

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19833 of 2014

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Gaya Singh S/O Late Mundeshwar singh R/o Mohalla -Santi Sadan behind
Dy.S.P.Kothi ward No.27 ,Shahpur,Aurangabad P.S+District-Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar. through the Principal Secretary, Department Of Public Health Engineering Development ,Govt. of Bihar Patna.
2. The Engineer- in- Chief, Department Of Public Health Engineering Development , Govt. of Bihar Patna.
3. The Chief Engineer-Public Health Engineering Development Division ,Gaya.
4. The Executive Engineer, Public Health Engineering Development Division ,Gaya.
5. The Sub- Divisional Officer, Public Health Engineering Development Division ,Gaya.
6. The Junior Engineer, Public Health Engineering Development Sub-Division ,Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Verma, Adv.

For the Respondent/s : Mr. J.P. Karn, AAG4

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 08-01-2015 Heard learned counsel for the parties as with regard to
the following relief prayed in this writ application:-

"1. *That this petition is being filed for direction to the concerned Respondents to pay the rest amount due i.e. Rs. 10,42,656.00 and security money for the work done under agreement no. 29F2 of 2010-11 vide work order letter 938 dated 8.3.2011."*

Learned counsel for the petitioner, with the help of documents in enclosed with the writ application as also having produced a photocopy of the measurement book showing the measurement made by the Junior Engineer on 22.12.2011 with a

calculation of Rs. 7,45,525.73 as payable amount towards the third final bill, has submitted that the authorities ought to have not kept at least admissible amount and security amount of the petitioner unpaid for this long period.

In this case, no counter affidavit has been filed though by an order dated 25.11.2014, the prayer of the learned counsel for the State for adjourning the case for a period of three weeks to enable him to file counter affidavit was allowed.

In that view of the matter, when learned counsel for the State, on the basis of the pleadings of the writ application, has tried to make out a case that as a matter of fact the work of the petitioner was to be completed by 16.6.2011 and as because the petitioner did not complete the work within the prescribed period, his payment for the work done has been withheld no one can question the wisdom and intelligence of the learned counsel for the State. He infact can definitely place whatever he would like to by reading from the uncontroverted averments made in the writ application and its annexures but, then, he should not be unmindful that the petitioner had made a clear and categorical statement in paragraph no.6 & 7 of the writ application, which reads as follows:-

"6. That prior to issuance of the letter as contained in annexure-1 the petitioner has been intimated to



get the agreement executed after fulfilling requirement i.e. depositing of required amount as security vide letter no.938 dated 8.3.11 and in pursuance of that the petitioner has deposited the required amount and annexure-1 has been issued there after.

7. *That thereafter the petitioner has started work as allotted and the date of completion of the work was 16.6.2011 but due to some unavoidable circumstances the work could not be completed within the stipulated time and the petitioner filed an application for request of extension of time and on his request letter no. 435 dated 15.2.12 has been issued and vide order dated 23.1.2012 time for completion of the work has been extended to 22.12.2011."*

The aforesaid statement having not been controverted, the reference made by the petitioner to annexure-3 in isolation even if accepted cannot give an authority to the authorities of the Department to withhold the entire payment, inasmuch as, even if the petitioner may have become liable for damages for the delay caused in completion of the project (if the time limit for completion of work had not been extended) but, in no event, the Department could have sat over the matter refusing to make entire payment to the petitioner. As a matter of fact, the moment the Junior Engineer had submitted the final measurement of 3rd final bill on 22.12.2011, a decision either way for making full and final payment of the petitioner as well as refund of the security amount,



earnest amount and/or any other amount could have been taken as per the stipulation made in the agreement itself. This Court in absence of the counter affidavit, however, is not aware as to why the payment of the petitioner has not been made as yet.

In such a situation, when the respondents have not come out with any explanation, this Court would direct the Engineer-in-Chief of the Department of Public Health Engineering Development (Respondent No.2) to examine the claim of the petitioner and take a final decision with regard to the admissible payment to the petitioner.

It is also made clear that whatever measurement has been shown by the Junior Engineer being not disputed nor the statement made in paragraph nos. 6 & 7 have been denied by the respondents, they shall have no liberty now to make out a third case as with regard to completion of the work by the petitioner and, therefore, the Engineer-in-Chief will be under obligation to examine the matter objectively so that the petitioner's due amount withheld for last more than two years is at least paid to him within the aforesaid period of three months.

Thus whatever amount is found payable to the petitioner in course of such consideration that atleast must be paid to him within a period of three months from the date of

receipt/production of a copy of this order. If the petitioner, thereafter, is aggrieved on account of any deduction from his final bill and/or withholding any other amount, he shall have to enforce the terms of the contract by moving the Arbitral Tribunal for redressal of rest of his grievance.

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

(Mihir Kumar Jha, J)

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