

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15532 of 2024

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M/s. Jai Mangla Construction, At and P.O. Bihat, District- Begusarai, Bihar- 851135 through its Authorised Partner Ramanuj Kumar Singh, resident of Flat No. C/101, Dream Apartment, Plot No.14, Sector 22, Dwarka, South West Delhi, Delhi- 110077, at present residing at Pillar No. 58, machchli Gali, Raja Bazar, Patna- 800014.

... .. Petitioner/s

Versus

1. Union of India, through Ministry of Railway, New Delhi.
2. Senior Section Engineer- Elect. (Con.), Eastern Railway, having office at Bhikhanpur Gumty No.3, Near Dom Para, P.O. and District- Bhagalpur- 812001.
3. Divisional Electrical Engineer (Con), Eastern Railway, Bhikhanpur Gumty No.3, Near Dom Para, P.O. and District- Bhagalpur- 812001.
4. Deputy Chief Electrical Engineer (Con.), Eastern Railway, Bhikhanpur Gumty No.3, Near Dom Para, P.O. and District- Bhagalpur- 812001.
5. Chief Electrical Engineer/Con, Eastern Railway, 17, Netaji Subhas Road, 3rd Floor, Kolkata- 700001.
6. Senior AFA/Con/Fin/, Eastern Railway, 17, Netaji Subhas Road, 3rd Floor, Kolkata- 700001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vaibhava Veer Shanker
For the Respondent/s	:	Mr. Additional Solicitor General

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 16-07-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

relief(s):-

“1. That petitioner is a registered partnership firm and a registered contractor with the Eastern Railway, the registered office of the petitioner is at Village & P.O. Bihat, Refinery Road, District -Begusarai, Bihar - 851135 and as such a resident of Bihar is filing this writ application for the following reliefs:



(i) To issue a Rule NISI in the nature of a writ certiorari to quash and cancel the order/ direction dated 05.12.2023 (Annexure-P/3 hereof) issued under the signature of Deputy Chief Electrical Engineer/Con/SDAH, Eastern Railway (Electrical Construction Wing), Sealdah (Respondent no.4).

(ii) To issue a writ in the nature of writ of certiorari to quash and cancel the two orders dated 05.06.2024 (Annexure-5&6 hereof) issued under the signature of Chief Electrical Engineer/Con/ER (Respondent no.5) as well as respondent no.6.

(iii) To issue a writ of mandamus commanding the respondents to restore the amount of Rs.4,85,157.00 (Rupees four lacs eighty five thousand one hundred fifty seven only) as also Rs.16,57,291.00 (Rupees sixteen lacs fifty seven thousand two hundred ninety one only) the total Rs. 21,42,448/- to the credit of the petitioner in LOA No. EL-BGP-CON-GENL-35-2017/Tender dated 15.01.2018 and CA No. EL-BGP-CON-GENL-35-2017/AGT dated 19.03.2018 along with interest @18% per annum.

(iv) To issue any appropriate writ/writs, order/orders, direction/directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. Learned counsel for the petitioner has stated that the petitioner has entered into a contract with the respondent-Railway vide Letter of Acceptance (LOA) No. EL/BGP/CON/GENL-03 of 2014-15/ Tender dated 20.03.2015. That after successful completion of the work contract, the authorities being fully satisfied have issued a final acceptance certificate dated 15.12.2017 under the signature of Deputy Chief Electrical



Engineer (Con), Eastern Railway, Bhagalpur, Senior Section Engineer-Elect.(Con.) Eastern Railway, Bhagalpur, Divisional Electrical Engineer (Con.) Eastern Railway, Bhagalpur. Thereafter, the authorities have deducted a sum of Rs. 16,57,291/- and further sum of Rs. 4,85,157/- from another running contract being executed by the petitioner. Learned counsel has further stated that once a contract has been concluded and the final acceptance certificate has been issued, the authorities cannot seek to deduct amounts from another contract being executed by the petitioner. Learned counsel has stated that the authorities without putting the petitioner on any prior show cause notice or granting him any opportunity have come to the conclusion that some amounts of the previous work completed in the year 2016 are recoverable from the petitioner. Learned counsel has further stated that the work was completed in the year 2016 and the final acceptance certificate was also issued in the year 2017. That the authorities after due inspection, have come to the conclusion that the performance of the work contract was satisfactory and the work completed in all respects have then issued the final acceptance certificate. That once the final acceptance certificate is issued, the authorities are precluded from initiating any action against the petitioner for the said work or recover any amounts pertaining to the said work from



the petitioner. Learned counsel has relied on the judgments of the Hon'ble Supreme Court in the case of ***Gangotri Enterprises Limited Vs. Union of India and Others.*** reported in (2016) 11 SCC 720 and also the judgment of Division Bench of this Hon'ble Court in LPA No. 921 of 2017 dated 15.11.2017.

4. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the authorities duly taking into consideration that the vigilance team inspected the work site and having found that the material for which the amounts were paid by the Railways is deducted from the retention amount. That the vigilance organization of the Railways regularly checks the works in progress as well as the works completed and came to the conclusion that some of the amounts were paid excessively to the petitioner and decided to take steps for recovery of the same. That many works are being done by the petitioner, and the petitioner was informed through letters and giving him a right to file representations against the amount deducted. However, the petitioner has not filed his objections. That full opportunity was given to the petitioner to file his representation, if he is not agreed for the amounts which were deducted and, the petitioner has not availed the same. Learned



counsel has further stated that the petitioner having failed to file any representation against the deductions of the amount cannot maintain the present writ petition and therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. The only issue involved in the present writ petition is as to whether the authorities can deduct any amounts from the bills of on going contracts for the lapses, if any, pertaining to the earlier contract and for which a final acceptance letter has already been issued.

6. Admittedly the issue involved in the present writ petition is no longer res integra.

7. The Hon'ble Supreme Court in the ***case of Gangotri Enterprises Limited Vs. Union of India and Others.*** reported in ***(2016) 11 SCC 720*** has held as under;

“A claim for damages for breach of contract is, therefore, not a claim for a sum presently due and payable and the purchaser is not entitled, in exercise of the right conferred upon it under Clause 18, to recover the amount of such claim by appropriating other sums due to the contractor. On this view, it is not necessary for us to consider the other contention raised on behalf of the respondent, namely, that on a proper construction of Clause 18, the purchaser is entitled to exercise the right conferred under that clause only where the claim for payment of a sum of money is either admitted by the contractor, or in case of dispute, adjudicated upon by a court or other adjudicatory authority. We must, therefore, hold that the appellant had no right or authority under Clause 18 to appropriate the amounts of other pending bills of the respondent in or towards satisfaction of its



claim for damages against the respondent and the learned Judge was justified in issuing an interim injunction restraining the appellant from doing so.”

8. Further, the Hon’ble Division Bench of this Court in LPA No. 921 of 2017 dated 15.11.2017 has held as under;

“Having heard learned counsel for the parties, we find that the legal question with regard to the issue in question as to whether an amount due in one contract can be withheld from another contract, is no more res integra. It has already been decided in a catena of cases and such an action has been prohibited in the case of Gangotri Enterprises Limited Vs. Union of India & Ors., (2016) 11 SCC 720, decided in May, 2016, the issue has been decided and after placing reliance on the earlier judgment of the Supreme Court in the case of Union of India vs. Raman Iron Foundry, (1974) 2 SCC 231, it has been held that an amount payable in one contract cannot be withheld even found due on account of breach of another contract or violation in execution of another contract.”

9. Having regard to the above, the impugned orders dated 05.12.2023 & 05.06.2024 are both liable to be set aside and accordingly set aside. The authorities are directed to refund the amount of Rs. 21,42,448/- to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. In case the amounts are not refunded by the authorities within the time stipulated by this Court, the authorities will then have to pay simple interest at the rate of 8% per annum from the date of



deduction till the date of actual payment to the petitioner on the above said amount.

10. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.07.2025.
Transmission Date	NA

