

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15349 of 2023

M/s Supreme-VPIL (Joint Venture of Supreme Infra India Limited and Vijeta Projects and Infrastructure Limited) a company registered under India Companies Act, 1956, having its Head Office at Supreme House, Plot No. 94/C, Pratap Gad, Opposite- IIT Main Gate, Powai, Maharastra- PIN - 400076 through its Authorised Signatory and General Manager namely, Rakesh Kumar Singh, Gender-Male, age about 40 years, Son of Late Shyam Sunder Singh, resident of - Near Mamta Apartment, Flat No. 304D, Varun Vihar, Shivpuri, P.S. - Sri Karishnapuri, Boring Road, Patna, District- Patna, PIN - 800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Energy Department, Bailey Road, Patna, Bihar.
2. The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, Bihar.
3. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, Bihar.
4. The Chief Engineer (Project- 1), Urban and Other Scheme, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, Bihar.
5. The Senior Manager (F and A), South Bihar Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
6. The Electrical Superintending Engineer, Electric Supply Circle, Patna.
7. The Electrical Superintending Engineer, Electric Supply Circle, Bhojpur at Ara.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.
For the Respondent/s : Mr. Yogendra Prasad Sinha (Aag 7)

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

8 30-09-2024 Heard the learned counsel for the parties.

The present writ petition has been filed for the
following reliefs:-

*“a. For issuance of a writ in nature of
Certiorari for quashing the Letter No. 289 dated
19.06.2023 issued by the Chief Engineer (Project-*



1), Urban and Other Schemes, South Bihar Power Distribution Company Limited (hereinafter referred to as SBPDCL for brevity) whereby the Chief Engineer arbitrarily approved the Final Bill of Quality (BOQ) and asked the petitioner for final closure of the project Supply and Erection of materials & equipment's for composite work of supply of materials and equipments, erection, testing and commissioning of 33/11 KV line, New 33/11 KV power sub-station, Installation of New DSS and augmentation of DT, R&M of DSS, new LT line and R&M of LT line, 33 KV line and 11 KV line of TURNKEY basis in Patna & Bhojpur Districts under Special plan (BRGF) phase-II and Balance work of Phase-1 (Erection & Supply) despite of the fact that the completion certificate and the project taken over certificate has already been issued in favour of the petitioner in the year 2022.

b. For issuance of the Writ in nature of Mandamus directing the respondent authorities to restrain from taking the ex-parte decision for closure of the contract as communicated vide letter no. 371 dated 18.07.2023 and further direct the respondent authorities to finalize the BOQ in terms of the LOA issued to the petitioner at the time of completion of the project and not in terms of final BOQ dated 19.06.2023 approved by the respondents which is arbitrary and contrary to the LOA as approved at the time of commencement of the project.

c. For issuance of a writ in nature of Certiorari for quashing the Memo No. 1192 dated 18.08.2023 issued by the Senior Manager (Finance & Accounts), SBPDCL whereby it has directed the Bank Manager, Allahabad Bank to invoke and encash the Bank Guarantee furnished by the petitioner company against LOA 583 and 584 dated 25.02.2014.

d. For issuance of a writ in nature of the Mandamus directing the respondent authorities to release the Bank Guarantee, amount of Liquidity Damage, amount of Capping, Amount against the Bills as the project has already been completed in the year 2022 and the Project Taken Over Certificate has also been issued to that effect and further



directing the respondent authorities not to encash the Bank Guarantee till the adjudication of the present writ application.

e. For any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case and in the interest of justice.”

3. Learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has an alternative and efficacious remedy of approaching the Commercial Court and relied on the judgment of this Hon’ble Court passed in CWJC No. 2278 of 2023 dated 19.04.2023. Learned counsel has further stated that the above judgment has become final as the LPA No. 672 of 2023 filed against the said writ petition was dismissed as withdrawn.

4. This Hon’ble Court in CWJC No. 2278 of 2023 dated 19.04.2023 has held as under;

*“10. In view of the law laid down by the Apex Court in **M.P. Power (supra)** and the provisions as quoted above, this Court feels that the existence of the alternative remedy which is efficacious and having a statutory character with a relief of appeal available to an aggrieved party before this High Court against the order of Commercial Court, the writ petition ought not to have been entertained, more so, as the claims raised by the petitioner are disputed by the respondents.”*

5. The above judgment has been rendered by the Coordinate Bench of this Hon’ble Court relying on the



judgments of this Hon'ble Court reported in **2019 (3) PLJR 18** and the Hon'ble Supreme Court reported in **(2023) 2 SCC 703**.

6. Having regard to the fact that there are seriously disputes questions of fact and also the fact that the petitioner is having an alternative and efficacious remedy of approaching the Commercial Court, this Court is not inclined to entertain the present writ petition. The present writ petition is disposed of granting liberty to the petitioner to approach the Commercial Court established under Commercial Courts Act, 2015 within a period of four weeks from the date of receipt of a copy of this order. On such case being filed, the Commercial Court is directed to consider the same and pass necessary orders duly taking into account the evidence led by both the parties. It is made clear that this Court has not gone into the merits of the case and leaving all issues open to be agitated by the petitioner and to be decided by the Commercial Court.

7. With the above direction, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

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