

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15550 of 2011

=====

M/s Sharda Construction, a Partnership Firm having Office at New Area, Maharajganj Road, Aurangabad, Bihar through its Partner Smt. Geeta Singh W/O Sri Kaushal Kumar Singh R/O New Area, Maharajganj Road, P.S.- Town Thana Aurangabad, District- Aurangabad, Bihar.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna
2. The Engineer in Chief, Water Resources Department, Government of Bihar, Patna
3. The Chief Engineer, Water Resources Department, Aurangabad
4. The Executive Engineer, Sone High Level Canal Division, Aurangabad
5. The Sub-Divisional Officer, East Sone High Level Canal Sub-Division, Bharthauli, District- Aurangabad

.... Respondents

=====

Appearance:

For the Petitioner : Mr. RAJ KISHORE PRASAD, ADVOCATE
For the Respondents : Mr. ANJANI KUMAR, AAG 6
Mr. SOORAJ KUKAR, AC to AAG 6

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 09-10-2015

Heard learned counsel for the petitioner and learned counsel for the Respondents.

2. The present writ petition has been filed for a direction to the respondents to make payment of about Rs. 80 lakhs for the work executed by the petitioner with respect to Metalling of Service Road with Black Topping of Sone High Level Main Canal from kilometer 17.921 to kilometer 33.04 vide agreement No. 17 F2/2006-07 which was allotted to the petitioner by the respondents and for connected reliefs.



3. It is submitted on behalf of the petitioner that pursuant to the directions of this Court in CWJC No. 13037 of 2008 directing IRCON to assist in measurement and assessment of work done by the petitioner, such measurement/assessment was carried out the IRCON and a report dated 12.06.2009 was submitted. Upon some objection by the respondents, fresh measurement was carried out and a report dated 06.01.2011 then came to be submitted. The petitioner seeks payment on the basis of such measurement.

4. Learned counsel for the respondents invites attention to the counter affidavit filed, and in particular to letter No. 274 dated 04.03.2011 written by the respondent no. 4 to IRCON enclosed therewith, raising objection on the ground that the measurement was not done in the presence of their representative. It is therefore, submitted that such measurement would not bind the respondents.

5. Learned counsel for the petitioner in reply, refers to the letter dated 26.04.2011 written by the IRCON as enclosed in the counter affidavit itself, according to which the aforesaid letter No. 274 dated 04.03.2011 of the respondent no. 4 has been replied. It has categorically been stated therein that the representative of the respondents had participated during the entire process by proposing a convenient date and even attending the site for inspection. However, at the time of joint

measurement of the executed work, it has been stated that the concerned Executive Engineer did not show any interest for the detailed measurement and finally left the site along with the Junior Engineer. This aspect of the matter has not been denied in the counter affidavit.

6. Having heard learned counsel for the parties and on consideration of the materials on record, this Court is unable to fault the measurement carried out by IRCON pursuant to order of this Court as aforesaid. The respondents must be held to be bound by the report dated 06.01.2011 submitted by IRCON and cannot be permitted to resile from the same, having chosen not to be present at the time of detailed measurement.

7. In the above view of the matter, this Court directs the respondents to ensure payment to the petitioner appropriately on the basis of the aforesaid measurement report of IRCON dated 06.01.2011 within a period of three months from the date of receipt/production of a copy of this judgment.

8. The writ petition stands allowed.

(Vikash Jain, J)

Chandran

U			
---	--	--	--