

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15456 of 2009

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M/S F.F. Info. Com through its Proprietor Rishi Kapoor, S/O Late Brij Mohan Prasad, its Office situated at Basement of Pawanputra Apartment (Behind Adision Arcade) Fraser Road, Patna Residing At Brij Mohan Kunj, Near Radha Cyber, Bazar Samiti Main Gate, P.S.Bahadurpur, District-Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Rural Development Deptt., Govt. of Bihar, Patna
3. The District Magistrate, Madhepura
4. The Deputy Development Commissioner cum Chief Executive Officer, District Rural Development Agency, Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durga Nand Jha
For the Respondent/s : Mr. Prashant Pratap, GP-6
Mr.Gyan Shankar, AC to GP-6

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 04-02-2015 Heard the parties.

The petitioner has filed the present writ petition under Article 226 of the Constitution of India seeking a direction to the respondents to make payment against the works performed by the petitioner-firm allotted to it vide work order contained in Memo No.86 dated 07.02.2009 (Annexure-3) issued under the signature of the respondent no.4.

Learned counsel appearing on behalf of the petitioner has submitted that by an order dated 07.02.2009 passed by the respondent no.4-D.D.C., Madhepura, the agreement of Webel Technology Limited, Ranchi for execution of the works in question was cancelled and in view of the offer made by the petitioner to execute the works on the same terms and conditions, work order was issued in favour of petitioner-firm on provisional basis till May, 2009. It is the case of the petitioner that in light of

the aforesaid works order dated 07.02.2009 (Annexure-3) petitioner-firm executed the works, supplied the materials as per challan, vide Annexure-4 series, and ultimately submitted its bills, which have been brought on record as Annexure-6 series, yet the petitioner-firm has not been paid its dues by the respondents till date. According to him, in view of the materials placed on record by the petitioner-firm, it is entitled to receive payment for the works executed and materials supplied by it.

In compliance of the order dated 16.11.2009 passed by a Bench of this Court, a counter affidavit has been filed on behalf of the respondent no.4-D.D.C., Madhepura controverting and disputing the claims raised on behalf of the petitioner in the present writ petition.

Learned GP-6 appearing on behalf of the respondents, by referring to the averments made in the aforesaid counter affidavit, has strongly opposed the prayer made on behalf of the petitioner. According to him, the claims raised on behalf of the petitioner are based on disputed questions of facts. By referring to the averments made in paragraphs 4, 9 and 10 besides others, it is contended that the petitioner-firm is not entitled to the reliefs prayed for in the present writ petition in view of the fact that the claims are under serious dispute. For better appreciation, the averments made in paragraph 9 and 10 of the aforesaid counter affidavit are reproduced hereinbelow :-

9. That with regard to the statements made in para 6 of the writ application, it is submitted that the petitioner never supplied required instruments and apparatus, but has used old and substandard equipments. The claim of the petitioner is not true, as he has failed to submit the original papers or receipts, certification of the Equipments and Software. No telephone,

fax, internet connection was ever made available.

10. That with regard to the statements made in para 7 of the writ application, it is submitted that all the six computer operators as mentioned in letter no.1668 dated 04.09.2009 are directly recruited by the Rural Development Department, Bihar to work on contract basis under the DDC Madhepura. All of them are paid staff under control of DDC Madhepura and not the petitioner's.

Learned State counsel by placing heavy reliance on the judgment of the Hon'ble Apex Court in the case of **M/S Radhakrishna Agarwal & Ors. Vs. The State of Bihar & Ors.** [AIR 1977 SC 1496] submitted that with respect to contractual obligation, if the facts are under dispute and require assessment of evidence, the writ should not ordinarily be issued and party should be relegated to Civil Court for getting the matter decided by placing evidence in support of the respective claims.

After having heard the parties and on consideration of the materials available on record, this Court finds that the claims raised on behalf of the petitioner-firm with respect to payment of contractual dues have not been admitted by the respondents, rather it has been seriously disputed. From the pleadings of the writ petition, this Court could not find any averments made on behalf of the petitioner that the works assigned to it was completed. Of course, certain documents have been produced by the petitioner-firm to substantiate its claim about the certain works having been done by it. However, genuineness of the claims of the petitioner has been disputed in the counter affidavit filed on behalf of the respondent no.4. A copy of the counter affidavit was served upon the learned counsel appearing on behalf of the petitioner as far

back as on 28.01.2010, but despite passage of more than five years the petitioner has not controverted the averments made therein by filing any rejoinder affidavit.

In the aforesaid factual matrix and in view of the law laid down by the Hon'ble Apex Court in the case of **M/S Radhakrishna Agarwal & Ors. Vs. The State of Bihar & Ors.** (supra) particularly in paragraph 12, this Court is of the opinion that no direction can be issued in the present proceeding to the respondents for payment of dues/claims raised on behalf of the petitioner, as it is under serious dispute.

In the result, the writ petition has to fail and is, accordingly, dismissed.

However, the petitioner shall be at liberty to approach the Civil Court of competent jurisdiction for grant of an appropriate relief on the basis of the evidence produced by the petitioner. If such a civil suit is filed by the petitioner, the same shall be considered and decided in accordance with law without being prejudiced by the present order.

(Birendra Prasad Verma, J)

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