

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3669 of 2021

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M/s Kirloskar Brothers Ltd., a Company having its Registered Office at YAMUNA Surway No. 98/3 to 7, Baner, Pune-411045 Maharashtra, duly represented through its Authorized Signatory, Mr. Girish Gopal Sawant.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
2. District Magistrate and Collector, Darbhanga, Bihar.
3. Chief Engineer (Urban), Public Health Engineering Department, Government of Bihar, Patna.
4. Superintendent Engineer (Urban), Public Health Engineering Department, Darbhanga Division, Darbhanga.
5. Executive Engineer, Public Health Engineering Department, Darbhanga Division, Darbhanga.
6. Bank of India, having its office at Pune Lodge Corporate Branch, C.T.S. No. 11290 Office, G.M. Road, Shivaji Nagar, Pune -44411005 through its Branch Manager.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-9
		Mr. Sanjay Singh Thakur, Advocate
		Mr. Parijat Saurav, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

4 10-02-2022 The matter has been taken up for online hearing through video conference because of COVID-19 pandemic restrictions.

2. The present writ application has been filed seeking a direction to the respondents to return the performance



guarantee of a sum of Rs. 45,68,180/- and security deposit to the tune of Rs. 1,82,72,720/-, issued by the Bank of India against a Contract Agreement No. 02/2011 entered into between the petitioner and the Public Health Engineering Department, Government of Bihar. Petitioner's claim for return of bank guarantee and security deposit is based on Clause-1 of the Agreement, according to which the performance bank guarantee and security deposit were to be kept valid till 28 days beyond the defect liability period. It is the petitioner's case that despite completion of defect liability period, the respondents are not releasing the bank guarantee.

3. The petitioner has also put to challenge a letter dated 01.07.2020, issued by the Executive Engineer, PHED, Darbhanga, whereby it was directed to renew the bank guarantee for the said Agreement. This is, however, not in dispute that in the light of the said communication dated 01.07.2020 the bank guarantee has been renewed.

4. Learned counsel appearing on behalf of the petitioner, with reference to the statements made in the writ petition and the documents brought on record by way of Annexures has attempted to convince this Court that the work has been completed and the defect liability period has crossed.



5. In our opinion, however, this writ application seeking enforcement of contractual obligation under the contract in question is not maintainable in the facts and circumstances of the case, since the petitioner has not been able to make out a specific case on the basis of documents brought on record that his admitted claim is not being considered by the respondents.

6. Learned counsel for the petitioner has placed much reliance on a communication dated 17.01.2020, issued by the Executive Engineer, PHED, Darbhanga Division, addressed to the Municipal Commissioner, Darbhanga Municipal Corporation to convince this Court that despite said communication the completed work of the petitioner has not been taken over by the respondents.

7. We have carefully perused the said communication dated 17.01.2020. There is no definite admission in the said communication that the work has been completed and defect liability period has crossed. It rather mentions fixing of a date for joint inspection of the work executed by the petitioner.

8. In the aforesaid background, we are not inclined to entertain this writ application filed for enforcement of contractual obligation between the petitioner and the respondents in a proceeding under Article 226 of the



Constitution of India. It goes without saying that the petitioner shall be at liberty to approach appropriate forum by invoking the provisions under the contract in question for resolution of dispute and to seek relief as sought in the present writ application.

9. This application stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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