IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6945 of 2023

==

M/S Rehanam Construction Pvt. Ltd. Through its Managing Director Md. Taslim, (Male) Age-55 years, S/o- Late Md. Makhan, R/o- R.K. Plaza, Meva Sah Lane, Katra Mandai, Sultanganj, Near Zakir Hussain School, Post- Mahendru, P.S- Sultanganj, Dist- Patna.

... ... Petitioner

Versus

1. The Chairman cum Managing Director, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna-14
2. The Chief Engineer, Bihar Police Building Construction Corporation, Kautilya Nagar, Patna-14.
3. The Executive Engineer, Bihar Police Building Construction Corporation, Magadh Division Camp Dehri on Sone.

... ... Respondents

==

Appearance :

For the Petitioner/s	:	Mr. Majid Mahboob Khan, Advocate
For the Respondent/s	:	Mr. Prasoon Sinha, Senior Advocate
		Mr. Prabhat Kumar, Advocate

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

16 22-01-2025 Heard learned counsel for the petitioner and learned Senior Counsel for the Bihar Police Building Construction Corporation (hereinafter referred to as the 'Corporation').

2. This writ application has been preferred seeking the following reliefs:-

> "1. a. For issuance of appropriate writ, rule or direction upon the respondents for direction to pay/reimburse the GST claim amount Rs.2,33,64,764.00 approx as per SBD clause 35 of levy/taxes if levied after receipt of tenders from the bidders and also from the clauses of contract in section 35 of the standard bidding document in the

> various works departments of the government of Bihar.
> b. For consequential direction to pay applicable interest upon the respondents to incorporate the provisions/order of Hon'ble court along with order dt-27.05.2019 of S.O.R committee of all working department in which clear order passed to the concerned Ex. Engineer to pay/reimburse the enhanced taxes along with interest to the petitioner.
> 2. For consequential direction to pay the dues of Royalty amount Rs.28,76,500/- for which M.N Form submitted earlier which was verified by the concerned mining officer."

3. It is the case of the petitioner that he had participated in the tender and was successful in getting the work for construction of STF training building at Gaya. The Executive Engineer of the Corporation, Magadh Division Camp, Dehri-on-Sone executed the Agreement No. 35 SBD of 2014-15 dated 14.01.2015 for Rs.33,45,87,383/- and supplementary agreement dated 16.09.2019 for Rs.11,06,45,991/- and completed the work 99% approximately.

4. The petitioner submitted GST claim and M.N form which according to him was verified by the concerned Mining Officer but the grievance of the petitioner is that the Respondents did not pay the entire amount of royalty and held the payment of Rs.28,76,000/- of royalty which has been deducted from the work done bill of the petitioner company.

5. Learned counsel for the petitioner submits that the petitioner submitted the GST claim with Request Letter dated 17.06.2019/30.11.2019, a copy of which has been brought on record by way of Annexure '3' to the writ application. It is submitted that despite pursuing the claim with the Corporation, the petitioner has failed to draw the attention of the competent authority of the Corporation.

6. Learned counsel has relied upon the judgment dated 05.07.2019 passed by a learned Single Judge of this Court (one of us Mr. Justice Rajeev Ranjan Prasad) in CWJC No. 1452 of 2019 and other analogous matters wherein after taking note of the stand of the learned counsel for the petitioner(s) and the State, it was found that earlier there had been some issues with regard to the payability of the differential amount on account of the GST but later on, the same was resolved after holding meetings between the petitioner(s) and the competent authorities of the State. This Court has been informed that the decision rendered in CWJC No. 1452 of 2019 and other analogous matters has attained finality and those petitioners have been paid the differential amount.

7. Referring to Clause '35' of the Standard Bidding

Document (in short 'SBD') which deals with the general conditions of contract and the matters relating to reimbursement of levy/taxes if levied after receipt of tenders, learned counsel submits that taking note of Clause '35' of the SBD, it would be incumbent upon the Respondent Corporation to consider the claim for the differential amount which has arisen because of the GST paid by the petitioner on the works contract.

8. Mr. Prasoon Sinha, learned Senior Counsel for the Corporation has drawn the attention of this Court towards paragraph '18' of the counter affidavit. It is submitted that the petitioner had submitted incomplete claim. The competent authority of the Corporation communicated him in this regard vide Memo No. 1642 dated 10.11.2022 (Annexure 'R/B' to the counter affidavit) but the petitioner has not complied with the requirements which have been pointed out in Annexure 'R/B'.

9. In course of hearing of the writ application, when this Court called upon Mr. Prasoon Sinha, learned Senior Counsel to take a stand with regard to paragraph '4' of Annexure 'R/B', learned Senior Counsel submits that it is a mere opinion of the Superintending Engineer of the Corporation at this stage and this cannot be treated as a final decision as to the payability of the GST in terms of SBD Clause '35'.

10. In any case, it is submitted that the views expressed by the Superintending Engineer in paragraph '4' of the Letter (Annexure 'R/B') shall not come in the way of a fair consideration of the claim of the petitioner and an appropriate decision shall be taken immediately after the petitioner complies with the requirements mentioned in the letter.

11. Having heard learned counsel for the parties, we find that the Respondent Corporation is ready to consider the claim of the petitioner in accordance with SBD Clause '35', subject to the condition that the petitioner submits a complete claim and fulfills the requirement by furnishing the information which have been sought for by the Superintending Engineer of the Corporation in Annexure 'R/B'.

12. We, therefore, grant liberty to the petitioner to submit a complete claim with all such information which have been sought for in Annexure 'R/B' within a period of two months from today.

13. On receipt of the complete claim with the requirements in terms of Annexure 'R/B', the competent authority of the Corporation shall consider the same in accordance with law and keeping in view SBD Clause '35'. It is made clear that the prima-facie opinion expressed in paragraph

'4' of the Letter (Annexure 'R/B') shall not come in the way of a fair consideration of the claim in accordance with law.

14. At the same time, this Court makes it clear that this Court is not expressing any opinion with regard to interpretation of SBD Clause '35' at this stage.

15. Let a speaking order on the claim of the petitioner be passed within two months from the date of receipt of the complete claim. The admitted claim shall be paid within one month thereafter and, in case, the petitioner would have any grievance with regard to the decision of the Respondent Corporation in not making payment either in full or in part, he will be at liberty to raise his grievance before appropriate forum.

16. Liberty is there to the petitioner to file the judicial pronouncements on the subject, if any, which may govern this case.

17. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

lekhi/-

U			