

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2554 of 2024

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KEMS Services Pvt. Ltd. through its Managing Director Mr. Mohan Kumar Khandelwal, Aged about 60 Years (Male), Son of Shri Durga Prasad Khandelwal, 76, B1/B, Maurya Lok Complex, Dak Bunglow Road, P.O-G.P.O, P.S-Kotwali, Patna, State- Bihar, Pin-800001. ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna-15.
2. The Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna-15.
3. The Engineer- In- Chief, Flood Control and Water Drainage, Water Resources Department, Sinchai Bhawan, Patna-15.
4. The Chief Engineer, Flood Control and Water Drainage, Water Resources Department, Katihar.
5. The Superintending Engineer, Flood Control Circle, Bhagalpur.
6. The Executive Engineer, Flood Control Division, Water Resources Department, Naugachia (Bhagalpur). ... Respondents

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Appearance :

For the Petitioner : M/s Manish Sahay, Anil Kumar Singh & Siddarth Aditya, Advs.
For the Respondents : Mr.Advocate General

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

6 23-08-2024 Heard the parties.

2. The present writ petition has been filed for the following relief(s) :

(i) For commanding and directing the concerned respondents to prepare final bill in terms of Clause-8 of agreement after taking final measurement in pursuance of letter no. 1110 dated 20.08.2022, issued under the signature of the Executive Engineer (Respondent No. 6).

(ii) For direction upon the Executive Engineer to consider bill dated 16.11.2009 as submitted by the petitioner before him and after incorporated in the



final bill pay the same to the petitioner.

(iii) For further direction upon the concerned Respondent to reimburse entire deducted amount of "Time Extension" in favor of the Petitioner because such deduction is contrary to Section-55 of the Indian Contract Act, 1872 as well as settled principles of law in a case of Bihar State Power Transmission Company Ltd. Vs. Brajesh Kumar, Order passed on 15.06.2023 in Civil Revision No. 249 of 2019.

(iv) For further directing the concerned respondent to refund the balance amount of Security Deposit (i.e. Rs. 15.54.624/-) in favor of the petitioner because in the year 2021 the respondents had taken decision for closer of agreement in question.

(v) For direction upon the concerned respondents to pay a sum of Rs. 53.749/- in favor of the petitioner which was illegally withheld by the respondents under miscellaneous head.

(vi) For further direction upon the concerned respondents to pay interest over entire payable amount @ 18% per annum compoundable from the date of its due and till the date of its realization.

*(vii) For declare that the respondents have committed breach of contract completion of said work in time.
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(viii) For passing such an order or orders for which the petitioner would also be entitled under the law in question in the facts and circumstances as discussed above.



3. In the counter affidavit filed by the respondents it is specifically stated that the relief claimed by the petitioner can not be granted at this stage unless and until the final measurement of the work completed and it is further stated that the petitioner may be directed to cooperate with the concerned authority so that the final measurement can be done in the presence of the petitioner. Learned counsel for the petitioner has stated that the petitioner is always ready and willing to cooperate with the authority concerned for completing the final measurement of the work done by the petitioner. Learned counsel has also drawn the attention of the Court to Annexure P/9, dated 10.05.2024, wherein the petitioner was put on notice directing him to appear before the authorities on 22.05.2024 for completing the final measurement. Learned counsel appearing on behalf of the respondents has stated that he has no instructions with regard to the completion of the measurement work pursuant to the letter, dated 10.05.2024. However, learned counsel has stated that the authority may be directed to complete the measurement, if not already completed.

4. Having regard to the above submissions, the present Writ Petition is **disposed of** directing the respondents to complete the final measurement of the work done by the



petitioner. The petitioner is also directed to cooperate with the authority concerned. In case the final measurement of the work is completed the authority shall make necessary arrangements for payment of the amount due to the petitioner as per the terms and conditions of the contract. The entire exercise shall be completed as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. Any orders passed shall be communicated to the petitioner.

(A. Abhishek Reddy , J)

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