

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1976 of 2015

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Birendra Kumar Tiwary Son of Kailash Tiwary, Resident of Mohalla - Taj
Coloney, Panchayati Akhara, P.S- Kotwali, District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principle Secretary, Rural Works Department, Bihar, Patna.
3. The Engineer- In- Chief , Rural Works Department, Bihar, Patna.
4. The Chief Engineer, Rural Works Department, Bihar, Patna.
5. The Superintending Engineer, Rural Works Department, Magadh Division,
Gaya.
6. The Executive Engineer, Rural works Department, Work Division, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate.
For the Respondent/s : Mr. Rajesh Kumar, AC to GP 28

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 26-02-2016

Heard learned counsel for the parties.

The writ petitioner has moved the Court for quashing the orders contained in letter No. 871 dated 13.05.2014 as well as Memo No. 884 dated 17.05.2014 by which agreement bearing No. 05(PMGSY) 2009-2010 in respect of the contract work for construction of Road from Mangarwan to Kamathia bearing package No. BR-12R/030 under Prime Minister Gramin Sadak Yojna has been rescinded/cancelled and his security deposit has been seized and direction issued to recover the excess paid amount/recoverable amount from the security deposit, earnest money and performance deposit of the petitioner and the petitioner has been directed to deposit

the further remaining Rs. 5,48,346/- by bank draft and further for quashing the subsequent orders dated 09.06.2014 and 24.07.2014 by which he has been redirected to deposit the above said amount of Rs. 5,48,346/-.

Learned counsel for the petitioner submits that on the one hand, there are dues against the department payable to the petitioner for the work already done by him whereas on the other hand, the order impugned has been passed, which is clearly *mala fide*. It is submitted that even the reason stated in the impugned orders are *non est*, as the petitioner had kept informing the department about the reason of non-completion of the work which was never denied or objected to by the concerned authorities. Learned counsel submits that though the amount payable to the petitioner by the authorities is being withheld but simultaneously, a certificate proceeding has also been initiated for recovery of Rs. 5,48,346/-, which is a colourable exercise of the authority.

Learned counsel for the State, raising a preliminary objection, submits that the petitioner has an alternate and efficacious remedy before the Bihar Public Works Contract Disputes Arbitration Tribunal (hereinafter referred to as the 'Tribunal') in the matter.

Learned counsel for the petitioner submits that he has no issues in moving before the Tribunal, but seeks an indication from the

Court that upon him doing so and also filing an application for interim protection, the same may be considered and disposed off within a reasonable time.

In view of the aforesaid, the writ petition stands disposed off with liberty to the petitioner to move before the aforesaid Tribunal within two weeks from today along with a copy of this order. Upon the same being done and the petitioner also filing an application within the same period for interim protection, the said application shall be considered and disposed off by the Tribunal within three weeks from the date of filing of such application. Thereafter, the matter shall also be finally disposed off within five months.

It goes without saying that the parties shall co-operate before the Tribunal so that the matter may be disposed off within the time fixed.

(Ahsanuddin Amanullah, J)

Sujit/-

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