

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11502 of 2014

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M/s Agastya Engineers Pvt. Ltd. through its Director, Manish Singh Address L-40,
Road No. 20, Sri Krishna Nagar, District Patna.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
2. The Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Additional Secretary, Rural Works Department, Govt. of Bihar, Patna.
4. The Executive Engineer, Rural Works Department, Work Division, Danapur, Patna.
5. The Executive Engineer, Rural Works Department, Work Division-2, Patna.
6. The Certificate Officer, Patna.

.... Respondents

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Appearance:

For the Petitioner : Mr. Vikas Kumar, Advocate

For the Respondents: Mr. MANI KANT MISHRA, GP25

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18.03.2016

Heard learned counsel for the petitioner and learned counsel for
the Respondents.

2. The present writ petition has been filed for quashing the notice dated 10.06.2014 issued by the Certificate Officer, Patna whereby and whereunder the petitioner has been directed to deposit a sum of Rs. 1,40,35,166/-.

3. Learned counsel for the petitioner makes a short submission to the effect that there is no agreement between the parties for applying the provisions of the Bihar & Orissa Public Demands Recovery Act (for short "the Act") for recovery of any amount thereunder from the petitioner. It is submitted that the agreement dated 30.01.2009 (Annexure-2) entered into between the parties is self contained and complete in itself, which does not

disclose that the petitioner has agreed to submit to the provisions of the Act for recovery of any dues by the respondents.

4. Learned counsel for the Respondents on the other hand submits that Clause 53 of the Standard Bidding Document ("SBD") issued by the Government of Bihar in connection with procurement of civil works costing more than Rs. 2.00 crores for all Works Department categorically provides that "any amount found recoverable from the Contractor shall be recovered as public demand under the Bihar Public Demand Act without prejudice to any other mode of recovery." It is further submitted that by dint of Article 8-A of the Schedule to the Act, "any outstanding loans and advances payable to the State Government or to a Department or official of the State Government by anybody whatsoever" qualifies as a public demand recoverable under the provisions of the Act. In the instant case, it is submitted that since final payment has not been made to the petitioner, the amount paid against the petitioner's bill from time to time must be treated in the nature of an advance in view of Para 4(3) read with Para 252 of the Bihar Public Works Accounts Code and thus covered under Article 8-A of the Schedule to the Act referred to above.

5. It has also been submitted that the writ petition ought not to be maintained in view of the petitioner having suppressed material facts with regard to serious irregularities said to have been committed in the matter of the work done by the petitioner for which an enquiry was conducted and the anomalies were brought to the notice of the petitioner by letter No. 99 dated 13.01.2010 by the Executive Engineer, Rural Works Division 2, Patna with a request to rectify the defective works and construct

the road afresh, failing which recovery would be made.

6. Having heard the parties at length and on a careful consideration of the materials on record, this Court finds merit in the writ petition. It is not in dispute that the agreement dated 30.01.2009 (Annexure-2) does not contemplate applying the provisions of the Act for recovery of the dues from the petitioner. The said agreement is a detailed document containing all the terms and conditions agreed to between the parties including certain general conditions of contract as contained in Section 4 thereof. The agreement however, does not adopt the SBD, nor has learned counsel for the respondents been able to demonstrate from the counter affidavits filed on behalf of the respondents that the SBD was ever contemplated to form a mandatory part of the agreement between the parties.

7. The submission of the respondents on the basis of paragraph 8-A of the Schedule to the Act to the effect that pending final measurement and payment to the petitioner, all payments were in the nature of advance to the petitioner and thus recoverable as a public demand, is equally untenable. As evident from para 1 of the aforesaid Code itself, the Code is intended primarily for internal guidance of the Public Work Officers. There is nothing in the agreement between the parties to show that the provisions of the Code were adopted in order to bind the petitioner, being a private and independent party to the agreement. Besides, Clause 38.1 of the agreement specifically provides for the value of works executed to be determined based on detailed measurement certified by the Engineer and only thereafter the bills could be paid to the petitioner. If such payments are based on the final

measurements from time to time, the question of treating the same as advance would not even otherwise arise.

8. In the above view of the matter, the impugned notice dated 10.06.2014 issued by the Certificate Officer, Patna (Annexure-1) is hereby quashed and the writ petition is allowed.

(Vikash Jain, J)

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