

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3342 of 2019

Palak Infra Pvt. Ltd. Having its Registered Office at Village and PO Amlori,
Distt- Siwan through its one of Director Praveen Kumar Singh aged about 43
years (male)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Govt. of Bihar, Patna
2. The Engineer-in Chief cum Additional Secretary, Cum Special Secretary, Road Construction Department Bihar, Vishweshwaraiya, Bhawan, Bailey Road, Patna
3. The Chief Engineer(Traffic) North Bihar Zone, Road Construction Department, Bihar, Patna
4. The Executive Engineer Road Construction division, siwan

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kumari Rashmi
For the Respondent/s : Mr.Chitranjan Sinha (PAAG2)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 28-06-2019 Heard learned counsel for the petitioner and learned
counsel for the State.

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

“i. For issuance of an appropriate writ/s, direction/s, order/s, preferably in the nature of mandamus commanding the respondents to pay the 55% deducted amount of the monthly bills out of OM (Ordinary Maintenance Works) head, which has been illegally deducted and retained till date in the name of DLP by the respondents, overlooking the fact that 5 years works period is now going to be over and also while awarding the work to the petitioner, the bid price for OM Works were aksed to be quoted on Lump sum



Basis taking into consideration of DLP of 12 months where provision to retain 55% of the bill is to be retained and thus on lump sum basis the cost of OM was fixed @ Rs.6,87,25,211/- for 5 years for all the roads under package no.39/OPRMC and Agreement No. MBD-1/2013-14 dated 20.10.2013 is executed, thus since the cost of work is already reduced and awarded on lump sum amount, once again deduction @ 55% is not justified and the retained amount must be paid, as in absence of such amount other projects of the petitioner is adversely affected in its timely execution which too going under the same respondents.

ii. For directing the respondent to pay the retained amount with statutory interest as retaining the same is illegal as already cost of works is fixed on reduced rate as per CG/PC 41.2 calculating only 45% of the cost of the work, as such there is no question to retain and deduct further 55% out of the monthly bills of OM, which was fixed 5 years thereafter cost of work is much inflated/enhanced, moreover due to retaining the huge amount of OM bills, the petitioner is suffering from acute financial crisis, and despite repeated requests/reminders which is appreciated by the respondent E.E. also, even then no such payment is made under the reason best known, hence necessary directions be issued for making payment of such deducted amount out of the monthly bills as earliest as possible along with statutory interest.

iii. Further to restrain the respondents from deducting @ 55% amount out of any bill of OM pending during pendency of this application.

iv. For granting any relief/s for which the petitioner may be found entitled in the eye of law.”

In course of hearing, learned counsel for the petitioner has taken this Court through Annexure-5 and 6 to the writ



application which are communications made between Executive Engineer, Road Division, Siwan and Chief Engineer (Mechanical), North Bihar Sub-part, Road Construction Department, Government of Bihar, Patna. It appears that on receipt of the communications as contained in Annexure-5 and 6 to the writ application the Chief Engineer (Mechanical) has not responded as a result thereof the petitioner has been compelled to move this Court for appropriate directions.

Learned counsel for the State submits that in the given facts and circumstances of the case, the Chief Engineer (Mechanical) may be directed to look into the matter and take a decision thereon.

Having heard learned counsel for the parties as also in the nature of the materials available on the record, this Court directs the Chief Engineer (Mechanical), North Bihar Sub-part, Road Construction Department, Government of Bihar, Patna to look into Annexure-5 and 6 to the writ application, consider the same and take an appropriate decision thereon in accordance with the terms of contract within a period of two months from the date of receipt/production of a copy of this order. Upon examination, if any amount is found payable to the petitioner, the same be paid to him within next one month.



This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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