IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2423 of 2011

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Swami Dayanand Welfare Society, Basudeopur, Munger through its President Kumar Krishna Chandra, S/o – Late Abhai Kumar, R/o – Mohalla Basudeopur, P.S. Kotwali, District – Munger.

.... Petitioner

Versus

1. The State of Bihar through Sri Girish Shankar, Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. Sri Bhanu Prakash, the Executive Officer, Munger Nagar Parishad, Munger, now Finance and Account Controller, Munger Municipal Corporation, Munger.
3. Smt. Kumkum Devi, the Chairman, Munger Nagar Parishad, Munger.
4. Sri Sushil Kumar Pandey, the Executive Engineer, N.R.E.P. Munger.
5. Mr. Yogendra Mahto, the Assistant Engineer, Building Construction Department, Govt. of Bihar, Munger.
6. Sri Ram Kumar Rai, the Junior Engineer, Munger Nagar Parishad, Munger.

.... Respondents

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL JUDGMENT

Date: 16-02-2017

A writ petition was filed by the petitioner as against the Munger Nagar Parishad (in short the "Nagar Parishad") claiming that being an NGO, it had executed certain work for the Nagar Parishad for which payments of about 8.79 lacs was due and was not being paid on the specious plea of funds being not available.

By judgment and order dated 13.05.2009, passed in C.W.J.C. No. 6033/2009 (Swami Dayanand Arya Samaj Welfare Society Vs. State of Bihar and Others), this Court disposed of the writ petition with a direction to the

Executive Officer of the Munger Nagar Parishad to pay the amount as considered due within one month along with a copy of the accounts so that the petitioner may know what he is being paid and what is being deducted. This Court also observed that there appears to be a dispute in relation to certain deductions, it would be open for the petitioner to raise all his grievances about those deductions, and if it is found that those deductions are beyond the agreed terms as stipulated in the agreement, those deductions would have to be refunded. Thus, the compliance of the order of this Court was required to be done within one month of 13.05.2009.

As is usual, nothing was done, for reasons which this Court cannot discuss. Ultimately, only partial payments were made of what petitioner was demanded. Two cheques were issued, one dated 25.05.2010 for Rs. 2,61,149/- and the other dated 02.06.2010 for an amount of Rs. 4,34,302/-, totaling to Rs. 6,95,451/-.

The first contemptuous action was that these were not accompanied by the account as ordered by this Court. The second was that on deposit of these two cheques, the cheque dated 25.05.2010 for Rs. 2,61,149/- was bounced on the ground of it being issued of a dormant account. Again, it was bounced for insufficient funds.

I am surprised why the petitioner did not file criminal cases under Section 138 of the Negotiable Instruments Act, as this was clearly a criminal act. The petitioner having waited long enough for compliance of order of this Court, he filed this contempt proceeding on 20.06.2011. Everyone sat tight over the matter. One officer named the other for inaction, the other took the plea of funds being not available. Bona fide mistake, but the net result is that, during course of these proceedings, the bounced cheque of Rs. 2,61,149/- has been made good. The payment has been given delayed by over four years. Much to be detriment to the petitioner, and on contrary and in defiance of the order of this Court, the detail account statement is yet to be furnished.

I, in such circumstances, *prima facie*, find the opposite parties in contempt. As notice had earlier been issued as to why for delayed compliance apart from other action interest being not awarded, then, there is virtually no response. The only response being argued in the Court is Municipalities have little funds to discharge their financial liability. If this be so, then, we wonder why works are taken, if they have no money. I cannot accept this plea. I understand that no work is sanctioned till adequate funds arrangement is not in place. Surely, there is much more than what meets the eyes. There are wrongful fund diversions.

Be that as it may, considering that the compliance of this Court's order was delayed in the manner, as noticed above, for over four years, I direct that interest @ 10% per annum be paid by the Municipal Corporation from the time the amount was due to the time when it was ultimately paid. This payment of interest along with all calculations has to be positively made to the petitioner within one month.

Let it be clearly understood that if within one month the detail account and interest is not paid to the petitioner, the Municipal Commissioner would be personally liable for contempt and no excuse whatsoever for delayed compliance of both counts would be accepted.

With these observations and directions, this contempt proceeding is terminated with a warning to the Executive Officer to be careful in future.

(Navaniti Prasad Singh, J.)

Rajeev/-

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