

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7176 of 2013

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1. M/S Shiv Kumar Press, Jail Road, Dumra, P.S. Dumra, District- Sitamarhi Through Its Proprietor Shiv Kumar Singh, Son Of Late Chandrika Prasad Singh Resident Of Jail Road, Dumra, P.S. Dumra, District- Sitamarhi
 2. M/S Shashi Raj Printers, Bari Bazar, Dumra, P.S. Dumra, District- Sitamarhi, Through Its Proprietor Sanjiv Ranjan, Son Of Late Raj Kishore Prasad Resident Of Bari Bazar, Dumra, P.S. Dumra, District- Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Rural Development Department, Government Of Bihar, Patna
2. The District Magistrate, Madhubani, District- Madhubani
3. The Deputy Development Commissioner-Cum-Chief Executive Officer, District Rural Development Authority, Madhubani
4. The Project Officer, District Rural Development Authority, Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pushendra Kumar Singh, Advocate
For the State : Mr. Madhav Pd. Yadav, GP-23

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 08-05-2017

Heard learned counsel for the petitioners and learned counsel appearing for the State.

The petitioners seek an appropriate writ in the nature of mandamus commanding the respondent-authorities to pay the remaining 25% amount of contractual work which was done by the petitioners pursuant to the work order issued in their favour by Respondent No. 3 under memo nos. 196 dated 25.1.2006, 234 dated 28.1.2006, 350 dated 11.2.2006 and 1102 dated 3.5.2006. The petitioners further pray for refund of amount of draft amounting to



Rs. 10,000/- which had been filed by the petitioners by way of security money at the time of submission of the tender.

Learned counsel for the petitioners submits that in pursuance of the contract for supply of certain stationery and general materials, the petitioners performed their part of the contract work and subsequently out of the total work/supply undertaken by them, the respondents have paid only 75% of the amount of the contractual work and have withheld 25% amount from the bills of the petitioners and have also withheld the amount of security money amounting to Rs. 10,000/- which had been deposited by them at the time of filing of the tender papers which was admittedly refundable. They thus, seek a direction of this Court for payment of the aforementioned amounts of remaining bills from the respondents which have been illegally withheld for the last seven years. The petitioners also claim penal interest over the said amounts as well as cost of litigation.

Learned counsel appearing on behalf of the respondents have filed a counter affidavit stating that the claim and grievance raised by the petitioners in the writ application are not tenable as though the order of supply had been given on the ground that both the Press will have to execute an agreement with the District Rural Development Authority, and on any laches in the supply of materials, the security will be forfeited. The petitioners did not



come forward to enter into the agreement as was required by them. It is further submitted by the respondents that the concerned suppliers were directed at the time of release of the first instalment by the District Rural Development Authority, Mathubani vide memo no. 578 dated 24.2.2008 that the final payment of the bills will be made after the verification of the quality of the materials by the Purchase Committee and after adjustment of VAT, TDS and advance out of the total bills. Counsel for the respondents further submits that the respondents have released 75% of the amounts of bills and the rest 25% bills amounts could not be paid due to adjustment which was required to be made towards payment of VAT, TDS and also after verification of quality of materials. It is submitted by the respondents that the work of supply was not executed in time and now after lapse of seven years the petitioners have sought for payment of the same by approaching this Court.

It appears from the counter affidavit that vide memo no. 400 dated 3.3.2014 the authorities have passed an order whereby the claim of the petitioners has been rejected on the ground that the claim has been made after seven years. In the said order it has also been observed that the quality of goods cannot be tested at such a late stage. It further appears from the record of the case that the supplies have not been disputed. What has been disputed by the



respondents is the agreement having not been entered into, the petitioner cannot make such claim as has been done in the present writ application. Moreover, the respondents have also not been able to explain as to under what circumstances the agreement was not entered into and straightway the petitioners were called upon to execute the work. It further appears that the statements made in the order at Annexure-B clearly shows that the quality of the goods has not yet been tested and therefore withholding of the security on that ground is wholly uncalled for.

Admittedly, the claim of the petitioners has remained pending. The bills have been substantially paid but 25% has been withheld which was sought to be deducted by way of VAT, TDS and other such necessary formalities, which the respondents are fully entitled to.

It is thus directed that the respondents shall once again reassess and calculate the deductions which are required to be made from the bills of the petitioners and thereafter, if any amount remains pending, the same may be paid to them. So far as the refund of the security amount is concerned, there being no finding to the effect that the quality of the goods so supplied was of inferior character from that which was required to have been supplied by the petitioners, this Court directs that the same may be refunded as early



as possible, preferably, within three months from today.

The entire exercise are accordingly, directed to be conducted and concluded within three months from the date of receipt/production of a copy of this order.

With the aforesaid observations, the writ application is disposed of.

(Anjana Mishra, J)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2017
Transmission Date	

