

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8340 of 2017

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Ozone Overseas Private Limited S/o Sh S L Aggarwal, Resident of Hno-41/3,
Block- Aster, Vatika City, P.S.- Sector-50 Gurugram, Haryana.

... .. Petitioner/s

Versus

1. Bihar Urban Infrastructure Development Corporation Limited through its Managing Director, 2nd Floor, Khadya Bhawan, Road No. 2, Daroga Prasad Rai Path, R-Block, Patna - 800001
2. Urban Development and Housing Department, Government of Bihar through its Principal Secretary, Vikas Bhawan, Bailey Road, Patna – 800 001
3. The General Manager works, Bihar Urban Infrastructure Development Corporation Limited, 2nd Floor Khadya Bhawan, Road No. 2, Daroga Prasad Raj Path, R-Block, Patna - 800001
4. The Project Director, Bihar Urban Infrastructure Development Corporation Limited, 2nd Floor Khadya Bhawan, Road No. 2, Daroga Prasad Raj Path, R-Block, Patna - 800001
5. Principle Secretary Finance Department of Finance, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Sri Mrigank Mauli, Sr. Advocate Saket Tiwary Brisketu Sharan Pandey Abhishek Kumar, Advocates
For the Respondent BUIDCO	:	M/s Lalit Kishore, Sr. Advocates R.Priyadarshi, Advocate Ayush Kumar, Advocate Kanishka Shankar, Advocates
For the State	:	M/s Subhash Pd. Singh, GA 3 Indeshwari Pd. Mandal, AC to GA 3

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
Date : 03-03-2025

1. The petitioner has filed the Writ petition
for the following reliefs:-

*“(i) Issuance of writ of
mandamus directing the*



Respondents to make payment of the balance amounts of INR 62378767/-, admittedly, due to be paid for successful performance and completion of the work awarded to the Petitioner under Tender No. BUIDCO/YO-332/13-06 and subsequent Agreement dated 22.08.2014. alongwith interest @15% per annum compounding basis; to be calculated on

(ii) Issuance of writ of mandamus directing the Respondents to release the Performance Bank Guarantee of INR 68,60,000 (INR Sixty Eight Lacs Sixty Thousand) submitted by the Petitioner and renewed from time to time;

(iii) Issuance of writ of mandamus directing the Respondents to release the Retention Money equivalent to a sum of INR 38,32,905 (INR Thirty Eight Lacs Thirty Two Thousand nine hundred five only) submitted by the Petitioner and renewed from time to time;

(iv) For setting aside the



Letter No. 1367 dated 19.05.2017 by which the respondent Bihar Urban Infrastructure Development Corporation Ltd has directed the petitioner to renew the bank Guarantee furnished by the petitioner. For setting aside the letter No 1499 dated 01.06.2017 by which the respondent Bihar Urban Infrastructure Development Corporation Ltd has directed the bank to (BUIDCO) encash the bank Guarantee furnished by the petitioner if not renewed by the petitioner.

(vi) For any other relief for which the petitioner is entitled to in the facts and circumstances of the case and in the interest of justice."

2. I had heard at length the Learned Senior Counsel for the petitioner, the Learned Senior Counsel for the respondent BUIDCO, and the Learned Counsel for the State on 11.2.2025. During the course of arguments, it was contended by the 2nd Respondent that without any sanction or approval the works had been executed at the



instance of Respondent Nos. 1, 3 and 4 and, as such, they are not liable to pay the balance amount for the works executed by the petitioner. On the other hand, the Learned Senior counsel, Mr. Lalit Kishore, appearing on behalf of BUIDCO contended that BUIDCO does not have any financial assistance of its own and is an organization working under the 2nd respondent and until the 2nd respondent releases the amount, BUIDCO cannot pay to the petitioner. However, the Learned Senior counsel further contended that a high level meeting took place in the year 2015 which was headed by the Additional Secretary of the Government. In that high level meeting, a decision was taken to make payments to the petitioner. In spite of reminder letter, the Government has not yet released the amount.

3. From perusal of the aforesaid pleadings, it is evident that the work in question are not in dispute and the admitted unpaid balance amount of the petitioner should have been paid by the respondents.



4. The respondent BUIDCO has filed counter affidavit on 08.09.2017 and for better appreciation of the facts, the relevant paragraph is quoted hereinbelow:

“4. That the brief facts of the case is that Ozone Overseas Pvt. Ltd was selected as L-1 bidder for construction of Bus Que Shelters at various locations in the city of Patna. Accordingly, Letter of Award dated 04.07.2014 was given and Contract Agreement was signed on 22.07.2014 between BUIDCO & Ozone Overseas Pvt. Ltd. The Contractor had to construct $104 \times 2 = 208$ Bus Que Shelters at total project cost of Rs. 13.72 Crores. However the design & specification of Bus Que Shelter changed before the start of work by the competent upon production of design & specification by authority of BUIDCo and Ozone Overseas Pvt. Ltd was Petitions directed to construct all the Bus Que Shelters upon the changed design and specification (6 Meter to 9 Meter length). The Contractor constructed total 117 Bus Que Shelter for project cost of Rs.13.72 Crores before 20th March 2015. Defect Liability Period was up to 20th March 2016. Completion Certificate was issued by BUIDCo vide Letter No. 279 dated 26.05.2016. Out of total cost of Rs. 13.72 Crores, Rs. 6.66 Crores was paid by BUIDCo. Rest of the amount was demanded by BUIDCo



through Letter No. 97 dated 11.01.2016 and letter No. 410 dated 17.02.2017 from Urban Department & Housing Department. The same will be given to the Contractor once it will be received from the Department after conducting financial accounting.

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8. That it is submitted that the during execution the design of one Bus Que Shelter changed by the competent authority of BUIDCo upon production of design and specification by the petitioner. In the course of change as mentioned above 6 Meter length of one Bus Que Shelter was changed to 9 Meter length. The design was also approved by the competent authority of BUIDCo and rest of the Bus Que Shelters was ordered to be constructed in lieu of above changes. BUIDCO informed Urban Development & Housing Department about the tenders cost by sending technical note sheet along with Bid Document and technical sanction for administrative approval by the department. Urban Development & Housing Department accorded approval through letter No. 2 ब०/न० सु० 3-30/2013 dated 17.10.2014 for construction of 104 Bus Que Shelter upon 52 proposed locations to be provided by PMC (both sides of road) with total project cost of Rs. 7.50 Crores and accordingly provided fund of Rs. 7.50 Crores to BUIDCo for the same.”

5. Further, the respondent BUIDCO has



filed 2nd supplementary counter affidavit on 31.01.2025 and for better appreciation of the facts, the relevant paragraphs thereof are quoted hereinbelow:

“4. That the present affidavit is being filed in reply of supplementary affidavit filed on behalf of the petitioner shown by Shubham Prasad on 1st October 2024. In this regard, it is stated and submitted that the deponent can reiterate the earlier counter affidavit as well as supplementary counter affidavit filed on behalf of the authorities of BUIDCO and in continuation of same it is submitted that the authorities of the BUIDCO has paid the substantial amount but still Rs.6,23,78,667/-(Rs Six Crores Twenty Three Lakhs Seventy Eight Thousand Six Hundred Sixty Seven) is still to be paid.

5. That in the aforesaid regard it is further submitted that to resolve this issue the then Principal Secretary of Urban Development & Housing Department had convened a high level meeting at 11:30 A.M on 15.04.2015 in which altogether sixteen agenda has been discussed in which at item no.16



this issue with regard of construction of Bus Queue Shelter at Patna is discussed and it is directed to take action for releasing funds for this project. In this high level meeting not only it is resolved that necessary fund will be released but also Officer on Special Duty has been nominated as Compliance Officer for this purpose.

6. That after high level meeting the authorities of the BUIDCO had submitted application on 11.01.2016 addressed to the Joint Secretary, Urban Development & Housing Department for release of rest amount of Rs. 6.35 Crores. Thereafter, again vide letter no.17/14- 1723 dated 22.06.2017 again application has been submitted for release of the aforesaid amount, but now the Urban development & Housing Department even on consistent representation by the BUIDCO not releasing the fund as it was agreed upon high level meeting, as a result the petitioner is not being paid.

7. That it is further submitted that the then the Principal Secretary, Shri Amrit Lal Meena in whose chairmanship the High Level Meeting



was convened and decision was taken on 15.04.2015 is now holding the Office of Chief Secretary, Bihar. It is further submitted that since the earlier decision of the Urban Development & Housing Department is overruled resulting the controversy between the two government organization.”

6. The Learned Senior counsel for the petitioner in support of his case placed reliance on the judgment of the Hon’ble Supreme Court of India passed in **Civil Appeal No. 2610 of 2019 (M/S Surya Constructions Vs. The State of Uttar Pradesh & Ors.)** and also placed reliance on the judgment passed by a **Division Bench of this Court in CWJC No. 3840 of 2021 (Fulena Construction Pvt. Vs. The State of Bihar & Ors.)** and a Coordinate Bench of this Court in **CWJC No. 10576 of 2023 (Alflah Manufacturing Company Vs. The State of Bihar & Ors.)**.

7. In the case of **M/S Surya Constructions(supra)**, the Hon’ble Supreme



Court has held as follows:

“It is clear, therefore, from the aforesaid order dated 22.03.2014 that there is no dispute as to the amount that has to be paid to the appellant. Despite this, when the appellant knocked at the doors of the High Court in a writ petition being Writ Civil No. 25216/2014, the impugned judgment dated 02.05.2014 dismissed the writ petition stating that disputed questions of fact arise and that the amount due arises out of a contract. We are afraid the High Court was wholly incorrect inasmuch as there was no disputed question of fact. On the contrary, the amount payable to the appellant is wholly undisputed. Equally, it is well settled that where the State behaves arbitrarily, even in the realm of contract, the High Court could interfere under Article 226 of the Constitution of India [‘ABL International Ltd. and Another v. Export Credit Guarantee Corporation of India Ltd. and Others’ (2004 (3) SCC 553)].

This being the case and the work having been completed long back in 2009, we direct the Uttar Pradesh Jal



Nigam to make the necessary payment within a period of four weeks from today. Given the long period of delay, interest at the rate of 6 per cent per annum may also be awarded.”

8. In the case of **Fulena Constsruction Pvt. Ltd. (supra)**, the Division Bench of this Court has held as follows:

“26. In view of the admitted facts and the aforementioned discussions, in our opinion, this writ application deserves to be allowed. The Principal Secretary, Water Resources Department, Government of Bihar is hereby directed to ensure that the amount which is admittedly payable to the petitioner is paid within a period of three months from the date of receipt/production of a copy of this order. We were inclined to allow the petitioner adequate interest for inordinate delay in payment of the amount by the respondents without any valid reason. We have, however, refrained ourselves from doing so in the present facts and circumstances.

27. This application is



accordingly allowed with the directions and observations as noted above.”

9. From bare perusal of the aforesaid judgments, this Court is of the considered view that the petitioner is entitled for his admitted dues. Further, the State is also vicariously liable for the acts of Bihar Urban Infrastructure Development Corporation Ltd.

10. Having regard to the facts that the petitioner has completed the work awarded to him, and in lieu thereof, out of Rs. 13.72 Crores, Rs. 6.66 Crores was paid by BUIDCO while the remaining amount i.e. Rs. 6,23,78,767/- has not been paid by the respondent, this Court is of the considered opinion the remaining amount as stated above, should be paid to the petitioner by the respondents forthwith.

11. The State Government is directed to make available the fund to BUIDCO for payment of the remaining admitted dues of the petitioner as expeditious as possible, preferably within a period of six weeks from the date of receipt of a



copy of this order.

12. With the aforesaid observations, this writ petition stands allowed to the extent indicated above.

13. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.03.2025
Transmission Date	

