

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2095 of 2017

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M/s Durga Electric, situated at village+Post-Amhara, P.S.-Bihta, District-Patna through its proprietor namely, Nagendra Kumar, S/o late Jagmohan Singh, Resident of Village Post- Amhara, P.S. Bihta, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Chief Engineer, Rural Works Department, Govt. of Bihar, Patna.
4. The Superintending Engineer, Rural Works Department, Patna.
5. The Executive Engineer, Rural Works Department , Works Division-2, Mashauri Camp, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Singh
For the Respondent/s : Mr.Smt. Archana Meenakshee- GP6

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 26-06-2019 Heard learned counsel for the petitioner and the State.

Petitioner, in the present case, is seeking a mandamus directing the respondents to make payment of the Earnest Money Deposit (in short 'EMD') of Rs.2,50,000/- and security deposit i.e. 5% amounting approximately Rs.2,50,000/- against the work done by the petitioner for the repair of the road for main road Mashaurhi-Naubatpur towards village-Bhadaura of Block Mashaurhi, District-Patna under the agreement no.91F2/2010-11 dated 01.12.2010. He has also prayed for a direction to make payment of security amount of Rs.1,25,000/- against the work done by the petitioner for repair of road from



NH83 Main Road (By-pass) to Silpalpur village under Block Punpun, District-Patna under agreement no.95/F2/2010-11 dated 01.12.2010.

In course of argument, learned counsel for the petitioner submits that the work was completed long back, the final bill of the petitioner was also paid, but then the EMD and the security performance deposit have not been refunded. It is his submission that when this petitioner moved this Court as his representations were not being considered by the respondent authorities, in the counter affidavit they came with plea that in both the schemes PCC road was to be constructed, but within a very short period of construction, defects like cracks began to develop with regard to road in village Bhadaura, Block Masaurhi. The villagers are said to have raised complaint which was published in the newspaper, thereafter the petitioner was called upon to rectify the defects vide letter no.440 dated 19.07.2012 by respondent no.5, otherwise his security deposits will be forfeited and other actions will be taken as per clause of the agreement. It is further stated that the petitioner did not take any notice of the aforesaid instructions of the authorities and did not take any remedial measure. It is further stated in the counter affidavit that the bill has not been finalized and security money



has not been refunded to the petitioner for these reasons. Counter affidavit, however, admits that there was no defect noticed in the repairing of the road from N.H.-83 Main Road (By-pass) to Silpapur village of Block-Punpun, but the security deposit of both the works have not been refunded so far.

Learned counsel for the petitioner has, at this stage, drawn the attention of this Court towards the report dated 31.03.2012 submitted by the Superintending Engineer, Work Circle-2, Patna as contained in Annexure-4 to the rejoinder filed on behalf of the petitioner. It is submitted that the Superintending Engineer had enquired into the allegations made by the villagers and had submitted a report in which he had found that towards the flank of the road the earth work was not done because of the hindrances created by the villagers. It is submitted that till date the EMD and security performance amount of the petitioner are lying with the department.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that at least for the second scheme of repair of road from N.H.-83 main road (By-pass), no reason has been provided for withholding the security amount. The only reason stated in the counter affidavit is that because in respect of the first work there were certain



complaints by the villagers and road started cracking and the petitioner had not come forward to repair the same, the security deposit of the second scheme was also withheld. In the opinion of this Court, this cannot be said to be a cogent and plausible reason to withhold the security deposit of the second scheme.

So far as the EMD and security deposit pertaining to first scheme is concerned, a plea has been taken on behalf of the State that because the petitioner had not performed the work satisfactorily, therefore, it was withheld. Learned counsel for the petitioner has however submitted that the petitioner has done the repairing work as required but despite that the payments have not been made to the petitioner. This Court, therefore, directs the Chief Engineer, Rural Works Department, Govt. of Bihar, Patna (respondent no.3) to look into the grievance of the petitioner, consider the same keeping in mind the materials available on the record and take a decision with regard to the refunds claimed by the petitioner on account of his 'EMD' and security deposits in respect of the work done under agreement no.91F2/2010-11 dated 01.12.2010. In case it is found that the petitioner had carried out the work and had completed the same and an amount is admittedly required to be paid to the petitioner, the same shall be made available to the petitioner without any delay and in any



case within one month from the date of taking of the decision by the respondent no.3.

As regards the security deposit of the second scheme under agreement no.95/F2/2010-11 dated 01.12.2010 is concerned, the same is liable to be refunded and this Court accordingly directs the Chief Engineer (respondent no.3) to make payment of this amount together with interest @ 6% per annum or as per contractual rate whichever is higher within two months from the date of receipt/production of a copy of this order.

The writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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