

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17206 of 2023

M/s Narsingh Construction Gangjala Saharsa, through its Partner Pratap Kumar Singh, aged about 48 years, Male, son of Late Jai Mangal Singh, resident of Shastri Nagar, Sipahi Tola, Ward No. 3, P.S. K. Hat, District Purnia, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Engineer in Chief, (Works Management), Road Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, Simanchal Division, Road Construction Department, Government of Bihar, Patna.
4. The Superintending Engineer, Road Construction Department, Works Circle, Saharsa, District Saharsa, Bihar.
5. The Executive Engineer, Road Construction Department, Road Division, Khagaria, District Khagaria, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
For the Respondent/s : Mr. Amit Prakash (GA 13)

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 01-09-2025

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. In the instant petition, petitioner has prayed for the
following relief(s):-

*"(i) Quashing of the decision of
the Department Tender Committee dated
06.04.2023 as contained in Memo No. 2253*



(E) by which, without taking any decision on the recommendation of the Tender Bid Evaluation Committee, with regard to the Price Escalation the earlier decision of the Technical Bid Evaluation Committee vide Memo No. 7871(E) dated 24.11.2020 has been partially modified only to the extent of refund of 5% of the liquidated damages; and

(ii) Direction upon the Respondents to take a decision in terms of the recommendation of the Technical Bid Evaluation Committee dated 04.08.2022 recommending for the payment for price escalation in terms of Clause 10CC of the Statndard Bidding Document arising out of Agreement No. 01/CMBD/2018-19;"

3. Petitioner executed the works beyond the stipulated period and it is not default on the part of the petitioner. In such circumstances, if there is a belated completion of work and it is beyond twenty four months, in that event, the petitioner is entitled to price escalation. The same was examined by the Committee and recommended that the petitioner is entitled for price escalation on 04.08.2022. However, in the impugned action dated 03/06.04.2023 there is not even iota of reference to the recommendation made by the Committee. Therefore, there is a total non-application of mind while taking the impugned action dated 03/06.04.2023.

4. Learned counsel for the respondents submitted that Technical Bid Evaluation Committee decision is not binding on the Department and Department can take their own decision.



Further, it is pointed out that petitioner has remedy of invoking arbitration.

5. We have perused the records. Subject matter of price escalation is not to be agitated under the arbitration clause. Whatever the action taken by the Superintending Engineer is required to be examined with reference to any disputed issue and the same would be subject before the arbitration. Assuming that Technical Bid Evaluation Committee's decision in respect of decision/recommendation for price escalation is not binding on the author of Annexure-P12, in that event, he should have at least analyzed and considered as to how the Committee's decision in respect of price escalation is impermissible. In the absence of these material information, one has to draw inference that impugned action of the respondent *vide* Annexure-P12 dated 03/06.04.2023 is without application of mind. Accordingly, the petitioner has made out a case. Annexure-P12 dated 03/06.04.2023 stands set aside. Hence, the present writ petition, i.e., CWJC No. 17206 of 2023 is allowed. The matter is remanded to the author of Annexure-P12 to decide afresh after due taking note of the recommendation of the Technical Bid Committee insofar as price escalation is concerned and proceed to pass a detailed speaking



order within a period of three months and communicate the decision to the Petitioner.

(P. B. Bajanthri, ACJ)

(Alok Kumar Sinha, J)

Vikash/-

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

