

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18118 of 2017

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M/s India Progressive Construction Pvt. Ltd. having its registered office at Astha Bhawan, Caster Town, near Geeta Devi, D.A.V. School Deoghar through one of its Director namely Umesh Pandey S/o Late Dina Nath Pandey resident of Pokhna Tila, B.N. Jha Road, P.S. Deoghar, District - Deoghar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary cum Commissioner, Rural Works Department, Government of Bihar, Patna
2. The Engineer in Chief, Rural Works Department, Govt. of Bihar, Patna.
3. The Superintending Engineer, Rural Works Department, Madhepura Circle.
4. The Executive Engineer, Rural Works Department, Works Division Udakishunganj, Madhepura.
5. The Assistant Engineer, Rural Works Department, Udakishunganj Division, Madhepura.
6. The Junior Engineer, Rural Works Department, Udakishunganj Division, Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhat Ranjan, Advocate
For the Respondent/s	:	Mr. Kameshwar Prasad Gupta, GP 10 Virendra Kuar, AC to GP 10

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 09-07-2025

1. The petitioner has filed the instant application for the following reliefs:

“(a) For issuance of a writ or order or direction in the nature of mandamus upon the respondents to pay the outstanding bill raised by the petitioner against price adjustment bill for the period of extension duly granted and approved by the respondents concerned;

(b) For a further direction upon



the respondents to pay appropriate interest to the petitioner on the outstanding bill amount which has been withheld by the respondents without any reasonable cause rather illegally, arbitrarily and in violation of the admitted terms and conditions of the agreement:

(c) For issuance of a writ or order or direction in the alternative upon the respondent Executive Engineer, Rural Works Department. Works Division, Udakishanganj to consider the representation submitted by the petitioner vide letter no. 65/Madhepura dt. 19.07.17 and decide the same in accordance with Clause 47.1 of the general terms and conditions of the agreement and the documents and materials pertaining to the work executed by the petitioner,

(d) For holding and a declaration that once the general conditions of contract prescribed in the agreement vide Clause 47.1 of the same provided for payment of price adjustment to the petitioner both for the original period of contract as well as the time extensions attributable to the factors of delay on part of the respondents, no bills of the petitioner admitted by the



respondent in the measurement book could be withheld and as such is unreasonable, arbitrary and violative of article 14 of the Constitution of India:

(e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case.”

2. The case of the petitioner, in brief, is that the petitioner, having considerable experience in construction of roads and bridges, participated in a tender process floated by the respondent Department for the Udakishanganj Division. Upon being declared the successful bidder, the petitioner was awarded five work packages and entered into agreement under the Standard Bidding Document (SBD) format. The package details and corresponding agreement numbers are as follows:

(a) Pkg. No. BKFRP/RD/MAII - Agreement No. 8
SBD/2012-13

(b) Pkg. No. BKFRP/RD/MAV - Agreement No. 7
SBD/2012-13

(c) Pkg. No. BKFRP/RD/MAVIII - Agreement No.



NCB/WB/UDA/2012-13

(d) Pkg. No. BKFRP/RD/MAXII - Agreement No. 11

NCB/WB/UDA/2013-14

(e) Pkg. No. BKFRP/RD/MAIV - Agreement No. 13

NCB/WB/UDA/2013-14

3. It is submitted that during the execution of these works, the petitioner faced several impediments such as interference from anti-social elements, encroachment at work sites, shortage of raw materials, adverse weather conditions, and non-cooperation from local authorities. These issues were duly brought to the notice of respondent authorities, who acknowledged the same.

4. In light of the above, the petitioner sought time extensions for completion of work. The said extension of time were granted by the respondents, after due recommendation from the concerned engineers, including the Chief Engineer and Executive Engineer.

5. On completion of the works to the



satisfaction of the respondents, completion certificates were issued, performance security was refunded, and final bills were paid in respect of four agreements. However, final bill pertaining to engagement is still pending.

6. The petitioner submits that due to delays not attributable to him, the works attracted price escalation under Clause 47.1 of the General Conditions of Contract. Accordingly, price adjustment bills were submitted.

7. While partial price adjustment was paid for the original completion period, no payment was made in respect of the extended period, despite the fact that relevant measurement entries were duly made by the Assistant Engineer and counter signed by the Executive Engineer.

8. Further, the Executive Engineer had sought clarification from the Engineer-in-Chief, who, vide letter no. 7247/Patna dated 28.06.2017, clarified that the issue should be decided as per the terms of the agreement and confirmed that the



Executive Engineer was competent to take a decision in the matter.

9. Despite the above directions and multiple representations made by the petitioner, no payment was done for the extended period under the price escalation clause. The petitioner asserts that the delay was not due to his fault, which is supported by the fact that time extensions were granted based on hindrances, beyond his control.

10. The petitioner contends that denial of price adjustment for the extended period is arbitrary, unreasonable, and in violation of Clause 47.1 of the agreement and is violate of Articles 14 and 19(1)(g) of the Constitution of India, resulting in grave financial hardship to the petitioner.

11. A detailed counter affidavit was filed by the respondents stating that the petitioner failed to complete the works within the stipulated agreement period. The petitioner was granted as many as five extensions of time from time to time, for completing the works, each with the explicit



rider that no price escalation would be paid for the extended period.

12. The Learned counsel for the respondents submitted that the petitioner had accepted all such time extensions unconditionally without raising any objection. Therefore, the petitioner is now estopped from claiming the same at a belated stage.

13. The Learned counsel for the respondents submits that the allegations made by the petitioner about the difficulties faced during execution of work such as shortage of materials, encroachments, floods, and lack of cooperation by local authorities, are unsubstantiated and appear to be artificial excuses to justify the petitioner's failure to complete the work on time. It was incumbent upon the petitioner to familiarize himself with the site conditions, prior to execution of the contract.

14. The respondents further contend that despite repeated opportunities and extensions of time granted by the Engineer-in-Chief's memos



dated 26.12.2014, 22.01.2016, 18.07.2016, and 21.10.2016, the petitioner failed to complete the works within the extended periods. All extensions were expressly granted on the condition that no price escalation would be payable for the extended period of duration. Hence, there is no dispute that the petitioner accepted these conditions and failed to complete the works. On this basis, the respondents submit that the writ petition is devoid of merit and is liable to be dismissed.

15. A rejoinder to the counter affidavit was also filed on behalf of the petitioner. It states that the respondents' denial of the petitioner's claim for price escalation under Clause 47.1 relies solely on the letter dated 26.12.2014, granting the first time extension with a rider excluding price escalation for the extended period.

16. The petitioner further contends that this unilateral decision to withhold price escalation for the extended period is unjustified and contrary to the terms of the contract.

17. Clause 47.1 of the General



Conditions of Contract, which forms part of the Agreement, clearly provides that price adjustment applies to the entire contract period, including any extensions granted by the Engineer, unless the delay is attributable to the contractor.

18. It is submitted that the petitioner communicated objection to the Engineer-in-Chief's decision, refusing price escalation by letter dated 25.10.2016 and expressly reserved the right to claim such escalation. No reply was ever provided by the respondents and by conduct the respondents waived the exclusion clause. Further, the Engineer-in-Chief's subsequent letter dated 28.06.2017 directed the Executive Engineer to decide the matter, in accordance with the terms of Agreement, thereby authorizing payment of price escalation. The Executive Engineer also prepared and checked the final price adjustment bills for all five contracts on 12.07.2017, post the Engineer-in-Chief's clarification.

19. It is further submitted in the rejoinder that the petitioner relies on the enteries



in measurements book as a conclusive proof of the respondents' admission of liability.

20. The Learned counsel for the petitioner submitted that the respondents never provided any justification for withholding the price escalation benefit and their conduct rendered the initial clause ineffective. It is also contended that the repeated extensions granted by the respondents for reasons beyond the petitioner's control, affirms that the petitioner is entitled to price adjustment under Clause 47.1.

21. The Learned counsel for the petitioner submitted that the petitioner has suffered significant pecuniary loss, estimated at approximately Rs. 4.25 Crores due to the respondents' refusal to honor the contract terms and seeks interest on the delayed payment. Finally, the petitioner asserts that the respondents' attempt to unilaterally alter the contract terms is beyond jurisdiction and contrary to settled legal principles, as upheld by this Hon'ble Court in M/s RK Constructions v. State of Bihar (Order dated



25.02.2023 in CWJC No. 13711 of 2022).

22. Heard the Learned counsel for the petitioner and the Learned counsel for the respondents and perused the records.

23. The learned counsel for the petitioner has drawn the attention of this Court to Clause 47.1 of the General Conditions of Contract, which deals with Price Adjustment.

24. On perusal of Clause 47.1, it is clear that the contract price shall be adjusted for increases or decreases in the rates and prices of labour, materials, fuels, and lubricants for the entire contract period, including any extensions granted by the Engineer, unless the delay is attributable to the contractor. It has been further submitted that the petitioner, upon learning of the Engineer-in-Chief's unilateral decision to deny the benefit of price escalation, promptly objected to the same vide Letter dated 25.10.2016 (Annexure-9). In this letter, the petitioner clearly expressed disagreement and objected to the modification of contractual terms on grounds of jurisdictional



incompetence and violation of the terms of the agreement. It was also stated therein that in the absence of a reply, it would be deemed that the department had no objection and accepted the applicability of Clause 47.1.

25. The petitioner has also brought on record the Measurement Book (Annexure-10), wherein it is recorded that the price adjustment is to be made as per Clause 47.1 of the agreement. It is submitted that the entire work was duly measured, checked, and passed by the Executive Engineer, and the Measurement Book stands as a conclusive evidence of the liability and the validity of the petitioner's claim. It is argued that the Executive Engineer, having certified the work, is not justified in withholding the payment related to price adjustment for the extended period.

26. In view of the facts and circumstances discussed above and the documents placed on record, this Court is of the considered view that the petitioner is entitled to the reliefs prayed for in paragraph 1(a) of the writ petition.



27. Accordingly, the respondents are directed to make payment of the outstanding amount raised by the petitioner, towards price adjustment for the period of extension, which had already been duly granted and approved by the competent authorities within a period of three months from the date of receipt of the order.

28. This writ petition is allowed in the terms indicated above.

29. Interlocutory Application(s), if any, shall stands disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2025
Transmission Date	

