

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 77 of 2015**

- S.P. Singh S/o Sohan Lal Singh Aged About 64 Years R/o Mother Teresa Ward, Jagdalpur, PS Bodhghat, Distt. Bastar C.G.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Chief Secretary, Mahanadi Bhawan, New Mantralaya, Ps Naya Raipur C.G.
2. State Of Chhattisgarh Through Secretary, Water Resource Department, Mahanadi Bhawan, New Mantralay, Ps Naya Raipur C.G.
3. The Executive Engineer T.D. P.P. Water Resource Department, Jagdalpur, Ps Kotwali Distt. Jagdalpur (Bastar) C.G.
4. U.S. Rajpoot Executive Engineer, T.D.P.P. Water Resource Department, Jagdalpur, Ps Kotwali Distt. Jagdalpur (Bastar) C.G.

---- Respondent

For Petitioner : Shri A.K. Mishra, Advocate.
 For Respondent/State : Shri R.K. Gupta, Deputy Advocate General.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****Passed on :5/04/2016**

1. Prayer in this writ petition under Article 226 of the Constitution of India is for issuance of direction to respondent No.3, Executive Engineer, TDPP, Water Resource Department, Jagdalpur to release the entire undisputed amount illegally detained by respondents 3 & 4 along with suitable compensation and interest on the entire amount from the date of completion of work. The petitioner has also prayed for punishing

respondent No.4 for his malafide action and respondent No.1 for non-compliance of the order passed by this Court in WPC No.1696/2014.

2. The petitioner is a registered A-4 Class contractor in the Water Resource Department. In the year 2011-12 he was awarded 36 piece work of Left Bank & Right Bank protection work near old bridge Indrawati river at Jagdalpur and construction of retaining wall, CC pitching work and 8th down stream & upstream of Anicut for different lengths. Each piece work valued at Rs.2.5 lakhs. The petitioner claims to have completed the entire work within the prescribed period and requested for releasing the entire bills, however, when after the lapse of 15 months, respondent No.3 issued a recovery order on 2.4.2013 alleging excess payment made to the petitioner, the petitioner had to prefer WPC No.512/2013. By order dated 17.4.2013, this Court quashed the recovery notice as it was issued without affording opportunity of hearing. Liberty was reserved in favour of the respondents to proceed in the matter in accordance with law after giving opportunity of hearing to the petitioner. A show cause notice was issued to the petitioner on 6.8.2013 mentioning that there was an audit objection raised by the Accountant General pointing out excess payment. Show cause notice also mentions that reduced SORs were made effective from 1.4.2011. Not being satisfied with the reply submitted by the petitioner, respondent No.3 issued a fresh recovery order on 3.9.2014 which was again assailed before this Court in WPC No.1696/2014, which was allowed on 14.11.2014.

3. Armed with the order passed by the Division Bench, the petitioner

again submitted a representation on 29.11.2014 annexing the order dated 14.11.2014 in WPC No.1696/2014 to demand the balance undisputed amount which was withheld by respondent No.3 on the pretext of recovery notice.

4. It is put forth by learned counsel for the petitioner that respondents 3 and 4 have raised unnecessary and unwanted dispute to harm the petitioner by wrongly interpreting the audit report for not making payment of the amount to the petitioner. According to him, the petitioner has completed the work within time which is manifest from the fact that the department has never issued any notice nor any order granting extension of time for completion of work neither any proceedings were ever initiated for not completing the work. Therefore, there being absolutely no dispute in respect of completion of work, the respondents have acted in an arbitrary and capricious manner which needs to be corrected by interfering in the matter under Article 226 of the Constitution of India.
5. Per contra, learned State Counsel would submit that the petitioner completed 21 piece work within the actual period of completion i.e. 13.6.2011 for which measurements were made and payment of Rs.44,26,690/- has been released. Remaining 15 piece works were not completed within time for which applications for extension were made on 27.5.2011. Prior to this, on 23.3.2011, the Engineer in Chief reduced the rate of work mentioned in different SORs with effect from 1.4.2011 to which the petitioner agreed. The petitioner completed 10 out of 15 remaining piece work on 9.2.2012 and as per the

measurement, payment of Rs.14,56,000/- has been made to him as per the reduced SORs, to which he consented on 30.5.2011. Since he did not complete the remaining 5 piece work, no payment has been made to the petitioner towards 5 piece work.

6. Pursuant to the directions issued by this Court, the respondents have submitted measurement book Nos.627, 628 and 756 relating to the work, however, the measurement book does not contain any entry concerning agreement Nos.108 to 112 for which the petitioner has not been paid any amount.
7. WPC No.1696/2014 was preferred for setting aside the order dated 3.9.2013 and 18.7.2014 by which recovery was directed to be made from the petitioner as also for direction to the respondents not to add or insert any new terms and conditions in the agreement. While deciding WPC No.1696/2014, this Court held in paragraphs 5, 6 & 7 thus:-

“5. We have considered the submissions on behalf of the parties. The show cause notice issued to the petitioner on 6.8.2013 is based on the audit objection by the Accountant General only. It does not contain any expression of opinion by the authorities of their satisfaction for reasons explained why they were of the opinion that excess payments had been made to the petitioner under the contract. The decision for recovery has therefore not been taken by independent application of mind but at the behest of the Accountant General. It clearly amounts to abdication of power in decision making process acting at the dictates of another, vitiating the decision for recovery. The objection of the Accountant General is quoted at paragraph 7 of the reply filed by the State, which reads as under:-

“It was observed that the work awarded to eight contractors splitting into 290 piece works. Instead of having clear departmental instructions to award one

piece work at a time to single contractor, 290 piece orders were issued to eight contractor in multiples on a single day on 30/03/2011 i.e. on the day on which the sanctions had been accorded by Superintending Engineer, Indrawati Circle, Jagdalpur.”

A bare reading of the same makes it apparent that the only objection was with regard to award of multiple contracts in a day. No objection had been raised with regard to quantum of payment or the rate of payment. The show cause notice dated 6.8.2013 was itself therefore based on non-est ground.

6. The show cause notice is based on the alleged excess payment having caused revenue loss to the government. The Executive Engineer concerned was proceeded departmentally after suspension. The charges against him were dropped and the suspension revoked as revealed from order dated 22.5.2014 supported by pleadings in paragraph 8.13 of the writ petition. While dealing with the paragraph the counter affidavit stops at suspension only and does not answer or deal with the subsequent development even though the deponent of the counter affidavit was well aware of the same more particularly from the pleadings of the writ petition.

7. The present litigation, in our opinion was clearly avoidable in terms of Chhattisgarh Government Litigation Policy. The policy states that bad cases need not be persevered needlessly. The Government must behave as a responsible litigant. It must not resort to litigation for the sake of litigation or raise false and frivolous and technical pleas. Nothing should be suppressed from the Court and the Government must be cease to be a compulsive litigant. The practice of “let the Court decide” must be shelved. The litigation policy appears to have been placed in the archives. The officers in whom the Government has placed trust to behave responsibly while exercising their powers cannot be permitted to indulge in luxury litigation at the expense of the tax payer. Undoubtedly the Government has a right to protect its interests and contest litigation in appropriate cases. But that does not empower the authorities to act arbitrarily. One major reason for pendency in the Courts is litigation on account of Governmental actions. The State Litigation Policy was therefore conceived. The State Government for prevention and better control of genuine litigation shall consider creation of a grievance redressal

cell/system under the State Litigation Policy, at each departmental level headed by Senior Officers where a litigant can first espouse his grievance so that litigation is conducted responsibly.”

8. The Division Bench eventually quashed the demand notices dated 3.9.2013 and 18.7.2014 which were issued against the petitioner.
9. It appears, recovery of Rs.5,38,145/- was proposed to be made against the petitioner out of the total amount of Rs.44,26,690/- for 21 piece work as is mentioned in the Executive Engineer's order dated 2.4.2013 (Annexure-P/6 in WPC No.1696/2014). The recovery was made on the ground that reduced SOR at 10% and 15% less than the prevalent rate was made effective from 1.4.2011, yet payment was made at the contractual rate after 1.4.2011. However, the Division Bench did not accept the plea of reduction of rate in the SOR and quashed the recovery notice. Therefore, same plea raised in the present writ petition by referring to the letter written by the petitioner on 30.5.2011 vide Annexure-R/5 and on 27.5.2011 vide Annexure-R/3 would not render any assistance to the respondents. The respondents have calculated the amount at the reduced rate on the basis of amended SOR which was made effective from 1.4.2011. however, in view of the Division Bench order, the same could not have been done as the same method of calculation while directing recovery of Rs.5,38,145/- has been quashed by the Division Bench of this Court. Thus for the said 10 piece work the petitioner is entitled for payment at the contractual rate and not as per the amended SOR.
10. The petitioner has prayed for payment of the entire 36 piece work. As

stated above, he has already received payments for 21 piece work and for the next 10 piece work, he has been paid at the reduced rate which has been declared illegal in the previous paragraphs.

11. This leaves this Court to consider payment in respect of remaining 5 piece work.

12. It is the stand of the respondents that the petitioner has not done any work for agreement Nos.108 to 112, therefore, no payment has been made for these agreements. On 11.1.2016, this Court had directed the State Counsel to produce the measurement book of all 36 piece works. Learned State Counsel has produced the measurement books stating that it contains measurement books of all 36 piece works. However, on perusal, it is found that measurement books of 5 piece works pertaining to agreement Nos.108 to 112 are not available. In the considered opinion of this Court, respondents 3 & 4 are guilty of concealing and withholding material information from this Court by not producing the measurement books. Although dispute is going on for the last about 3 years, respondents 3 & 4 never issued any show cause notice to the petitioner for his failure to initiate the work for these agreements. The respondents have not bothered to initiate action for terminating the contract or for recovery of the security deposit or earnest money deposit for the said agreements. Despite two earlier writ petitions, the respondents have not averred in any of the pleadings or affidavits that the petitioner has not at all done any work for these agreements. Thus the respondents have raised an altogether new stand with respect to these 5 agreements in this writ

petition. It appears, the respondents are bent upon to withhold the petitioner's payment on one pretext or the other, however, when the efforts failed in the earlier writ petitions, a dispute has been manufactured for denial of payment to the petitioner. In the absence of any measurement book for the said work, the stand that no work was carried out is only a lip service rather than supported with any documents available in the department.

13. Considering the nature of the work which involves left Bank & Right Bank protection work near old bridge Indrawati river at Jagdalpur, construction of retaining wall, CC pitching work and 8th down stream & upstream of Anicut for different lengths, the same is incapable of being measured after 4 rainy seasons.

14. It is also the stand of the petitioner that he has completed the entire work and the measurement allegedly carried out by the respondents in the month of July, 2012 was not at all possible because during that period of the year, Indrawati river, being a big river, is fully inundated. In the considered opinion of this Court, non production of the measurement books or non issuance of any notice or initiation of any action by the department for these 5 piece works would compel this Court to draw adverse inference against the respondents to hold that the stand taken by the petitioner that he has completed the entire work appears to be true.

15. Considering the history of previous litigation and the observations made by this Court against the State of it being involved in an avoidable litigation and further that the State should not resort to

litigation for the sake of litigation or raise false, frivolous and technical pleas and nothing should be suppressed from the Court, this Court would allow the Writ Petition with respect to remaining 5 piece work.

16. Accordingly, the respondents are directed to make payment of the entire amount to the petitioner at the contractual rate for the remaining 5 piece work. Similarly, the petitioner be paid the entire amount at the contractual rate for 10 piece work for which he has been paid the amount as per the amended SOR and not as per the contractual rate.

17. The Writ Petition stands allowed in the above stated terms.

Sd/-
Judge
(Prashant Kumar Mishra)

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