

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.465 of 2009

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M/S Om Construction through its proprietor Sri Ram Ganesh Jha son of late Nageshwar Jha resident of village Kabilpur, P.S. Bahadurpur, Dist-Darbhanga.

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.The Secretary, Rural Engineering Organization, Government of Bihar, Bisheshwaraya Bhawan, Bailey Road, Patna.
- 3.The Chief Engineer, Rural Engineering Organization-II, Bisheshwaraya Bhawan, Bailey Road, Patna.
- 4.The Superintending Engineer, Rural Engineering Organization, Darbhanga circle, District Darbhanga.
- 5.The Executive Engineer, Rural Engineering Organization, Works Division Darbhanga, District Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Choudhary 1, Adv
For the Respondent/s : Mr. Shailendra Kr Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 16-01-2015 Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:-

“That this is an application for the issuance of an appropriate writ/Writ, order/orders or direction/directions upon the respondent authority concern to make the payment of the balance dues of Rs. 2,79,094/=(two lacks seventy nine thousands ninety four rupees) to petitioner for a work done in terms of a contract under agreement No. 28 F of 1999-2000.”

Mr. Ashok Kumar Choudhary, learned counsel for the petitioner in support of the aforementioned prayer has invited attention of this Court to not only an earlier



order of this Court dated 24.01.2003 passed in C.W.J.C No. 521 of 2003 but has also referred to the impugned order passed by the Secretary of the Rural Development Department, wherein, the claim of the petitioner has been rejected by a reasoned order on 03.11.2004. According to him, the said order passed by the Departmental Secretary is contrary to the materials on record and specially the decision of the two liability committees.

Mr. Shailendra Kumar Singh, learned counsel appearing on behalf of the respondents on the other hand has submitted that the departmental Secretary has found the whole approach of the second liability Committee to be perfunctory and he has discarded/rejected the finding of the liability Committee while passing the impugned order.

In the considered opinion of this Court, the order passed by the departmental Secretary cannot be sustained for more than two reasons. Firstly, if the



departmental Secretary was of the view that the report of the two liability Committees were to be discarded by him, which were in favour of the petitioner, the first one favouring the full payment of Rs. 2,79,094/- and the second one favouring payment of Rs. 1,94,383/-, he had to issue a notice to the petitioner giving liberty to explain as with regard to the so called infirmity in the report of the both liability Committees.

Secondly, the departmental Secretary has tried to read between the lines in the report of the second liability Committee because the second liability Committee has nowhere recorded that the work of the petitioner was unsatisfactory and that it did not complete the work or its work done was not as per the specifications prescribed in the work order. In fact the finding of the second liability committee as against the entry made in column no. 35, it was clearly mentioned that the work was done as per the prescribed specification. Thus, if the departmental Secretary had



found the work of the petitioner to be unsatisfactory only because of average of 2.75 stone metal grade-II or the width of premix 16 m.m (average) that by itself could not have led to a conclusion that the report of the second liability Committee was incorrect or not acceptable.

The departmental Secretary in fact had also lost track of the issue that the work was completed by the petitioner way back in the year 2000, and when its full and final payment was not made, it had moved this Court by filing writ application being C.W.J.C No. 521 of 2003 which was disposed of on 24.01.2003. After the order of this Court dated 24.01.2003, two reports of the learned counsel, the first one dated 08.01.2004 consisting of the Superintending Engineer and two Executive Engineers and the second report of the liability Committee dated 04.09.2004, again by one Superintending Engineer and two Executive Engineers was in its favour favouring payment of Rs. 1,94,383/-.

Thus, reduced amount of Rs. 1,94,383/- ought to have been not withheld on mere ipse dixit of the departmental Secretary.

It is true that such disputed question of fact in relation to a non statutory agreement and that to by way of money claim cannot be gone into in writ jurisdiction but nonetheless as the first writ application of the petitioner was entertained and the authorities were directed to consider the claim of the petitioner, this Court having found apparent infirmity in the impugned order passed by the Secretary of the Rural Development Department must quash the same and remit the matter back to the departmental Secretary of Rural Development Department to pass fresh order but only after affording opportunity of hearing to the petitioner and/or his counsel.

This exercise however must be completed by the departmental Secretary within a period of four months from the date of receipt of this order. In order to shorten

this exercise, this Court would also give liberty to the petitioner to file a self contained representation enclosing a copy of this order and the period of four months shall commence only from the date of filing of the representation by the petitioner enclosing also a copy of this order.

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

(Mihir Kumar Jha, J)

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