

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15593 of 2024

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M/s Aditya Enterprises through Proprietor Mr. Kundan Kumar Dwivedi
(Male-55 years) son of Late Dudh Nath Dwivedi, Resident of Flat No. 102,
Divya Apartment, Ashiyana-Digha Road, Patna-800014 (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna (Bihar).
2. The Principal Secretary, Department of Finance, Government of Bihar, Old Secretariate, Patna (Bihar).
3. The Additional Chief Secretary, Road Construction Department, Government of Bihar, Head-Quarter, Road Construction Department, 1st Floor, Vishweshwaraiya Bhawan, Patna-800015 (Bihar).
4. The Engineer in Chief, Road Construction Department, Head-Quarter, Road Construction Department, 1st Floor, Vishweshwaraiya Bhawan, Patna-800015 (Bihar).
5. The Chief Engineer, Road Construction Department, Office of Chief Engineer, North Bihar Wing, Bihar, Patna (Bihar).
6. The Superintending Engineer, Road Construction Department, Road Circle, Motihari (East Champaran Bihar).
7. The Executive Engineer, Road Division, Bettiah (West Champaran Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. K. Dixit Mr. Sanjay Kumar Chaubey Mr. Milind Raj Dixit
For the Respondent/s	:	Mr. Advocate General

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

10 30-10-2025

1. Heard learned counsel for the parties concerned.

2. The present writ application has been filed for issuance of direction to the respondents to make payment to the petitioner towards the carriage cost of GSB and WMM (Work Materials) from Sheikhpura warehouse to the work site amounting to Rs. 14,65,39,782/-.

3. The petitioner which is a proprietor firm, namely,



M/s. Aditya Enterprises, through its Proprietor Mr. Kundan Kumar Dwivedi has filed the present writ application with the facts that the petitioner entered into an agreement with the respondents on 19.05.2022 for widening and strengthening of single lane to intermediate lane of Lauriya to Sugauli Road, Ch.14.70 (At Kaithwalia) to Ch.42.90 (At Bishnupurwa Chowk), having total length 28.2 km under the Road Division, Bettiah, for the year 2021-22 (Work) for a total consideration amount of Rs. 51,48,27,669/-.

4. The dispute in the present writ application is that the petitioner is demanding the difference of cost of carriage by road transport instead of railway transport due to certain reasons which are mentioned in the writ application.

5. Learned counsel for the petitioner argued that earlier the procurement and transport of GSB and WMM (Work Materials) were agreed to be transported through Rail Rack, Sheikhpura, as per the estimate agreed between the parties. However, vide letter, dated 19.07.2022, of Mining Development Officer, Shiekhpora, annexed at Annexure-P/1, all loading and carriage through Rail Rack was stopped from 01.08.2022.

6. The petitioner filed his representation before the Additional Chief Secretary, Road Construction Department,



Government of Bihar, Patna, seeking permission in the interest of work to supply the work materials through road. On the representation of the petitioner, the Engineer-in-Chief (Work Management), Road Construction Department, Patna, vide his letter, dated 10.04.2023, addressed to the Chief Engineer (North), Road Construction Department, Patna, asked him to submit a report regarding transportation of work material in view of closure of railway track. The railway authorities informed the Executive Engineer, Road Construction Department, Patna, vide letter, dated 21.04.2023, that pursuant to letter of Mining Department loading of stone chips through rail is closed since 01.08.2022.

7. The Engineer-in-Chief (Work Management), Road Construction Department, Patna, vide his letter, dated 07.06.2023 (Annexure-P/6), directed the Superintending Engineer, Road Division, Motihari, informing him that due to unavailability of transportation/carriage of the work material through rail rack, the materials were being supplied through road and accordingly directed to ensure the payment of carriage cost through road to the petitioner after verifying the proof/evidence in this regard.

8. The Superintending Engineer, Road Division,



Motihari, vide his letter, dated 16.08.2023, informed the Chief Engineer (North), Road Construction Department, Patna, stating therein, that Executive Engineer, Road Division, Bettiah, has submitted the relevant documents, details of which are mentioned in the letter, annexed at Annexure-P/9. Further stating that from the documents submitted by the Executive Engineer, Road Division, Bettiah, including the challans for transportation of GSB and WMM (Work Materials) and upon verification/examination of the relevant documents as well as claim towards the carriage charge/cost, he recommended that process for payment of Rs. 14,65,39,782/- can be initiated.

9. In pursuance to the aforesaid letter, dated 16.08.2023, a meeting of the Technical Bid Evaluation Committee was held for deciding the claim of the petitioner and the Technical Bid Evaluation Committee arrived at the conclusion that the total claim towards carriage charge/cost by road comes to Rs. 14,65,39,781/- and recommended that its approval can be taken from the Departmental Bid Committee vide its decision, dated 21.08.2023, annexed at Annexure-P/10.

10. Learned counsel relies upon the order of a Division Bench of this Court passed in CWJC No. 18738 of 2018, dated 01.02.2022, in which the dispute was with regard to



the payment of carriage cost and the Division Bench disposed the writ application with a direction to the respondents to consider the claim of the petitioner and pass a speaking order. It was further directed that in case the petitioner files a representation before the concerned respondent, he shall take decision thereto keeping in mind the recommendation of the Technical Bid Evaluation Committee. Division Bench further directed that if any amount is found due, the same shall be released to the petitioner forthwith.

11. Accordingly, the submission is that similar order, in line with the Division Bench order, may be passed in the interest of justice and in view of the recommendation made by various authorities, including the Technical Bid Evaluation Committee.

12. On the other hand, learned counsel for the State opposes the prayer of the petitioner submitting that the payment of extra carriage cost is not permissible and the same is dehors the agreement. The payment as per the agreement on the basis of rate quoted by the petitioner for transportation of the work materials by rail rack has already been paid and payment of extra carriage cost may not be decided in the writ petition in view of the fact that there is an arbitration clause available to the



petitioner in the contract agreement.

13. I have heard learned counsel for the parties concerned and have gone through the materials available on record.

14. The claim of the petitioner is based upon the fact that admittedly the transportation of work materials, including, stone chips, was stopped by the Mining Department. The respondent-authorities, including the signatories of the agreement from the side of the respondents i.e. Executive Engineer, Road Division, Bettiah, allowed carriage by road and verified and examined this fact and recommended for payment of carriage charges through road. The matter was referred at the high level to the Technical Bid Evaluation Committee. Upon verification of supporting materials/evidence a total amount payable for transportation of work materials was arrived at Rs. 14,65,39,781/-.

15. The Hon'ble Supreme Court, in a case of **Union of India and Ors. v. Tania Construction (P) Ltd.**, reported in **(2011) 5 SCC 697**, in paragraphs nos. 33 and 34, has observed that it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting



such alternative remedy, a writ petition would not be maintainable. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of Constitution. Accordingly, the Supreme Court in view of the High Court that notwithstanding the provision relating to the arbitration clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the writ petition filed on behalf of the respondent.

16. Considering the aforesaid fact and the law, including the order of Division Bench of this Court in the matter relating to carriage charges, I feel it expedient to dispose the writ application at this stage directing the petitioner to file a representation before the respondent no. 3 i.e. the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna, within a period of four weeks.

17. If such a representation is filed, the respondent no. 3-Additional Chief Secretary, is directed to consider the representation/claim of the petitioner and pass a reasoned/speaking order. It is made clear that the petitioner shall also be given personal hearing by the respondent no. 3 informing the date of hearing to the petitioner at least one week in advance.



18. With the aforesaid observations and directions,
this writ application is, accordingly, disposed.

(Anil Kumar Sinha, J)

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