

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.978 of 2009

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M/S Paras Nath Ray Ganesh Pd. Through its partner Ganesh Prasad, son of late Sukh Lal Sah, resident of Hajiapur Road, P.S. Gopalganj, District Gopalganj

.... Petitioner

Versus

1. The State of Bihar
2. The Commissioner cum Secretary, Water Resources Department, Govt. of Bihar, Patna
3. The Engineer-in-Chief (North), Water Resources Department, Govt. of Bihar, Patna
4. The Chief Engineer Water Resources Department, West Champaran at Siwan, P.S. Siwan, District Siwan
5. The Superintending Engineer, Flood Control and Monitoring Division, Patna
6. The Superintending Engineer Flood Control and Monitoring Division, Pandrauna, P.S. Padrauna, District Kushinagar (U.P.)
7. The Executive Engineer Flood Control Division No.-1, Camp Pandrauna, P.S. Padrauna, District Kushinagar (U.P.)
8. The District Magistrate, West Champaran (Bettiah), District West Champaran

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Jha
Mr. Subhash Kumar Jha
Mr. Choudhary Prem Kr.Thakur
Mr. Amarendra Kr.Jha

For the Respondent/s : Mr. (Ga6)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 07-01-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

“That this is an application for issuance of a writ in the nature of mandamus commanding the concerned respondents i.e. Respondent no. 1 and 2 to release the Fund of Rs.70,881.00 for the allotted work of Supply of Stone Boulder in between 0.00 K.M. to 5.00 K.M. as P.P.E. as per the agreement No. 22(A) of 1999-2000 and accordingly to pay the remaining amount of bill of



Rs.2,39,411.00 i.e. Rs.70,881.00 to the petitioner, who completed the allotted work of Stone Boulder supply as per the agreement no. 22(A) of 1999-2000 and even after utilization of the same by the department, payment of the said bill is pending since long, inspite of the representation duly received in the office of the respondents, along with panel interest as well as cost of litigation.”

2. Mr. Ranjan Kumar Jha, learned counsel appearing on behalf of the petitioner, in support of the aforementioned prayer has straightway proceeded to assail the reasons given by the respondents in the counter affidavit for confining payment of the petitioner to the work done as evaluated by the Assistant Engineer on a plea that the Assistant Engineer actually has never rejected the claim of the petitioner. According to him, the endorsement made by the Assistant Engineer in the measurement book vide Annexure 1 to the counter affidavit will only go to show that he had made certain endorsement regarding consumption of material which in no way can be said to be different to the measurement made by the Junior Engineer.

3. This Court would find it difficult to accept such submission in the light of the documentary evidence addressed by the respondents in the counter affidavit. As a matter of fact the respondents in the counter affidavit have also explained the reason for the deduction made in the bills of the petitioner and in this

regard it has been stated as follows:

5. That it is humbly stated that the work supply of reserve stone boulder has been allotted by the Superintending Engineer Flood Control, Circle Padrauna vide his letter No. 616 dated 10.7.1999. The work order issued by the Executive Engineer Flood Control Division No.1, Madhubani Camp Padrauna vide his letter No. 454(B) dated 10.7.1999 to complete the work, supply of reserve stone boulder upto 25.7.1999. The petitioner has made an agreement vide Agreement No. 22H of 1999-2000 on 10.7.1999 for supply of 200M3 reserve stone boulder to be supplied upto 25.7.1999 completely.

6. That it is further stated that the first on A/C bill has been prepared by Junior Engineer in M.B.No. 1086 page 31 to 34 giving date of bill No. 30.8.1999 and date of entry of bill 22.6.2004 giving the measurement of stack in stack wise. The total quantity given by the Junior Engineer in this measurement book is 197.814 M3 of stone boulder amounting to Rs.239411/-. After checking and verification by the Assistant Engineer only 139.249 M3 Net quantity of stone boulder allowed for payment. Accordingly payment has been made for 139.249M3 of stone boulder of Rs.168350/- to the petitioner. Now there is nothing dues to be paid to the petitioner.

8. That in this connection it is humbly stated that against the Agreement No.22H, the petitioner supplied the stone boulder for which first on Account bill was prepared by the Junior Engineer in Measurement Book No. 1086 page 31 to 34 giving date of bill 30.8.1999 and dated of entry of



bill 22.6.2004. The measurement book by the Junior Engineer, the total quantity of which comes to 197.814 M3 amounting to Rs.2,39,411/- Further after checking and verification, the Assistant Engineer found only 139.249M3 Net quantity of stone boulder and allowed it for payment. Accordingly payment has been made for 139.249M3 of stone boulder of Rs.1,68,530/- to the petitioner, so there is nothing dues to be paid to the petitioner.

12. That with regards to the statement made in paragraph no.9 of the writ petition under reply, it is humbly stated that letter No. 1605 dated 10.4.2003 is a self explanatory one in which the Chief Engineer, Water Resources Department, Siwan has stated that the quantity of boulder supplied at every sites was found lesser during his inspection and so the payment of supplied stone boulder should be made carefully after checking and verifying the measurement. The measurement of stacks supplied by the petitioner has been checked by the Assistant Engineer accordingly and payment made likewise.”

4. There is no reply to the counter affidavit despite service of the counter affidavit on the learned counsel for the petitioner on 23.6.2010 and therefore, this Court will have also no difficulty in holding that the stand taken by the respondents in the counter affidavit remains un-rebutted.

5. A question, therefore, would arise that if the respondents have disputed the claim as made by the petitioner for payment of the contractual amount can a writ petition lie when a

money suit also could not have been maintained by the petitioner after a lapse of three years?

6. Let it be noted that a cause of action for the petitioner on account of deductions made as per the measurement book and consequently payment made was in the year 2004 when the Assistant Engineer's measurement had led to passing of the bill by the concerned Executive Engineer by way of payment of Rs.1,68,530/-. Thus, if the petitioner had a cause of action as its deduction of the amount is from his final bill, his money suit also could have been maintained only for next three years but the petitioner having been not filed even a money suit and also taking any recourse to arbitration proceeding as per the terms and conditions of the agreement has filed this writ application on 20.1.2009.

7. Thus, the delay itself was sufficient for this Court to reject the claim of the petitioner because if a money suit could not have been maintained by the petitioner the writ application also filed by him after more than four years of the cause of action cannot be said to be maintainable.

8. Delay apart when this Court would find that there is a dispute with regard to measurement as has been projected in the counter affidavit, the same cannot be said to be even admitted

plea. For this removal of the dispute the petitioner had to either move the civil court or could have taken recourse to arbitration proceeding, where both the parties could have got opportunity to lead their evidence.

9. At the end of the day it is a non-statutory contract and therefore, the judgment of 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 by at least two Division Bench judgment of this Court in the case of M/s BASF India Ltd. v. the State of Bihar & ors., reported in 1992(2) PLJR 714 and in the case of M/s Patna Hume Pipes Manufacturing Company v. the State of Bihar & ors., reported in 1993(1) BLJR 600, will itself make the writ application with regard to disputed money claim not maintainable.

10. That being so, this writ application fails and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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