

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7338 of 2025

M/s Hari Construction and Associates Pvt. Ltd. Keshawe, Baruni, Begusarai, through its Authorised representative, Nilesh Kumar Pandey S/o Dinesh Chandra Pandey, Sex Male, Aged about 53 years, Resident of Mokama Palace, Shri Krishna Puri, Williams Town, Behind SBI Training Center, Deoghar, Distt. Deoghar (Jharkhand), PIN 814112.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resource Department, Govt. of Bihar, Sichayee Bhawan, Patna.
2. The Addl. Secretary, Water Resource Department, Govt. of Bihar, Sichayee Bhawan, Patna.
3. The Engineer-in-Chief, Water Resources Department, Bihar Sichayee Bhawan, Patna.
4. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Samastipur.
5. The Superintending Engineer, Flood Control, Water Resources Department, Samastipur.
6. The Executive Engineer, Flood Control Division, Rosera, Distt. Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suresh Pd. Singh, Adv. Mr. Kumari Rashmi, Adv. Mr. Suraj Pd. Singh, Adv.
For the Respondent/s	:	Mr. Government Advocate (11)
For the State	:	Mr. Raghwanand, Adv. Mr. Sanjay Kumar Tiwari, Adv.

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

9 07-07-2026 Heard the learned counsel for the parties.

2. This writ petition has been filed for the following

relief(s):-

“i. For quashing the Letter No. 1371 dated 22.11.2024, issued by the respondent Executive Engineer Rosera, whereby he has refused to pay Half of amount of Security



Deposit, (hereinafter called as "SD"), violating the mandates of clause 41 of the SBD, banking on which he had paid half of the amount of SD after Six months from the work completion of work, and as per its stipulations, refusing to refund the same, is contrary to the mandates of clause 41 of the SBD, which bad, illegal and arbitrary thus the same may be quashed, declaring the same to be influenced with ulterior motives.

ii. Further, after quashing the impugned letter, an appropriate writ/s, direction/s, order/s may be issued commanding the respondents Executive Engineer, Rosera to Refund and pay 50% of the Security Deposit (hereinafter called as "SD") which comes to Rs.84,34,604.95/-(Rupees Eighty Four Lakh Thirty Four Thousand Six Hundred Four and Paise Ninety Five only) along with interest @ BPLR, as the Defect Liability Period for 24 months is already over by 20.05.2023 itself, and prior to expiry of defect liability, there is no notified defects notified nor any amount remained to be adjusted/recovered, hence direction to the respondents to refund the half of the Security deposit to the petitioner along with interest as claimed be issued.

iii. Further for declaring that refusal to refund of balance SD is patently arbitrary and against mandates of clause 41 of the SBD, which overrides on any executive decisions/orders.



iv. Further holding that in the name of maintenance of road for five years further that too against a meager amount of Rs.27,06,018.17/-, keeping hold the refund of huge balance amount of SD is unjust, improper and not sustainable as clause 41 of SBD says "After completion of the **whole of work**, Half of the total amount of SD shall be paid to the contractor after six months from the date of completion, and the balance half of the amount of SD will be returned after completion of defect liability period and after the engineer has certified that all the defects notified by him to the contractor **before end of this periods** have been corrected and also after recovery of any dues", and taking into consideration completion of **WHOLE OF WORK**" half SD amount is already paid by them, and admittedly Defect liability period (hereinafter referred as DLP) is already over by 20.05.2023 itself, thus denying to refund half of the same which is bad and illegal, as by any executive order/decision, the clauses of SBD cannot be overridden, because it is approved by the cabinet of State Govt. which can only be modified by the Govt, thus refusal to refund the balance and half of SD is not only contrary to clause 41 of the SBD but is beyond jurisdiction too."

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner has been given contract for



work of raising, strengthening and pucckikaran on top of embankment in between km 85.00 to 98.00 of left burhi gandak embankment 2019-2020 on 17.03.2020 and the petitioner has completed the work on 20.05.2021. Learned counsel for the petitioner submits that the defect liability period is of two years from the date of completion i.e. 20.05.2023. Thereafter the petitioner under the terms and conditions of the contract has to maintain the work done by him from the date of defect liability period i.e. from 21.05.2023 till a period of five years i.e. 21.05.2028. Learned counsel submits that as per clause 41 of the SBD the respondent authority is obligated to refund the security deposit in two installments i.e. half of the total amount of the security deposit after six months of the completion of the work, which he has already received. That in so far as the other half of the security amount is concerned, the same has to be returned after the completion of the defect liability period and after the engineer has certified that all the defects notified by him to the contractor before the end of this period have been corrected and also after recovery of any dues. Learned counsel for the petitioner submits that at no point of time have any defects been pointed out by the concerned authority and there are no dues recoverable from the petitioner. Learned counsel submits that



inspite of the clear language employed in clause 41 of the SBD, the authorities are not refunding the balance security deposit which is to the tune of Rs. 84,34,604.95/-. Learned counsel submits that the petitioner has made a representation to refund the half of the 50 per cent of the security deposit, however the authority have issued a letter no. 1371 dated 22.11.2024 (Annexure- P/12) wherein they have rejected the application for refund of security amount on the ground that the balance 50 per cent of the security deposit will be returned only after the completion of the maintenance period. Learned counsel for the petitioner submits that the rejection of the claim of the petitioner to refund the balance 50 per cent of security deposit is without any legal basis and contrary to the Clause 41 of the SBD. Learned counsel has, therefore, prayed this Hon'ble Court to set aside the impugned order and direct the respondent authorities to release the balance 50 per cent of the security deposit amounting to Rs. 84,34,604.95/- by fixing a time frame.

4. *Per contra*, the learned counsel appearing on behalf of the respondent authority has vehemently opposed the very maintainability of the present writ petition. Learned counsel for the respondent has stated that the reliance of the petitioner on clause 41 of the SBD is misplaced. That as per the terms and



conditions of the contract, the petitioner is obligated to maintain the works for a period of five years from the date of completion of the defect liability period i.e. from 20.05.2023 till 20.05.2028. Learned counsel submits that clause 17 of the SBD is applicable in this particular case and has taken this Court to the said clause in support of his case. Learned counsel has, therefore, prayed this Hon'ble court to dismiss the present writ petition

5. In order to resolve the issue involved in the present petition, it is necessary to extract the relevant portions of the SBD, more specifically, Clause 17 and 41 which reads as under:

“Clause 17 Contractor liable for Damages defects during Maintenance period

If the contractor or his working people or servants shall break, deface, jure or destroy any part of building in which they may be working, or any building, road, road curb, fence, enclosure, water pipe, cables, drains, electric or telephone post or wired, trees, grass or grassland, or cultivated ground contiguous to the premises on which the work or any part is being executed, or if any damage shall happen to the work while in progress, from any cause whatever or if any defect, shrinkage or other faults appear in the work within defect liability period after a certificate final or otherwise of its completion shall have been given by the



Engineer-in-Charge as aforesaid arising out of defect or improper materials or workmanship the contractor shall upon receipt of a notice in writing on that behalf make the same good at his own expense or in default the Engineer-in-Charge cause the same to be made good by other workmen and deduct the expense from any sums that may be due or at any time thereafter may become due to the contractor, or from his security deposit except for the portion pertaining to asphalted work which is governed by sub-para (iii) of clause 35 or the proceeds of sale thereof or of a sufficient portion thereof. The security deposit of the contractor shall not be refunded before the expiry of defected liability period after the issue of the certificate final or otherwise, of completion of work, or till the final bill has been prepared and passed whichever is later.

In case of Maintenance and Operation works of Electrical & Mechanical services, the security deposit deducted from contractors shall be refunded within one month from the date of final payment or within one month from the date of completion of the maintenance contract whichever is earlier.

Clause 41 Release of Security

On completion of the whole of the work, half of the total amount of security shall be repaid to the contractor after six months of completion. However, the balance half of the total amount of security will be returned after



completion of defect liability period and after the engineer has certified that all defects notified by him to the contractor before the end of this period have been corrected and also after recovery of any dues.”

6. Admittedly in this present case, the work has already been completed on 20.05.2021 and the defect liability period has also ended on 20.05.2023. A plain reading of clause 41 makes it abundantly clear that the petitioner is entitled to the balance 50 per cent of the security deposit after the completion of the defect liability period. Further it is to be noted that the authorities have not stated anywhere in the counter affidavit that at any point of time during the defect liability period some defect(s) by the engineer concerned and that the petitioner failed to rectify the same. therefore the second limb of the Clause 41 is not applicable to the facts of the present case. Moreover there are no dues payable by the petitioner.

7. In so far as the reliance of the respondents on Clause 17 is concerned, a plain reading of the same would indicate that the same is applicable only where the work is in progress and not after the work has been completed. Even otherwise the relevant portion of the said clause 17 reads as under:



“The security deposit of the contractor shall not be refunded before the expiry of defected liability period after the issue of the certificate final or otherwise, of completion of work, or till the final bill has been prepared and passed which ever is later.”

8. A plain reading of the Clause 17 makes it abundantly clear that the security deposit cannot be refunded before the expiry of the defect liability period which admittedly in this case has already been completed on 20.05.2023. Further the work has already been completed and the final bill has already been paid to the petitioner. Therefore, the authority cannot take a stand that unless and until the petitioner completes the maintenance period, the balance 50 per cent of the security deposit cannot be paid.

9. Neither in the counter affidavit nor in the SBD there is any clause which stipulate that the petitioner would be entitled to balance 50 per cent of the security deposit only after the completion of the maintenance period. Except a bald statement in the counter affidavit stating that the petitioner is not entitled to the balance 50 per cent of the security deposit till the maintenance period is over, no material is placed to support the said averment.



10. Having regard to the above mentioned facts and circumstances, the letter no. 1371 dated 22.11.2024 is set aside and the authorities are directed to see that the 50 per cent of the security deposit amounting to Rs. 84,34,604.95/- is returned at the earliest preferably within a period of four weeks from the date of receipt of the copy of this order. In case the amount is not refunded to the petitioner within the stipulated period, the petitioner would be entitled to simple interest at the rate of 8 per cent per annum from the date of the end of the defect liability period till the date of actual payment.

11. With the above directions, the present writ petition stands allowed to the extent indicated

(A. Abhishek Reddy , J)

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