

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21180 of 2018

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Bagaha Contractors Pvt Ltd Through Its Director, Niraj Kumar Son of Shri Premchandra Prasad, Resident of Village-Dumwalia, P.S. Bagaha , District-West Champaran ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Rural Works Department, Visheshwaraiya Bhawan, Baily Road, Patna.
2. The Chief Engineer, Rural Works Department Visheshwaraiya Bhawan Bailey Road, Patna.
3. The Superintending Engineer, Rural Works Department at and P.O.-Bettiah, District-West Champaran.
4. The Executive Engineer, Rural Works Department, Work Division-2 at and P.O.-Ram Nagar, District-West Champaran.
5. The District Magistrate, West Champaran. ... Respondents

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Appearance :

For the Petitioner : Mr.Braj Kishore Singh Chouhan, Adv.
For the Respondents : Mrs.Archana Meenakshee, GP VI

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

6 24-07-2023 The present writ petition has been filed for the following relief :

“..... for issuance of writ of certiorari quashing the order no. 01 dated 09.06.2018 issued under the signature of the Executive Engineer, Rural Works Department, Works Division, Bagaha, vide Memo No. 370 dated 09.06.2018 forfeiting the security amount by way of two National Savings Certificate despite of no any adverse order by the Arbitration Tribunal more over absolved by it and further for issuance of writ of mandamus directing respondent respondent to refund Rs.91,690/- deducted on account of liquidated damage.”

2. Learned counsel for the petitioner has stated that



the petitioner has been awarded works contract and after completion of the work, the payment for the work done by the petitioner was not paid, therefore, he had raised dispute under Section 9 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act (hereinafter referred to as, “the Act”) and the learned Arbitrator has passed an award.

3. Learned counsel has stated that as per the Arbitration Award the it was specifically held that the petitioner was not liable for any breach of the contract and that no liquidated damages can be collected from the petitioner. In spite of passing any adverse order against the dispute against the Department, the Department has withheld the bank guarantee submitted by the petitioner at the time of tender.

4. Learned counsel has stated that on an earlier occasion the petitioner has approached this Hon’ble Court vide C.W.J.C. No. 5068 of 2018 and this Hon’ble Court has directed the petitioner to make a representation to the authorities, but, the authorities have rejected the claim of the petitioner vide impugned order, dated 09.06.2018, and, therefore, prayed this Hon’ble Court to allow the present writ petition and direct the official respondents to release the bank guarantee submitted by the petitioner.



5. Per contra, learned counsel appearing on behalf of the respondents has vehemently opposed the maintainability of the writ petition and has stated that the petitioner has already approached the Tribunal/Arbitrator and no relief was given to the petitioner by the said Arbitrator. Learned counsel for the respondents has prayed for dismissal of the present writ petition.

6. A perusal of the Arbitration Award shows that the petitioner had raised certain disputes with regard to the payment of the amount due and also liquidated damages, the Arbitrator has framed the following issues and finally after going through the entire record and evidence adduced by the parties, the Arbitrator has held as under :

(i) The petitioner shall be entitled to payment of the unpaid dues of Rs.1.06 lacs with simple interest @ 10% per annum from the date of last measurement i.e. 14.08.2010 till realization.

(ii) The respondent shall not be entitled to the claim of recovery of the liquidated damages.

(iii) The petitioner shall be entitled to the sot and counsel's fee according to schedule.

7. Once the Arbitrator has held that the petitioner is entitled to the payment of unpaid dues and also that the respondents are not entitled to withheld any recovery of



liquidated damages from the petitioner, the authorities are obligated under law to return the bank guarantee submitted by the petitioner. In the counter affidavit the respondents have stated the petitioner is not entitled to return of the bank guarantee as no relief has been granted by the Arbitrator. It is pertinent to note that the petitioner had not claimed any relief in the said Arbitration Reference, i.e., for refund of the money deposited as there as no occasion for raising the said issue at that point of time. Therefore, the objection raised by the authorities is without any legal basis. Further, in the supplementary counter affidavit it is stated that the petitioner has breached the terms of contract and, therefore, not entitled to return of the bank guarantee. It is pertinent to note that the respondents had raised all these issues before the Arbitrator and the Arbitrator has negated the said contention and passed the Award in favour of the petitioner. The said Award has become final as no appeal has been filed challenging the said Award.

8. Having regard to the above said facts and circumstances, this Court is constrained to hold that the impugned order no. 1, dated 09.06.2018, passed by the Executive Engineer, Rural Works Department, Works Division – 2, at & P.O. Ram Nagar, district West Champaran, (respondent



no. 4) is without legal basis more particularly when the Arbitrator has held that the petitioner has not breached the terms of the contract and the respondents are not entitled for any liquidated damages.

9. The writ petition is, accordingly, **allowed**. The authorities, concerned, are directed to return the bank guarantee submitted by the petitioner to the tune of Rs.91,690/- within a period of four weeks from the date of receipt of this order.

(A. Abhishek Reddy , J)

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