

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.174 of 2013

IN

Civil Writ Jurisdiction Case No. 20594 of 2010

- =====
1. The State of Bihar.
 2. The Commissioner, Munger Division, Munger.
 3. The Collector, District- Sheikhpura.
 4. The Deputy Development Commissioner, District- Sheikhpura.
 5. The Superintending Engineer, Irrigation Circle No.2, Jamui, District- Jamui.
 6. The Executive Engineer, Water Ways Division, Department of Irrigation, District- Sheikhpura.

....Respondents Petitioner/s

Versus

Nageshwar Prasad Yadav, S/o Late Triloki Prasad Rai Yadav, resident of Giddha,
P.S.- Kaindi, District- Lakhisarai.

.... Petitioner Respondent/s

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Appearance :

For the Petitioner-State : Mr. P.K. Verma, AAG-3

Mr. S.K. Sharma, AC to AAG-5

For the Respondent/s : Mr. Mahendra Prasad Bhartee, Advocate

Ms. Manisha Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-08-2016

Heard the parties.

This review application has been filed for review of a judgment and order dated 3.3.2011 passed in CWJC No.20594 of 2010 by Hon'ble Mr. Justice S.N. Hussain (as his Lordship then was). The order under review has been brought on record vide Annexure-4 to the supplementary affidavit and whereby the writ petition was disposed of in following terms:

“6. In the said circumstances, this writ petition is disposed of with a direction to the respondents, especially the Collector of Sheikhpura (respondent no.3) to ensure payment of Rs.23,96,653.00 within one month from the date of receipt/production of a copy of this order. Let it be noted that this is not full and final payment with regard to claim of the petitioner and if more amount is

payable to the petitioner, he will be entitled to raise his claim before the appropriate forum.”

A bare perusal of the order passed by the Bench would manifest that despite several adjournments being granted, no instruction was received from the District Magistrate, Sheikhpura. The Court thus having no other option disposed of the matter on the basis of uncontroverted materials on record. The respondent-State and its authorities who are the review petitioners herein, did not take steps for ensuring compliance which led to filing of contempt application giving rise to MJC No.1760 of 2012. It is while during the pendency of the contempt matter that the order was complied and the payment was made to the writ petitioner albeit on an undertaking that in case the order in the writ petition would go against the writ petitioner he would repay the total amount together with interest. The contempt application was accordingly disposed of on 26.7.2013 vide order placed at Annexure-6 to the supplementary affidavit.

It is now the case of the review petitioners that although only 80% of the work had been executed by the writ petitioner but it is on account of the fact that no counter affidavit was filed in the writ proceedings, that it led to the direction for payment on the basis of the assertion made by the writ petitioner that 90% of the work had been completed by him. The Writ Court in calculation of the amount payable on the basis of the assertion made by the writ petitioner of having completed 90% of the contract work which was valued at Rs.72,61,142/-



found him entitled to a payment of Rs.65,35,027/-. Since part payment had already been made in favour of the writ petitioner hence the Writ Court directed for payment of Rs.23,96,653/- which has also been paid to the petitioner in compliance of the order of the Court but in view of the measurement recorded and the bill submitted the writ petitioner is actually entitled to payment to the extent of 80% only and thus excess payment has been made to the writ petitioner which is a loss of Government revenue.

Learned counsel for the review petitioners has relied upon a judgment of this Court reported in **2000 (1) PLJR 443 (The State of Bihar vs. M/s Hardeo Singh)** to submit that the case is within the parameter of Order 47, rule-1 of the Code of Civil Procedure and requires a review. It is the argument of learned counsel that since the correct facts could not be placed on record that the writ petition was disposed of but the order in effect grants relief to the writ petitioner to which he is not rightfully entitled. Learned counsel submits that the power of review can also be exercised to avoid miscarriage of justice and in the circumstances it is a fit case for review. Learned counsel in support of his submission has relied upon the following judgments:

- (1) **2000 (1) PLJR 443 (The State of Bihar vs. M/s Hardeo Singh);**
- (2) **(2012) 7 SCC 2000 (Haryana State Industrial Development Corporation Ltd. Vs. Mawasi).**

The argument of learned counsel appearing for the review

petitioners is contested by learned counsel appearing for the opposite party i.e. the writ petitioner.

I have heard learned counsel for the parties and I have perused the records.

It is undisputed that since no counter affidavit was filed despite several adjournments that the Writ Court had proceeded to adjudicate on the basis of materials on record. It is the argument of Mr. P.K. Verma, learned Additional Advocate General No.3 that the order does not take into consideration the factual position as regarding the actual work done by the writ petitioner and the actual payment to which he was found to be entitled rather it is simply based on the assertion made by the writ petitioner. In my opinion, in the circumstances taken note of by the Writ Court there was no other option available to the Writ Court than to dispose of the writ petition on the basis of the uncontroverted material available on record. It is also not a case where facts were not to the knowledge of the review petitioners rather it is a case where the respondents i.e. the review petitioners were at leisure in filing the counter affidavit. The lapse is entirely attributable to the respondent-review petitioners and which has resulted in the order impugned.

Law on the scope of review is well settled and unless there is error apparent on the face of record or there is material which despite due diligence of a party seeking review, was not within his knowledge and thus could not be placed at the relevant time or for matters connected

therewith, a party cannot invoke the review jurisdiction as a matter of course and merely because the review petitioners could not place the proper facts on record at the relevant time though the facts were much available at the time, is no ground for a review. In so far as the present case is concerned, except for laches attributed to the review petitioners, no prerequisite exists warranting a review. In my opinion the issue that is sought to be raised by Mr. Verma, learned AAG-3 at the present stage, in fact is an endeavour to persuade this Court for a re-hearing of the writ petition which is beyond the scope of a review jurisdiction.

The argument of Mr. Verma that the direction issued by the Writ Court is not in tune with the materials on record, is an aspect which if discussed or commented upon, would amount to sitting in appeal over the order under review. May be the issue raised is based on sound reasons for questioning the order, but the forum for such purpose would be otherwise and not in a review jurisdiction and the review petitioners shall be at liberty to take recourse to the same.

The review application is accordingly disposed of.

(Jyoti Saran, J)

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AFR/NAFR	AFR
CAV DATE	NA
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