

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16334 of 2010

Nari Kalyan Sewa Sangh Mosimpur Kurtha, Fatuha, Patna-1, Through Its Secretry
Vimla Devi

.... Petitioner/s

Versus

1. The Union of India through the Secretary Ministry of Health, Government of India, New Delhi
2. The National AIDS Control Organization (NACO) 6th Floor, Chandra Lok Building, Janpath, New Delhi-110001, through its Director General
3. The State of Bihar through the Principal Secretary Department of Health, Government of Bihar, Vikas Bhawan, New Secretariat, Patna
4. The Project Director Bihar State Aids Control Society (BSACS), State Institute of Health and Family Welfare Building, Shekhpura, Patna-800014
5. The Joint Director, Finance Bihar State Aids Control Society (BSACS), State Institute of Health and Family Welfare Building, Shekhpura, Ptana-800014

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Syed M. Ashraf
For the Respondent No.1 & 2: Mr. Rakesh Kumar Sinha
For the Respondent No.3 : Mr. K.K. Jha, AAG-14
For the Respondent No. 4& 5: Mr. Upendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 10-02-2015

Heard the parties.

The petitioner, a society registered under the Society Registration Act, 1860, has filed the present writ petition seeking a direction to the respondents for payment of dues for the works undertaken and completed by the petitioner on the basis of the agreement as contained in Annexure-2 to the writ petition. According to the petitioner, it is entitled to receive a total sum of Rs. 18,83,558/- from the respondents. Besides that, some other claims have also been raised by the petitioner in the present proceeding.

Separate counter-affidavits have been filed on behalf of the respondent no. 1 and 2 as also on behalf of the respondent no. 4 and 5 after service of their copies upon the learned counsel appearing on behalf of the petitioner disputing and controverting the claims raised on behalf of the petitioner. In the counter-affidavit filed on behalf of

the respondent no. 4 and 5 it has been specifically asserted in paragraph-5 that the entire admissible amount has already been paid to the petitioner and no amount is due to the petitioner. Copy of the aforesaid counter-affidavit was served upon the learned counsel appearing on behalf of the petitioner on 03.12.2014, but till date no rejoinder affidavit has been filed by the petitioner controverting the averments made therein in that counter affidavit.

After having heard the parties and on consideration of the materials available on record, this Court finds that the claims regarding contractual dues raised on behalf of the petitioner are based on disputed question of facts, which cannot be appropriately decided in a proceeding under Article 226 of the Constitution of India in view of the judicial pronouncements made by the Hon'ble Apex Court in the case of **M/S Radhakrishna Agrawal & Ors. Vs. The State of Bihar & Ors.** [AIR 1977 SC 1496].

In above view of the matter, the present writ petition is disposed of, but with a liberty to the petitioner to approach the civil court of competent jurisdiction for grant of appropriate relief on the basis of the evidence produced by the parties, or alternatively, the petitioner may invoke Clause 15.1 of the Agreement as contained in Annexure-2 to the writ petition.

If any such claim is raised on behalf of the petitioner in an appropriate proceeding, then the same shall be considered and decided on its own merit without being prejudiced/ influenced by any observations made in the present order, and the parties shall be at liberty to raise all the issues of facts and law which are available to them.

(Birendra Prasad Verma, J)

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