IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1261 of 2014

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Rani Devi, wife of Pramod Paswan, resident of Village - Gaurigama, Post Office - Mananpur Morsand, Police Station - Runnisaidpur, District - Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Rural Development Department, Government of Bihar, Patna
3. The Commissioner, Tirhut Division, Muzaffarpur
4. The District Magistrate, Sitamarhi
5. The Deputy Development Commissioner, Sitamarhi
6. The Block Program Officer, Runnisaidpur, Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Pramod Rajpati, Advocate

For the S t a t e : Mr. Krishna Chandra Jha, A.C. to AAG-8

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 04-04-2017

The petitioner seeks to quash the order, as contained in Memo No.1079 dated 29.08.2012 (Annexure 12), which is an enquiry report, on the basis of which the petitioner's claims for payment of her bills to the tune of Rs.6,57,828/- (Six lacs fifty-seven thousand eight hundred twenty eight) for conducting works of Yojana No.75/08-09 and Yojana No.135/08-09, has been rejected by the Deputy Development Commissioner, Sitamarhi (respondent No.5).

2. Learned counsel for the petitioner submits that the impugned order, contained in Annexure 12, is wholly illegal and arbitrary and the enquiry has been conducted behind the back of the petitioner and negates her right towards payment of dues, for which she has admittedly worked in the year 2008-09 itself.

3. Learned counsel for the petitioner submits that having failed in her attempt to take payment from the concerned authorities, the petitioner first approached this Court in CWJC No.23260 of 2011 along with other similarly situated contractors. The said writ application was disposed of by an order dated 06.02.2012 giving liberty to the petitioner to file a representation to the Deputy Development Commissioner, Sitamarhi and the Block Programme Officer, Runnisaidpur, Sitamarhi and directed the said authorities to consider the representation in accordance with law and decide the same by a reasoned order within a period of two months thereafter.

4. The petitioner then filed a representation before the Deputy Development Commissioner, Sitamarhi, Block Programme Officer, Runnisaidpur, Sitamarhi and the District Magistrate, Sitamarhi along with a copy of the aforesaid order dated 06.02.2012 raising her claim along with interest at the rate of 12%. Thereafter, by an order dated 24.03.2012, contained in Memo No.352, the D.M., Samastipur constituted a 6-Member team for enquiry and report on the works conducted and the

Deputy Development Commissioner, Sitamarhi was directed to monitor the enquiry. The said enquiry proved to be a sham and thereafter another enquiry was ordered and the Commissioner, Tirhut Division, issued letter dated 03.05.2012 to the D.D.C.,Sitamarhi for compliance of the order passed by this Court.

5. When the order of the Court was not complied with, the petitioner filed a contempt application, bearing M.J.C. No.3235 of 2012. During the course of contempt proceedings, the Deputy Development Commissioner filed his show cause and brought on record a reasoned order, contained in Memo No.1079 dated 29.08.2012 passed by him, rejecting the claim of the petitioner for payment of her bills, stating that making payment of such bills would amount to financial irregularities. The said decision dated 29.08.2012 was arrived at on the basis of an enquiry report, contained in Letter No.988 dated 03.08.2012. Accordingly, the contempt application was disposed of, giving liberty to the petitioner to challenge the aforementioned order. Hence the present writ application.

6. Learned counsel for the petitioner submits that the entire enquiry was conducted behind the back of the petitioner and she was never noticed during the enquiry. The findings arrived at are based on no material and the enquiry conducted with regard to the works undertaken way back in the year 2008 was wholly irregular and no such spot verification was undertaken by the authorities. It was further submitted that be that as it may, the measurement book having been available with the respondents, they ought to have acted in accordance with the measurement book at the time the work was actually conducted by the petitioner. As such, the enquiry report was wholly vitiated for the respondents having failed to notice the same, the action so taken suffers from violation of the principles of natural justice.

7. Learned counsel appearing on behalf of the State submits that the authorities have filed a detailed counter affidavit in which they have clearly explained the reasons for rejection of the claim of the petitioner. It has been submitted that as per the enquiry report, no such work was undertaken and the enquiry report indicates that actually no work had been performed by the petitioner nor payment made to the workers. As such, the impugned order is based on sound reason and on verification of actuals which cannot be ignored. Thus, the submission of the bill of the petitioner was not in accordance with the rules. As such, the authority has rightly passed the impugned order, which is wholly legal and valid.

8. Learned counsel appearing for the petitioner has filed a rejoinder to the counter affidavit, in which he has submitted that the petitioner has obtained the copies of the Measurement Books, which would go to show that, in fact, the work was undertaken by the petitioner and it had been measured at the relevant point of time accordingly, and sanction had also been accorded for payment of the works undertaken by her. However, the authorities have ignored the measurement book while passing the impugned order. Thus, the measurement book was available with the respondents even as on date. As such, the submission of the petitioner that the entire enquiry conducted behind her back is correct and at no point of time she was noticed for appearing before the enquiry committee. The purported receipts, which have been filed by the Panchayat Rojgar Sewak, are also not in accordance with rule. So far as the service of the notice is concerned, neither it stands affidavited nor is there anything on it indicating as having been served on her in presence of the witnesses. As such, the submission made by the respondent is fit to be rejected.

9. Having heard learned counsel for the petitioner and the learned counsel appearing on behalf of the State and after consideration of all facts and circumstances, it appears that the respondents have gone a bit further in their actions by ignoring the measurement book, which was available with them. Had such measurement books been considered by the respondents, which have been available with them all along during the course of litigation between the petitioner as well as the State, the litigation ought not to have stretched so long and the bills ought to have been settled much earlier. It further appears that any enquiry which was conducted ignoring such measurement made at the concerned point of time is also wholly irregular and cannot be accepted by any stretch of imagination. As such, this Court finds the action of the State-respondents to be wholly illegal and vested with wrong intention of harassing the petitioner for no fault of hers.

10. Accordingly, the impugned order stands vitiated for having been issued without notice to the petitioner and being in violation of the principles of natural justice.

11. The impugned order dated 29.08.2012, contained in Memo No.1079 (Annexure 12), thus, stands quashed. The writ application is allowed with a direction to the respondents to consider the claim of the petitioner within a period of three months from the date of communication of this judgment/order on the basis of the measurement book which was available with the respondents, as has been filed by the petitioner. However, in the facts and circumstances, there shall be no order as to costs.

(Anjana Mishra, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.04.2017
Transmission Date	