

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13050 of 2015

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Madhup Kumar Singh S/o Sri Shambhu Nath Prasad Singh R/o Rajopatti
Dumra Road, Aduari Niwas, Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Rural Works Department ,Vishwasariya Bhawan
Patna , Bihar.
3. The Engineer-in-Chief, Rural Works Department ,Vishwasariya Bhawan,
Patna , Bihar.
4. The Chief Engineer, Rural Works Department ,Vishwasariya Bhawan,Patna ,
Bihar.
5. The Superintendent Engineer, Rural works Department , Sitamarhi.
6. The Executive Engineer, Rural works Department , Sheohar.
7. The Assistant Engineer, Rural works Department , Sheohar.
8. The Junior Engineer, Rural works Department , Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shri Prakash Tiwari
For the Respondent/s : Mr.Naman Nayak- AC to AAG-13

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
Date : 14-03-2024

Heard counsel for the petitioner and the State.

2. This writ petition has been filed by the petitioner
seeking following reliefs:-

(a) That the concerned respondents
particularly respondent no. 6/Executive Engineer,
Sheohar, be directed by issuance of an appropriate
writ order/direction to return the National Saving
Certificate (NSC) and Kishan Vikash Patra (KVP)
worth Rs. 22,30,000/- deposited in form of Earnest
money and Security Deposit amount of Rs.
22,30,000/- by the petitioner under Agreement No.
1F2 of 2002-2003 and 3F2 of 2002-2003 in the light



of the recommendation made by the incharge Officers on spot i.e. the Junior Engineer as well as the Assistant Engineer, Respondent nos. 7 and 8 respectively of the Department.

(b.) That the concerned respondents be further directed to pay interest @ 12% till date of final payment over the above-said two head for its delayed payment.

(c.) That any other relief(s) to which the petitioner deemed entitled for.

3. The specific relief which is sought for by the petitioner is that in spite of the completion of contract between the petitioner and the respondents, the respondents are not returning the earnest money and security deposit of Rs. 22,30,000/- to the petitioner which was given under agreement no. 1F2 of 2002-2003 and 3F2 of 2002-2003 in spite of the recommendations made by the Incharge Officers ie., Junior Engineer as well as Assistant Engineer (respondent nos. 7 and 8 respectively).

4. Under the Prime Minister Gramin Sadak Yojana for the year 2001-2002 the petitioner was allotted with a work order for construction of road from Khanua to Sugrihdih as well as from Sheohar to Malibisahi. The petitioner entered into an agreement and as per the terms of the agreement the construction work was completed and he approached the respondent/authority for final payment.

5. It is the specific contention of the learned counsel for the petitioner that Rs. 20,00,000/- of the petitioner's amount was



withheld on the ground that work was completed beyond the scheduled time, in as much as no quality control report was available in the Office. The petitioner was constrained to run from pillar to post for the purpose of his amount to the said authorities and for release of the payment. But the authorities did not respond for which the petitioner was constrained to file CWJC No. 7132 of 2009 which was disposed of by this Court dated 01.07.2009 directing the respondent to act fairly on contract matters and further directed the petitioner to file a representation raising all the grievances before the respondent no. 2, the Principal Secretary, Rural Works Department, Bihar, Patna within three weeks from the date of disposal of the said writ petition. In turn, the respondent no. 2 shall dispose of the same by a speaking order.

6. It is further contended by the learned counsel for petitioner that the petitioner filed a representation as per the directions of this Court and the payments was made except the earnest money which was given as security deposit. It is further contended by the counsel for the petitioner that for the purpose of security deposit the petitioner was again made run from pillar to post and he was constrained to another round of writ petition, as the respondents have not returned security deposit.



7. On the other hand, a detailed counter affidavit has been filed by the respondent nos. 2 to 4 and respondent no. 6 denying all the allegations made in the writ petition.

8. It is specific contention of the respondents that for finalization of return of amount of security deposit and earnest money it transpired that the petitioner has not submitted the documents relating to the purchase of Bitumen and emulsion which was supposed to be purchased from the IOCL.

9. It is also contended by the learned counsel for respondent/State that the petitioner has not submitted the documents relating to the purchase of Bitumen and emulsion and as such, the respondents have withhold the security deposit/earnest money. It is specifically contended by the learned counsel for respondent that as per the Special Contract which was entered between the petitioner and the government, there is specific condition which clearly stipulated that the contractor is to supply materials Bitumen, Cement, Rod on his own cost as per standard specifications and quantity, further the Bitumen shall be obtained from IOCL/HP Ltd. and cash memo shall be furnished to the department by the contractor to ascertain the supply of standard quantity of Bitumen.



10. It is further contented that no payment shall be made by the Executive Engineer until and unless cash memo was produced by the petitioner as per clause 5 of the agreement dated 24.05.2002.

11. It is relevant to mention that the learned counsel for the petitioner has relied upon a judgment of the Hon'ble Division Bench of this Court passed in CWJC No. 13024 of 2022 wherein the Hon'ble Division Bench has made specific observation:

“large number of writ petitions are being preferred before this Court where despite representations made/claims set out, no action is being taken by the authorities in either deciding the representation(s) or settling the claims of the parties who have undertaken work on the asking of Government Officers/officials or remitting payments in relation thereto. Resultantly, this Court is flooded with such litigation(s).

we have come across several petitions where the State has availed the services of private citizens/entities, be it for hiring vehicles for the use at the time of elections/officials work; setting up tents and infrastructure at the time of elections or special fairs (Melas), as is the case in hand; or for having executed public works which strictly do not fall within the adjudicatory



process of ambit and scope of the provisions of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008.

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unfortunately, parties are made to run from pillar to post, and as we have noticed, it is only where the officers of the State are interested, be it for whatever reason and consideration, that case of few favoured individuals are settled and issues resolved, leaving the significant majority to litigate.”

12. Heard the rival contentions of the petitioner and the respondent/State. Perused the materials available on record. It is evident that the petitioner initially has preferred writ petition for settlement of his payments. Basing on the orders of this Court, the petitioner has made his representation for final settlement of the works done by him. The State has made final settlement however, the security deposit of the petitioner was withheld, for which the petitioner was constrained to approach this Court for the second time. Admittedly, Bitumen and emulsion are the materials used by the petitioner for the works allotted to him and considering the Field Measurement Book final payment was being made to the



petitioner but the security deposit/earnest money was withheld. Once the payment towards full and final settlement has been made the contract comes to an end. Therefore, the respondents cannot withhold the earnest money or the security deposit with them. Therefore, the contention that the cash memos are not filed by the petitioner cannot be considered at this juncture, for return of earnest money. Hence, the respondents are directed to return the security deposit and earnest money by way of NSE and KVP certificates along with their interest thereon.

13. With the above-said observation, the writ petition is hereby allowed.

(G. Anupama Chakravarthy, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	01.04.2024
Transmission Date	

