

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10132 of 2008

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M/S Venus Industries, Baghpat Road, Meerut, a Partnership Firm through its Partner namely Rashmi Gupta D/o Sri Jagdish Saran Gupta

.... Petitioner/s

Versus

1. The State of Bihar through Director Industries, Department of Industries, Govt. of Bihar, Patna
2. The Industries Facilitation Conciliation Council, Bihar Vikash Bhawan, New Secretariat, Patna through Director Industries, Department of Industries, Govt. of Bihar, Patna-3
3. The Bihar State Road Transport Corporation, Patna through its Managing Director, Pariwahan Bhawan, Bir Chand Patel Path, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10523 of 2008

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M/S Harish Industries Pvt.Ltd, Baghpat Road, Meerut, Private Limited Company registered under the Companies Act, 1956 through its Managing Director Shri Harish Bansal

.... Petitioner/s

Versus

1. The State of Bihar through Director Industries, Department of Industries, Govt. of Bihar, Patna
2. The Industries Facilitation Conciliation Council, Bihar Vikash Bhawan, New Secretariat, Patna through Director Industries, Department of Industries, Govt. of Bihar, Patna-3
3. The Bihar State Road Transport Corporation, Patna through its Managing Director, Pariwahan Bhawan, Bir Chand Patel Path, Patna

.... Respondent/s

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Appearance :

(In both the cases)

For the Petitioner/s : Mr. Shri Prakash Srivastava, Adv.
Mr. Jyoti Shankar, Adv.

For the Respondent State : Mr. Sanat Kumar Mishra, AC to AAG8

For the respondent BSRTC: Mr. Nand Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 19-01-2015

In both these writ applications a prayer has been made
seeking quashing of the two separate order, both dated 4.5.2006



passed separately in the case of the two petitioners, whereby and whereunder respondent no.2 did not decide the claim of the petitioners and had left the matter by recording that such dispute could be adjudicated before the competent court. Additionally, a prayer has also been made for directing the Bihar State Road Transport Corporation, respondent no.3, to make payment of the amount awarded by respondent no.2.

Mr. Shri Prakash Srivastava, learned counsel appearing on behalf of the petitioners in both these cases, has submitted that the petitioners and the Bihar State Road Transport Corporation had entered into the agreement for construction of Aluminium Single Decker District Type/ Deluxe Type Omini-Bus Bodies on the chassis of Tata and Ashoka Leyland vehicles. He has submitted that despite the petitioner's completing the work they were not paid stipulated amount by the Corporation and as such, they had moved before respondent no.3 in terms of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertaking Act, 1993 but surprisingly the competent authority of respondent no.2 by an order dated 12.4.2006 had directed for payment of interest on all the pending claims but had refused to go into the rest of the claim by giving liberty to the petitioners to approach the competent court.

In the considered opinion of this Court both the petitioners

and respondent no.3 were/ are still bound by an inter-party agreement in relation to construction of buses, Clause 12 in one case and Clause 13 in the other case, being paramateria, is quoted hereinbelow:

“In case any disputes or differences shall arise between the parties relating to or arising out of this contract it shall be referred to the Administrator of the Corporation who will be the sole Arbitrator and whose decision shall be final, conclusive and binding on the contracted parties.”

It is not in dispute that pursuant to the aforementioned agreement and the dispute the petitioners on 26th March, 2001 had approached the Administrator by way of seeking arbitration and in paragraph no.6 of such reference made before the Arbitrator the petitioner, authorized signatory of M/s Venus industries in the claim petition had stated as follows:

“6. By this petition the applicant is invoking the specific remedy under clause (12) of draft agreement/ agreement for resolution of dispute arising out of this contract before the sole Hon’ble Arbitrator as opposite parties failed to abide by terms of contracts and official of the opposite parties had disobeyed conditions of tender draft agreement and contract and they have done the work of pick and choose as per their sweet will in definance of terms of tender dated 16.11.1999 and its annexures (draft agreement etc) and instructions/ final settlement of penalty clause as done by then Administrator of the opposite party on 8.3.2000 and only it with this finally settled clause, the applicant started to lift chassis for

fabrication and official of Chief Accounts Officer, purposely had harassed the applicant by deducting unnecessary and unwarranted deductions in the form of

(i) Penalty without taking consideration conditions of tender/ draft agreement etc. out of the amount of bills submitted for payment by the applicant and without taking into consideration that much delay against terms settled either in structural inspection or final inspection was done by officials of the opposite party, and in definance of final settlement done and consented by the Administrator and applicant on 8.3.2000 as referred above.

(ii) That illegally by the office of the Chief Accounts Officer sales tax was deducted on the amount deducted on account of penalty in contravention of tender dated 16.11.1999 and its draft agreement (Annexure) and agreement dated 16.2.2000.

7. Sir, in view of above factual position and terms of contract no penalty shall be imposed of delay in payment or delay in structural of final inspections to by done by officials of the opposite party.

And the officials of the opposite party had caused delay in inspection of the structural works as well as delay in payment for the built up bus bodies as per details given in a table annexed as Annexure 5 to this petition and as per these details a brief chart of delays in inspection and delay in payment by officials of opposite party on such chassis is summarized below:-

S.No.	Chassis No.	Delay in Inspection	Delay in payment	Total delay
1.	JBAO30750	8 days	42 days	50 days
2.	JBAO30767	8 days	42 days	50 days



3.	JBAO30781	8 days	42 days	50 days
4.	JBAO30766	14 days	62 days	76 days
5.	BKAO30422	8 days	42 days	50 days
6.	BZZ105513	8 days	62 days	70 days
7.	BZZ105520	11 days	41 days	52 days
8.	BZZ105499	15 days	61 days	76 days
9.	BZZ105521	15 days	61 days	75 days
10.	JBAO30751	13 days	37 days	50 days
11.	BZZ105504	13 days	41 days	54 days
12.	JBAO30762	14 days	59 days	73 days
13.	BZZ105526	12 days	66 days	78 days
14.	CZZ106366	10 days	41 days	51 days
15.	CZZ106365	10 days	41 days	51 days
16.	CZZ106364	13 days	37 days	50 days
17.	JBAO30763	11 days	71 days	82 days
18.	BKAO30413	10 days	78 days	88 days
19.	BKAO30420	12 days	71 days	83 days
20.	BZZ105523	14 days	30 days	44 days

It is also not in dispute that a similar claim petition seeking

reference was made even by the petitioner M/s Harish Industries Pvt. Ltd. before the Administrator of the Corporation and again in such a claim petition dated 25.3.2001 in paragraph nos. 6 and 7 thereof similar adjudication with regard to payment of interest on delayed payment made by the Corporation was made subject matter which again for the sake of clarity and convenience is quoted hereinbelow:

“6. By this petition the applicant is invoking the specific remedy under clause (12) of draft agreement/ agreement for resolution of dispute arising out of this contract before the sole Hon’ble Arbitrator as opposite parties failed to abide by terms of contracts and official of the opposite parties had disobeyed conditions of tender draft agreement and contract and they have done the work of pick and choose as per their sweet will in definance of terms of tender dated 16.11.1999



and its annexures (draft agreement etc) and instructions/ final settlement of penalty clause as done by then Administrator of the opposite party on 8.3.2000 and only it with this finally settled clause, the applicant started to lift chassis for fabrication and official of Chief Accounts Officer, purposely had harassed the applicant by deducting unnecessary and unwarranted deductions in the form of

(i) Penalty without taking consideration conditions of tender/ draft agreement etc. out of the amount of bills submitted for payment by the applicant and without taking into consideration that much delay against terms settled either in structural inspection or final inspection was done by officials of the opposite party, and in defiance of final settlement done and consented by the Administrator and applicant on 8.3.2000 as referred above.

(ii) That illegally by the office of the Chief Accounts Officer sales tax was deducted on the amount deducted on account of penalty in contravention of tender dated 16.11.1999 and its draft agreement (Annexure) and agreement dated 16.2.2000.

7. Sir, in view of above factual position and terms of contract no penalty shall be imposed of delay in payment or delay in structural or final inspections to be done by officials of the opposite party.

And the officials of the opposite party had caused delay in inspection of the structural works as well as delay in payment for the built up bus bodies as per details given in a table annexed as Annexure 5 to this petition and as per these details a brief chart of delays in inspection and delay in

payment by officials of opposite party on such chassis is summarized below:-

S.No.	Chassis No,	Delay in Inspection	Delay in payment	Total delay
1.	412060BZZ105015	17	21	38
2.	412060BZZ105060	17	21	38
3.	412060BZZ105500	13	76	89
4.	412060BZZ105005	17	21	38
5.	JBA-030759	17	21	38
6.	BKA-030412	17	21	38
7.	JBA-030758	13	67	80
8.	412060CZZ106367	13	76	89
9.	JBA-030753	18	72	90
10.	JBA-030825	18	72	90
11.	JBA-030828	17	21	38
12.	JBA-030831	18	81	99
13.	JBA-030826	18	72	90
14.	JBA-030756	18	21	39
15.	JBA-030827	18	21	39
16.	412060BZZ104985	18	37	55
17.	412060BZZ104986	18	17	35
18.	412060BZZ105514	18	38	55
19.	412060BZZ105515	18	37	55
20.	412060BZZ106362	18	37	55"

It is not in dispute that on 19.4.2003 the Administrator of the Bihar State Road Transport Corporation had passed reasoned detailed award and in the order dated 19.4.2003 it had also recorded that the petition filed by both the petitioners was partially allowed in terms of Paragraphs no. 19, 33 and 36.

Such award of arbitration may or may not have been to the satisfaction of the petitioners and if part of the claim of the petitioners was rejected, the remedy for them again was to move the competent civil court but in no view of the matter this issue could have been



raised in any way before respondent no.2 for the simple reason that once a remedy was sought to be invoked by the petitioners by approaching the Arbitrator the course of events could not have been changed in the midstream by the petitioners. It is true that under the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 the jurisdiction has been vested for determination of the liability of payment of interest but then when the liability of payment of interest of the petitioners was already determined in the arbitration proceeding, the award under arbitration could not have been either directly or indirectly made subject matter of the proceeding before respondent no.3.

This Court is informed that the award given by the Administrator of respondent no.3 is pending before Sub Judge I, Patna in Execution Case No. 20 of 2007 and 21 of 2007. Thus, this Court will have no difficulty in holding that the Director (Industries) of the Govt. of Bihar acting as the competent authority of respondent no.2 ought to have not even issued the limited direction for payment of any interest which was subject matter of the arbitration. His such decision of not interfering in other matter ought to have been extended as a whole because the entire issue has already been raised by the petitioners before the Arbitrator and was decided by the award of the Arbitrator partly in favour of the petitioners and partly against them.

If the petitioners, therefore, were satisfied and did not assail that part of the award by which their certain claims were rejected, that could not have been made subject matter of any proceeding before respondent no.3. Admittedly in the execution case pending before the Sub Judge I, Patna the petitioners are not assailing the award but only seeking to implement the award given by the Arbitrator, the Administrator of the Corporation in their favour.

Thus, the petitioners could not have sought any relief before respondent no.3 in the subject matter of dispute between them and respondent no.3 governed by the agreement and the award.

In the result, both the writ applications are found to be lacking any merit and they are accordingly dismissed.

(Mihir Kumar Jha, J)

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