

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20440 of 2018

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M/s Interlink Coal Private Limited, a company incorporated under the Indian Companies Act, 1956, having its Head Office at Shukla Colony, Hinoo, Ranchi, through its Managing Director, Sri Rasendra Kumar Singh, Son of Late Rajendra Singh, Resident of Janki Niwas, Shukla Colony, Hinoo, P.S.-Hinoo, District- Ranchi, Jharkhand.

... .. Petitioner/s

Versus

1. The East Central Railway, through its General Manager, Zonal Office, Hajipur, District – Vaishali.
2. The General Manager, East Central Railway, Zonal Office, Hajipur, District- Vaishali.
3. The Deputy Chief Engineer (Construction)-II, East Central Railway, Hajipur, Vaishali.
4. The Chief Administrative Officer (Construction) North, East Central Railway, Mahendrughat, Patna.
5. The Chief Engineer (Construction), N.E., East Central Railway, Mahendrughat, Patna.
6. The FA & CAO, East Central Railway, Mahendrughat, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate Mr. Raj Kishore Prasad, Advocate
For the Railways	:	Mr. Pradeep Kumar, Sr. Panel Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 27-02-2023 Heard Mr. Rajendra Narain, learned senior counsel assisted by Mr. Raj Kishore Prasad, learned counsel appearing on behalf of the petitioner and Mr. Pradeep Kumar, learned senior panel counsel appearing on behalf of the Railways.

2. In the present writ petition, the petitioner has prayed for the following reliefs:-

(i) For issuance of an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus



directing the respondents to pay the admitted amount of dues to the tune of Rs.50 lacs approximately to the petitioner which includes the amount of Earnest Money, Security Deposit and Performance Guarantee etc. after passing the final bill for the work executed by the petitioner for "Construction of 28 units Type-IV quarters at Ramashish Chowk, Hajipur" vide Contract Agreement No. ECR/CAO/Con/WT/148 dated 31.05.2006 along with reasonable interest thereon, as the work has already been completed on 31.05.2009 itself and since then the respondents are not passing the final bill in spite of repeated request made by the petitioner.

3. Learned senior counsel appearing on behalf of the petitioner submitted that the petitioner was issued Work Completion Certificate on 10.08.2010 by the Dy. CE/Con/II/HJP, East Central Railway, Hajipur. According to the Work Completion Certificate issued in favour of the petitioner, the agreement value of the work is Rs. 3,50,15,886.43/- and the value of work paid so far is Rs. 2,50,99,040.69/-. The remaining value of work amounting to Rs. 99, 16, 845.74/- is required to be paid to the petitioner subject to the final bill and final valuation. Learned counsel further submitted that several representations were made for payment of the remaining amount of Rs. 99, 16, 845.74/- and when no action was taken, petitioner served legal notice dated 14.12.2016 claiming that the petitioner had completed the work on 31.05.2009 but till date in an arbitrary manner, the legitimate claim of the petitioner has been withheld without assigning any valid reason for the same. The



petitioner has informed vide letter dated 16.06.2017 that though the work was completed on 31.05.2009 itself, pursuant to which the security deposits deducted from the bill and earnest money have also not been refunded. Learned counsel further submitted that the Authorized Signatory of the Company again communicated annexing the Work Completion Certificate dated 10.08.2010. In compliance of the said letter, a communication was made by the Dy. CE/C/North for CAO/CON/North, to Dy. CE/Con/II, East Central Railway, Hajipur, requesting him to furnish item wise compliance and submit to his office for further disposal of the case. When no action was taken, the petitioner again represented before the concerned authority which was received in the office on 23.08.2017 and in reply, the Dy. CE/Con/II/HJP communicated to the CE/Con/NE/MHX, East Central Railway, Patna for final payment of the bill as claimed by the petitioner. Petitioner being conscious of the fact that he is only liable for payment to the tune of Rs. 50 lacs approximately which includes amount of security deposit, earnest money and performance guarantee etc., the petitioner for early payment restricted his claim only to the tune of Rs.50 lacs, even though the Work Completion Certificate issued is for total amount of agreemental value i.e. Rs. 3,50,15,886.43/- and value of work



paid so far as on 10.08.2010 is Rs. 2,50,99,040.69/-.

4. Mr. Pradeep Kumar, learned senior panel advocate appearing on behalf of the Railways submitted that the petitioner is not liable to be paid the claimed amount and in this regard he has referred to paragraph nos. 7 and 17 of the counter affidavit which are reproduced hereunder:

“7. That in any case, the demand raised by the petitioner is hopelessly barred by time. The work was admittedly completed by the petitioner on 31.05.2009. Even thereafter, the petitioner sent a letter for the first time on 21.12.2011 only. It is the petitioner who has been sleeping over his rights. The petitioner ought to have invoked arbitration against the respondents if the payments allegedly being demanded by way of this writ petition were not paid to it. It is a settled position of law that exchange of correspondence does not extend the period of limitation. Period of limitation once commences, does not stop because the parties may be communicating with each other. It is further humbly submitted that even in case of acknowledgment, the period of limitation gets extended only when the outstanding amount is admitted before the expiry of the original period of limitation. Therefore, even otherwise, the claim being barred by limitation, does not survive and therefore, this petition deserves to be dismissed on this ground also.

17. That the contents of Para 15 are wrong and denied. It is denied that from a reading of the letter dated 05.09.2017, it is evident that the respondents have admitted the claim of the petitioner. On the contrary, the letter dated 05.09.2017 merely says that if the claim is sanctioned, payment will be made to the petitioner. The petitioner's claim, to the knowledge of the petitioner, is hopelessly barred by time and therefore, it is unnecessarily raising the plea of admission by respondents when there is none.”

5. In support of the statement made in above paragraphs, the petitioner has relied upon a judgment in case of



Gujarat Housing Board & Anr. Vs. Vandemataram Projects Private Limited (Civil Appeal No. 2093 of 2022) to deny the claim of the petitioner.

6. At this stage, learned senior counsel appearing on behalf of the petitioner further submitted that in reply to paragraph no. 7 of the counter affidavit, petitioner has made a specific statement in paragraph no. 6 of the reply to the counter affidavit that considering proposal for reduction of rate due to use of marbles of thickness 16mm and PCC grade cement by then authority in place of agreemental scope of marbles of thickness 18mm thickness and OPC grade cement due to unavailability in market, the petitioner has reduced the final bill to the extent of Rs. 40 lacs. He further submitted that in paragraph no. 14 of the counter affidavit, the only reason for non-payment of the admitted dues of the agreed value of the work allotted to the petitioner is that the file for sanction of some items was misplaced at the Head Quarters of the respondents and in support thereof, he has referred to paragraph no. 16 of the counter affidavit. Paragraph nos. 14 and 16 of the counter affidavit are reproduced hereunder:-

“14. That as regards the contents of Para 11, it is humbly submitted that the file for sanction of some items was misplaced at the Head Quarters of the respondents, hence the proposal had to be sent again for sanction of the competent authority.



16. That as regards the contents of Paras 13 and 14, it is humbly submitted that some pages of the file for NS items was misplaced and therefore the same had to be re-constructed and sent to the HQ for concurrence of the finance department and sanction from the competent authority. It is, however, submitted that the respondents have not admitted the claims raised by the petitioner.”

7. Having heard the rival submissions made on behalf of the respective parties, on perusal of the counter affidavit, it appears that the respondent for the reason that the file for sanction of some items was misplaced at the Head Quarters of the respondent, the admitted dues of the petitioner as contained in Work Completion Order dated 10.08.2010 has not been paid till date. The petitioner in paragraph no. 6 of the reply to the counter affidavit has admitted that on account of the proposal contained in file no. DCE/Con/II/HJP/B/17/Rebate dated 15.05.2012, petitioner has reduced the agreement value to the extent of nearly Rs. 40 lacs and now he claims only Rs. 50 lacs approximately and reasonable interest accrued thereon as prayed in paragraph no. 1 of the writ petition which also includes the amount of earnest money, security deposit and performance guarantee etc. and in such circumstances, the authority must not deny the admitted dues for any reason for their own fault.

8. The General Manager, East Central Railway, Hajipur is directed to forthwith take action in accordance with the provisions of the Indian Railways Act, 1989 for making



payment of the admitted dues amount claimed by the petitioner within a period of thirty days from the date of this order by disposing of the representations already pending which have been annexed to the present writ petition.

9. Since the order has been dictated in the open Court in presence of learned senior panel advocate and his assisting panel advocate, they are required to communicate the order today forthwith to the General Manager, East Central Railway, Hajipur for necessary action. It is expected that the respondent no.2-General Manager, East Central Railway, Hajipur is required to take final decision for payment of the admitted dues within a period of six weeks from today.

10. Accordingly, the writ petition stands disposed of.

(Purnendu Singh, J)

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