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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11951 of 2010

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M/S Shivani Infratech Pvt.Ltd. through its Managing Director Sri Ramesh Kumar Roy S/O Late Ramudgar Roy Sri Krishna Nagar, Deep Shikha Road, Begusarai, P.S. Begusarai (Town), in the Distt-Begusarai

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Road Construction Govt. of Bihar, Patna
2. Engineer-in-Chief -Cum-Divisional Commissioner-Cum-Special Secretary, Road Construction Department Govt. of Bihar, Patna
3. The Chief Engineer, National Highway Division, Road Construction Department Bihar, Patna
4. The Superintending Engineer, National Highway Circle Muzaffarpur
5. The Executive Engineer , National Highway Division Muzaffarpur
6. The Union of India, through Secretary, Ministry of Shipping, Road Transport & Highways, Department of Road Transport & Highways, Transport Bhawan, 1-Parliament Street, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kumar

For the Respondent No.1 to 5: Mr. P.K.Verma, AAG-5
Mr. Saroj Kr. Sharma, AC to AAG-5

For the Respondent No.6 : Mrs. Kanak Verma, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 02-04-2015

Heard the parties.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondents to make payment of contractual dues to the tune of Rs.20,18,209/- to the petitioner against the emergent nature of works done by him for repairing of road crust from 619 K.M. to 627 K.M. at N.H. 28 during the year 2008-2009.

3. This matter was heard earlier and in compliance of the order dated 30.07.2010, a counter-affidavit has been filed on behalf of the respondent no. 1 to 5 wherein contractual dues of the petitioner is not under dispute.

4. By order dated 25.04.2011 the Union of India, through

Secretary, Ministry of Shipping, Road Transport & Highways, Department of Road Transport & Highways, Transport Bhawan, Parliament Street, New Delhi was impleaded as party respondent no. 6. Two copies of the writ petition were served upon the learned counsel appearing on behalf of the newly added respondent no.6. However, despite passage of almost four years, no counter-affidavit has been filed on behalf of the aforesaid respondent no.6.

5. In the supplementary counter-affidavit filed on behalf of the respondent no. 1 to 5, while admitting the contractual dues of the petitioner, it has been stated that despite repeated requests, fund has not been allotted by the Ministry of Road Transport and Highways, Government of India, New Delhi for paying the liabilities of the financial year 2008-2009. By referring to Annexure-D to the aforesaid supplementary counter- affidavit, learned Additional Advocate General-5 appearing on behalf of the respondent no. 1 to 5 submits that the respondent Chief Engineer, National Highway Wing, R.C.D., Bihar, Patna has written a letter on 06.02.2015 to the Chief Engineer (Planning Zone), Ministry of Road Transport & Highways, Transport Bhawan, 1-Parliament Street, New Delhi, seeking permission from him to utilize the allocated fund for payment of liability prior to the year 2010- 2011, which includes the admitted dues of the petitioner also, but according to him, that letter has not been responded to till date and, therefore, despite availability of fund and despite the fact that the contractual dues of the petitioner is not under dispute, payment is not being made.

6. After having heard the parties at length and on consideration of the materials available on record this Court is of the opinion that since contractual dues of the petitioner, as indicated above, is not under dispute rather it stands admitted, and since fund is

available with the respondent Chief Engineer, which is evident from letter dated 06.02.2015 (Annexure-D to the supplementary counter-affidavi9t), it is directed that admitted contractual dues of the petitioner must be paid to him within a period of one month from the date of receipt/production of a copy of the order from the funds already available. It is expected that the money paid to the petitioner by the respondent Chief Engineer shall be approved by the respondent Union of India while responding to the letter dated 06.02.2015 (Annexure-D to the supplementary counter-affidavit).

7. The writ petition stands finally disposed of with the observations and directions made above.

(Birendra Prasad Verma, J)

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