

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9946 of 2017

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1. Hari Shankar Prasad, S/o Subansh Prasad, resident of Village- Gram Gadaichak,
Post Office- Mahdaiya, P.S.- Meenapur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Principal, Building Construction Dept., Bihar, Patna.
2. The Bihar State Building Construction Corporation Ltd., Patna.
3. The General Manager, Bihar State Building Constructuion Corporation Ltd., Bihar, Patna.
4. The Deputy General Manager, Bihar State Building Constructuion Corporation Ltd., Muzaffarpur.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10042 of 2017

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1. Harishankar Prasad, S/o Subansh Prasad, resident of Village- Gram Gadaichak,
Post Office- Mahdaiya, P.S.- Meenapur, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Building Construction Dept, Bihar, Patna.
2. The Bihar State Building Construction Corporation Ltd., Patna.
3. The General Manager, Bihar State Building Construction Corporation Ltd., Bihar, Patna.
4. The Deputy General Manager, Bihar State Building Construction Corporation Ltd., Muzaffarpur.

.... Respondent/s

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Appearance :

(In CWJC No.9946 of 2017)

For the Petitioner/s : Mr. Pradhan Murli Manohar,
Mr. Raju Kumar.

For the State : Mr. Chittarnjan Singh, PAAG-2
Mr. Shailendra Kumar, AC to PAAG-2

For Building Construction: Mr. Tej Bahadur Singh, Sr. Advocate.
Mr. B.K. Pandey.

(In CWJC No.10042 of 2017)

For the Petitioner/s : Mr. Pradhan Murli Manohar,
Mr. Raju Kumar.

For the State : Mr. Chittarnjan Singh, PAAG-2



Mr. Shailendra Kumar, AC to PAAG-2
For Building Construction: Mr. Tej Bahadur Singh, Sr. Advocate.
Mr. B.K. Pandey.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 13-10-2017

Heard the parties.

In both cases same question have been raised and as such they have been heard together and disposed of by this common judgment.

For convenience, the fact of C.W.J.C. No.9946 of 2017 is being taken into consideration for deciding the issues.

The petitioner has challenged the order dated 29.4.2017/7.6.2017 passed by the Managing Director, Bihar State Building Construction Corporation Ltd., Patna by which Managing Director has rejected the claim of the petitioner to give bonus payable to him in terms of the agreement no. SBD 07 of 2012-13 dated 6.1.2013.

The Building Construction Corporation issued NIT calling upon intending persons to participate in the tender. The petitioner was selected being L-I tenderer and work was allotted to him. Petitioner entered into an agreement for construction of building vide SBD-07 of 2012-13. Clause 2A of SBD provides if the contractor completes the work ahead of scheduled completion



time, a bonus @ 1% of the tendered value per month basis, shall be payable to the contractor, subject to a maximum limit of 5% of the tendered value. The amount of bonus, if payable, shall be paid along with final bill after completion of work. Provided always that provision of the Clause 2A shall be applicable only when so provided in Schedule F.

As per petitioner, he has completed the work and handed over the building to the respondent authority on 28.2.2014 whereas as per agreement the work was to be completed within the period of one year and six months from 6.1.2013. So, as per petitioner he has handed over the building before time. Petitioner submitted the final bill, has been paid to him except the bonus which he is entitled.

The petitioner had approached this Court vide C.W.J.C. No. 18065 of 2015 for payment of bonus amount which was disposed of vide order dated 23.1.2017 giving direction to consider the case of the petitioner and pass a reasoned order.

In pursuance thereof the petitioner filed a representation along with the order of this Court before the Managing Director, Bihar State Building Construction Corporation whereupon the Managing Director, Building Construction Corporation vide order



dated 29.4.2017/7.6.2017 rejected the claim of the petitioner on the following grounds: (i) He has not filled up the form of Schedule F. (ii) nor he has claimed bonus at the time of final bill as those are pre-requisites, for claiming the payment of bonus amount and in absence of fulfilling those requisites the petitioner cannot claim the bonus over and above the final payment has already been made to the petitioner.

Learned counsel for the petitioner, in contra, submits that petitioner was not called upon to fill up Schedule F and as such he had not filled up the form F, the question now arises if the petitioner failed to fill up Schedule F at the same time he did not claim bonus at the time of final bill, will petitioner be deprived from that benefit which is point of attraction for contractor to complete the work before the stipulated time. The basic idea of scheme, has been, formulated to act as catalyst to creation of atmosphere to attract contractor come forward and complete the work without delay preferably before due delivery date and for that the scheme has provided incentive in the form of bonus. It will be relevant to quote Clause 2A of the SBD:

“In case, the contractor completes the work ahead of



scheduled completion time, a bonus @ 1% of the tendered value per month computed on per day basis, shall be payable to the contractor, subject to a maximum limit of 5% of the tendered value. The amount of bonus, if payable, shall be paid along with final bill after completion of work. Provided always that provision of the Clause 9A shall be applicable only when so provided in Schedule F.”

“9A: Payments due to the contractor may, if so desired by him, be made to his bank instead of direct to him provided that the contractor furnishes to the Engineer-in-Charge (1) an authorization in the form of a legally valid document such as a power of attorney conferring authority on the bank to receive payments and (2) his own acceptance of the correctness of the amount made out as being due to him by Government or his signature on the bill or other claim preferred against Government before settlement by the Engineer-in-Charge of the account or claim by payment to the bank. While the receipt given by such banks shall constitute a full and sufficient discharge for the payment, the contractor shall wherever possible present his bills duly receipted and discharges through his bankers.

Nothing herein contained shall operate to create in favour of



the bank any rights or equities vis-à-vis the Governor of Bihar”

Clause 2A talks about grant of bonus stipulates that Schedule F should be filled up but there is no negative clause which disentitled the person in the event of failure to fill up Schedule F, and as such he cannot be deprived of the benefit of bonus. Similar is the position of Clause 9 of SBD which also prescribes that in what manner the bill has to be submitted but there is no negative clause in the SBD which makes the person disentitled of the benefit of bonus if he has not claimed the bonus at the time of final bill. In form there are two clauses “Yes” and “No”. If it has been kept blank, the authority was required to ask the petitioner to fill up Schedule F. In absence of the same merely the petitioner has not filled up the form he cannot be deprived of the benefit.

This Court is of the view that clauses are not mandatory but are directory. If a contractor has completed the work before time though has not claimed along with final bill he cannot be deprived of bonus, rather it is/was duty of the employer that he must ensure for payment of bonus so that they may feel satisfy with the work done by him.



In such view of the matter, the dated 29.4.2017/7.6.2017 passed by the Managing Director, Bihar State Building Construction Corporation, Patna is set aside and this Court directs the Managing Director to make payment of bonus in terms of the scheme of Clause 2A of SBD within a period of three months from the date of receipt/production of a copy of this order.

With the aforesaid observation and direction these writ petitions are allowed.

Vinay/-

(Shivaji Pandey, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	1.11.2017
Transmission Date	NA

