

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P.(C) No.5397 of 2016**

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M/s. Nav Nirman Builders,  
through its Partner Dharamveer Bhadoria ..... Petitioner.

-Versus-

1. The State of Jharkhand, through the Principal Secretary, Road Construction Department, Project Building, Dhurwa, Ranchi.
2. Engineer-in-Chief, Road Construction Department, Project Building, Dhurwa, Ranchi.
3. Executive Engineer, Road Construction Department, Road Division (Rural), Ranchi.

..... Respondents.

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**CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR**

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For the Petitioner : Mr. Sumeet Gadodia, Advocate  
For the State : Mr. J. F. Toppo, S.C.VII  
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**Order No.07**

**Date: 07.07.2020**

1. This case is taken up through video conferencing.
2. The present writ petition has been filed for the following reliefs:-
  - (i) For issuance of an appropriate writ, order or direction, including writ of mandamus, directing the respondents to immediately and forthwith refund an amount of Rs.28,53,000/- recovered by the respondents on encashing the petitioner's bank guarantees submitted towards security deposit in respect of Agreement no.43 of 2011-12 pertaining to the work of "Strengthening of Silli-Banta-Hazam-Tiker-Rangamati Road in K.M. 0 to 38.60";
  - (ii) For issuance of further appropriate writ, order or direction, including writ of mandamus, directing the respondents to refund an amount of Rs.11,31,440/-, which has been deducted from the running account bills submitted by the petitioner pertaining to the said work towards retention amount;
  - (iii) For issuance of further appropriate writ, order or direction, including writ of mandamus directing the respondents to process final measurement bill of Rs.32,87,148.30 submitted by the petitioner in respect of the said work undertaken by it pursuant to Agreement no.43 of 2011-12;
  - (iv) For issuance of further appropriate writ, order or direction, including writ of mandamus, directing the respondents to pay the difference of cost of bitumen to the petitioner purchased by

it to the extent of Rs.15,13,234.57 for which the bills have already been submitted by it.

3. Learned counsel for the petitioner, while advancing his argument, has confined the prayer to the extent of prayer nos.(i) and (ii) only.
4. The factual matrix of the case, as stated in the writ petition, is that the petitioner was awarded the work by the respondents pertaining to "Strengthening of Silli-Banta-Hazam-Tiker-Rangamati Road in KM 0 to 38.60" vide Agreement no.43 of 2011-12 dated 26<sup>th</sup> March, 2012. The value of the said work was Rs.14,16,84,577.30 and the period of completion of the said work was 11½ months from the date of commencement. Pursuant to the agreement, the petitioner deposited the performance security equivalent to 2% of the contract price plus additional security for unbalanced bids etc. by way of two bank guarantees, amounting to Rs.28,53,000/- in total. The petitioner started executing the work and in the said process had raised first and final bill for the work done during the period 1<sup>st</sup> April, 2012 to 25<sup>th</sup> July, 2012 amounting to Rs.1,74,30,192.30 against which it received Rs.1,41,43,044/-. As per the terms of the agreement, the respondent authorities were entitled to retain certain percentage of the bill amount as retention amount at the time of making payment of the running bills. Accordingly, the retention amount of Rs.11,31,444/- was deducted from the bills of the petitioner raised for the said work. During the progress of the said work, the respondent no.3 vide memo no.893 dated 22<sup>nd</sup> August, 2012 closed the agreement for the said work on the sole ground that the Road Construction Department had blacklisted the petitioner with respect to another contract in terms of Jharkhand Road Construction Registration of Contractors Rules, 2008 (hereinafter to be referred as 'the Rules, 2008') and the registration certificate of the petitioner was cancelled and/or contemplated to be cancelled.
5. Learned counsel for the petitioner submits that the order of blacklisting was passed by the State authorities in relation to a separate work i.e. "Special Repair of Saraikella-Chaibasa Road" (Agreement dated 22<sup>nd</sup> March, 2007), which was in fact successfully completed by the petitioner. However, a C.B.I. case was registered vide R. C. Case No.20(A) of 2009-R dated 22<sup>nd</sup> October, 2009 and in course of

investigation of the said case, the petitioner's complicity transpired due to which the order of blacklisting was passed by the respondent authorities in terms with Rules, 2008. The petitioner preferred an appeal against the said order of blacklisting before the Secretary, Department of Road Construction, Government of Jharkhand and during the pendency of the said appeal, certain bank guarantee was sought to be invoked by the State authorities, which compelled the petitioner to approach this Court by filing a writ petition, being W.P.(C) No.5069 of 2012, seeking direction upon the Secretary, Road Construction Department, Government of Jharkhand (respondent no.1 herein) to dispose of the petitioner's appeal. The said writ petition was disposed of vide order dated 18<sup>th</sup> September, 2012, directing the respondent no.1 to dispose of the said appeal and it was also directed that the petitioner would file an application before the respondent no.1 praying for interim protection. It was also observed in the said order that no coercive action would be taken against the petitioner till its application filed before the Secretary of the Department for interim protection was considered and decided. Subsequently, the respondent-no.2 itself vide order as contained in memo no.3373(S) dated 30<sup>th</sup> April, 2014 cancelled the order dated 21<sup>st</sup> July, 2012 by reasons of which the petitioner was blacklisted and its registration was cancelled. However, the respondent no.2 again vide order as contained in memo no.6511(S) dated 1<sup>st</sup> September, 2014 restored the order of blacklisting dated 21<sup>st</sup> July, 2012 and the petitioner's registration certificate was again cancelled on the ground that the cognizance of the offence alleged to have been committed by the petitioner was taken by the Special Court, C.B.I. in connection with R.C. Case No.20(A) of 2009-R. Thereafter, the petitioner filed another writ petition being W.P.(C) No.5184 of 2014, which was disposed of by this Court vide order dated 13<sup>th</sup> August, 2015 by quashing/setting aside the order dated 1<sup>st</sup> September, 2014 by which the order of blacklisting as well as cancellation of its registration certificate was restored. It is further submitted that admittedly the order of blacklisting and cancellation of the petitioner's registration certificate have been quashed by this Court and the said order has attained its finality to the best knowledge of the petitioner, however, the respondent authorities

have arbitrarily retained the amount of bank guarantees for a sum of Rs.28,53,000/-, which were encashed on account of closure of the petitioner's agreement. It is also submitted that the bank guarantees of the petitioner were not encashed by the respondent authorities on account of any default on its part for the agreement in question, rather the same were encashed only on the ground that the petitioner's agreement in question was closed due to the order of blacklisting and cancellation of its registration certificate. Learned counsel for the petitioner further submits that the act of encashment of bank guarantees with respect to alleged default in a completely different contract and/or blacklisting with respect to a separate contract altogether is apparently illegal, arbitrary and also amounts to egregious fraud on the part of the State authorities. Nevertheless, since the order of blacklisting and cancellation of the petitioner's registration certificate have already been quashed/set aside by this Court, the petitioner is otherwise entitled for refund of the amount of bank guarantees to the extent of Rs.28,53,000/-. It is also submitted that at the time of closure of the petitioner's contract, the representative of the petitioner was directed to remain present on the work site on 4<sup>th</sup> September, 2012 for the purpose of final measurement of the work, however, no such measurement was taken by the respondent authorities on the said date and as such the petitioner took the measurement of the work completed by it till the date of closure of the agreement and pursuant thereto it submitted final bill for balance dues of Rs.32,87,148.30. The said final bill was submitted by the petitioner with the respondent no.3 as far back as on 22<sup>nd</sup> September, 2014, but till date no step has been taken by the respondent authorities for payment of the said final bill. It is also submitted that an amount of Rs.11,31,444/- has also been deducted from the running account bill of the petitioner towards "retention amount" in terms with the agreement and, thus, the petitioner is also entitled for refund of the said retention amount specially in view of the fact that the respondent authorities themselves closed the contract in question and also keeping in view that the ground on which the contract was closed has been rendered nonest in the eye of law. The petitioner has also filed several representations before the respondent

authorities seeking refund of the amount of bank guarantees encashed by them and payment of balance dues of final bill as well as refund of retention amount, however, no action has been taken by the respondent authorities in this regard. The respondent authorities cannot enrich themselves unjustly at the cost of the petitioner's agony, particularly in absence of any fault on its part.

6. Learned counsel for the respondents submits that the petitioner's bank guarantees were encashed in terms with rule 10.4 of the Rules, 2008. The measurement of the work was taken by the department on 4<sup>th</sup> September, 2012 and the same was also entered in the measurement book, wherein abstract of cost etc. was also recorded. It is further submitted that the petitioner is not entitled for refund of the retention amount, as the same has been forfeited in accordance with the provisions of Rules, 2008.
7. Heard learned counsel for the parties and perused the materials available on record. The petitioner has sought direction upon the respondent authorities to refund an amount of Rs.28,53,000/- recovered from it by way of encashing the bank guarantees deposited as performance security. The petitioner has also claimed refund of Rs.11,31,444/- deducted from its running account bills towards retention amount.
8. The main contention raised on behalf of the respondents is that the action taken by the respondent authorities is completely justified, as the same has been done under the provisions of rule 10.4 of the Rules, 2008.
9. To appreciate the said contention of learned counsel for the respondents, rule 10.4 of the Rules 2008 is required to be considered, which reads as under:-

***"10.4:- The guarantee money of all the work being done by the blacklisted contractor in Road Construction Department Jharkhand shall be seized since the date of issuance of order under Rule 10.1 and appropriate action will be taken for completion of rest of the work."***

10. The petitioner has specifically contended in the writ petition that the order of blacklisting passed against it has already been quashed/set aside by this Court in W.P.(C) No.5184 of 2014 and as such the very basis of invoking the bank guarantees does not subsist now and as such there is no justifiable reason for the respondent authorities to

retain the said amount. So far as the refund of retention amount of Rs.11,31,444/- is concerned, the same was not even amenable to seizer under rule 10.4 of the Rules, 2008. Learned counsel for the respondents while advancing his argument has not been able to satisfy this Court as to under which provision the retention amount has been withheld by the respondent authorities.

11. The Hon'ble Supreme Court in a recent judgment rendered in the case of ***Punjab National Bank & Ors. Vs. Atmanand Singh & Ors., reported in 2020 SCC Online SCC 433***, has held as under:-

"17. -----

*We restate the above position that when the petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral and documentary evidence to be produced and proved by the concerned party and also because the relief sought is merely for ordering a refund of money, the High Court should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit. Had it been a case where material facts referred to in the writ petition are admitted facts or indisputable facts, the High Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with law."*

12. In the aforesaid case, the Hon'ble Supreme Court has held that in case of admitted facts, the High Court while exercising the writ jurisdiction under Article 226 of the Constitution of India may grant relief to the petitioner by examining the case on its own merit.
13. Since in the present case, admittedly, blacklisting of the petitioner which was the basis of invoking bank guarantees as well as withholding the retention amount has been quashed/set aside by a co-ordinate Bench of this Court in W.P.(C) No.5184 of 2014, I see no reason as to why the respondent authorities can continue to withhold the said amount of the petitioner.
14. Under the aforesaid facts and circumstances, the respondents are directed to release the amount of Rs.28,53,000/-, which has been recovered from the petitioner by encashing the bank guarantees submitted towards security deposit as also the amount of Rs.11,31,444/- deducted from the running account bills of the petitioner as retention money within a period of eight weeks from the date of receipt/production of a copy of this order.
15. The writ petition is, accordingly, disposed of with aforesaid observation and direction.

**(Rajesh Shankar, J.)**