

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5047 of 2018

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Kedar Nath Singh, son of Late Bachuli Singh, Resident of Village-
Gandhinagar Katira Ara, P.S.- Nawada Ara, District, Bhojpur.

.. ... Petitioner/s

Versus

1. The Union Of India through the Eastern Central Railway, Danapur, District - Patna
2. The Senior Divisional Engineer I, Eastern Central Railway, Danapur, Patna.
3. The Divisional Railway Manager Engg, Eastern Central Railway, Danapur, District- Patna.

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sumeet Kumar Singh, Advocate
For the Respondent/s : Mr. Anshuman Singh, CGC

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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 : 18-03-2023

Heard learned counsels for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:

“1. That the present writ application is being filed for quashing the letter dated 11.03.2015 issued by the Senior Divisional Engineer, Eastern Central Railway, Danapur, respondent no.-2 by which the agreement of the petitioner has been cancelled; on the ground that the petitioner has not been served a show cause notice before termination of the contract, no opportunity of hearing has to be given to the petitioner;



II. That the present writ application is being filed for quashing the letter dated 14.09.2015 issued by the Senior Divisional Engineer (I), East Central Railway, Danapur by which the earnest money of the petitioner of Rs. 98,000/- and performance ground of Rs. 2,87,000/- and Security Deposit of Rs. 81912.00/- has been forfeited on the ground that the termination of contract vide Annexure No. 4 has been issued without giving opportunity of hearing to the petitioner hence, the entire exercise is illegal and contrary to the settled principle of law;

III. That the present writ application being filed in the nature of Mandamus for a direction to the respondent authority do the final measurement of the work which has been done by the petitioner till March, 2015 and further to make payments for the work from 01.04.2014 till 23.03.2015 i.e. 60% of the total work which is Rs. 35,57,214/- Rs. 8,19,120) = Rs. 27,38,004/-; also to make payment of the consequential relief;

IV. And for any other relief(s) for which the petitioner may be found to be entitled to in the present facts and circumstances of the case.”

3. Perusal of the impugned action dated 11.03.2015 (Annexure - 5), petitioner's contract has been terminated without notice.

4. Learned counsel for the respondents submitted that notice need not be served to the petitioner in the light of Railway Board Circular. It is also submitted that tenure of the contract was completed on 07.11.2014, however, work was not completed by him, therefore the impugned action has been taken. Impugned



action is in respect of termination of contract. Nodoubt tenure of the contract was up to 07.11.2014, however, the work was not executed in complete by the petitioner. Thereafter, concerned respondent has not taken any decision either to extend the contract tenure and in the absence of same proceeded to terminate the contract on 11.03.2015.

5. The contention that the concerned respondent need not issue notice before termination of contract read with the Railway Board Circular is not tenable in the light of Article 14 of the Constitution. Further, it is contended by the learned counsel for the respondents that the petitioner has an alternative remedy of arbitration. It is to be noted that it is a case of violation of principle of natural justice, in such circumstances Article 226 of the Constitution would be invoked.

6. Accordingly, petitioner has made out a case so as to interfere with Annexure - 5 dated 11.03.2015 and it is set aside reserving liberty to the concerned respondent to initiate action in accordance with law after giving ample opportunity of hearing in the light of Hon'ble Apex Court's decision in the case of ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan*** reported in (2010) 9 SCC 496, Para 47 to the extent that in the event of termination order, the same is amenable to judicial review. In such circumstance, all necessary formalities were required to be



undertaken by the concerned respondent who has taken the impugned action.

7. At this juncture, learned counsel for the respondents submitted that before impugned action dated 11.03.2015, the petitioner was made known through notice for settling certain bills, it is also submitted that the petitioner is stated to have executed only 15 % of the work and running bill read with payments have been made and some of the bills were required to be settled. These issues are not necessary to be examined. On the other hand, issue is whether the impugned action is in order or not? The aforesaid contentions are all the factual aspects of the matter which are required to be agitated in the arbitration in terms of the agreement. These material information will not change our decision. Accordingly, it is rejected.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2023
Transmission Date	NA

