

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8085 of 2016

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M/s Balajee Enterprises, Vachaspati Nagar, Mahendru, Patna through its Proprietor Mr. Om Prakash Pandey, son of Late Lakshman Pandey, resident of Vahchaspatti Nagar, P.O. Mahendru, P.S. Bahadurpur, District- Patna 800006

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Department of Health, Government of Bihar, Patna
3. State Health Society, Bihar Pariwar Kalyan Bhawan, Sheikhpura, Patna 14, through its Executive Director
4. The Executive Director, State Health Society, Bihar Pariwar Kalyan Bhawan, Sheikhpura, Patna 14, Bihar, Patna
5. Development Commission, Government of Bihar, Patna
6. The Civil Surgeon-cum-Chief Medical Officer, Patna
7. Rajendra Nagar Super Speciality Ophthalmic Centre Patna through the Civil Surgeon cum Chief Medical Officer, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Siddharth Shankar Pandey, Advocate
Mr. Sanjay Kumar, Advocate

For the State : Mr. Kumar Manish, SC-21
Mr. Alok Kumar, A.C. to SC-21

For respondent nos. 3 &4: Mr. K.K. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 16-05-2016 Heard the parties.

The petitioner under a contract supplied medical equipments to the Rajendra Nagar Hospital at Patna, a copy of such agreement dated 11.2.2011 is present at Annexure-7. The petitioner raised his bills for Rs. 1,32,04,500/- vide Annexure-16 series which is dated 16.7.2011 and was paid vide demand drafts



present at Annexure-12 series which also encloses the receipt of the petitioner and is to the tune of Rs. 1, 26, 96,634/- payable to the petitioner and a sum of Rs. 5,07, 866/- payable to the Sales Tax Department, the sum total of which comes to Rs. 1,32,04,500/-. As according to the petitioner the payment was delayed that he invoked the penalty clause 13.06 of the agreement present at Annexure-7 which vested a right in the petitioner to claim penalty on delayed payment of the bills @ 0.5 per cent per day to a maximum of 15 per cent of the invoice amount. The petitioner charging the Civil Surgeon-cum-Chief Medical Officer, Patna on delayed payment, has raised a demand of Rs. 19,80,675/- stated to be the penalty payable by the Civil Surgeon under Clause 13.06 of the agreement. The petitioner did not receive any response and thus the demand was renewed vide Annexure-19 dated 19.3.2014 and again on 15.1.2016. In absence of response by the Civil Surgeon cum Chief Medical Officer, Patna that he is before this Court.

As I have noted above, Clause 13.06 enabled the petitioner to claim penalty on delayed payment of his bills which has been quantified @ 0.5 per cent from the date of submission of the bills until the date of payment to a maximum of 15 per cent of the invoice amount. The invoices raised by the petitioner is to the

tune of Rs. 1,32,04,500/- as is manifest from Annexure-16 series and which amount has also been paid to the petitioner albeit with some delay and for which he has invoked the penalty clause. Whether or not the petitioner would be entitled to penalty amount is a matter left best at the discretion of the Civil Surgeon who has not chosen to respond to the request made by the petitioner.

In the circumstances, I deem it fit and proper to direct the Civil Surgeon-cum-Chief Medical Officer, Patna to consider the claim so raised by the petitioner, which is present at Annexure-18 and 19 respectively and dispose of the same by speaking order within three months from the date of receipt / production of a copy of this order.

This writ petition is disposed of accordingly.

(Jyoti Saran, J)

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