

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17049 of 2019

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M/s SVSVS Projects Pvt. Ltd. through its authorized representative Shri Shambhu Prasad Sharma, aged about 50 years, (Male), Son of Late Braj Kishore Sharma, Resident of Village- Panchratan, P.S.- Basopatty, District- Madhubani and Registered office at Plot No. 31, 2nd floor Phase-1, Kalyan Nagar, Hyderabad- 5000038 Telangana.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Vishwariya Bhawan, Govt. of Bihar, Patna.
2. The Principal Secretary Road Construction Department, Vishwariya Bhawan, Govt. of Bihar, Patna.
3. The Deputy Secretary (Vigilance) Road Construction Department, Govt. of Bihar, Patna.
4. The Chief Engineer North Bihar Division, Road Construction Department, Govt. of Bihar, Patna.
5. The Chief Engineer Road Construction Department, Vishwariya Bhawan, Govt. of Bihar, Patna.
6. The Superintendent Engineer Road Construction Department, Road Division, Darbhanga.
7. The Executive Engineer Road Construction Department, Road Division, Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Vikas Kumar, Advocate
For the Respondent/s	:	Mr. Chitranjan Sinha (PAAG 2) Mr. Anujit Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 07-01-2020

The counsel for the respondent has filed the replication application in Court. Let it be taken on record.

Copy of the affidavit referred above has already been served upon the counsel for the petitioner.

Heard Mr. P.K. Shahi, learned senior advocate for the petitioner and Mr. Anujit Sinha for the State.



The petitioner who is a Class-I contractor and had been entrusted with the task of maintenance of roads under certain package/programme has been slapped with a notice of recovery of Rs. 3,56,85,323/-, which amount is said to have been paid to him in excess of his entitlement. The petitioner therefore has approached this Court for setting aside the aforesaid decision of the respondents as also for a direction to them to make good the balance payments which is to the tune of Rs. 60 lakhs and odd under the same work plan.

It has been submitted that this recovery notice has been served upon the petitioner in the month of May, 2019. It has further been brought to the notice of the Court that according to the BOQ and the agreement executed between the petitioner and the respondents, there was no provision for painting the roads in the single, intermediate and middle lines. Learned counsel for the petitioner has shown from the BOQ that the requirement was only of painting the edges of the single road and intermediate road and with respect to double and multiple lanes, the requirement was only of painting the edges, the centre line and the curves. According to the agreement, the petitioner was made to paint the entire intersection of the roads for which a bill was raised. Initially, when an objection was raised with respect to the entitlement of the



petitioner for claiming the amount incurred on such painting of roads and fixation of thermoplastic beads, the matter was investigated, inquired into and a decision was taken at the level of Superintending Engineer that the petitioner was entitled for being paid such amount as it was an additional work. The aforesaid payment was therefore made after a supplementary agreement was executed between the parties. It was only much later that a Junior Engineer of the department found out that there was no need for executing such agreement for any additional payment as the compact and the mandate of the work obligated the petitioner to undertake the task of painting at all levels without any necessity for any separate agreement or for any extra payment.

Hence the notice for recovery of the aforesaid amount was issued to the petitioner.

The primary objection of the petitioner therefore is that such notice of recovery has been slapped upon him without affording any opportunity to him to explain his cause and the necessity of additional payment. He submits that a coercive measure like recovery could not have been resorted to by the concerned department/respondent without affording an opportunity of hearing to him. Apart from this, it has also been urged on behalf of the petitioner that several such contractors who have been allotted the



aforesaid work under different packages for annual maintenance of roads have been paid extra for such painting of the edges of the roads and the petitioner is not the only exception. Surprisingly, it has been argued, only the case of the petitioner has been taken up for recovery of the aforesaid amount.

In any view of the matter, before taking any decision and asking the petitioner to deposit the amount which is estimated to have been paid in excess of his entitlement, there is no reason why the petitioner ought not to be allowed ample opportunity of explaining his cause.

The other prayer in the writ petition of directing the respondents to make the balance payment would obviously be taken into account only after the present issue *viz.* the excess payment having been made, is sorted out.

Though the learned counsel for the respondents/State has submitted that in case of any excess payment which is fraudulent, there is no requirement of adhering to any one of the principles of natural justice but this proposition is difficult to accept.

There is no fraudulent action on the part of the petitioner as the payment has supposedly been made after an agreement has been executed between the parties at



the level of the Executive Engineer who was manning the work.

Thus, this Court deems it expedient and legal to provide that in case the petitioner makes a detailed representation before the Principal Secretary, Road Construction Department, Government of Bihar (respondent no. 2) within a period of four weeks explaining his cause, the same shall be entertained in correct perspective; the petitioner shall be afforded an opportunity of personal hearing and the Principal Secretary, Road Construction Department shall pass a reasoned order in accordance with law within a period of six weeks of the receipt of such representation.

Needless to state that till the disposal of the representation of the petitioner, no coercive step for recovery of the amount stated to have been paid in excess of the entitlement shall be made.

With the aforesaid direction/observation, the writ petition stands disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2020
Transmission Date	

