

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1452 of 2019**

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M/s. Jai Bhawani Construction, Adarsh Colony, Bettiah through its Authorized Signatory Nikhil Singh, aged 33 years, Male, son of Sri Vijay Kumar Singh resident of Adarsh Colony, P.S.Bettiah Town,Distt.-Bettiah, West Champaran, Bihar

.. ... Petitioner

Versus

1. The Union Of India through the Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi
2. The Under Secretary, Ministry of Finance(Department of Revenue), Government of India, New Delhi
3. The State of Bihar through the Chief Secretary, Government of Bihar,Patna
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna
5. The Principal Secretary, Road Construction Department, Government of Bihar,Patna
6. The Principal Secretary Rural Works Department, Government of Bihar, Patna
7. The Engineer in Chief, Rural works Department, Government of Bihar, Patna
8. The Executive Engineer, Rural Works Department, Works Division, Bettiah, Dist.- West Champaran, Bihar

... ... Respondent/s

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with

**Civil Writ Jurisdiction Case No. 2734 of 2019**

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M/s. Jai Bhawani Construction Adarsh Colony, Bettiah through its Authorized Signatory Nikhil Singh, aged about 33 years, Male, son of Sri Vijay Kumar Singh, Resident of Adarsh Colony, P.S. Bettiah Town,Dist.-Bettiah,West Champaran, Bihar

... ... Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Finance, (Department of Revenue), Government of India,New Delhi
2. The Under Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi
3. The State of Bihar through the Chief Secretary, Government of Bihar,Patna
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna
5. The Principal Secretary, Road Construction Department, Government of Bihar, Patna



6. The Principal Secretary Building Construction Department, Government of Bihar, Patna
7. The Chief Engineer North, Building Construction Department, Govt. of Bihar, Patna
8. The Superintending Engineer, Building Circle, Motihari
9. Executive Engineer, Building Division, Bettiah

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 2857 of 2019**

M/s. Jai Bhawani Construction Adarsh Colony, Bettiah through its Authorized Signatory Nikhil Singh, aged about 33 years, Male, son of Sri Vijay Kumar Singh, Resident of Adarsh Colony, P.S. Bettiah Town, Dist.-Bettiah, West Champaran, Bihar

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi
2. The Under Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi
3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
4. The Principal Secretary, Department of Finance, Government of Bihar Patna
5. The Principal Secretary, Road Construction Department, Government of Bihar Patna
6. The Principal Secretary Rural Works Department, Government of Bihar Patna
7. The Chief Engineer-3, Rural Works Department, Government of Bihar Patna
8. The Superintending Engineer, Rural Works Department, Works Division, Bettiah Bihar
9. Executive Engineer, Rural Works Department, Works Division, Bettiah Bihar

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 1453 of 2019**

M/s. Jai Bhawani Construction Adarsh Colony, Bettiah through its Authorized Signatory Nikhil Singh, aged about 33 years, Male, son of Sri Vijay Kumar Singh, Resident of Adarsh Colony, P.S. Bettiah Town, Dist.-Bettiah, West Champaran, Bihar

... .. Petitioner

Versus



1. The Union Of India through the Secretary,Ministry of Finance, (Department of Revenue),Govt. of India,New Delhi
2. the Under Secretary, Ministry of Finance,(Department of Revenue),Govt. of India,New Delhi
3. The State of Bihar through the Chief Secretary,Govt. of Bihar,Patna
4. The Principal Secretary, Department of Finance,Govt. of Bihar,Patna
5. The Principal secretary, Road Construction Department,Govt. of Bihar,Patna
6. The Principal Secretary, Rural Works Department,Govt. of Bihar,Patna
7. The Chief Engineer-3, Rural works Department,Govt. of Bihar,Patna
8. The Superintendent Engineer, Rural works Department,Works Division,Bettiah
9. Executive Engineer, Rural works Department,works Division,Bettiah

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 24529 of 2018**

Satyendra Kumar Construction Pvt. Ltd. having its registered office at 202, Hira Enclave, New Dak Bunglow Road, P.S. Kotwali, District Patna through its Director Satyendra Kumar, son of Sri Bhagwan Das, resident of 202, Hira Enclave, New Dak Bunglow Road, P.S. Kotwali, District- Patna.

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi.
2. The Under Secretary Ministry of Finance, (Department of Revenue), Government of India, New Delhi.
3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
6. The Principal Secretary, Water Resources Department Government of Bihar, Patna.
7. The Chief Engineer, Irrigation Creation Water Resources Department Nalanda, Bihar Sharif, District Nalanda, Bihar.
8. The Executive Engineer, Irrigation Division Sheikhpura, District Sheikhpura, Bihar.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 3288 of 2019**



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M/s. Brijnandan Singh aged about 59 years, Male, through its partner  
Brijnandan Singh son of Late Mangroo Singh Resident of Village Lahthan,  
P.S. Agiaon Bazar, District- Bhojpur, Bihar.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi.
2. The Under Secretary, Ministry of Finance (Department of Revenue) Government of India, New Delhi.
3. The State of Bihar through the Chief Secretary Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Principal Secretary, Road Construction Department Government of Bihar, Patna.
6. The Principal Secretary, Water Resources Department Government of Bihar, Patna.
7. The Chief Engineer, Flood Control and Drainage Water Resources Department, Katihar (Camp Purnea) District- Katihar, Bihar.
8. The Executive Engineer, Flood Control Division Karhagola, Katihar, Bihar.

... .. Respondent/s

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with

**Civil Writ Jurisdiction Case No. 3316 of 2019**

=====  
M/s. Brijnandan Singh aged about 59 years, Male, through its Partner  
Brijnandan Singh, Son of Late Mangroo Singh, Resident of Village Lahthan,  
P.S. Agiaon Bazar, District- Bhojpur Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi.
2. The Under Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi.
3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
6. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
7. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Katihar, District Katihar, Bihar.



8. The Executive Engineer, Flood Control and Drainage Division, Purnea, Bihar.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 8068 of 2019**

M/s. Brijendra Kumar Singh having its registered office at Village Sarai, P.O. Mashodha, Jandaha, P.S. Ramgarh, District Kaimur, through its partner Ramjee Singh, aged about 56 years, Male, son of Late Shilwant Singh, resident of New Area, Jora Mandir, Kadam Gachh Gali, P.S. Dehri, District Rohtas.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi.
2. The Under Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi.
3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
6. The Executive Engineer, N H Division, Gaya.
7. The Executive Engineer, R C D, Road Division, Bhabhua.
8. The Executive Engineer, R C D, N H Division, Aurangabad.
9. The Executive Engineer, R C D, Road Division, Siwan.
10. The Executive Engineer, R C D, Road Division, Chapra.
11. The Executive Engineer, R C D, Road Division, Dehri On Sone.

... .. Respondents

with

**Civil Writ Jurisdiction Case No. 8205 of 2019**

M/s. Brijendra Kumar Singh having its registered office at Vill.- Sarai, P.O.- Mashodha, Jandaha, P.s.- Ramgarh, Distt.- Kaimur, Bihar through its partner Ramjee Singh, aged about 56 years, Male, son of late Shilwant Singh, resident of New Area, Jora Mandir, Kadam Gachh Gali, P.s.- Dehri, Distt.- Rohtas

... .. Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Finance (Department of Revenue), Govt. of India, New Delhi



2. The Under Secretary Ministry of Finance, (Department of Revenue), Govt. of India, New Delhi
3. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
4. The Principal Secretary Department of Finance, Govt. of Bihar, Patna
5. The Principal Secretary Road Construction Department, Govt. of Bihar, Patna
6. The Executive Engineer N.H. Division, Gaya
7. The Executive Engineer R.C.D., N.H. Division, Bhabhua
8. The Executive Engineer R.C.D., N.H. Division, Aurangabad
9. The Executive Engineer R.C.D., N.H. Division, Siwan
10. The Executive Engineer R.C.D., N.H. Division, Chapra
11. The Executive Engineer R.C.D., N.H. Division, Dehri On Sone

... .. Respondents

with

**Civil Writ Jurisdiction Case No. 8214 of 2019**

M/s. Brijendra Kumar Singh, having its registered office at Village Sarai, P.O. Mashodha, Jandaha, P.S. Ramgarh, District Kaimur, Bihar, through its partner Ramjee Singh, aged about 56 years, Male, son of Late Shilwant Singh, resident of New Area, Jora Mandir, Kadam Gachh Gali, P.S. Dehri, District Rohtas

... .. Petitioner/s

Versus

1. The Union of India, through the Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi.
2. The Under Secretary, Ministry of Finance, (Department of Revenue), Government of India, New Delhi.
3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
6. The Executive Engineer, N H Division, Gaya.
7. The Executive Engineer, R C D, Road Division, Bhabhua.
8. The Executive Engineer, R C D, N H Division, Aurangabad.
9. The Executive Engineer, R C D, Road Division, Siwan.
10. The Executive Engineer, R C D, Road Division, Chapra.
11. The Executive Engineer, R C D, Road Division, Dehri On Sone.

... .. Respondent/s



**Appearance :**

(In Civil Writ Jurisdiction Case No. 1452 of 2019)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
Mr. Chandan Kumar, Advocate  
For the Respondent/s : Ms.Archana Meenakshee (GP6)  
Mr. Mahendra Pd. Verma, Advocate  
For the State : Mr. Vikash Kumar, S.C.11  
Mr. Akash Chaturvedi, A.C. to S.C.11

(In Civil Writ Jurisdiction Case No. 2734 of 2019)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
Mr. Chandan Kumar, Advocate  
For the Respondent/s : Mr. Vikash Kumar, S.C.11  
Ms.Archana Meenakshee (GP6)

(In Civil Writ Jurisdiction Case No. 2857 of 2019)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
Mr. Chandan Kumar, Advocate  
For the State : Mr. Vijay Bharti, AC to S.C.7  
For the Union of Inda : Mr. Asst. S.G.  
Ms.Archana Meenakshee (GP6)

(In Civil Writ Jurisdiction Case No. 1453 of 2019)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
Mr. Chandan Kumar, Advocate  
For the Respondent/s : Ms.Archana Meenakshee (GP6)

(In Civil Writ Jurisdiction Case No. 24529 of 2018)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
Mr. Chandan Kumar, Advocate  
For the State : Mr. Deepak Sahay Jamuar, AC to AAG-4  
For the Respondent/s : Mr. S.D. Sanjay, Addl. S.G.  
Mr. Anshay Bahadur Mathur, C.G.C.

(In Civil Writ Jurisdiction Case No. 3288 of 2019)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
Mr. Chandan Kumar, Advocate  
For the Respondent/s : Ms.Archana Meenakshee (GP6)  
For the U.O.I. : Mr. Rajesh Kr. Verma, Asst. S.G.

(In Civil Writ Jurisdiction Case No. 3316 of 2019)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
Mr. Chandan Kumar, Advocate  
For the Respondent/s : Mr.Vikash Kumar (SC11)  
Ms.Archana Meenakshee (GP6)

(In Civil Writ Jurisdiction Case No. 8068 of 2019)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
For the Respondent/s : Mr. Sanjay Kumar, AC to GA13

(In Civil Writ Jurisdiction Case No. 8205 of 2019)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
Mr. Chandan Kumar, Advocate  
For the Respondent/s : Mr.Vikash Kumar (SC11)  
Ms.Archana Meenakshee (GP6)

(In Civil Writ Jurisdiction Case No. 8214 of 2019)

For the Petitioner/s : Mr.Prabhat Ranjan, Advocate  
Mr. Chandan Kumar, Advocate  
For the Respondent/s : Mr.Vikash Kumar (SC11)  
Ms.Archana Meenakshee (GP6)

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD  
ORAL JUDGMENT**

**Date : 05-07-2019**



Heard learned counsel for the petitioners, learned counsel representing the State as well as learned Assistant Solicitor General representing the Union of India.

All these writ applications are raising a common question as to the effect of coming into force of the Goods and Services Tax Act (hereinafter referred to as the “GST Act, 2017”) in respect of the tenders which were floated prior to coming into force of the Act of 2017 and in respect thereof the agreement i.e. the Standard Bidding Document (in short the “SBD”) applicable in the Works Departments of the Government of Bihar contains Clause 35 which deals with the condition of reimbursement of levy/taxes if levied after receipt of the tenders. Similar provision is there in the Model Bidding Document (in short ‘MBD’).

The petitioners moved this court stating that they had participated in the tender process prior to coming into force of the GST Act, 2017, when Bihar VAT Act, 2005 was in force and applicable in relation to the contracts in question. According to the petitioners, after coming into force of the GST Act, 2017 it was incumbent upon the Works Department of the Government of Bihar to suitably



amend Clause '35' of the conditions for reimbursement of levy/taxes if levied after receipt of tenders, as in absence of suitable amendments thereof the petitioners were being made liable to pay GST without there being any provision for reimbursement of the liabilities falling upon them by virtue of the implementation of the GST Act, 2017.

Their contention in all these writ applications is that there are such contracts in which the estimates were prepared and agreement were executed prior to 01.07.2017 i.e. the date of commencement of GST Act, but the work continued even after that, there are contracts in which the estimates were prepared prior to 01.07.2017 but the agreements were executed after 01.07.2017 and yet there are contracts in which both the estimates prepared and agreements have been executed after 01.07.2017 and in order to meet the requirement of the GST Act, 2017 in its terms and spirit Clause 35 was required to be amended suitably.

Before further dealing with the contentions, it would be just and proper to quote relevant Clause 35 of the Standard Bidding Document (in short 'SBD') prevailing on



01.07.2017 which reads as under : -

***“35. Conditions for reimbursement of Levy/taxes if levied after receipt of tenders.***

*(i) All tendered rates shall be inclusive of all taxes and levies payable under respective statutes. However, pursuant to the Constitution (46<sup>th</sup> Amendment) Act, 1982, if any further tax or levy is imposed by Statute, after the last stipulated date for the receipt of tender including extensions if any and the contractor thereupon necessarily and properly pays such taxes/levies the contractor shall be reimbursed the amount so paid, provided such payments, if any, is not, in the opinion of the Chief Engineer (whose decision shall be final and binding on the contractor) attributable to delay in execution of work within the control of the contractor.*

*(ii) The contractor shall keep necessary books of account and other documents for the purpose of this condition as may be necessary and shall allow inspection of the same by a duly authorized representative of the government and/or the Engineer in Charge and further shall furnish such other information/document as the Engineer in Charge may require from time to time.*

*(iii) The Contractor shall, within a period of 30 days of the imposition of any such further tax or levy, pursuant to the Constitution (forty Sixth Amendment) Act, 1982, give a written notice thereof to the Engineer in Charge that the same is given pursuant to this condition, together with all necessary information relating thereto.”*



In course of argument, Mr. Prabhat Ranjan, learned counsel representing the petitioner(s) submitted that till the date of filing of the writ application, the State Government had not provided for any mechanism to find out the amount payable as 'GST' on those works contract of the nature stated above, there was no mechanism as to who would be competent to deduct the amount payable under 'GST' and how the same shall be deposited in the government exchequer and would be refunded to the contractor and because of the inaction on the part of the government, the petitioners were required to deposit on recurring basis an amount of 12% on each and every bills without there being any stipulation as to how such amount so deposited shall be reimbursed.

It is also contended that the inaction of the State Government has a material bearing on the profit of the contractor inasmuch as an amount of 10% of the net value of the estimate is approved as contractor's profit but on account of 'GST' the contractors were being compelled to deposit an amount of 12% at GST which was never



contemplated under the Bihar VAT Act, 2005.

Attention of this court has also been drawn to the fact that the Water Resources Department in the Government of Bihar has formulated a *modus operandi* making provision of GST in the works contract and the Commercial Taxes Department has been requested to accord concurrence to the same but the Department has not accorded the concurrence as yet. It is, thus, his submission that this court should issue a direction to the respondents to delete Clause 35 and a consequential direction be issued to incorporate the provision for the reimbursement of the amount being collected in the form of GST after 01.07.2017. The petitioners have also prayed for a direction to the respondents to provide for the refund of the amount being paid/deposited under the GST from the various running accounts bills of the contractors. A consequential prayer has been made to issue a writ of mandamus to the respondents to revise the schedule of rates (in short 'SOR') of the 'SBD' so as to make it GST compliant.

For purpose of narrating the case of the petitioners, this court has taken the facts from the writ application being



CWJC No. 3288/2019. A counter affidavit has been filed in this writ application but it is only on behalf of the Executive Engineer, Flood Control Division, Karhagola, Katihar, Bihar (respondent no.8). In his counter affidavit he has stated that so far as the work in the present writ application is concerned, it was completed on 25.03.2018 for value of Rs. 5174.09147 Lakhs and no GST has been deducted from the bill because the work was completed before implementation of the GST deduction at source. He has further taken a plea that in terms of Clause 35(ii) & (iii) of the 'SBD' the petitioner has not given any information regarding any extra tax being paid by him within a period of 30 days of the imposition of any such further tax or levy and no record or evidence has been provided by the petitioner.

As stated above, in this case since only the Executive Engineer has filed the affidavit, therefore, in order to take note of the stand of the Department of the Government, learned counsel for the State, Mr. Vikash Kumar, Ms. Archana Meenakshee and Mr. Kumar Alok have taken this court through the counter affidavit filed in



CWJC No. 1452/2019 on behalf of respondent Nos. 6 to 9. In this case, the issues raised by the petitioner are identical to the first writ application, however, it relates to an agreement which was executed after 01.07.2017 being 20/SBD-PMGSY of 2017-18 dated 28.08.2017 for a cost of Rs. 1,02,01,006.00 (rupees One Crore Two Lac One Thousand Six Only). Since the Module Bidding Document (in short 'MBD') in this case contains the same Clause 35 as appearing in the 'SBD', a similar contention has been raised on behalf of the petitioners.

While answering the contentions raised on behalf of the petitioners, learned counsel for the State has relied upon the counter affidavit filed on behalf of respondent nos. 6 to 9 in CWJC No. 1452/2019. It is stated that all the provisions of the 'SBD' are part and parcel of the agreement. Clause 13.3 of the 'SBD' states that "*All duties, taxes, royalties and other levies payable by the Contractor under the Contract, or for any other cause, shall be included in the rates, prices and total Bid price submitted by the Bidder.*" According to the respondents, the petitioner if had any objection with regard to any of the provisions of



the agreement then he should have raised objection to the same at the time of execution of the agreement itself but having signed the agreement and executed the same, the prayer of the petitioner to direct the respondents to delete or add any Clause in the 'SBD'/ 'MBD' cannot be entertained. It is, thus, submitted that the writ applications, as framed, are not maintainable and are fit to be rejected.

As regards the implementation of the GST Act, the respondents have taken a stand that a Committee of the Rural Works Department, Government of Bihar has examined its implication in the light of the guidelines issued by the National Rural Infrastructure Development Agency, Ministry of Rural Development, Government of India vide Circular No. GO21(117)-3201/FA dated 06.06.2018 (Annexure 'C' to the counter affidavit). It is further stated that in accordance with the said Circular dated 06.06.2018, Bihar Rural Road Development Agency, Rural Works Department, Government of Bihar (in short 'BRRDA') has vide letter No. 1059 dated 05.12.2018 issued under the signature of the Nodal Officer, circulated the aforesaid guidelines to all the Executive Engineers which



specifically provides for additional payment provision/clause. Since Annexure 'C' to the counter affidavit has been relied upon, this court thinks it just and proper to reproduce Annexure 'C' as under: -

National rural Infrastructure Development Agency  
Ministry of Rural Development, Government of India  
15 NBCC Tower, 5<sup>th</sup> Floor, Bikaji Cama Place, New Delhi-110066

**File No. NRRDA-GO(17)/32017-FA**

**Dated; 06.06.2018**

To,

The Principal Secretary/Secretary of Nodal Departments of PMGSY (State/UT), Empowered Officers/CEOs & Chief Engineers of SRRDAs, General Managers Finance (NEAs), (All State).

**Subject: Implementation of Goods and Service Tax-Works Contractor.**

Sir/Madam,

1. Government of India has enacted the Goods and Services Act 2017 through out India w.e.f. 01.07.2017. The GST has subsumed various indirect Taxes of both the Central & State Government, such as Central Excise Duty, Service Tax, Central Sales Tax (CST/Works Contract Tax (WCT)/State Value Added Tax (VAT), Additional Custom Duty (CVD) and special Additional Duty (SAD) apart from Entry Tax and Octroi Charges etc.

2. The Standard Bidding Document (SBD) makes provisions about the taxes which directly relating to Contract Value. It incorporates that whenever the tax structure is changed during the ongoing contract and new law comes into force then the contractor has to be refunded the increased amount of taxes, if any and similarly, recovery is to be made from the contractor if the taxes have decreased.

3. On request of various States, seeking clarifications of GST and issuance of guidelines for future references, this office in consultation with Integrated Finance Division (IFD) of Ministry of Rural Development (MoRD) has worked out comprehensive guidelines and categorized all the projects under PMGSY into four different categories of A, B, C and D to enable the States to calculate additional tax burden.

**4. The adoption and the consequent implication of GST under PMGSY will be on the following categories of works -**

i. Works sanctioned, prior to 01.07.2017, under different phases of PMGSY and which are ongoing i.e. subsisting contracts (including the delayed projects, beyond the original intended completion date) under various stages of physical and financial progress (Category A)

ii. Works sanctioned, after 01.07.2017, under different phases of PMGSY wherein GST has not been accounted for in the original



proposal/sanction and wherein Tenders have been completed. (Category B).

iii. Works sanctioned, after 01.07.2017, under different phases of PMGSY wherein GST has not been accounted for in the original proposal/sanction and for which tender process has not been initiated. (Category C).

iv. All new works proposed and yet to be proposed i.e. works which are in the pipeline under PMGSY. (Category D).

**5. Following are the Guidelines suggested to be followed by all SRRDAs -**

**A. Category A**

i. The new Goods and Service Tax (GST) laws require that all invoices should show the value of supply and GST separately, and the value of supply will therefore, include non-GST taxes, which remain embedded in the input prices, such as taxes on petroleum products.

ii. The Project components under different major heads (like Earth, Sand, Aggregates, Steel, Bitumen etc.) are to be intimated by the Contractor, checked and confirmed by the competent authority.

iii. The major issue under GST regime is to identify the portion of the existing contract that will come under GST. Therefore, there is a need to cull out GST component of the existing contracts (i.e. the value of taxes subsumed under GST).

iv. The benchmark date for this purpose will be 01.07.2017 i.e. GST will be applicable on the portion of the contracts that are being paid from 01.07.2017.

v. The value of the portion of the work not completed or not paid for as on 01.07.2017 shall be divided into two components.

a. Value of work including taxes and duties such as Customs Duty, taxes on petroleum products and other non-VAT taxes that have not been subsumed into GST should be worked out.

b. the balance will be the value of taxes subsumed into GST such as Central Excise Duty and VAT i.e. GST component.

vi. Therefore, the value of subsumed taxes under GST needs to be separated out from the contracted amount to arrive at the value of work.

vii. The key issue is to estimate the value of subsumed tax carefully and as accurately as possible. For this purpose, an indicative Excel format is annexed for guidance. Model calculations are also attached herewith and states may workout similarly for all the ongoing works. Excel sheet indicates various project components which attract various types of taxes including ED, CST, VAT/WCT and other taxes which were already in the contract price as per the original contract. The same format can be used to compile the information for each ongoing project, taking into consideration the GST input tax credit available for the project. The assessment of subsumed shall be submitted by the contractor along with copies of invoices and statement of input taxes duly certified by a Chartered Accountant. It is responsibility of the contractor to furnish correct details of the subsumed taxes.

viii. Once the value of work sanction and GST taxes are arrived, the employer may enter into supplemental agreement with revised agreement value that will be original contracted value minus the value of subsumed tax arrived as above plus GST of 12%, i.e., the cost of the subsumed taxes factored in toe original



contract value is required to be deducted from the original contract price to arrive at the actual amount of “cost of the project”.

ix. The GST law allows the ITC (Input Tax Credit) under the existing Acts (VAT etc) to be carried forward under their Transitional Provisions. Therefore, Section 140 of the GST law in effect allow credit of all subsumed taxes paid by a taxable person on his inputs, including the Central Excise Duty embedded in the price of inputs.

x. Thus, the supplier gets ITC into the GST credit ledger through Transitional Provisions (including both the VAT and Central Excise Duty paid on the inputs).

xi. The contractor while raising their bill and tax invoice post-GST, will now collect GST as indicated above from the employer and will remit the same to the respective Government. The entire GST of the supply will have to be finally borne by the employer.

xii. The contractor will have to pay GST on the value of work, which he will pay to the respective Government, partly using the ITC that represents the taxes that he has already paid through the inputs, and partly using cash collected from the procuring entity concerned.

xiii. Through this arrangement, the supplier also cannot claim to have incurred loss on account of embedded taxes that has been paid on the inputs.

#### **B. Category B**

i. The works sanctioned after 01.07.2017, may be treated upon status of their work, as here under:

a. For works, which have been awarded and commenced on the field, action may be initiated as detailed in the Category A above.

b. For works, which have been awarded but not commenced may also be treated as above before commencement of the work.

ii. In cases, where tenders are initiated as per the existing SBD (Standard Bidding Document) norms, there should be no change in the evaluation criteria for selection of the bidders and bids shall be evaluated based on the criteria mentioned in the tender documents. However, after identification of the lowest bidder, it must be ensured that, all taxes subsumed under GST are carefully deducted to arrive at the value of works under the GST law, and the agreements should provide for payment of value of works plus applicable GST.

#### **C. Category C**

i. In cases, where the sanctions have been obtained after 01.07.2017 and tenders are yet to be initiated, the rates to be quoted shall be exclusive of GST and GST of 12% will be added to the value offered by the bidders separately.

ii. The SBD may be modified to the above extent.

iii. The Bill of Quantities (BoQ) shall also reflect prices offered by the bidder without GST and applicable GST separately.

iv. The States shall work out the departmental cost of the work without GST for the purpose of evaluation and comparison with rates offered by the bidders.



**D. Category D**

i. In cases of all new works to be proposed under PMGSY, the states shall prepare Schedule of Rate (SoR) after deducting the taxes subsumed under GST.

ii. The Detailed Project Reports shall be prepared based on this revised SoR and the state may add 12% GST to cost of the work to arrive at the overall cost of the work.

iii. In all such cases approval of SoR may be obtained from NRRDA as per existing practice.

**6. Revision of Cost**

The States shall work out the impact of GST for all the works individually for all category of works indicated above and shall submit detailed proposals based on the same. Any cost excess that may be required shall be borne by MoRD and the state in the existing Fund sharing pattern of PMGSY as may be applicable to the State.

7. These instructions will not apply to cases where the proposals have been made with necessary GST component for which no revision of cost is required or permitted.

8. This has concurrence of IFD, MoRD vide diary dated 28.05.2018.

Yours sincerely,

(Shamthi Priya S.)  
Director (F&A)

**Copy to:**

1. JS (RC) & DG, NRIDA, Krishi Bhavan, New Delhi.
2. All Financial Controllers of Nodal Department of PMGSY.
3. Director (Tech)/Director (P-III)/Director (P-I,P-II) NRIDA
4. Dy. Secretary (RC Division) MoRD, Krishi Bhavan, New Delhi.
5. Dy. Secretary (IFD), MoRD, Krishi Bhavan, New Delhi.

Director (F&A)

It is further stand of the respondents that Annexure 'C' has also been duly considered by the Committee headed by the Engineer-in-Chief in rural Works Department on 12.12.2018 and upon consideration the Schedule of Rates (in short 'SOR') has been revised. In this regard, reliance has been placed on letter no. 391 dated 29.01.2019 of the Engineer-in-Chief, Rural Works Department which has been enclosed as Annexure 'D' to the counter affidavit. In order



to have a ready reference of Annexure 'D' the same is being reproduced as under: -

“बिहार सरकार  
ग्रामीण कार्य विभाग

पत्रांक-मु0अ0-4(मु0) विविध (कार्य)-23-60/2018-391 अनु0 पटना, दिनांक:-29-1-2019

प्रेषक,

अभियंता प्रमुख,  
ग्रामीण कार्य विभाग,  
बिहार, पटना।

सेवा में,

संयोजक,  
राज्य स्तरीय अनुसूचित दर निर्धारण समिति-सह-  
अभियंता प्रमुख-सह-अपर आयुक्त-सह-विशेष सचिव,  
पथ निर्माण विभाग, बिहार, पटना।

विषय:- ग्रामीण कार्य विभाग द्वारा तैयार किये गये अनुसूचित दर पुस्तिका के अनुमोदन के संबंध में

महाशय,

लोक निर्माण संहिता के नियम 103 एवं 103A में अर्न्तनिहित प्रावधान के आलोक में MORD DATA BOOK में दिए गए मार्ग निर्देशन एवं दर विश्लेषण के आधार पर अनुसूचित दर पुस्तिका तैयार किया गया है।

इसमें विभिन्न मदों में उपयोग की जाने वाली सामग्रियों एवं प्रयुक्त की जाने वाली plant एवं machinery की दर राज्य स्तरीय अनुसूचित दर निर्धारण समिति द्वारा निर्गत दर के अनुरूप है।

निदेशानुसार, अनुरोध है कि इस अनुसूचित दर पुस्तिका के राज्य अनुसूचित दर निर्धारण समिति से अनुमोदित करने की कृपा करें।

अनु0-यथोक्त।

विश्वासभाजन  
ह0अ0/दिनांक  
(सुभाष चन्द्र)  
अभियंता प्रमुख,  
ग्रामीण कार्य विभाग,  
बिहार, पटना।”

“बिहार सरकार  
ग्रामीण कार्य विभाग

दिनांक 12.12.2018 को अभियंता, ग्रामीण कार्य विभाग,  
बिहार, पटना के कार्यालय कक्ष में GST (Goods and



Service Tax) के प्रावधानों के संबंध में ग्रामीण कार्य विभाग के अनुसूचित दर समिति की सम्पन्न बैठक की कार्यवाही-  
उपस्थिति:-

1. श्री सुभाष चन्द्र, अभियंता प्रमुख, ग्रामीण कार्य विभाग
2. श्री प्रवीण कुमार ठाकुर, मुख्य अभियंता-4
3. श्री कमलेश चौधरी, मुख्य अभियंता-3
4. श्री योगेश्वर पाण्डेय, मुख्य अभियंता-2
5. श्री अरुण कुमार महतो, अभियंता प्रमुख के सचिव  
(प्रावैधिक)
6. श्री भगवत राम, अधीक्षण अभियंता
7. श्री राकेश रंजन पाण्डेय, कार्यपालक अभियंता
8. श्री संजीव कुमार, कार्यपालक अभियंता
9. श्री समीर कुमार, कार्यपालक अभियंता
10. श्री रत्नेश सिंह, कार्यपालक अभियंता
11. श्री शिव प्रताप सिंह, सहायक अभियंता
12. श्री कृष्णा प्रसाद, सहायक अभियंता
13. श्री योगेन्द्र भाटिया, सहायक अभियंता
14. श्री ठाकुर प्रसाद कुमार, सहायक अभियंता
15. श्री आनन्द प्रकाश, सहायक अभियंता
16. श्री मुकेश श्रीवास्तव, सहायक अभियंता

कार्यवाही

विभिन्न स्तरों पर GST के प्रावधान एवं भुगतान का मुद्दा उठता रहा है। उक्त के आलोक में आज दिनांक 12.12.2018 को अभियंता प्रमुख की अध्यक्षता में विभागीय अनुसूचित दर समिति के सदस्यों के बीच विचार विमर्श किया गया।

2. बैठक में ग्रामीण विकास विभाग, भारत सरकार (M.O.R.D.) के Standard Data Book के संबंध में भी चर्चा की गई। ग्रामीण कार्य विभाग में उक्त Standard Data Book के आधार पर विभिन्न मदों का अनुसूचित दर को अद्यतन करने की कार्रवाई प्रक्रियाधीन है। जबतक इसे अद्यतन नहीं किया जाता है तबतक GST की प्रक्रिया निम्नवत् अपनाये जाने के संबंध में सर्वसम्मति से समिति द्वारा अनुशंसा की गयी-

(i). MORD के Standard Data Book में जहाँ भी overhead (OH) मद का प्रावधान है उसमें से 4% हटा दिया जाय।

(ii). किसी भी material का कोई GST (Goods Tax) नहीं जोड़ा जाय।

(iii). उपरोक्त कंडिका (i) एवं (ii) का अनुपालन करते हुए लेवर दर, यंत्र-संयंत्र का Royalty सहित material के दर, carriage, overhead एवं contractor's profit को समाहित करते हुए प्रत्येक कार्य मद का दर निर्धारित किया जाय तथा इस निर्धारित दर के आधार पर योजना का प्राक्कलित राशि निर्धारित की जाय।

(iv). उपरोक्त कंडिका (iii) में निर्धारित प्राक्कलित राशि पर



1% labour cess का प्रावधान प्राक्कलित राशि में किया जाय।

(v). उपरोक्त कंडिका (iii) में निर्धारित प्राक्कलित राशि पर ही 12% GST (contractor service tax) का प्रावधान किया जाय।

(vi). एकरारनामा में work Value, Labour Cess Value एवं GST Value का अलग-अलग उल्लेख किया जाय।

(vii). GST लागू होने के पश्चात की अवधि में जो कार्य पगति पर है अथवा समाप्त हो चुके हैं अथवा GST लागू होने के पूर्व निविदा आमंत्रित किया जा चुका था एवं GST लागू होने के पश्चात कार्य आवंटित हुआ है, वैसे कार्यों के लिये GST में अन्तर राशि का भुगतान तबतक नहीं किया जायेगा जबतक कि संवेदक द्वारा GST का Return दाखिल नहीं कर दिया जाता है। इसके पश्चात संवेदक को GST का भुगतान Claim के माध्यम से किया जाय।

धन्यवाद ज्ञापन के साथ बैठक की कार्यवाही समाप्त की गयी।

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ह0अ0/दि0

श्री मुकेश श्रीवास्तव श्री आनन्द प्रकाश श्री ठाकुर प्रसाद कुमार  
सहायक अभियंता सहायक अभियंता सहायक अभियंता

ह0अ0/दि0

ह0अ0/दि0

ह0अ0/दि0

श्री योगेन्द्र भाटिया श्री कृष्णा प्रसाद, श्री शिव प्रताप सिंह,  
सहायक अभियंता सहायक अभियंता कार्यपालक अभियंता

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श्री रत्नेश कुमार, श्री समीर कुमार, श्री संजीव कुमार,  
कार्यपालक अभियंता कार्यपालक अभियंता कार्यपालक अभियंता

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ह0अ0/दि0

ह0अ0/दि0

श्री राकेश रंजन पाण्डेय, श्री भगवत राम, श्री अरुण कुमार महतो  
कार्यपालक अभियंता अधीक्षण अभियंता अभियंता प्रमुख के  
सचिव (प्रावैधिक)

ह0अ0/दि0

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ह0अ0/दि0

श्री योगेश्वर पाण्डेय श्री कमलेश चौधरी, श्री प्रवीण कुमार ठाकुर  
मुख्य अभियंता-2 मुख्य अभियंता-3 अभियंता प्रमुख-4

ह0अ0/दि0

श्री सुभाष चन्द्र,

अभियंता प्रमुख''

In course of argument, Ms. Archana Meenakshee has submitted that once Clause-vii of the enclosure to Annexure 'D' is gone through it would be evident that the grievance of the petitioner has been taken care of and now the only thing is required to be done by the petitioner is to



claim the differential amount on account of 'GST' after filing of the GST return.

At this stage, Mr. Prabhat Ranjan, learned counsel for the petitioner has hasten to point out that on perusal of Annexure 'D', it would appear that the Engineer-in-Chief, Rural Works Department, Government of Bihar has forwarded the 'SOR' for approval to the State Level Committee of Schedule of Rates in Road Construction Department, Government of Bihar, which is yet to be approved, but, then learned counsel for the State, Ms. Archana Meenakshee submits that pursuant to Annexure 'D', the 'SOR' has already been formulated. A copy of which has been placed before this court.

Learned counsel for the State has drawn attention of this court towards the statements made in paragraph 11 & 12 of the counter affidavit, wherein it is stated that the 'GST' deduction by the Executive Engineer are deposited with the 'GST' authorities on behalf of the petitioners and due credit is given to the Contractors for the amount so deducted, therefore the petitioner can set off his liabilities from tax credit and if refund is due on the basis of the return



filed it will be granted by the 'GST' authorities. It is submitted that the grievance of the petitioner has, thus, already been redressed and in fact it is the petitioner who has not taken an appropriate steps as per the provisions made in the preceding paragraphs. It is also stated that the petitioners may contact the concerned Executive Engineer/ departmental Authorities with his claim in accordance with the provisions made in this regard as any action or proceeding for payment of differential amount cannot be initiated without presentation of the claim by the petitioners.

On the last date when the matter was taken up for consideration this court recorded the submissions of the parties in the following terms: -

**"Re.: CWJC No. 2734 of 2019**

A counter affidavit on behalf of the Building Construction Department has been filed today. Let it be kept on the record.

**Re.: CWJC No. 3288 of 2019 with analogous cases**

The matter has been heard again for some time. Mr. Prabhat Ranjan, learned counsel for the petitioner as well as learned counsel for the State namely, Vikash Kumar, Ms. Archana Meenakshee and Mr. Kumar Alok all have participated in course of argument. Mr. Rajesh Kumar Verma, learned Assistant Solicitor General on behalf of the Union of India is also present.

Mr. Prabhat Ranjan, learned counsel for the



petitioner has drawn attention of this court towards Annexure 'C' to the counter affidavit filed on behalf of respondent nos. 6 to 9 to submit that in fact the Government of India under Ministry of Rural Development has come out with a guideline for implementation of Goods and Service Tax (in short the 'GST') in the works contract matters. Annexure 'C' dated 06.06.2018 is the said guideline and according to the same the States are obliged to work out the impact of GST for all the works individually for all category of works which have been indicated in the said guideline.

It is his submission that in fact what has been suggested in Clause 'viii' saying that "*once the value of work sanction and GST taxes are arrived, the employer may enter into supplemental agreement with revised agreement value that will be original contracted value minus the value of the subsumed tax arrived as above plus GST of 12%, i.e., the cost of the subsumed taxes factored in the contract value is required to be deducted from the original contract price to arrive at the actual amount of "cost of the project"*", is not being done by the State Government and in absence of the supplemental agreement with revised contract value the present confusion is still going on. He has also invited attention of this court towards paragraph '6' of the guideline which talks of 'revision of cost'.

He has further submitted that instead of taking the exercise as suggested in Annexure 'C' the Commercial Taxes Department has come out with letter no. 2594 dated 25.07.2017 (Annexure 'E' series) which does not clarify the issue.

Mr. Vikash Kumar, Ms. Archana Meenakshee and Mr. Kumar Alok, learned counsel for the State has taken a stand based on the statements made in the counter affidavit filed in CWJC No. 1452/2019. Paragraph 9, 10 & 11 of the counter affidavit have been referred to and it is submitted that in fact there is no difficulty in redressal of the grievance of the petitioner. It is submitted that in the cases where the contract work has been executed after 01.07.2017 and the value to be paid comes to Rupees Two Lakhs and Fifty Thousand and odd, in that case, the payment is to be made after deduction of 1% CGST



and 1% SGST with the supplier with effect from the date to be notified subsequently and for that reason the Commercial Taxes Department, Government of Bihar has come out with Notification dated 13.09.2018 published on 1<sup>st</sup> day of October, 2018. The said Notification is in terms of Section 51 of the GST Act. As regards the reimbursement of tax liabilities arising due to enactment of GST Act, it is stated that the said Act has elaborately dealt with the issue and directions have been issued to the Executive Engineers to entertain the claim of the petitioner and other contractors in the light of the aforesaid circulars and guidelines.

In course of argument, certain submissions have been made based on the Schedule of Rate (SOR). Copy of the SOR is, however, not on the record, and, therefore, it has been agreed at the bar that copy of the SOR showing the contract value arrived at in a work tendered prior to 01.07.2017 (pre-GST) and one SOR of the work tendered after 01.07.2017 (post-GST) be brought on record.

As prayed, let this matter be listed again on 5<sup>th</sup> of July, 2019.

Learned counsel for the State Ms. Archana Meenakshee is requested to place on record a copy of the SOR (pre-GST and post-GST) after obtaining the same from the department when the matter will be further heard.”

Today when the matters were called learned counsel for the State, Ms. Archana Meenakshee has produced before this court the two bound volumes of the ‘SOR’, one is showing the rate analysis prior to implementation of the ‘GST’ whereas another one contains the rate analysis after taking into consideration the ‘GST’ after 1<sup>st</sup> of July, 2017. It is evident from the ‘SOR’, copy of



which has been brought before this court, that now the implication of the 'GST' has been considered and after treating the effect of the 'GST' the total basic rate applicable after coming into force of the 'GST' has been fixed. Learned counsel for the petitioner(s) as well as State agree with formulation of the 'SOR' taking note of the effect of the 'GST' now no issue remains with regard to the implications of the 'GST' on the contract works executed subsequently i.e. after coming into force of the 'GST'.

Having heard learned counsel for the petitioner(s) in all these writ applications, learned respective counsel for the State as also learned Assistant Solicitor General for the Union of India, this court finds that initially when the writ application was filed the petitioner(s) had been complaining that they were being burdened to pay the 'GST' in respect of the works allotted to them on the basis of the 'SOR' which did not take care of the implication of the 'GST'. The rate of 'GST' or any other issue were not in question and learned counsel for the petitioners has reiterated before this court that his grievance is limited to payability of the differential amount, if any, arising out of and by virtue of



implementation of the 'GST'. At this stage, when Clause-vii of the minutes of the meeting held on 12.12.2018 which is part of Annexure 'D' to the counter affidavit of the State respondents in CWJC No. 1452/2019 has been brought to the notice of this court, and it has been shown that the grievance of the petitioners had in fact been redressed, learned counsel for the petitioners has agreed at the bar that if Clause (vii) of the minutes of the meeting of the Rural Works Department is followed by all other works department of the Government of Bihar, the grievance of the petitioners shall be taken to have been redressed. Learned counsel for the State are unanimous in their submission that the petitioners should not have any doubt with regard to the decision as contained in Clause (vii) of the minutes of the meeting of the Rural Works Department which has been enclosed with the letter as contained as contained in Annexure 'D' to the counter affidavit of the State respondents based on which the 'SOR' has already been revised.

In view of the above, this court is of the considered opinion that now nothing remains for



adjudication by this court as the grievance of the petitioners as framed in these writ applications are to be taken to have been redressed.

These Writ Applications are, thus, disposed of in terms recorded hereinabove.

Let the bound copies of the 'SOR' (before GST and after GST) be kept on the record.

**(Rajeev Ranjan Prasad, J)**

Rajeev/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	10.07.2019
Transmission Date	

