

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18864 of 2017

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M/s Akhileshwar Builders Pvt. Ltd. Nawadih Road, Aurangabad through its Director Amitabh Singh, S/o Late Akhileshwar Prasad Singh, R/o Ganj Muhalla- Nawadih Road, P.S.- Aurangabad Town, District- Aurangabad, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The Superintendent Engineer, Bihar State Police Building Construction Corporation, Kautilya Nagar, Patna.
4. The Executive Engineer, Bihar State Police Building Construction Corporation, Magadh Division, Camp, Dehri-on-Sone, Rohtas.
5. The Station House Officer, Kasma Police Station, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Avinash Kumar Singh, Advocate
For the State	:	Mr. Md. N. H. Khan – SC-1
For the B.P.S.C.	:	Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-04-2023

In the instant petition, petitioner has prayed for following reliefs:-

"i. To issue an appropriate writ preferably in the nature of certiorari for setting aside the Letter No. 1602, dated 28.12.2016, issued by the Executive Engineer, Bihar Police Building Construction Corporation, Magadh Division, Camp-Dehri-on-Sone whereby and where under the agreement No. 73 F 02/ 2010 – 11 entered into between the Petitioner and



Respondent authorities has been rescinded and the amount of advance along with security deposit made by the petitioner to the tune of Rs. 7,81,131/- (Rs. Seven Lacs Eighty One Thousand One Hundred Thirty One Only) has been forfeited.

ii. To issue an appropriate writ preferably in the nature of mandamus commanding upon the respondent authorities to allow the petitioner to complete the construction work in terms of the Agreement No. 73 F02/2010-11 within reasonable period after handing over vacant premises of the construction site to the petitioner, and

iii. To grant any other relief(s), for which the petitioner may be found entitled to in the peculate facts and circumstances of the Case."

2. Impugned communication dated 28.12.2016

(Annexure-10) reads as under:-

"बिहार पुलिस भवन निर्माण निगम

(बिहार सरकार का उपक्रम)

मगध प्रमंडल कैम्प डिहरी-ऑन-सोन

कुमुद कुमार सिंह
कार्यपालक अभियंता

मोबाईल सं०-09471006814

पत्र संख्या: 1602

दिनांक- 24/12/2016

सेवा में,

मेसर्स अखिलेश्वर बिल्डर्स प्रा० लि०

नावाडीह रोड, औरंगाबाद ।

विषय : औरंगाबाद जिलान्तर्गत कसमा थाना में थाना भवन , पहुँच पथ, चहारदिवारी, वारवेड वायर फेंसिंग गेट का निर्माण कार्य ।

प्रसंग : इस कार्यालय का पत्रांक 1139 दिनांक 09.09.2016

महाशय,

उपरोक्त विषयक प्रासंगिक पत्र के संबंध में कहना है



कि उक्त कार्य का दिनांक 26.09.2016 को अंतिम मापी की तिथि निर्धारित की गई थी जिसकी सूचना आपको प्रासंगिक पत्र के माध्यम से दी गई थी। उक्त तिथि को आप कार्य स्थल पर उपस्थित नहीं हुए एवं कोई भी सूचना इस कार्यालय को नहीं दिया गया। तत्पश्चात् उक्त तिथि को सहायक अभियंता एवं कनीय अभियंता द्वारा कार्य का अंतिम मापी ले लिया गया। आपका एकरारनामा संख्या- 73 एफ 02 2010-11 को रिसाईन (Rescine) किया जाता है एवं उक्त कार्य में जमा अग्रधन एवं जमानत की राशि एवं विपत्र से काटी गई राशि को जब्त किया जाता है। जो निम्न प्रकार है-

- | | |
|--------------------------|----------------------------|
| 1. अग्रधन की राशि | : रु. 140000/- (एन०एस०सी०) |
| 2. शेष प्रतिभूति की राशि | : रु. 202000/- (एम०एस०सी०) |
| 3. जमानत की राशि | : रु. 281896/- |
| 4. समयवृद्धि | : रु. 157235/- |
| | <u>कुल रु. 781131/-</u> |

विश्वासभाजन

कार्यपालक अभियंता
बिहार पुलिस भवन निर्माण निगम
मगध प्रमंडल कैम्प डिहरी-ऑन-सोन।"

3. Impugned action is without there being specific notice followed by reply from the petitioner. The same are not forthcoming. Moreover, impugned action is a non-speaking order. On this count, petitioner has made out a case. Hence, the impugned action dated 28.12.2016 stands set aside.

4. Accordingly, the present petition stands allowed reserving liberty to the concerned respondent to take appropriate action after due notice to the petitioner and submission of his



reply, if any and thereafter, pass a speaking order after due consideration of reply, if any to be submitted by petitioner. Above exercise shall be completed within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.04.2023
Transmission Date	N.A.

