

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1976 of 2016

with

I.A. No. 8280 of 2016

with

I.A. No. 8281 of 2016

with

I.A. No. 8282 of 2016

In

Civil Writ Jurisdiction Case No.15550 of 2011

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1. The State of Bihar through the Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
 2. The Engineer in Chief, Water Resource Department, Government of Bihar, Patna.
 3. The Chief Engineer, Water Resources Department, Aurangabad.
 4. The Executive, Sone High Level Canal Division, Aurangabad.
 5. The Sub-Divisional Officer, East Sone High Level Canala Sub-Division, Bharthauli, District - Aurangabad.

... .. Appellants

Versus

M/s Sharda Construction, a partnership Firm having office of New Area Maharajganj Road, Aurangabad Bihar, through its Partner Smt. Geeta Singh w/o Sri Kaushal Kumar Singh R/o New Area Maharajganj Road, P.S. - Town Thana - Aurangabad, District - Aurangabad, Bihar.

... .. Respondent

Appearance :

For the Appellant/s : Mr. Anjani Kumar, AAG
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 15-12-2017

There is a delay of 331 days in filing of the Letters Patent Appeal arising out of the judgment dated 09.10.2015 passed in C.W.J.C. No. 15550 of 2011. I.A. No. 8280 of 2016 has been filed for condonation of delay.



We have heard the learned Additional Advocate General No.4 on the plea of limitation and for the reasons stated by the learned Additional Advocate General No.4, we are satisfied that in the interest of justice the delay needs to be condoned and is accordingly condoned. Thereafter, we proceed to hear the matter of merits.

The State of Bihar, being aggrieved by the impugned judgment by which a direction has been issued to the respondent State and its authorities to ensure payment to the petitioner appropriately on the basis of the measurement report submitted by IRCON dated 06.01.2011 within a period of three months, has preferred the present Letters Patent Appeal.

Learned Additional Advocate General No.4 submits that the report submitted by the IRCON is a kind of collusive report and that is the reason why the State is not accepting the said report. Sub mission is that in the writ application it was submitted on behalf of the State that the report submitted by the IRCON is not worth reliable.

We have heard learned Additional Advocate General No.4 and perused the records.

The facts of the case reveals some startling reasons which have been indicated by the learned single Judge in the first round



of litigation being C.W.J.C. No. 13037 of 2008 decided on 20.02.2009. It is worth taking note of the fact from the said order that it is a case of closure of a contract. The said closure was because of the various reasons right from the delay in finalisation of tender resulting in increase in prices up to the change in design and despite various promises made, as has been taken note of by the learned single Judge, to revise the rate, when revision has not taken place a request for closure was made which was accordingly allowed. Thereafter, the petitioner claimed his payment against the work done by him. There were some dispute as to the measurement claimed by the department *vis-a-vis* the work claimed to have been done by the petitioner. The learned single Judge in the operative part of the order dated 20.02.2009 held as under :

“Be that as it may, the matter to this Court is simple and is being complicated by the State right from the beginning. It is well settled that the State must do what is just and fair, while the State acting as an independent agency believing the correctness of its stand I, therefore, direct IRCON, which have their establishment at Aurangabad, to assist in the matter and after noticing to both the parties i.e. Executive Engineer, Water Resources Department, Aurangabad and the petitioner , fix a convenient date for measurement and assessment of work done by the petitioner and give a copy of the report to



both the parties. It is expected that the State would abide by the finding arrived at and make payment accordingly and settle the dispute rather than court's litigation and wasting time of the Court.”

Pursuant to the aforesaid direction, measurement was taken by the IRCON, a report was submitted with the State but when the payment was not made to the petitioner-appellant despite submission of the said report dated 06.01.2011, the petitioner once again moved this Court in C.W.J.C. No. 15550 of 2011, in which the present impugned order has been passed.

The learned single Judge while hearing the writ application and passing the impugned order took note of the pleadings and held that on the consideration of the materials on record no fault may be found with the measurement carried out by the IRCON pursuant to the order of this Court. In course of hearing learned counsel for the State invited the attention of the learned single Judge towards the letter No.274 dated 04.03.2011, said to have been written by the respondent No.4 to IRCON, by which certain objections were raised on the ground that the measurement was not done in presence of their representative. The learned single Judge found that in response to the said letter, the IRCON vide its letter dated 26.04.2011 informed the State authorities that the representative of the respondents had participated during the entire



process by proposing a convenient date and even attending the site for inspection but at the time of a joint inspection and measurement of the executed work, the concerned Executive Engineer did not show any interest and finally detailed measurement was done when he left the site along with the Junior Engineer showing no interest in the same. This aspect of the matter, the learned single Judge has held, has not been denied in the counter affidavit filed on behalf of the State respondents.

In course of hearing, we asked a pointed question to the learned Additional Advocate General No.4 as to whether he can show any document or material to demonstrate that prior to submission of the report dated 06.01.2011 by IRCON either the Executive Engineer or the Junior Engineer of the Department had ever submitted any note raising protest against the ongoing measurement by the IRCON or that they had ever written any letter to the Authorities of the IRCON showing their protest, we have not been shown any such letter or document or material of any kind whatsoever to show that prior to 06.01.2011 they had written any letter in protest to IRCON. If this is so, then a bald plea by making few statements in the counter affidavit alone when the writ application was being contested, the State cannot prove its bonafide and such plea cannot be accepted without there being any



evidence to support such pleadings. The facts of this case particularly does not permit us to give any leverage to the State in taking such plea belatedly just to defeat the claim of the petitioner.

In our opinion, the learned single Judge has rightly concluded the whole issue by directing the State authorities to pay the amount to the petitioner-appellant on the basis of the measurement report dated 06.01.2011 submitted by the IRCON in view of the order and direction of this Court in the first round of litigation.

Appeal has no merit. It is dismissed.

I.A. Nos. 8281 of 2016 and 8282 of 2016 stand disposed of.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Pawan/-

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