

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14200 of 2023

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M/s Chaitanya Projects Consultancy Pvt. Ltd. C-5, 2nd Floor, RK Tower, Plot No. 21-22, Vaishali Sector 4, Ghaziabad-201010, through its Authorized Signatory Manish Kumar Dutta, male, aged about 52 years, son of Late Shri Arun Kumar Dutta, Resideth of Lalbagh, Tilkamanjhi, P.S. Tilkamanjhi, District-Bhagalpur.

... .. Petitioner/s

Versus

The Union of India Ministry of Railways, Through CAO-C South-HQ-Engineering, Chief Administrative Officer, East Central Railway, Mahendrughat, Patna-800004.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajiv Ranjan Raj, Advocate Mr. Abhijeet Gautam, Advocate Mr. Vijay Kishore Bharti, Advocate
For the Respondent/s	:	Mr. Naresh Dikshit, Advocate Mr. Sumit Shekhar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 01-11-2023

In the instant writ petition, petitioner has prayed for the following relief(s):-

- i. For issue a writ order or direction in the nature of certiorari quashing the impugned order dated 09.08.2023, passed by the respondent, as contained in Annexure-P/42 to this writ petition.*
- ii. To stay the entire process with regard to allotment of the tender till the disposal of the present case.*
- iii. To issue such other orders, which this Hon'ble Court may deem just and proper in favour of the petitioner.*
- iv. To allow the writ petition with costs.*

2. The petitioner has assailed the termination of contract



order dated 09.08.2023 and it has been given retrospective effect from 31.12.2022. It is submitted on behalf of the petitioner that the impugned action is without providing specific notice of termination of contract. Termination of contract has a civil consequence on the petitioner. Therefore, without hearing or giving opportunity of hearing to the petitioner proceeded to terminate the contract is in violation of Article 14 of the Constitution.

3. Learned counsel for the petitioner submitted that subject matter of work and offices are situated in two different states i.e., State of Bihar and State of Jharkhand. When certain cause of action accrued in the State of Bihar in such event writ is maintainable in Patna High Court.

4. The impugned action is not in terms of principle laid down by the Apex court in a number of decisions to the extent that wherever livelihood of the person is involved in a civil consequence. In such circumstances, principle of natural justice like opportunity is required to be given to such of those persons whose rights are affected. Therefore, the impugned action of termination of contract dated 09.08.2023 said to be having retrospective effect from 31.12.2022 is liable to be set aside.

5. *Per contra*, learned counsel for the respondent resisted



the aforementioned contentions. He has raised preliminary issue relating to maintainability of the writ petition on territorial jurisdiction. It is submitted that record reveals that petitioner has a grievance within the State of Jharkhand and not in Patna High Court (State of Bihar). In this regard, he has also pointed out that impugned communication is from the Office of Dy. Chief Engineer/Con/I East Central Railway, Hazaribagh. Therefore, this Court has no territorial jurisdiction to entertain the present writ petition. It is further submitted that writ petition is not maintainable in view of the fact that petitioner has an alternative remedy of arbitration under Clause 49.0 read with Section 8 of the Arbitration and Conciliation Act, 1996.

6. Heard learned counsels for the respective parties.

7. Firstly it is to be seen whether this Court has territorial jurisdiction or not insofar as entertaining the present petition read with the impugned action dated 09.08.2023 of the Executive Engineer/Construction, East Central Railway, Hazaribagh for & on behalf of the President of India. In the very same communication it is to be noted that copy has been marked to FA & CAO/Con/ECR/MHX/Patna, for information & necessary action please. Author of the above document is requesting to forfeiture the Earnest Money, PBG and Security



Deposit which has been communicated from the office of Hazaribagh to the office of Patna. Therefore, cause of action accrued in both States. In such circumstance, the petitioner has option to choose cause of action at a particular place. Petitioner has chosen Patna High Court. Therefore, the contention of the respondent that this Court has no territorial jurisdiction is hereby rejected.

8. Learned counsel for the respondent submitted that writ is not maintainable in view of the Clause 49.0 to the extent that the petitioner has a remedy under arbitration read with Section 8 of the Arbitration and Conciliation Act, 1996. The same cannot be appreciated in view of the fact that the impugned action dated 09.08.2023 is bereft of material information like not issuing notice to the petitioner insofar as proposed action to terminate the contract of the petitioner. That apart, it is unheard that contract could be terminated with retrospective date. Even on this issue there is total non-application of mind.

9. It is necessary to reproduce termination of contract order dated 09.08.2023, it is reads as under:-

“Termination Notice

	<i>East Central Railway (Construction Department)</i>	<i>Office of Dy. Chief Engineer/Con/I East Central Railway, Hazaribagh</i>
<i>No. DCE/ C/HZME/WT/275/</i>		<i>Dated: 09.08.2023</i>



To,

*M/S Chaitanya Projects, Consultancy
Pvt. Ltd.,*

*C-5, 2nd Floor, RK Tower, Sector 4,
Vaishall, Ghaziabad-201010 (U.P)*

*Sub:- Tender No. ECR-CAO-C-S-ETEN-44-
21-22 for Conducting Sol investigation with
Reports, Design & Drawing of Major
Bridges, ROBs & LHS with structural
Drawing etc. in connection with
construction of ROB and Major Bridge in
Tori - Shivpur 3rd line, ROB (corridor of
elephant & wild animals) at Ch.72.15
between Danea-Jogeshwar Bihar in
connection doubling between Danea -
Ranchi Road and LHS in G.C. line between
Parasnath-Paharpar section.*

*Acceptance letter No.:-ECR-CAO-C-S-
ETEN-44-21-22 /10547390047358 dated
29.12.2021*

Dear Sir,

*In terms of the conditions of the
contract acceptance letter No.:-ECR-CAO-C-
S-ETEN-44-21-22 /10547390047358 dated
29.12.2021 governing the execution of the
above work, it was required to be completed
by the stipulated date of completion/ mutually
extended date of completion viz 31.12.2022.
You have failed to complete the work by the
agreed date of completion. You have also
failed to apply for further extension of period
of completion on valid and reasonable
grounds as acceptable to the Railway. Due to
your failure to fulfill your contractual
obligations, the contract stands terminated
with effect from the completion of contract i.e.
31.12.2022.*

*Please note that for non-fulfillment of the
contract the Railway reserve right to claim
damages under clause 62 of the general
condition of contract in addition to any other
rights to it under the law.*

Final measurement of the work done by you



shall be recorded on 14.08.2003. Please arrange to be present at site to witness and so sign the elements failing which the work will be measured in your absence and measurements as per provisions of the contract agreement shall stand such absence binding upon you whether or not shall have signed the measurement book.

Thanking you.

*Yours faithfully
(Pawan Kumar)*

*Executive Engineer/ Con
East Central Railway, Hazaribagh
For & on behalf of the President of India*

Copy to:-

> CE/Con/SE/ECR/MHX/Patna, for his kind information please.

> FA 7 CAO/Con/ECR/MHX/Patna, for information & necessary action please. He is requested to forfeit the Earnest Money, PBG and Security Deposit.

> Dy. CE/con/HZME-1, Dy. CE/Con/HZME-2 & AEN/Con/HZME for kind information please.

> Sri Rajesh Kumar, SSE/Con/ECR/HZME for information regarding final measurement on 14.08.2023

*Executive Engineer/Con
East Central Railway, Hazaribagh”*

10. Perusal of the aforementioned impugned action of the concerned respondent, it is evident that petitioner has not been heard to the effect that there is no specific notice insofar as termination of contract is concerned. Number of judicial pronouncements are in favour of the petitioner insofar as not providing opportunity of hearing before impugned action of termination of contract and it has a civil consequence. At this stage, it is necessary to take note of Apex Court decision in the



case of ***Kranti Associates Private Limited & Anr. Vs. Masood***

Ahmed Khan & Ors., reported in (2010) 9 SCC 496. Para 47

reads as under:-

“47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of



incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “due process”.

11. The principle laid down by the Apex Court in the aforementioned decision is required to be complied wherever there is a civil consequence. Reading of impugned action, it is crystal clear that there is no iota of evidence that the authorities have followed the principles laid down by the Apex Court in the aforementioned judicial pronouncement.

12. Taking note of these material information, the petitioner has made out a *prima facie* case insofar as the impugned action dated 09.08.2023 insofar as terminating the contract of the petitioner w.e.f. 31.12.2022 retrospectively and



the same is set aside.

13. The concerned authority is hereby directed to take note of the principle laid by the Apex Court in the cited decision and to proceed in accordance with law.

14. The concerned authority shall issue a detailed show cause notice seeking petitioner’s explanation and on receipt of petitioner’s explanation, the concerned authority shall pass detailed speaking order after due consideration of each of the contentions to be raised by the petitioner against the proposed show cause notice for termination of contract and proceed to pass speaking order and communicate the same to the petitioner.

15. The above exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

16. Accordingly, the writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Balmukund/-
DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2023
Transmission Date	NA

