

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16117 of 2022

KEC- DELCO- VARAHA JV through its Authorized Representative Shri Amarjeet Kumar Singh, aged about 36 years (Male), Son of Shri Hare Ram Singh, Resident of House No.- 158, Sector-09, Pocket- 01, Near Shiksha Bharti School, Dwarika, Bagdola, South-West Delhi, 110077.

... .. Petitioner/s

Versus

1. The General Manager, East Central Railways Hajipur.
2. The Chief Administrative Officer/Con./North, ECR, Mahendrughat, Patna.
3. The Chief Engineer/Con./North, ECR, Mahendrughat, Patna.
4. The Deputy Chief Engineer/Con./IV, ECR, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Vikas Kumar, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG Mr. Pradeep Kumar, Advocate Mr. Kumar Sachin, CGC

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-01-2023

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

1. That in this writ application the petitioner prays for issuance of appropriate writ/writs, order/orders, direction/directions to release and/or refund the original bond of Performance Bank Guarantee being Guarantee No. 0160/FIBG160394 dated 08.07.2016 for



Rs. 2,15,48,966.77/- (Rupees Two Crore Fifteen Lakhs Forty Eight Thousand Nine Hundred Sixty Six and Seventy Seven Paise only) issued by Bank of India, Mumbai Large Corporate Branch, deposited by petitioner to the respondent Railway pursuant to Agreement No. ECR/CAO/CON/WT/Agt/553 dated 11.09.2010 executed between petitioner and respondent Railway.

For any other relief/reliefs for which the petitioner is found entitled to.

On 18th of August, 2009, parties to the *lis* entered into an agreement for execution of public works, *i.e.* “Earth work in embankment, construction of major bridges in original/diverted alignment on pile/well foundation, minor bridges, stations buildings and level crossing between Saraigarh (excluding) to Forbesganj in connection with Saharsa-Forbesganj Gauge Conversion Project”.

It is not in dispute that disputes arising therefrom were subject matter of adjudication in the arbitral proceedings in terms of reference made by an order of this Court in Request Case No. 12 of 2016, titled as KEC-DELCO-VARAHA-JV Vs. The General Manager, East Central Railways, Hajipur and Ors.



It is also not in dispute that before the learned Arbitrator, the parties jointly foreclosed the said agreement, which fact is recorded in the proceedings dated 08.10.2017, relevant portion thereof is extracted as under:-

“In view for the aforesaid submission of the Claimant regarding foreclosure of the contract agreement the learned Senior Counsel representing the Railways contents that as regard foreclosure is concerned as public interest is suffering he too has no objection to the same. However it has also been contended by the parties that the disputes which are pending before the Tribunal should be decided on its own merit on submissions of the parties. In view of joint submission of the counsels of the parties the foreclosure is allowed. The Railways are free to proceed further in accordance with law.

As far as the relief prayed in the petition Under Section 17, reply to the rejoinder, if any, would be filed on the next date. It is also made clear the written statement/counter claim of claim petition should also be filed by the respondent Railway at the earliest.

As jointly prayed and agreed between the parties the next date of meeting in the Arbitration Proceeding is fixed on 15.10.2017 at 05:00 PM at my Residential Chamber. The order has been passed in presence of the counsel representing the parties, as such no further communication is required to be made.”

It is also not in dispute that the arbitral proceedings



culminated with the passing of the award in the petitioner's favour, which of course, is subject matter of challenge in adjudication before the competent authority in terms of and under the provisions of the Arbitration and Conciliation Act, 1996.

Be that as it may, the fact of the matter being that as on date there is an award passed by the Arbitrator in relation to the agreement in question in the petitioner's favour.

In this view of the matter, we are of the considered view that the respondent's action in calling upon the petitioner to renew the bank guarantee submitted as Performance Bank Guarantee is totally illegal and arbitrary.

Under similar circumstances, this Court in the case of M/s Sadbhav G K C Joint Venture Vs. The State of Bihar & Ors., in C.W.J.C. No. 4942 of 2017 had quashed the similar action. The said order stands affirmed by a Division Bench of this Court in the case of The Bihar State Road Development Corporation Limited & Ors. Vs. M/s Sadbhav G K C (JV) & Ors., in Letters Patent Appeal No. 1118 of 2017.

In this view of the matter, the writ petition stands allowed and the action of the respondent insisting the bank guarantee renewed is held to be illegal and arbitrary.



Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.01.2023
Transmission Date	

