

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15977 of 2023

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1. PLANIN Innovation and Consultancy Services Pvt. Ltd. through its Chief Executive Officer Mr. Fani Bhushan, male, aged about 40 years, son of Shri Vidya Bhanu, resident of A-601, Plot no. 09, Sector 22, Dwarka, P.S. Sector-23 Dwarka, District- New Delhi.
 2. Mr. Fani Bhushan, Son of Shri Vidya Bhanu, Resident of A-601, Plot no. 09, Sector 22, Dwarka, P.S. Sector-23 Dwarka, District- New Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Road Construction Department, through its Principal Secretary, Bihar, Patna.
3. The Bihar Rajya Pul Nirman Nigam Limited, through its Managing Director, Sardar Patel Marg, Patna.
4. The Senior Project Engineer, External Project Division, Bihar Rajya Pul Nirman Nigam Limited, Sardar Patel Marg, Patna.
5. Dr Anoop Chawla, C.I, The Foundation of Innovation and Technology Transfer, having its registered office at Dean's Complex, IIT Delhi. Hauz Khas, New Delhi/ Industrial research and Design, IIT Delhi Hauz Khas, New Delhi.
6. Ajay Gupta, Managing Director, Park Project Consultancy Pvt Ltd, Flat no. 101, First Floor, Pocket-A, Harihar Apartments, Phase-II, Ashok Vihar, Delhi.
7. Managing Director, Mr. S P Singla, M/s S.P. Singla Construction Private Limited, resident of 1006- 1007, Pearls Best Heights-1, A-5, Netaji Subhash Place, Pitampura, Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sarim Nawed, Advocate Mr. Nand Kumar Sagar, Advocate Mr. Md. Modassir Shams, Advocate
For the Respondent/s 1&2	:	Mr. Manoj Kr. Ambastha (SC-26) Mr. Santosh Kumar Krishna, AC to SC-26
For the Respondent/s 3&4	:	Mr. Vikash Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
CAV JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-02-2024

The termination of a contract is the cause of action for the above writ petition. The contract was a tripartite agreement between the petitioner, the 3rd respondent and the 5th respondent. The 3rd respondent raises the contention that there is an arbitration clause in the agreement which would dis-entitle the petitioner to invoke the remedy under Article 226 of the Constitution of India. Learned counsel for the petitioner asserts that his consultancy has been terminated on the ground of non-supply of design; which obligation was on the 3rd party to the agreement, the 5th respondent and not on the petitioner.

2. We have heard Shri Sarim Nawed, learned counsel for the petitioner and Shri Vikash Kumar, appearing for the Respondent Nos. 3 and 4. Learned Government Advocate, Shri Manoj Kumar Ambastha and Shri Santosh Kumar Mishra represent the Respondent Nos. 1 and 2.

3. The petitioner holds the patent for an invention entitled 'SWAP Process for Interchange and Traffic Management' as is seen from Annexure P-1. The petitioner, the holder of the patent, entered into an agreement with Foundation for Innovation and Technology Transfer (for brevity 'FITT'), IIT Delhi, a unit of the Indian Institute of Technology, Delhi,



which operates a technology business incubation unit. The petitioner who was the first party in the agreement had been working with the FITT, the second party, to develop the 'Swap Based Traffic Interchanges and Grade Separated U-turns based Interchanges', referred as SBTI and GSUTBI; the second party having leveraged the technical knowledge and expertise of the 5th respondent. The two parties to the agreement agreed to commercialize the invention, conceived by the first party, the petitioner herein and developed by the second party, the FITT who has not been impleaded in the above writ petition. We make this observation since the 5th respondent who is from the Mechanical Engineering Department of the IIT is referred to only for his technical knowledge and expertise. The agreement at Annexure- P-2 is signed by the Managing Director of the FITT.

4. Based on Annexure P-2 agreement, a Memorandum of Understanding (for brevity 'MOU') was entered into between the FITT and the 3rd respondent, the Bihar Rajya Pul Nirman Nigam Limited (for brevity "BRPNL"). The specific technology for which the petitioner had a patent was the basis of the MOU which also refers to a Consultant-In-Charge (C.I), who is the 5th respondent.



5. Based on the MOU, the 3rd respondent BRPNNL entered into a Project Execution Agreement with the 5th respondent, as C.I; produced at Annexure P-6. Then a tripartite agreement was entered into as produced at Annexure P-7 between BRPNNL, the C.I and the petitioner; who was referred to as the Supervision Consultant. There is no dispute that the agreement contains an arbitration clause. The records reveal that the tripartite agreement led to work being commenced on the 'Ram Manohar Lohia Path Chakra Project' as revealed from Annexure P-8 to P-15, which documents also reveal that BRPNNL was unsatisfied with the progress of the work and had been regularly intimating the petitioner, Supervising Consultant, about the lethargy displayed in the proper execution of the work. Eventually, it led to a letter dated 24.04.2021 being issued to the petitioner which is a notice for termination of the contract and the position of Supervision Consultant.

6. A reading of Exhibit P-15 would belie the contention of the petitioner that the Supervising Consultant's contract was sought to be terminated on the ground of the complete design and drawing of the project having not yet been submitted; which is the obligation of the C.I.

7. We specifically extract Annexure P-15 notice



hereunder:

As directed, we would like to bring into your notice that, in last few months during the site visit most of the time supervision personnel are found absent which can be verified through your attendance records also. As we all are aware that the project is already delayed by almost 3.5 years, hence such negligence of duty is not tolerable at all. At the same time it is also important to mention here that the Accountant General office has also raised the para regarding your appointment and payment till date.

We would also like to remind you that, to use the innovative planning solutions and guidelines of this project, PICS were appointed as a supervision consultant on the recommendation of CI, FITT/IIT Delhi who has already failed to deliver the complete design and drawing of the whole project.

Further in light of certain aspects which were not clearly defined, in the interest of the project you were appointed as the Project Planner on the recommendation of CI, IIT Delhi. But being working as a project planner as well as having intellectual right we have not received any significant input from you till date.

In the above context and reference to current progress of RMLPC it is felt that the payment being made to PICS as a supervision consultant is not justified and we are compelled to serve a notice to you for termination of contract as a supervision consultant.

8. Paragraph 2 would clearly indicate that BRPNNL was quite aware of the fact that the complete design and drawing of the project was to be supplied by the C.I of FITT/IIT,



Delhi and his failure was specified in the notice along with the allegation of tardy progress of the work, for which the petitioner was held responsible. The first paragraph in the notice specifically speaks of the supervising personnel not being at site, at the time of inspection. The delay in project was emphasized, which was ascribed to the negligence of both the other parties to the tripartite agreement.

9. Admittedly, there is an arbitration clause in the agreement. When a termination order was issued, the petitioner was before this Court with a writ petition numbered as CWJC No. 15219 of 2021. Therein the Division Bench after noticing the facts leading to the termination, also noticed the allegation and counter allegation of the petitioner and BRPNNL about the delay in the project. The termination order was set aside only on accepting the submission of the petitioner that it was cryptic and unreasoned order, which also did not deal with the reply of the petitioner. The learned Judges of the Division Bench also referred to the decision in *Oryx Fisheries (P) Ltd. v. Union of India & Ors., (2010) 13 SCC 427*. The petitioners were directed to be heard and a reasoned order passed, on passing of which, it is now challenged and produced in the writ petition as Annexure P-20.



10. It may not be proper for us to look into the various aspects of the order passed, since we do not have the expertise to do so and it would not be a permissible exercise in judicial review. Judicial review as is trite, looks at the decision making process and not at the decision itself, especially in this case where the agreement between the parties provide for a dispute resolution mechanism. The termination has also led to forfeiture of secondary deposit, which too can be agitated in a properly constituted arbitration. Admittedly, the tripartite agreement which was executed as on 23.12.2016 has not come to fruition till date and there is delay alleged on the part of the non-submission of the design and drawing, as also lethargy in the supervision of the work. This commends us to find a public element & interest, also, having motivated the BRPNL to terminate the contract. The termination was of both the other parties for defaults alleged against each of them; of failure to satisfy the respective obligations as per the agreement. We make it clear that the observation regarding public interest, is only a *prima facie* one and it would not regulate the decision of an arbitrator wherein definitely evidence has to be recorded and an adjudication made.

11. We decline interference under Article 226, an



extraordinary remedy not possible of invocation in contractual matters as has been reiterated by a Division Bench of this Court in *Md. Nizamuddin v. State of Bihar, (2014) 3 PLJR 515*.

12. The writ petition stands dismissed, however, making it clear that we put no stamp of validation on the termination order, which would have to be agitated in the appropriate forum for which liberty is left to the parties and all contentions are left open.

(K. Vinod Chandran, CJ)

Rajiv Roy, J I agree

(Rajiv Roy, J)

Anushka/-

AFR/NAFR	
CAV DATE	31.01.2024.
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