

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4196 of 2018

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Inam Khan Son of Kalam Khan Proprietor M/S Popular Refrigerator Works,
Opposite Catholic Church, Doranga, Ranchi, Resident of House No. 4/20,
Behind Church, Resaidar Nagar, Doranda, Ranchi- 834002Jharkhand.

... .. Petitioner/s

Versus

1. Bharat Sanchar Nigam Limited
2. The Chief EngineerElectrical, Bharat Sanchar Nigam Limited, Electrical
Zone, Patna- 800001
3. The Superintending Engineer Electrical, Bharat Sanchar Nigam Limited,
Electrical Circle, Patna- 80
4. The Executive Engineer Electrical, Bharat Sanchar Nigam Limited,
Electrical Division, Telephone Bh
5. The Executive EngineerElectrical Bharat Sanchar Nigam Limited, Electrical
Division, Bhagalpur- 812
6. The Accounts Officer, Electrical Division, Bharat Sanchar Nigam Limited,
Patna- 800001

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Munna Pd Dixit M.P. Dixit, Adv. Mr. Sanjay Kumar Dixit, Adv. Mr. Sanjay Kr. Chaubey, Adv. Mr. Shailendra Kumar, Adv. Mr. Punit Ranjan Dixit, Adv. Milind Raj Dixit, Adv.
For the Respondent/s	:	Mr. Renuka Sharma, Adv.
For the Res. BSNL	:	Mr. Nutan Sahay, Adv.

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 04-07-2025

1. The Writ petition is filed for the following
reliefs:-

*A. To issue an appropriate
writ / order /direction in the nature
of mandamus commanding the
Respondents to make payment of*



the balance amount to the Petitioner Company against the work done by the Petitioner Company in respect to the Work Orders dated 26.02.2010 amounting to Rs.3.80 Lacs and Rs.2.10 Lacs respectively as contained in Annexure-1.

B. To issue an appropriate writ / order /direction in the nature of mandamus commanding the Respondents to make payment of the balance amount to the Petitioner Company against the work done by the Petitioner Company in respect to the Work Orders dated 26.02.2010 amounting to Rs.2.10 Lacs henceforth as contained in Annexure-2.

C. To issue an appropriate writ / order /direction in the nature of mandamus commanding the Respondents to make payment of the balance amount to the Petitioner Company against the work done by the Petitioner Company in respect to the Work Orders dated 02.06.2009



amounting to Rs.8.50 Lacs henceforth as contained in Annexure-5 Series.

D. To issue an appropriate writ / order /direction in the nature of mandamus commanding the Respondents to make payment of the entire amount to the Petitioner Company against the extra work done by the Petitioner Company from January 2012 to March 2012 for which no Work Order was issued.

E. To issue an appropriate writ / order /direction in the nature of mandamus commanding the Respondents to pay statutory interest against the aforesaid dues amounts together with compensation and Contractor Profit without any further delay.

F. Any other relief or reliefs may be granted in favour the Petitioner for which he is legally entitled too.

2. The brief facts culled out from the Writ are that the petitioner is a proprietorship firm under the name and style of M/s Popular Refrigeration Work,



having its Registered Office at Opposite Catholic Church, Daronda, Ranchi.

3. The petitioner firm was allotted the work of annual comprehensive maintenance of Rs. 1.5 TR Air Conditioning units installed at various telephone exchange under SSA, Patna under SDE-III under Patna Division vide order No. 54/ WO/ TEDP/2008-2009/345 and order dated No. 54/ WO/ TEDP/2008-2009/346 of Bhagalpur and Munger Division respectively issued by the Executive Engineer, BSNL, Electrical Division, Patna. The petitioner company successfully completed assigned work and received partial payment for the works executed. However, an amount of Rs. 3.80 lakhs and Rs. 2.10 lakhs was retained by the respondents.

4. Furthermore, with respect to the work orders dated 26.02.2010, the petitioner submitted an application for extension of time on 01.06.2011, but no written order was issued by the respondents. The petitioner had completed the entire work for total amount i.e. 11.25 lakhs, out of which the respondents approved only Rs. 2.75 lakhs for



payment and the remaining amount of Rs. 8.5 lakhs was paid. Further, the respondents have taken extra work from the petitioner's company from January , 2012 to March, 2012, without any work order for which the respondents have to pay an amount of Rs. 5 lakhs. The petitioner made several representations to the respondents company dated 25.06.2012, 16.09.2013 and 06.08.2016, but in vain. Aggrieved by the inaction of the respondents, the petitioner was construed to file the Writ application.

5. A detailed counter affidavit was filed on behalf of the respondents. The counter affidavit disclose that the petitioner did not execute any work, during the extended period at any of the claimed sites. Extension of time was granted and the admitted dues were paid to the petitioner. Further, the counter affidavit disclose that there is an arbitration clause in the agreement. Clause 25 of the agreement stipulates that any disputes relating to the work are to be referred to arbitration, which constitutes an alternative remedy. Since the



petitioner has not availed the said alternative remedy, the Writ petition is not maintainable.

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

7. On considering the entire material on record, it is evident that the agreement contains Clause 25, an arbitration clause of the the agreement reads as follows:-

Except where otherwise provided in the contract all questions and disputes relating to the meaning of the specifications, designs, drawings and instructions herein before mentioned and as to the quality of workmanship or materials used on the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the contract, designs, drawings, specifications, estimates, instructions, orders or these conditions or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or



after the cancellation, termination, completion or abandonment thereof shall be dealt with as mentioned hereinafter:-

(i). If the contractor considers that he is entitled to any extra payment or compensation in respect of the works over and above the amounts admitted as payable by the BSNL or in case the contractor wants to dispute the validity of any deductions or recoveries made or proposed to be made from the contract, the contractor shall forthwith give notice in writing of his claim, in this behalf to the Engineer-in-Charge within 30 days from the date of disallowance thereof for which the contractor claims such additional payment or compensation or disputes the validity of any deduction or recovery. The said notice shall give full particulars of the claim, grounds on which it is based and detailed calculations of the amount claimed and the contractor shall not be entitled to raise any claim nor shall the BSNL be in any way liable in respect of any claim by the contractor unless notice



of such claim shall have been given by the contractor to the Engineer-in-Charge in the manner and within the time as aforesaid. The contractor shall be deemed to have waived and extinguished all his rights in respect of any claims not notified to the Engineer-in-Charge in writing in the manner and within the time aforesaid.

(ii) The Engineer-in-Charge shall give his decision in writing on the claims notified by the contractor within 30 days of the receipt of the notice thereof. If the contractor is not satisfied with the decision of the Engineer-in-Charge, the contractor may within 15 days of the receipt of the decision of the Engineer-in-Charge submit his claims to the conciliating authority named in Schedule 'F' for conciliation along with all details and copies of correspondence exchanged between him and the Engineer-in-Charge.

(iii) The party initiating conciliation shall send to the other party a written invitation to conciliate. Conciliation proceedings shall



commence when the other party accepts in writing the invitation to conciliate. If the other party rejects the invitation, or does not reply within thirty days from the date of invitation, there will be no conciliation proceedings.

(iv) When it appears to the Conciliator that there exists element of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to parties for their observation after receiving the observations of the parties. He may reformulate the terms of a possible settlement in the light of such observations. If the parties reach agreement on settlement of the dispute, they may draw up and sign a written settlement agreement. Parties may request the Conciliator to draw up or assist them in drawing up the settlement agreement. Such settlement agreement shall have the same status and effect as if it were an arbitral award on agreed terms on the substance of the dispute



rendered by an arbitral tribunal under section 30 of Arbitration and Conciliation Act, 1996. If a settlement does not appear possible, the Conciliator, after consultation with the parties will give a written declaration that further efforts at Conciliation are no longer justified and the conciliation proceedings are terminated.

(v) When conciliation proceedings have become infructuous or have been terminated, the party, which initiated the Conciliation shall, within a period of 30 days of termination thereof shall give a notice, in the form prescribed by the BSNL, to the Chief Engineer, Bharat Sanchar Nigam Limited in-charge of the work or if there be no Chief Engineer, to the Administrative Head of the Bharat Sanchar Nigam Limited for appointment of an arbitrator to adjudicate the notified claims failing which the claims of the contractor shall be deemed to have been considered absolutely barred and waived.



(vi) Except where the decisions have become final, binding and conclusive in terms of the contract, all disputes arising out, of the notified claims of the contractor as aforesaid and all claims of the BSNL shall be referred for adjudication through the arbitration by the sole arbitrator appointed by the Chief Engineer, Bharat Sanchar Nigam Limited in-charge of the work or if there be no Chief Engineer, the Administrative Head of the Bharat Sanchar Nigam Limited. It will also be no objection to any such appointment that the arbitrator so appointed is a BSNL Employee and that he had to deal with the matters to which the Contract relates in the course of his duties as BSNL Employee. If the arbitrator so appointed is unable or unwilling to act or resigns his appointment or vacates his office due to any reason whatsoever, another sole arbitrator shall be appointed in the manner aforesaid by the said Chief Engineer. Such person shall be entitled to proceed



with the reference from the stage at which it was left by his predecessor.

It is a term of this contract that the party invoking arbitration shall give a list of disputes with amounts claimed in respect of each dispute along with the notice for appointment of arbitrator.

It is also a term of this contract that no person other than a person appointed by such Chief Engineer, Bharat Sanchar Nigam Limited the Bharat Sanchar Nigam Limited as aforesaid act as aforesaid or the administrative head of act as arbitrator and if for any reasons that is not possible, the matter shall not be referred to arbitration at all.

The conciliation and arbitration shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the



arbitration proceeding under this clause.

It is also a term of this contract that the arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each disputes and claim referred to him. The arbitrator shall give reasons for the award for each dispute referred to him.

It is also a term of the contract that if any fees are payable to the arbitrator these shall be paid equally by both the parties.

It is also a term of the contract that the arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties calling them to submit their statement of claims and counter-statement of claims. The venue of the arbitration shall be such place as may be fixed by the arbitrator in his sole discretion. The fees, if any, of the arbitrator shall, if required to be



paid before the award is made and published. be paid half and half by each of the parties. The com of the reference and of the award (including the fees, if any, of the arbitrator) shall be in the discretion of the arbitrator who may direct to any, by whom and in what manner, such costs or any part thereof, shall be paid and fix or settle the amount of costs to be so paid.

8. As per the said clause, if there is any dispute relating to the payments, it is for the petitioner to submit his application before the Engineer-in-Charge within 30 days. Further, Clause 25-IV clearly disclose that cancellation can also be initiated by the authority, who may formulate the terms of a possible settlement and submitted the same to the parties for their observations. After receiving the observations of the parties, the authority may reformulate the terms of a possible settlement in light of such observations. If the parties reach an agreement on settlement of the dispute, they may draw up and sign a written



settlement. Such a settlement agreement shall have the same status and effect as an arbitral award on agreed terms concerning the substance of the dispute, rendered by an arbitral tribunal under Section 30 of Arbitration and Conciliation Act, 1996.

9. The submissions of the Learned counsel for the respondents, as well as the record reveal that the petitioner has not availed the alternative remedy and the Writ petition was filed in the year 2018. This Court grants liberty to the petitioner to avail remedy under Clause 25 of the agreement by approaching the appropriate authority for redressal of his grievances.

10. With the aforesaid observations, the Writ petition stands disposed of.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.07.2025
Transmission Date	

