

(2023) 05 PAT CK 0008

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 3895 Of 2023

M/S. Anand Consultants

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** May 2, 2023**Acts Referred:**

- Constitution Of India, 1950 - Article 226
- Bihar Public Works Contract Disputes Arbitration Tribunal Act, 2008 - Section 9

**Hon'ble Judges:** Rajeev Ranjan Prasad, J**Bench:** Single Bench**Advocate:** Shivendra Kishore, Priyank Deepak, Vinay Kirti Singh, Vijay Kumar Verma**Final Decision:** Dismissed

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**Judgement**

1. Heard learned senior counsel for the petitioner assisted by Mr. Priyank Deepak, learned Advocate and Mr. Vinay Kirti Singh, learned GA-2 for the

State assisted by Mr. Vijay Kumar Verma, learned AC to GA-2.

2. The petitioner in the present case is seeking the following reliefs:-

i. For a direction on the respondents to take decision on the representation of the petitioner dated 15.06.2022 and reminder dated 18.10.2022 in

regard to forced closure of construction of road under NH-31 to PAURA package No. BR-17R-062 and to settle the account of the petitioner by

making payment of remaining admitted amount towards execution of construction of road under the aforesaid agreement.

ii. For a direction on the respondents to refund a sum of Rs.44 lacs approx. deducted on account of time extension from the petitioner.

- iii. For a direction on the respondents to refund the Security deposit amount of the petitioner alongwith statutory and delayed interest.
- iv. For any other relief/reliefs to which petitioner is found entitled in the facts and circumstances of the case.â€

#### Brief Facts of the Case

3. The petitioner is a proprietorship firm engaged in construction of road, building etc. The Bihar Rural Road Development Authority (in short

â€BRRADAâ€™) invited a tender for construction of road from ND-31-PAURA under Package no. BR-17R/62 where length of road to be

constructed was 11.61 kilometers at the construction cost of Rs.512.95 lakhs, construction cost of CD work was 150.44 lakhs and the maintenance

cost for 5 years was Rs.48.62 lakhs.

#### Submission of the Petitioner

4. It is the case of the petitioner that a S.B.D. Agreement No. 10/SBD of 2012-13 was executed on 14.02.2013 between Rural Works Department,

Government of Bihar Works Division, Gogri and the petitioner. The petitioner claims that the work of construction of road was duly started in terms of

the agreement but the construction faced several obstructions from the private land owners in between Chain 5768m to Chain 7766 and Chain 2400m

to Chain 3460. Under the circumstances, it could not become possible to construct the road on the said chain. It appears on perusal of the writ

application that for various reasons, the petitioner claims that the work in question could not be completed, he, however, kept on representing to the

Department informing them about the obstructions which were being raised by the private land owners.

5. Be that as it may, it appears that the agreement of the petitioner was rescinded vide Annexure â€7â€™ issued under signature of the Executive

Engineer, Rural Works Department Works Division, Gogri. Against the rescindment order, the petitioner made representation and he was heard by the

Empowered Standing Committee. The Committee decided to grant one opportunity to the petitioner for completing the work by setting aside the order

of rescindment. It is the case of the petitioner that thereafter the petitioner sincerely tried to complete the construction work but it could not be

completed because of the obstructions caused by the owners of the private land.

## Submission of the State

6. Learned counsel for the State submits that the dispute between the petitioner and the Department is in the matter of a works contract, therefore,

this application is not fit to be entertained. It is further pointed out that the State of Bihar has enacted Bihar Public Works Contract Disputes

Arbitration Tribunal Act, 2008 (hereinafter referred to as the "Act of 2008") whereunder Section 9 specifically provides that where any

dispute arises between the parties to the contract, either party shall, irrespective of whether such contract contains an arbitration clause or not, refer,

within one year from the date on which the dispute has arisen, such dispute in writing to the Tribunal for arbitration in such form and accompanied by

such documents or other evidence and by such fees, as may be prescribed. The Practice and procedures to be followed in such cases are also

incorporated in the Act of 2008.

## Consideration

7. Having heard learned senior counsel and learned counsel for the State, this Court is of the considered opinion that the kind of issues raised in the

writ application cannot be adjudicated by this Court sitting under Article 226 of the Constitution of India. These are disputed question of facts and this

Court would not make any endeavour to go into the same. The petitioner, if so advised, may seek his remedy in accordance with law.

8. This application is dismissed.