

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3446 of 2010

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Jyotish Kumar Bhagat S/O Late Ram Prasad Bhagat R/O Vill.- Goshala, P.O.-
Deharia, P.S.- Sadar, Distt.- Katihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Rural Development Deptt. Govt. Of Bihar, Patna
3. The Principal Secretary Planning And Development Deptt., Govt. Of Bihar, Patna
4. The Principal Secretary Karmik And Prashashnik Sudhar Bibhag, Govt. Of Bihar, Patna
5. The Principal Secretary Deptt. Of Vigilance, Govt. Of Bihar, Patna
6. The Principal Secretary Deptt. Of Revenue, Govt. Of Bihar, Patna
7. The Divisional Commissioner Purnea, Distt.- Purnea
8. The District Magistrate-Cum-Collector Katihar, Distt.- Katihar
9. Sri Pran Mohan Thakur Then District Magistrate-Cum-Collector Katihar Presently Commissioner, Bhagalpur
10. The Deputy Development Commissioner Katihar, Distt.- Katihar
11. The Block Development Officer Balrampur, Distt.- Katihar
12. The Engineer-In-Chief Deptt. Of Rural Development, Govt. Of Bihar, Patna
13. The Engineer-In-Chief, N.R.E.P. Govt. Of Bihar, Patna
14. The Executive Engineer, N.R.E.P. Katihar, Distt.- Katihar
15. Sri Ranjit Prasad S/O Not Known To The Petitioner The Assistant Engineer, Balrampur Block, Distt.- Katihar
16. Sri Ram Baran Singh S/O Not Known To The Petitioner The Junior Engineer, Balrampur Block, Distt.- Katihar
17. Sri Ranjan Kumar Chauhan S/O Not Known To The Petitioner Then Incharge Of Block Development Officer, Balrampur-Cum-Executive Magistrate, Katihar, Distt.- Katihar, Through The Principal Secretary, Karmik And Prashashnik Sudhar Bibhag, Govt. Of Bihar, Patna
18. The Director General Of Police Govt. Of Bihar, Patna
19. The D.I.G. Purnea
20. The Superintendent Of Police Katihar
21. The Subdivisional Police Officer Barsoi, Katihar
22. The Thana Adhyaksha Of Balrampur P.S. Distt.- Katihar
23. The Then Adhyaksha Telta Out Post, Distt.- Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.N.K.Agrawal, Sr.Adv.
Mr. Indu Bhushan

For the Respondent/s : Mr. Satish Narayan Singh, AC to GA-2

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 12-02-2015

Heard the parties.

This is, in fact, 3rd round of litigation at the behest of the petitioner with respect to almost same cause of action.

The petitioner has filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 15th December, 2009 (Annexure-18) passed by the respondent District Magistrate, Katihar, whereby the representation filed on behalf of the petitioner for re-measurement of the works executed by him has been rejected. During the pendency of the present writ petition, in view of the subsequent developments, the petitioner filed I.A.No.5167 of 2011 seeking amendment in the writ petition and further seeking a direction to the respondents to dispose of the representation filed afresh by the petitioner on 07.04.2010.

Learned senior counsel appearing on behalf of the petitioner submits that the aforesaid I.A.No.5167 of 2011 was allowed by a Bench of this Court by the order dated 20.12.2011.

It is not in dispute that at the relevant time the petitioner was working as Revenue Karamchari, a class-III employee of the respondent State, and was posted at Balrampur Anchal in the district of Katihar. He was given advance for execution of eight schemes, fully detailed in paragraph no.1 of the writ petition. The petitioner appears to have not completed the works assigned to him as a result thereof Balrampur P.S. Case No.52 of 2007 was registered against him for the offences under Sections 409, 420, 467 and 468 and other allied offences under the Indian Penal Code. The petitioner was also subjected to a departmental proceeding and finally he was dismissed from service.

On previous occasion, the petitioner had moved before this Court in CWJC No.7309 of 2009 for a direction to the respondent



Executive Engineer, Balrampur to measure the works completed by him with respect to different schemes. The aforesaid writ petition was finally disposed of by a Bench of this Court by the order dated 03.07.2009 (Annexure-15) with a direction to the petitioner to file a representation before the respondent District Magistrate, Katihar, who, in turn, was directed to dispose of the same by a reasoned order.

It is the case of the petitioner that in the light of the aforesaid order dated 03.07.2009 (Annexure-15) he filed his representation as contained in Annexure-17 to the writ petition before the respondent District Magistrate, Katihar, which was considered and finally rejected by the impugned order dated 15th December, 2009 (Annexure-18 to the writ petition). From the findings recorded by the respondent District Magistrate, it is apparent that the petitioner had moved earlier in Cr.WJC No.1080 of 2007 also and by an order dated 23.04.2008 passed by a Bench of this Court a direction was issued to the respondent District Magistrate for taking measurement of the works completed by the petitioner, but despite the dates fixed for taking measurement of the works, the petitioner chose not to appear on the dates fixed. In the aforesaid factual matrix, the representation filed on behalf of the petitioner was rejected by the respondent District Magistrate, Katihar by the impugned order dated 15th December, 2009 (Annexure-18).

The learned senior counsel appearing on behalf of the petitioner has submitted that after the impugned order dated 15th December, 2009 (Annexure-18), the petitioner has filed a fresh representation on 07.04.2010 for taking re-measurement of the works completed by him. Therefore, according to him in the light of the representation filed by the petitioner the respondents may be directed to re-measure all the works undertaken by him.



A counter affidavit on behalf of the respondent no.8 was filed way back on 31.01.2012 after service of its copy upon the learned counsel appearing on behalf of the petitioner disputing and controverting the claims raised on behalf of the petitioner. It is not in dispute that till date the petitioner has not filed any rejoinder affidavit controverting the averments made in the aforesaid counter affidavit filed on behalf of the respondent no.8.

In the counter affidavit filed on behalf of the respondent no.8 it has been asserted that the works undertaken by the petitioner with respect to different schemes were measured by a committee of Engineers and Officers on 15.03.2010 and 16.03.2010 in presence of the writ petitioner and measurement report dated 17.03.2010 was accordingly submitted, wherein it was found that the works are still incomplete. A copy of the aforesaid report dated 17.03.2010 submitted by a committee of Engineers and Officers has been brought on record as Annexure-C to the aforesaid counter affidavit. Learned State counsel has pointed out that despite taking into consideration the works completed by the petitioner, the petitioner is still liable to pay a sum of Rs.Thirteen lacs and odd which he had taken by way of advance for execution of the aforesaid eight schemes. It is also to be noted that the schemes, which were allotted to the petitioner, were for the period 2001-2002 to 2006-07, which comprises the earth work as also the concrete work. As noticed earlier, the facts stated in the counter affidavit have not been controverted by the writ petitioner by filing any rejoinder affidavit.

After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that, in the factual matrix of the case, as noticed above, there is no need to issue any direction to the respondents for taking re-measurement of the

works already completed by the petitioner. Once the measurement of works was taken by a team of Engineers and Officers on 15.03.2010 and 16.03.2010 in presence of the writ petitioner and measurement report dated 17.03.2010 (Annexure-‘C’ to the counter-affidavit) was submitted with findings that the petitioner has not completed the works under the aforesaid 8 schemes, which were for the periods from 2001-2002 to 2006-07, then there would be no justification for issuing direction for taking measurement of the works once again after such a long time, particularly in the background that the facts stated in the aforesaid counter affidavit has not been disputed by the writ petitioner by filing any rejoinder affidavit. Admittedly, a criminal case is pending against the petitioner for criminal breach of trust and misappropriation of government fund as also with respect to the offence of forgery. The petitioner was subjected to a departmental proceeding for different charges and was awarded punishment of dismissal from service for his proven misconduct, which, according to the learned counsel appearing on behalf of the petitioner, was subsequently set aside by this Court and the matter has been remitted back with certain directions.

For the reasons recorded above, the writ petition has to fail and is, accordingly, dismissed, but without costs.

(Birendra Prasad Verma, J)

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