

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5874 of 2016

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M/s Alectra Construction Ltd. S/O Sri Anil Kumar Singh

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Engineer-In-Chief, cum Add. Commissioner cum Special Secretary
Road Construction Deptt. Bishwes
3. The Chief Engineer, North Bihar, Darbhanga, Road Construction Dept at
Patna.
4. The Executive Engineer, R.C.D. Road Division No.- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Raj Kishore Prasad
For the Respondent/s	:	Mr.Nirbhay Kumar Singh- Gp26
For the State	:	Mr. Manoj Kumar AC to GP-4

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**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY**

ORAL ORDER

11 18-07-2024 The Writ petition is filed for commanding the respondents to recall the condition of price escalation in the approval of the time extension till 31.03.2015 and pass the bill of escalation for Rs. 1,52,22,785/- as per Clause 10 CC of SBD and pay the same along with simple interest @ 10%, which stipulates to pay the escalated rate of all components, but overlooking the clause of SBD, the respondent No. 4 and 2 are not paying the aforesaid amount. Further for a direction to pay the entire bill amount of escalation along with interest with respect to agreement No. 4 of SBD of 2012-13



(07.06.2012) which was executed for an amount of Rs. 19,79,60,025/-) for the construction of Road, Drainage and Foot-path along with Road widening of State Highway No. 50 (Samastipur-Sarairanjan-Patori-Road) from km 1 to km 5(Part) total length of 4.615 km. Further relief is sought, to pay compound interest @ 14.5% since 07.06.2014.

2. The brief facts of the petition was that the petitioner Company was awarded with the work under SBD clauses with respect to Agreement No. 4 SBD of 2012-13 for the constriction of Road, *Nala*, Foot-path and also for widening of the State Highway from km 1 to km 5 (part) total length of 4.615 km which is executed for an amount of Rs. 19,79,60,025/- and the completion of the work has to be done within 33 months.

3. It is pertinent to mention here that after approval of the extension of time till 30.03.2015, the completion period has become 33 months. It is the contention of the Learned counsel for the petitioner, that inspite of completing the work, the 4th respondent deliberately did not obey the SBD clause and did not pass the bill of escalation of Rs. 1,52,22,785/-. It is urged by the Learned counsel for the petitioner that the petitioner could not complete the work



within stipulated period due to encroachment by 3rd parties. He relied on Annexure 5 Clause 10 CC of SBD which discloses the price escalation and approval of time extension and, therefore, direct the respondents to pay the balance amount.

4. A detailed counter affidavit was filed denying all allegations made in the petition, but admitting the agreement between the parties and also of extension of time. The counter affidavit further discloses that State of Bihar has enacted a law regarding the settlement of work dispute before the Tribunal i.e. “ The Bihar Public Works Contract Dispute Arbitration Tribunal Act, 2008” which was constituted to decide the disputes between the parties arising out of any works contract in the State of Bihar, irrespective of the fact, whether there is an Arbitration Clause or not. Therefore, prayed to dismiss the writ petition as alternative remedy is available for the petitioner.

5. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents.

6. The petitioner relied on Annexure 5 i.e. extension of time with Clause 10 CC of SBD that he is entitled for price escalation in the case, if, time is extended.



7. It is the contention of the respondent that the time extension for completing the work was granted to the petitioner on 03.11.2014 with a clear cut stipulation that he shall not be given any benefit of Price escalation provided under Clause 10 CC of SBD.

8. Admittedly, the delay occurred due to the encroachment and not due to the laches of the petitioner, therefore, the petitioner should not be suffered for the delay caused in completion of the work in view of the encroachment made by 3rd parties. Admittedly, the respondents have not made any efforts to remove the encroachment at the time of handing over the work site to the petitioner. However, as the Tribunal is empowered to settle the disputes, the petitioner is at liberty to approach the Tribunal for the settlement of disputed amount and the Tribunal in turn shall settle the dispute within six months from the date of receipt of this order. Further the petitioner is directed to file an application before the Tribunal within three weeks from the date of receipt of this order. A copy of order shall also be communicated to the Tribunal by the Registry. The Tribunal shall adhere the observations made by this Court while deciding the application.



9. With the aforesaid observations, the Writ petition
is disposed of.

(G. Anupama Chakravarthy, J)

Manishkumar/-

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