

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22089 of 2014

=====

Shyam Kishor Yadav, Son of Late Nageshwar Prasad Yadav, resident of
Village- Maruki, P.O.- Kumma, P.S.- Sursand, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. Engineer-in-Chief-Cum-Addl. Commissioner-cum-Special Secretary, Road Construction Department, Government of Bihar, Patna.
3. Chief Engineer (Com), North Bihar, Wing Road Construction Department, Darbhanga.
4. Superintending Engineer, North Bihar Road Circle, Road Construction Department, Muzaffarpur.
5. Executing Engineer, Road Division, Road Construction Department, Sitamarhi.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Virendra Kumar, Advocate.

For the Respondent/s : Mr. Manish Kumar, AC to GP 21.

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 13-01-2015 Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:

"2. That this is an application for issuance of a writ of mandamus directing the respondent to pay the Security Deposit payable to the petitioner to the tune of about Rs. 2500000/- (twenty five lacs) deducted from the bills of Road Construction Work under Agreement dated 19.05.2008 for constitution and maintenance of Charaut-Musra-Belba Road in District- Sitamarhi."

2. Learned counsel for the petitioner, in support of the
aforementioned prayer, has sought to rely on paragraph 11, 12 and
13 to the writ application which reads as follows:

"11. That as per Agreement the petitioner constructed and maintained the Road with all technical stipulation and quality control. After construction the road a show cause was sought from the petitioner and the petitioner given its reply on 25.2.2013.

12. That on 27.06.2012 after completion of work and

maintenance the respondents refunded an amount of Rs. 21,51,211/- (Twenty one lac fifty one thousand two hundred eleven) on account of security deposit to the petitioner and now about Rs. 25,00,000/- (Twenty five lacs) stands due to be paid by the respondents to the petitioner on account of security deposit deducted from the bills of the petitioner.

13. That as per Clause 41 of the agreement the Respondents are bound to refund the half security deposit after six months of completion of the work and the rest amount shall be refunded after correction of defects notified by the Engineer and certified by the Engineer."

3. Learned counsel for the State has submitted that the petitioner has not produced the documents either the whole of the agreement or the show cause notice on the basis of which it could emerge as to whether the claim of the petitioner for refund was in respect of admitted amount or otherwise. He in this regard also explains that if there was no laches on the part of the petitioner for which the show cause notice was issued, the petitioner was entitled for full refund of security amount.

4. In the considered opinion of this Court, the petitioner has done no favour to himself by giving incomplete and truncated information in the writ application specially in paragraph 11, where it is sought to withhold not only copy of the show cause notice but also its show cause reply. The petitioner has only given truncated copy of agreement in which there is a deliberate attempt to suppress the arbitration clause. All the agreements invariably contain arbitration clause and, therefore, if the petitioner had any grievance with regard to withholding of any

amount payable under the agreement including security amount, the remedy for him, instead of moving this Court, was before the arbitrator. The State of Bihar, in fact, for the resolution of such dispute, has already constituted Bihar Arbitral Tribunal.

5. Keeping all these aspect of the matter, while this Court is not inclined to entertain this writ application, nothing said in this order however will come in the way of the petitioner in approaching the Bihar Arbitral Tribunal for redressal of his grievance raised herein.

6. With the aforementioned observation and direction, this writ application is disposed of.

(Mihir Kumar Jha, J)

Sujit/-

U			
---	--	--	--