

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2484 of 2013

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Saroj Narayan Prasad Singh S/o Late Shiv Nandan Prasad Singh R/o
Mohalla-Babibpura, P.S.-Sohsarai, Distt-Nalanda

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Public Works Department, Government Of Bihar, Patna
3. The District Magistrate, Nalanda
4. The Chief Engineer-1, Vishweshwaraiya Bhawan, Govt. of Bihar, Patna
5. The Superintending Engineer, Rural Works Department Work Circle-2, Harding Road, Irrigation Barack, Patna
6. The Executive Engineer, Rural Works Department Work Division-2, Bihar Sharif, Nalanda at Present Rural Works Department, Works Division, Harnaut
7. The Executive Engineer, Harnaut Development Special Division, Bihar Sharif, Nalanda
8. The Assistant Engineer, Works Division-2, Bihar Sharif, Nalanda
9. The Junior Engineer, Rural Works Department, Works Division-2, Bihar Sharif, Nalanda

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Kumar Mritunjay Narain, Advocate

For the Respondent/s : Mr. Anjani Kumar AAG-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 07-04-2016 Heard Mr. Awadhesh Kumar Sinha, learned counsel
for the petitioner and Mr. Anjani Kumar, AAG-6 for the State.

The petitioner is aggrieved by the letter of the
Executive Engineer, Rural Works Department, Work Division,
Harnaut, District-Nalanda bearing Memo No. 876 dated
26.7.2012, addressed to the District Magistrate, Nalanda whereby
the claim of the petitioner has not been found admissible by the

Executive Engineer.

The petitioner stakes claim for payment of the bills submitted for the work done in the construction of a High Level Bridge over Sakri river near Ghosrama in the district of Nalanda.

The contest reached this Court once earlier in CWJC No. 8130 of 2009 and the grievance so raised by the petitioner against non-payment of his dues was disposed of by a coordinate Bench vide order placed at Annexure-1 with the following directions:

“In the circumstances, this writ application is disposed of with a direction to the respondents to finally examine the bills of the petitioner, after getting any report of measurement etc., as they may require, and settle it finally within three months from the date of receipt/production of a copy of this order and pay due amount of the petitioner positively within that very period. In the process, they will be at liberty to controvert any claim of the petitioner if they do not find it correct and communication in this regard shall be sent to the petitioner immediately. In case, bills of the petitioner are not finally settled and admitted amount is not paid or any communication with regard to rejection of the bill or any amount thereof is not sent to the petitioner within the said three months, respondents shall be liable to pay interest at the rate of 12% per annum on the due amount of the petitioner

from the next day of expiry of the period. It is made clear that in the process, paucity of fund shall not be taken as a ground by the respondents for not paying the due amount of the petitioner.”

It is in the light of the order passed by this Court that a Committee was constituted to examine the claim of the petitioner vide office order bearing letter no. 572 dated 25.9.2012 placed at Annexure-3 to the writ petition, issued under the signature of the Executive Engineer, Rural Works Department, Works Division, Harnaut, Nalanda. Upon constitution of the Committee, the Executive Engineer vide office order dated 03.10.2012 placed at Annexure-4 directed the members of the Committee to be present for carrying out the measurement and which order is reiterated in the letter dated 12.10.2012 present at Annexure-5. It seems a measurement was carried out but the report was yet to be submitted by the Committee to the District Magistrate, Nalanda for needful action. Interestingly even before any report could be submitted that in the meantime the Executive Engineer vide his letter dated 17.11.2012 recommended a payment of Rs. 79,80,606/- to the petitioner for the work discharged vide his letter present at Annexure-6. It is on receipt of such recommendation that the District Magistrate, Nalanda vide his letter dated



23.11.2012 present at Annexure-A to the counter affidavit reminded the Executive Engineer of the direction of this Court present at Annexure-1, the obligation cast upon him thereunder and to submit his report. It is on receipt of the advisory issued by the District Magistrate as contained in his letter dated 23.11.2012 present at Annexure-A that the Executive Engineer, Rural Works Department, Works Division, Harnaut vide his letter bearing memo no. 876 dated 26.11.2012 submitted the report of the Committee so constituted vide Annexure-3 and which Committee rejected the claim of the petitioner on merits. Surprisingly, the report so produced by Mr. Anjani Kumar, learned AAG-6 along with the records of the case is entirely different from Annexure-7 for whereas Annexure-7 enclosed by the petitioner is in a letter form, the report present in the records produced, contains the signature of the Committee members. Apparently Annexure-7 to the writ petition stares on its genuineness as well as its veracity for it is not the correct reproduction of the Committees report.

Be that as it may, since the report of the Committee has been produced by Mr. Anjani Kumar learned AAG-6 along with records, let a copy thereof be handed over to Mr. Awadhesh Kumar Sinha appearing for the petitioner.

Now, whereas it is argued by Mr. Sinha appearing for



the petitioner that it is at dictates of the District Magistrate, Nalanda that the Executive Engineer has retracted from his original opinion which is based on facts and on the measurements so carried out, it is the argument of Mr. Anjani Kumar that Annexure-6 is a unilateral action of the Executive Engineer only to provide unjust gain to the petitioner. It is submitted that once the committee was constituted in the light of the order of this Court present at Annexure-1 and 3 respectively, then until such time that the Committee prepared its report, it did not lie within the jurisdiction of the Executive Engineer to make any recommendation for payment. According to Mr. Kumar the error committed by the Executive Engineer while recommending vide Annexure-6 stands modified vide the report submitted under the signature of the Committee members which includes the Executive Engineer as well and although Annexure-7 purportedly reflects the same fact situation but its genuineness is doubtful for it does not contain the signature of the other Committee members.

Mr. Sinha learned, learned counsel for the petitioner contests the finding of the committee and submits that there is definite work discharged by the petitioner and which is supported by measurement reports for which he is entitled to payment of the admissible amount.



Having heard learned counsel for the parties and considering the disputed nature of contest in backdrop of the order passed by this Court and the report of the committee so produced by Mr. Anjani Kumar, I deem it fit and proper to remit this matter for consideration by the District Magistrate, Nalanda who shall give an opportunity to the petitioner to contest the report of the Committee as well as to establish his claim with supportive documents including measurement report which according to him confirms work that has been carried out by him.

It goes without saying that in case the claim set up by the petitioner is upheld then the admissible payments therefor may be made to him. However, in case the same is not worthy of being upheld then the claim may be rejected by a speaking order but only after opportunity of hearing to the petitioner. In either event the claim be disposed of within three months from the date of receipt / production of a copy of the order.

This application is disposed of with the directions aforementioned.

(Jyoti Saran, J)

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