

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7565 of 2013

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Saroj Kumar S/O Sri Murlidhar Seth R/O Village+P.O.+P.S.- Chenari,
District- Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Water Resources Department, Government Of Bihar, Patna
3. The Engineer-In-Chief Null Water Resources Department, Government Of Bihar, Patna
4. The Chief Engineer Water Resources Department, Dehri On Sone, Rohtas
5. The Superintending Engineer Durgawati Nirman Anchal- Chenari, Rohtas
6. The Executive Engineer Durgawati Bandh Pramandal No. 2, Bhitri Bandh Camp, Chenari, Rohtas
7. The Assistant Engineer Durgawati Bandh Sub-Division, Bhitri Bandh Camp, Chenari, Rohtas
8. The Junior Engineer Durgawati Bandh Sub-Dvision, Bhitri Bandh Camp, Chenari, Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raakesh Narayan Singh
For the Respondent/s : Mr. Uday Prasad,A.C.to G.P. 22.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

8 16-05-2017 Heard learned counsel for the petitioner and the respondents.

The writ petitioner has come to this Court for payment of his dues for the works he has undertaken for construction of two watch tower for CRPF at the construction site of Durgawati Jalasay Pariyojna situated in Badalgarh in Chenari Block of Rohtas district.

It is submitted that the estimated cost of the work was Rs..



5.978 lacs. The petitioner had quoted rate at 15% below of the estimated cost of the work.

By letter no. 777, dated 13.12.2012 the respondent no.5, Superintending Engineer approved the tender of the petitioner and directed the Executive Engineer to get the agreement executed with the petitioner after verifying the documents etc. On 10.01.2013, the petitioner was directed to execute the agreement, which was called upon by the Executive Engineer and he was directed to complete the work within a period of three months bearing agreement no. 04F2/2012-13. However, in the agreement a provision was made for construction of stair case at item no.7 but no provision for iron rod was made for this work. Thus, the petitioner was required to supply a total of 1.394 metric tone of rod, which was not provided for in the agreement. When the petitioner realized the mistake in the agreement as well as in the estimate, he requested the respondents to revise the estimate and sought permission to continue construction, as he had already got materials at the site to proceed with the work. The said constructions, according to the petitioner were completed by him in anticipation that the Junior Engineer, Assistant Engineer and Executive Engineer will take necessary steps for revising the estimate.

However, payment was not released in favour of the petitioner. On 14.03.2013, the petitioner filed a representation before the Chief Engineer, Water Resource Department, Dehri requesting him to make enquiry and measurement of the work and thereafter, release his payment. The petitioner also met Engineer-in-Chief on 25.03.2013 and also made representation to him on the same day. Having received, no response to the aforementioned representation, the petitioner approached this Court for release of his payment pursuant to agreement entered into with the



respondents.

Two sets of affidavits have been filed by the respondent-State of Bihar.

Learned counsel for the respondents contends that the work was never completed. It has been further asserted in the counter affidavit that estimate had been revised and the petitioner has been called for to come and enter into further agreement along with revised rate but in spite of several reminders, the petitioner never came to enter into an agreement. The work having been left incomplete, the petitioner's earlier agreement was cancelled and the security deposit of the petitioner has now been forfeited. In the circumstances, learned counsel for the respondents submits that now this application has become infructuous and is fit to be dismissed.

Having heard learned counsel for the petitioner and after perusal of materials on record, this court finds that the petitioner himself has not appeared before the respondents to enter into further agreement. The respondent has also filed Annexure-G wherein vide letter no. 334, dated 29.04.2013 the petitioner was directed to complete the remaining work but the petitioner evaded the same. It has further been submitted by the learned counsel for the State that the concerned authorities after obtaining assent from higher authorities with regard to Agreement No. 04F2/2012-13 informed the petitioner to come and enter into supplementary agreement, as per revised estimates vide letter nos. 428 and 429, dated 19.09.2013, letter no. 512 dated 25.10.2013 and vide letter no. 555 dated 18.11.2013 as also letter no. 574, dated 02.12.2013, which were received by the petitioner and his brother, who live in the same house (Annexure –I series). But he evaded to enter into the supplementary agreement.



From perusal of Annexure-K, letter dated 11.12.2013, it also appears that the Company Commander G/47BN CRPF, Badalgarh also wrote a letter on 11.12.2013 regarding early completion of work which had not been completed on the said date. Thus, considering the exigency of situation the department was forced to complete the remaining work.

In the circumstances, as the work was not completed the petitioner being Contractor is not entitled to any relief under Article 226 of the Constitution of India. As such after appreciating the facts and circumstances of the case and own action of the petitioner is not inclined to interfere under Article 226 of the Constitution of India.

This Court is thus of the considered opinion that the writ application is devoid of merit and is accordingly dismissed.

(Anjana Mishra, J)

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