

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 8355 of 2014

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Avinash Kumar Mohan, son of Shri Mahesh Kumar Mohan, resident of Mohalla Mallik Sarai, P.O. & P.S. Islampur, District Nalanda (Bihar) being the Director of Jai Om Engicon Private Limited having its registered office at Mallik Sarai, Nalanda (Bihar).

.... Petitioner

Versus

1. The State of Bihar through the Secretary, Rural Works Department, Govt. of Bihar, Patna.
2. The Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Engineer-in-Chief, Rural Works Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Rural Works Department, Govt. of Bihar, Patna.
5. The Special Works Officer, Rural Works Department, Govt. of Bihar, Patna.
6. The Superintending Engineer (Quality Control), Rural Works Department, Govt. of Bihar, Patna.
7. The Superintending Engineer, Work Circle-2, Patna present known as Work Circle, Bihar Sharif, Nalanda.
8. The Executive Engineer, Rural Works Department, Work Division, Hilsa.
9. The Assistant Engineer, Rural Works Department, Work Division, Hilsa.
10. The Junior Engineer, Rural Works Department, Work Division, Hilsa.
11. The Principal Secretary, Vigilance Department, Govt. of Bihar, Patna.
12. The Director General of Police, Vigilance Investigation Bureau, Bihar, Patna.
13. The Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna,
14. The Engineer-in-Chief, Vigilance Technical Examination Cell, Bihar, Patna.

.... Respondents

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Appearance:

For the Petitioner : In Person

For the Respondents: Mr. Arvind Kumar 2, SC 17

For the Intervenors : Mr. Anil Kumar Mukund, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 13-07-2016

Heard 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 towards excess work done by the petitioner on instructions of the Executive Engineer, Rural Works Department, Work Division No. 2, Hilsa in connection with notice inviting tender No. 08/2010-11, as well as for directing for an exhaustive and impartial enquiry by an independent agency for the irregularities committed in connection with the said tender.

3. It is submitted by the petitioner appearing in person, that pursuant to the newspaper advertisement inviting tenders for repairing work of Islampur Nishchalganj Road-Bishunpur More-Bishunpur-Ranipur-Mundipur More at an estimated cost of Rs. 9,87,745/- requiring completion by 20.03.2011, the petitioner successfully participated in the said tender and Agreement No. 80F2/10-11 came to be executed on 05.03.2011 between the



Executive Engineer, Rural Works Department, Work Division, Hilsa (Respondent No. 8) and the petitioner and the work order was issued on 07.03.2011. It is submitted that a substantial amount of work had progressed and payment of Rs. 1,37, 471/- was made to the petitioner on 26.03.2011 but, however, the petitioner was directed to stop work with an ulterior motive despite delivery of materials such as Emulsion and Bitumen had been made involving considerable investment by the petitioner. It is alleged that the petitioner was even got arrested on 31.03.2011 in a false cause of embezzlement in which he is said to have manipulated the amount appearing on the cheque issued by the Executive Engineer, DUDA, resulting in the petitioner being in custody for about two and half months. It is submitted that even the measurement book relating to the work was manipulated and contains various cuttings and overwritings and for which he wrote several representations but to no avail. Despite requests, proper investigation of the same was not made, rather the respondents proceeded to issue fresh advertisement at an exorbitant tender cost of Rs. 183.071 lakhs and the work was

finally allotted to another person who started the work in the month of July, 2012 and completed sometime in the year 2014. Pursuant to the petitioner's representation dated 19.08.2013 before the Chief Minister, a vigilance enquiry was conducted by the Technical Examination Cell which admittedly culminated in an enquiry report dated 21.10.2014. It is submitted that the vigilance enquiry report itself suffers from obvious errors of record. By way of illustration, an observation in para 5.4.1 has been made that during currency of an agreement, the work cannot be re-allotted. The petitioner's agreement is wrongly stated to have been terminated on 04.03.2012 as the agreement was in fact closed on 06.03.2013 (Annexure-17), whereas the work had already been re-allotted prior thereto in terms of an Agreement dated 14.12.2012 in favour of M/s Sandhya Samrat Company Pvt.Ltd., Hilsa. The *mala fide* action of the respondents is thus writ large on the face of it as without terminating the petitioner's agreement, the work has been re-allotted to another person at an exorbitantly escalated cost over what had originally been contemplated, the completion period of which was also

extended over a period of two years as against two weeks within which the petitioner was required to complete the work. It is submitted that even a perusal of the measurement book discloses obvious overwritings and manipulation, more particularly by insertion of decimal points in the middle of numeric figures used as a device to reduce the measurement figures to a fraction of their original value. It is submitted that the respondents have acted mala fide and have connived to deprive the petitioner of his legitimate dues for the work done such as the following :-

- (i) Regarding 428.4 cu.m. for construction of embankment involving cutting and excavations for roadway in soil, the petitioner had carried out excess work of 2022 cu.m., thus aggregating to 2450.4 cu.m., but, however, the respondents have admitted the work only to the extent of 428.3 cu.m. in terms of the vigilance enquiry report, though the letter of the Assistant Engineer dated 22.03.2011 duly acknowledged the excess earth work and rolling to the extent of 2022 cu.m. over and above the agreement. Total work of 2450.3 cu.m. therefore stands admitted, but payment has been made only in

respect of 428.3 cu.m.

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- ii) Regarding 84.375 cu.m. of laying, spreading and compacting stone aggregate Grading 2, the petitioner claims to have been completed 537.175 cu.m., but the payment has been made only with respect to 81.815 cu.m.
 - (iii) Regarding 168.75 cu.m. of laying, spreading and compacting stone aggregate Grading 3 it is claimed that such work was done in excess amounting to 325.293 cu.m. upto 26.03.2011, but the same was rendered unverifiable by reason of work done over it by the subsequent contractor pursuant to fresh tender and hence, no payment for the same has been made.

4. It is submitted that there is clear indication of the work having been done by the petitioner as evident from letter No. 466 dated 24.03.2011 of the Executive Engineer (Annexure-20).

5. Learned counsel for the Respondents on the other hand, submits that the writ petition ought not to be entertained as the entire claim of the petitioner is wholly false and the allegations raised by the petitioner against the respondents are wholly

misconceived. At the outset, it is submitted that the question of taking work from the petitioner in excess of the agreement cannot and does not arise, especially in view of the long standing Resolution No.948 Anu dated 16.07.1986, according to para 8.1.2 whereof no official is authorized to incur expenditure in excess of the estimate for repair work and the petitioner is not a naive person to have been enticed into working far in excess of the agreement at the instance of the Executive Engineer as claimed. The site inspection made on 25.12.2012 by the Department culminated in the inspection report dated 31.12.2012 according to which the claims of the petitioner was found to be unverifiable and recommendation was made terminating the agreement and for forfeiture of the petitioner's security deposit etc. Pursuant to the multiple representations filed by the petitioner, the matter came to be investigated in depth by the Technical Cell of the Vigilance Department and the consequent Vigilance Enquiry Report dated 21.10.2014 is self-speaking. It has been opined in the said report that the petitioner did not complete the work up to 20.03.2011, being the stipulated time for completion and even

thereafter he did not carry out any work for more than a year up to 29.03.2012 and instead kept leveling accusations against the concerned Engineers. It has, therefore, been opined that the petitioner has acted in retaliation as the respondents have not permitted the petitioner to work which was not completed even after inordinate delay. The past conduct of the petitioner has also been referred to, when the petitioner is alleged to have manipulated an amount of Rs. 1,09,351 into amount of Rs. 9,09,351/- on Cheque No. 250446 dated 30.12.2010 and encashed the same. As regards excess work claimed to have been done by the petitioner, he could not produce the Site Order Book despite being required to do so and merely produced one sheet of paper showing the amount of work done in support of his claim. No concrete materials were brought by the petitioner to establish that work was done in excess of the agreement and except some entries on which the petitioner relies, there is nothing on the record to establish the petitioner's claim which have therefore, been disbelieved in the Vigilance Enquiry Report.



6. On behalf of the three intervenors being Government officials against whom departmental proceedings had been initiated in respect of the allegations raised by the writ petitioner, learned counsel Mr. Anil Kumar Mukund opposes the writ petition. At the very outset, he points out that the petitioner has not come to this Court with clean hands having suppressed the fact of having earlier approached this Court in CWJC No. 1812 of 2012 substantially for the similar relief for payment in connection with Agreement No. 80 F2/2010-11 which stood dismissed on 05.12.2012.

In any event, it is submitted that the claim of the writ petitioner with regard to the extra work done is contrary to the materials on record. He invites attention to the inspection report dated 20.03.2012 of the Flying Squad, according to which it could not be established that the extra work over and above the agreement was got done by the Engineers, more so as none of the officials was authorized for expenditure in excess of the estimate for repair works in view of circular dated 16.07.1986. Reference



is also invited to letter no. 628 dated 18.02.2013 issued by the Officer on Special Duty, Rural Works Department wherein it has been stated on the basis of the inspection report of the Superintending Engineer, Quality Management, Rural Works Department that the extra work claimed by the petitioner to the extent Rs. 16.00 lakhs as against the agreement of Rs. 9,90,794/- was not established. In paragraph 5.1.1 of the report of the vigilance enquiry dated 21.10.2014 as well, the claim of the petitioner of having done the extra work has been found to be unsubstantiated.

Learned counsel for the intervenors also submits that the track record of the petitioner has been none too impressive and does not generate much confidence in his claims. It has been recorded in the inspection report of the Flying Squad dated 20.03.2012 referred to above that the petitioner had indulged in manipulation by overwriting on the cheque for Rs. 1,09,351/- to read as “Rs. 9,09,351/-” and obtained payment on the basis of such fraudulent act for which an FIR had also been lodged

against him. This Court in its order dated 05.12.2012 passed in CWJC No. 1812 of 2012 also took note of the fact of such interpolation and excess withdrawal of Rs. 8,00,000/-, in the backdrop of which this Court had declined to interfere in that matter.

That apart, learned counsel for the intervenors has further tried to demonstrate the highly litigious nature and conduct of the petitioner who has filed numerous complaints against various officials at every stage. Reference in this regard is made to Complaint Case No.16 of 2010 before the ACJM II, Hilsa against the intervenor-petitioner no.2 who was acquitted by judgment dated 05.04.2016 (Annexure-4/A); Complaint Case No. 814(C) of 2011 before the ACJM, Hilsa against numerous officials, further proceedings of which came to be stayed by this Court by order dated 18.03.2016 in Cr. Misc. No. 24334 of 2013 (Annexure-A/3); the petitioner's representation dated 07.02.2012 before the Minister, Rural Works Department (Annexure-7)); and a complaint dated 24.08.2012 before the Secretary, Rural Works

Department alleging forgery against several persons including the three intervenor-petitioners (Annexure-10). In paragraph 2 and 7 of the supplementary affidavit filed on 31.03.2016 by the petitioner before this Court, allegations have also been raised against the Vigilance Department for having manipulated the measurement book to favour the Executive Engineer of the Department. This was followed-up by a letter dated 17.03.2016 addressed to the Principal Secretary, Vigilance Department (Annexure-29). In his further supplementary affidavit filed on 20.04.2016, aspersions have been cast also on State Counsel for having colluded with the intervenor-petitioners in order to mislead this Court. Finally, in paragraph 5(b) thereof, he has stated that a dubious role played by his own counsel who was replaced, and has gone on to express dissatisfaction with his newly appointed counsel for not having placed the materials properly and whose role was thus also doubtful.

7. Having heard the parties at length and on detailed consideration of the voluminous materials on record, it is evident



that the claim for payment of extra work done by the petitioner involves seriously disputed questions of facts which cannot be adjudicated by this Court in its extraordinary writ jurisdiction. The various contentions raised by the petitioner to support his claim of having performed the extra work over and above the agreement stand controverted by the respondents on the basis of various inspection reports. To establish the truth and veracity of the petitioner's claim or otherwise would therefore require a detailed evaluation of facts, materials and evidences on each aspect of the matter as the respondents have raised serious opposition to the claims of the petitioner. The admissibility of the petitioner's claims would depend on the result of a proper adjudication of the rival stands of the parties on the various disputed questions of facts, such as with regard to the allegation of manipulation in the measurement book, and genuineness of the documents relied on by the petitioner to support his claim for the excess work done.

8. The writ petition accordingly stands dismissed. The

petitioner shall however be at liberty to raise his grievances before any appropriate forum as may be available to him in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the matter.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
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