

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.190 of 2014

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M/S Kumar Construction Company, Through Its Proprietor Narender Kumar Singh S/O Shri Prabhunath Singh R/O:- Village- Dumri, P.S.- Doriganj, Saran At Chapra

.... Petitioner/s

Versus

1. The State Of Bihar, Through The Principal Secretary, Road Construction Department, Bihar, Patna
2. The Principal Secretary, Road Construction Department, Bihar, Patna
3. The Engineer-In-Chief-Cum-Assistant Commissioner-Cum-Special Secretary, Road Construction Department, Bihar, Patna
4. The Chief Engineer (North), Road Construction Department, Vishwesharaiya Bhawan, Bailey Road, Patna
5. The Superintending Engineer, Road Construction Circle (Hajipur), Chapra
6. The Executive Engineer, Roads Division, Chapra

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Singh, Adv.
Mr. Rajgiri Singh, Adv.

For the Respondent/s : Mr. Manoj Kr. Sinha, AC to ASC-30

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 09-01-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads as follows:-

"1(i) Directing the respondent authorities for making the payments of the arrears of admitted dues (Rs. 10,45,459+Rs. 5,08,615= Rs. 15,54,074) of the petitioner in lieu work executed by the petitioner and for directing the respondent authorities to make the payments of the remaining amount of admitted dues of Rs. 5,08,615/- in lieu of Agreement No. 15 F2-2006-2007 (Estimated Cost being Rs. 96,52,000/-) and for payment of admitted dues of Rs. 10,45,459/- in lieu of Agreement No.

4F2-2005-2006 (Total Estimated Cost being Rs. 3,81,64,146/-)

- (ii) *Directing the respondent authorities to make the payments of the admitted dues, as elaborated above, which has been arbitrarily withheld by them, along with statutory interest."*

Learned counsel for the petitioner has submitted that the petitioner has subsisting claim in respect of the work done for agreement no. 15F2-2006-2007 under which he is entitled to get a sum of Rs. 15,54,074/-. He explains that this amount is an admitted amount because the work of the petitioner has been completed satisfactorily.

Learned counsel for the State, on the other hand, has submitted that though there is no dispute with regard to the work, in question, relating to agreement no. 15F2-2006-2007 but, then, the Department is in litigating terms in yet another work undertaken by the petitioner vide SBD 21/2006-07 relating to Chapra-Madhaura Road. In this regard, he has relied on certain averments made in the counter affidavit and also taken a plea that the award given in favour of the petitioner by the arbitral Tribunal in relation to SBD 21/2006-07 and also affirmed by this Court is pending consideration before Apex Court in Special Leave Petition wherein notices have been issued against the petitioner on 30.7.2014. He, accordingly, submits that the department for the

time being is not prepared to pay any amount even in respect of the admitted dues in relation to the agreement no. 15 F2-2006-07.

Learned counsel for the petitioner in reply has submitted that first of all there is no dispute with regard to the petitioner completing the work or becoming entitled for payment of Rs. 15,54,074/- in respect of agreement no. 15F2-2006-07. He has also submitted that there is no interim order imposed by the Apex Court even in the other case relating to agreement no. 21 SBD-2006-07 which may enable the respondents to withhold the payment of the petitioner in respect of agreement no. 15F2-2006-07. He has further explained that under the similar circumstances, the admitted dues of the petitioner in relation to Agreement No. 4F2-2005-06 to the tune of Rs. 10,45,459/- was paid in March, 2014 after a period of seven years of the petitioner becoming entitled for such payment but without any interest.

In the opinion of this Court once it found that there is no dispute with regard to payment of the amount in relation to Agreement No. 15F2-2006-07 and in fact the respondents also have not said a word in their counter affidavit with regard to non-admissibility of the total bill of Rs. 15,54,074/-, there would be no difficulty in directing the respondents to make payment of the aforesaid amount.

If the respondents succeeds in their Special Leave Petition and becoming entitled to recover any amount from the petitioner that can always be done in accordance with law but, for the time being, when the award of the Tribunal is in favour of the petitioner even in respect of Agreement No. 21SBD-2006-07, it would be a far fetched conclusion of the respondents to withhold the amount of payment of Rs. 15,54,074/- as with regard to the Agreement No. 15F2-2006-07. In this regard, this Court would find that the petitioner has already stood looser on account of delayed payment for a period over seven years in respect of Agreement No.4F2-2005-06.

Thus, taking all the aforesaid facts and circumstances into consideration, this Court would direct the respondents to make payment of the admitted dues of Agreement No. 15F2-2006-07 to the tune of Rs. 15,54,074/- within a period of three months from the date of receipt of this order.

The prayer for payment of interest on the aforesaid amount, however, is rejected.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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