

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6011 of 2009

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M/S Sharda Construction, a partnership firm having its Head Office at New Area, Maharajganj Road, Aurangabad, Bihar (Camp Office 469(C) Shanti Sadan, Road No. 1, Mandir Marg, Ashok Nagar, Ranchi but now closed) through it's Partner Kaushal Kumar Singh son of late Ambika Narayan Singh, resident of New Area, Aurangabad, Bihari.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Rural Works Department (earlier known as Rural Engineering Organisation) Government of Bihar, Patna.
2. The Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
4. The Chief Engineer-cum-Employer, Rural Engineering Organisation, (now known as Rural Works Department) (B.P.D.P.), Chota Nagpur and Santhal Pargana Wing, Government of Bihar, Ranchi (now Government of Jharkhand).
5. The Superintending Engineer, R.C.D. Circle, 203, Abhiyantran Bhawan, Ranchi.
6. The Executive Engineer, B.P.D.P. Works Division, Rural Engineering Organisation, Gumla.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad, Advocate.

For the State : Ms. Jahan Ara, AC to AAG 5.

For the Respondent : Mr. Dhrub Mukherjee, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 29-01-2015 Heard Mr. Raj Kishore Prasad, learned counsel for the petitioner as also Mr. Dhrub Mukherjee, learned senior counsel for the State of Jharkhand as well as Ms. Jahan Ara, A.C. to AAG 5 as with regard to the following prayer made in this writ application:

"1.(I) To issue an appropriate writ(s), order(s), direction(s) in the nature of writ of Mandamus directing the respondents to pay the admitted amount of dues to the tune of Rs. 40,25,432.00 for the work done by the petitioner under agreement no. B.P.D.P./RAU/56/96-97 dated 3.3.1997 for Package no. 66 with the respondent Executive Engineer which is due on account of the 6th and 11th Running

Account Bill alongwith reasonable interest thereon.

2. Learned counsel for the petitioner, in support of the aforementioned prayer, has sought to rely on the certificate dated 14.12.2000 issued by the Superintending Engineer of Road Construction Department, Circle Ranchi, to contend that the payment of 6th and 11th running bill for the work, in question, has not been made as a result whereof, the petitioner has also not been able to get payment of its final bill. In this regard, he also relies on certain observations made in the order dated 13.05.2009 by this Hon'ble Court, which for the sake of clarity and convenience is quoted hereinbelow:

"The petitioner had executed a contract satisfactorily. Certificates of completion were also duly issued but when it came to making payments, all bills, except the 6th and 11th running on account bill, were not paid because of paucity of funds. Thereafter, petitioner has been approaching authorities and on one pretext or the other, payments are not being made lastly because of complications created by bifurcation of the State. Learned counsel for the State of Jharkhand submits that in terms of Section 54(1)(b) of the State Reorganization Act, the liability would be that of the State of Bihar. This is contested by learned AAG XI on behalf of State of Bihar. The other contention of the learned AAG XI is that who paid the last final bill payment of which must surely have been made after bifurcation. If payment was made by the authorities in Jharkhand then previous bills would also be paid by the same authorities.

In my view, both respondents State of Bihar and its officers and State of Jharkhand and its officers should file a comprehensive counter affidavit in the matter so that the matter may be disposed of at the stage of admission itself because the right of petitioner to receive payment is not in dispute. What is in dispute is which of the two States or which of the two States' Organizations would pay.

Petitioner should also file details of payment received towards the final bills of the same work to show as to who had made the payments and when were the payments made. Such an affidavit should be served by the petitioner on the learned counsels for the State of Bihar and Jharkhand, if possible, by 22nd of May, 2009. Respondents would file their

counter affidavits thereafter."

3. Learned counsel for the petitioner has submitted that pursuant to the aforementioned order dated 13.05.2009, the petitioner had filed his supplementary affidavit and in this regard he has also invited attention to paragraph nos. 4 to 7 to the supplementary affidavit, which for the sake of clarity and convenience, is quoted hereinbelow:

"4. That it is further humbly stated that the final bill has not been prepared by the respondents. The last bill for which payments were made to the petitioner is the 10th Running Account bill for Rs. 52,95,130/- only. The payment for 10th Running Account bill was made to the petitioner vide cheque No. A/3470188 dated 30.06.2000. The said payments was made by the Executive Engineer, B.P.D.P. Works Division (World Bank), Gumla.

5. That it is further humbly stated that the payments with respect to 6th and 11th Running Account bill as contained in Annexure-2 to the main writ application has not been made to the petitioner till date. Hence, the final bill has actually not been prepared. It is relevant to state here that the final bill is usually prepared at the time of payment of last bill. The last bill in the present case is 11th Running bill, which has not been paid to the petitioner.

6. That it is further humbly stated that the entire work was completed by the petitioner within time as stipulated in the agreement to the full satisfaction of the concern authorities of the department. There is no dispute with regard to quantity and quality of work done by the petitioner.

7. That it is further humbly stated that the authorities went on assuring the petitioner to make the payments as soon as the fund is made available to the department. In the mean time, the State of Bihar has been bifurcated and the District Gumla falls under the Jharkhand State. That is why, the payments were not made to the petitioner."

4. On the basis of these submissions, learned counsel for the petitioner has submitted that there is no justifiable reasons for the petitioner to be denied such payment as they are admitted in the work completed by the petitioner.



5. Mr. Dhruv Mukherjee, learned senior counsel appearing on behalf of the respondents, on the other hand, has submitted that the writ application is grossly over delay inasmuch as the cause of action, pertaining to the years 1997-2000, has been sought to be raised in the year 2009. He has submitted that this is being purely a money claim, no writ application would lie. In this regard, he relies on the Division Bench judgment of this Court in the case of *M/s BASF India Limited vs. State of Bihar & Ors.* reported in **1992(2) PLJR 714** as also in the case of *M/s Patna Hume Pipes Manufacturing Company vs. State of Bihar & Ors.* reported in **1993 (1) BLJR 600**.

6. Learned counsel for the State, having not filed any counter affidavit, also adopts the submission of Mr. Dhruv Mukherjee.

7. In the present case, the issue of Bihar Re-organization Act and/or the liability of the State of Bihar or State of Jharkhand could have been decided by this Court, had this claim been not a money claim. It is the case of the petitioner that it had completed the work and his payment has not been made, the petitioner was bound by the provisions of the agreement. The said agreement was itself non-statutory.

8. In that view of the matter, this Court will have no



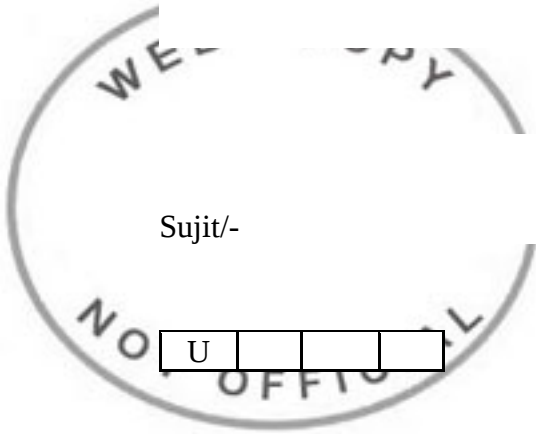
difficulty in holding that this writ application is firstly not maintainable in view of the law laid down by the Apex Court in the case of ***Radhakrishna Agarwal & Ors.V. State of Bihar & Ors.*** reported in ***AIR 1977 SC 1496*** which has been followed in the two subsequent judgments of this Court in the case of ***M/s BASF India Limited*** (supra) and ***M/s Patna Hume Pipes Manufacturing Company*** (supra).

9. That apart, Mr. Mukherjee seems to be correct that the petitioner has moved this Court after a period of nine years of the cause of action. The delay, in fact, has not been explained in any manner by the petitioner in the writ application.

10. Thus, for the reasons indicated above, this Court is not inclined to issue any direction to the respondents. It is, however, made clear that nothing, said in this order, will come in the way of the petitioner for seeking remedy under ordinary law either by way of filing of a civil suit in respect of money claim or by way of moving in arbitration as per the terms and conditions of the agreement.

11. If the petitioner, therefore, takes recourse before the appropriate forum/court and finds its relief to be circumscribed by the period of limitation, it may very well explain the same with regard to pendency of this writ application.

12. With the aforementioned observation and liberty,
this writ application fails and accordingly, dismissed.



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(Mihir Kumar Jha, J)