IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19297 of 2016

Pradip Kumar @ Pradip Choudhary @ Pradip Kumar Choudhary Son of Sri Sevak Lal Choudhary Resident of Court Station, Purnia, Ward No. 18, P. S.K. Hat, District- Purnia. ... ... Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna
2. The Chief Engineer, Road Construction Department, In-charge Bihar Rajya Pool Nirman Nigam Ltd, Sardar Patel Path, Patna
3. The Bihar Rajya Pool Nirman Nigam Ltd, through it's Managing Director, Sardar Patel Path, Patna-800015
4. The Managing Director, Bihar Rajya Pool Nirman Nigam Ltd, Sardar Patel Path, Patna-800015.
5. The Secretary (Administration-Non Technical) Bihar Rajya Pool Nirman Nigam ltd, Sardar Patel Path, Path, Patna

... ... Respondents

Appearance :

For the Petitioner/s	:	Mr.Amit Kumar Anand, Advocate
For the Respondent/s	:	Mr. Subodh Kumar AC to SC26
For Bihar R. P.N.N. Ltd.	:	Mr. Dr. Anand Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 07-11-2019 Heard learned counsel for the petitioner and learned counsel representing Bihar Rajya Pool Nirman Nigam Limited (hereinafter referred to as the 'Nigam') as also learned counsel for the State.

The petitioner in the present case is seeking to challenge the order contained in Memo No. 2438 dated 30.06.2016 (Anneuxre '9' to the writ application) by which the respondent no. '4' has cancelled the Ad-hoc Authorization and has taken back the Authorization for collection of toll tax by the petitioner with effect from the mid night of 30.06.2016 /

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01.07.2016 on Sudhani Bridge in Raghunathpur-Balrampur Road. The petitioner has by way of an alternative prayer requested for issuance of a writ in the nature of Mandamus commanding the respondents to return /refund the sum of Rs. 21,21,000/- said to have been deposited by the petitioner towards the total amount of Rs. 23,11,000/- under the agreement as the settlement amount for the purpose of collection of toll tax over the said bridge. The petitioner has further prayed for award of interest at the market rate on the said amount which he claims entitled to get refund.

The facts of the case are not much in dispute. The petitioner admits to have entered into an agreement with respondent no. ‘4’ for collection of toll tax over the aforesaid bridge in the district of Katihar between the period 30.03.2016/01.04.2016 to 31.03.2017. The total cost of agreement was Rs. 23,11,000/-, out of which the petitioner deposited a sum of Rs. 21,21,000/- in three installments. The last installment was paid on 30.03.2016.

It is the case of the petitioner that vide Memo No. 1264 dated 30.03.2016 issued by respondent no. ‘3’ the petitioner was authorised to collect the toll tax over the bridge with effect from 01.04.2016 with condition that if the

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Government enhances the rate of toll tax then the petitioner will deposit the amount after enhancing proportionately to the bid amount and if the petitioner would not deposit the amount after enhancing proportionately then the amount deposited by him would be forfeited after cancelling the license of the petitioner. He has brought on record the letter as contained in Memo No. 1246 dated 30.03.2016 issued under the signature of respondent no. '3'. The petitioner in fact acknowledged the information furnished in the letter dated 30.03.2016 and expressed his desire vide his letter dated 26.04.2016 (Annexure '2') to get the agreement executed keeping in mind that he would be entitled to collect the enhanced toll tax if the government enhances the rate whereunder the petitioner also becomes liable to pay the enhanced bid amount. The petitioner vide his letter as contained in Annexure '2' prayed for three months time to pay the enhanced amount.

Vide Annexure '3' to the writ application i.e. letter dated 30.04.2016, the petitioner was given Ad-hoc Authorization to collect the toll tax between 30.04.2016/01.05.2016 to 15.05.2016 with a clear stipulation that he will deposit the balance amount of Rs. 15,06,001/- after adjusting Rs. 4,50,000/-, with interest at the rate of 12 %, failing

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which his Ad-hoc Authorization shall be cancelled and the amount deposited by him shall be forfeited.

It is the case of the petitioner that he was unable to collect the toll tax because of the hindrance which was being created by the tempo drivers and the complaint made in this regard by the petitioner seeking protection from Police remained unattended. This is the explanation which has been furnished by the petitioner for not being able to deposit the balance amount.

The materials available on record shows that subsequently, the respondent Nigam issued letters and reminders to the petitioner to deposit the balance amount but ultimately when the balance amount was not deposited, the Ad-hoc authorization has been cancelled and his right to collect the toll tax has been withdrawn. The impugned order containing a direction to this effect is Annexure '9' to the writ application.

Thereafter, the petitioner has submitted a representation expressing his difficulties showing as to why he was unable to deposit the entire amount. Learned counsel for the petitioner submits that his representation as contained in Annexure '10' to the writ application has not been considered.

Learned counsel representing the Nigam has drawn attention of this Court towards the averments made in the

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counter affidavit. Learned counsel submits that the petitioner had entered into the agreement knowing fully well that he would be liable to pay the enhanced amount if the Government enhances the toll tax rate. He has shown from Annexure 'B' to the counter affidavit that the Government had notified the revised rate on 31.03.2016 by virtue of which this petitioner had also been liable to pay the enhanced rate and in fact the petitioner had himself come forward to accept the enhanced rate vide Annexure '2' to the writ application. Learned counsel submits that at this stage when the petitioner has failed to abide by the agreement and the respondents have taken the impugned action, the explanation furnished by the petitioner cannot be gone into by this Court sitting in its writ jurisdiction and no finding may be returned on the plea of the petitioner.

Having heard learned counsel for the petitioner and learned counsel representing the Nigam and upon perusal of the records, this Court comes to a conclusion that so far as the liability to pay the enhanced rate is concerned, the petitioner does not dispute that liability and has in fact admitted himself vide Annexure '2' to the writ application that he is ready to execute the agreement at the enhanced rate. He had requested for three months time to deposit the amount but as it appears form the

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records during the three months time the petitioner had failed to deposit the balance amount of Rs. 10,56,001/- and for that reason when despite reminders the petitioner did not fulfill his obligation under the agreement, the respondent Nigam issued Annexure '9' by which the Ad-hoc Authorization of the petitioner has been recalled. The explanations which are being furnished by the petitioner at this stage to get rid of Annexure '9' to the writ application cannot be adjudicated upon by this court sitting in its writ jurisdiction. The fact as to whether the petitioner was unable to collect the toll tax for the reasons given by him may be adjudicated only after giving opportunity to the parties to adduce their respective evidences.

In such view of the matter, this Court is of the considered opinion that the prayer of the petitioner to quash the impugned order and direct the respondent Nigam to refund Rs. 21,21,000/- with interest thereon cannot be accepted. The Writ application is thus not entertained and is disposed of giving liberty to the petitioner to seek his remedy, if so advised, before an appropriate court in accordance with law.

If the petitioner decides to pursue his remedy available in law and a question of limitation arises for consideration, the same will be considered keeping in view that

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the petitioner had been pursuing his remedy before this Court in the writ application.

The application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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