

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5194 of 2009

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Bijay Singh s/o Bhubneshwar Singh, Secretary of Vishnu Samaj Sewa Sansthan, resident of village Mohanpur, Post Mahisora, Prakhand Anchal cum P.S. Shambhuganj, District Banka.

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.The Director, District, Rural Development, Abhikaran, Banka.
- 3.The Commissioner, Bhagalpur, Division Bhagalpur.
- 4.The Deputy Development Commissioner, cum President District Water and Cleanliness Samittee, Banka.
- 5.The Executive Engineer Cum Member, Secretary Public Health Division, banka.
- 6.The Assistant Project Officer, District Rural Development Engineering, Banka.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

5 13-01-2015 Heard learned counsel for the parties as with regard to the following prayer made in this writ application in respect of admitted payment for the work done by the petitioner.

“That this application is being filed for issuance of an appropriate writ/writs, direction/directions or order/orders to the respondents and calling upon the respondents as to why and under what circumstances, the payment the work under the scheme have and styled as Lohia Cleanliness for the Construction of Latrine in various school and establishment in Shambhuganj Prakhand in the district of Banka and also constructed Latrine in the house of B.P.L. Card holders and A.P.L. Cardholders under Karsoap Panchayat and also further prays for the interest in the delayed payment of work done issued under the work order bearing letter No. 2570 dated 3.6.08 issued under the seal and signature of the respondent no. 5.”

2. The respondents could have become liable for



such payment had the completion of the work been admitted by them. As a matter of fact, the respondents in respect of the aforesaid prayer in this writ application have come out with a clear averment in paragraph nos. 7 to 11 of the counter affidavit denying the undertaking and/or completion of work by the petitioner.

3. In such a situation the remedy of writ jurisdiction to the petitioner under Article 226 of the Constitution of India is wholly misconceived, inasmuch as, such disputed question of fact cannot be gone into under the aegis of Article 226 of the Constitution of India. In fact when the respondents have disputed as with regard to undertaking/completion of the work and the petitioner is quite confident of completion of the work, the only remedy the petitioner would invoke in view of the inter parte agreement will be civil suit because the agreement says that the decision of the first party i.e., the Government agency will be binding on the second party i.e., the petitioner.



4. Law in this regard, has been well settled not only by the Apex Court in the case of **Radhakrishna Agarwal and others V. State of Bihar and others, AIR 1977 SC 1496**, but also in a full bench judgment of this Court in the case of **M/s. Pancham Singh v. The State of Bihar and others, 1991(1) PLJR 352** and the two Division Bench judgments of this Court in the case of **M/s BASF India Limited vs State of Bihar & Ors.** reported in **1992(2) PLJR 714** and **M/s Patna Hume Pipes Manufacturing Company vs the State of Bihar & Ors reported in 1993(1) BLJR 600**, wherein after considering all the judgments, it had held as follows:-

"12. In our opinion, however a pure money claim cannot be enforced by issuance of a writ/Direction of or in the nature of mandamus.

This Court while exercising its writ jurisdiction cannot usurp the function of a civil court by giving such reliefs to the petitioner which would be in the nature of a Money Decree.

A writ of mandamus can only be issued where the petitioner has any existing legal right and the respondent have a corresponding statutory obligation to perform.

13. The Supreme Court of India in Radhakrishna Agarwal and others V. State of Bihar and others, AIR 1977 SC 1496 categorised there following clauses of contract entered into by and between a person which may be enforced by the State:

"(i) where a petitioner makes a grievance of breach of promise on the part of the State in cases where on



assurance of promise made by the State he has acted to his prejudice and predicament, but the agreement is sort of a contract within the meaning of Article 229 of the Constitution;

(ii) where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rule framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by terms of the contract and the petitioner complains about breach of such contract by the State."

14. The Supreme Court held that a case not falling within any of the aforementioned three types of cases the writ petition will not be maintainable.

15. A full Bench of this Court recently in *M/s. Pancham Singh v. The State of Bihar and others*, 1991(1) PLJR 352 upon noticing various decisions of the Supreme Court including *Kumari Shrilekha Vidyarathi case (supra)* held that apart from the thrice types of cases which may arise out of contract as has been held by the Supreme Court in *Radha Krishna Agarwal (supra)* there may a fourth type of case arising out of a contractual matter which would also be amenable to the writ jurisdiction viz.:-

"Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual but such contract has been cancelled on the ground *de hors* any of the terms of the contract, and which is *per se* violative of Article 14 of the Constitution."

16. The case of the petitioner neither falls within the three type of cases mentioned in *Radha Krishna Agarawal's case (supra)* nor does it come within the purview of fourth type of case mentioned in *Pancham Singh's case (supra)*.

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23. For the reasons aforementioned, in our opinion, the remedy of the petitioner does not lie before this Court in its writ jurisdiction but by filing a suit before an appropriate civil court or by taking recourse to such

other remedy as may be available to them under the contract."

5. In such a situation when the respondents have denied the completion of work by the petitioner, he will have to go before the Civil Court to establish his claim.

6. That being so, this application is dismissed as not maintainable on account of the disputed question of fact as also the contract itself being non statutory and the claim of money therefore, being not admissible under the writ jurisdiction.

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

8. Nothing said in this order, however, will come in the way of the petitioner in claiming the relief by filing a civil suit before the Court of appropriate jurisdiction.

(Mihir Kumar Jha, J)

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