

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.149 of 2018
IN
Civil Writ Jurisdiction Case No. 9946 of 2017

- =====
1. The Bihar State Building Construction Corporation Ltd., Patna.
 2. The General Manager, Bihar State Building Construction Corporation Ltd., Bihar, Patna.
 3. The Deputy General Manager, Bihar State Building Construction Corporation Ltd., Muzaffarpur.

.... Appellants

Versus

1. Hari Shankar Prasad, S/o Subansh Prasad, resident of Village- Gram Gadaichak, Post Office- Mahdaiya, P.S.- Meenapur, District- Muzaffarpur.
2. The State of Bihar through the Secretary, Principal, Building Construction Dept., Bihar, Patna.

.... Respondents

With

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Letters Patent Appeal No. 151 of 2018
IN
Civil Writ Jurisdiction Case No. 10042 of 2017

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1. The Bihar State Building Construction Corporation Ltd., Patna.
2. The General Manager, Bihar State Building Construction Corporation Ltd., Bihar, Patna.
3. The Deputy General Manager, Bihar State Building Construction Corporation Ltd., Muzaffarpur.

.... Appellants

Versus

1. Hari Shankar Prasad, S/o Subansh Prasad, resident of Village- Gram Gadaichak, Post Office- Mahdaiya, P.S.- Meenapur, District- Muzaffarpur.
2. The State of Bihar through the Principal Secretary, Building Construction Dept, Bihar, Patna.

.... Respondents

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Appearance :

For the Appellants	:	Mr. Tej Bahadur Singh, Sr. Advocate
For the State	:	Mr. Raj Ballabh Pd.Yadav, AAG11
For the Respondents	:	Mr. Pradhan Murli Manohar Pd. Advocate Mr. Raju Kumar Goswami, Advocate



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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 14-03-2018

Heard learned counsel for the appellants and
learned counsel for the respondents.

2. Challenge in the present appeal is to the judgment dated 13.10.2017 passed by learned writ court in CWJC No. 9946/2017 and CWJC No. 10042/2017 whereby and whereunder the learned writ court has quashed the decision taken by the Managing Director of Bihar State Building Construction Corporation, Patna vide his letter dated 29.04.2017/07.06.2017 rejecting the claim of the writ petitioner to give bonus payable to him in terms of agreement no. SBD-07/2012-2013 dated 06.01.2013.

3. From perusal of the impugned judgment as also the records it appears that there is no dispute on fact that the petitioner being contractor under the aforesaid agreement had completed the work in question well before the contractual period and therefore in terms of Clause 2A of SBD if he had completed the work ahead of the scheduled



completion time, a bonus @ 1% of the tender value per month basis, shall be payable to the petitioner subject to the maximum limit of 5% of the tender value. The learned writ court found that the petitioner completed the work and handed over the building to the respondent authority on 28.02.2014 whereas in terms of agreement the work was to be completed within a period of one year and six months from 06.01.2013. The petitioner submitted his final bill but he has been paid the same without paying him the bonus amount which he was entitled to in terms of Clause 2A of the SBD. The learned writ court also took note of the fact that the petitioner had earlier approached this court in CWJC No. 18065/2015 for payment of bonus amount which was disposed of vide order dated 23.01.2017 giving direction to the respondent corporation to consider the case of the petitioner and pass a reasoned order.

4. Since a reasoned order was passed by the Managing Director of the Corporation vide the impugned letter rejecting the claim of the petitioner, the petitioner once again approached this court. The learned writ court found that the two grounds for rejection of the claim of the



petitioner, firstly, that he had not filled up the form of Schedule-F, and secondly, that he had not claimed bonus at the time of final bill as those are prerequisites for claiming the payment of bonus amount are totally irrelevant and the impugned order suffered from arbitrariness and hence was liable to be set aside.

5. Mr. Tej Bahadur Singh, learned Senior counsel while assailing the impugned judgment of the learned writ court submits with reference to the schedule of the SBD that the petitioner should have indicated 'Yes' in the proforma of schedules where he was required to say whether Clause 2A shall be applicable. According to learned senior counsel, if the petitioner had not indicated in the proforma schedule about applicability of Clause 2A of the SBD and received the final bill amount, he cannot be allowed to raise the claim of bonus subsequently after sometime.

6. On the other hand, learned counsel representing the respondent, who was original writ petitioner, vehemently opposed the contention of learned senior counsel for the appellants. It is the submission of the writ petitioner-respondent that the State Corporation cannot



avoid it's contractual obligation in terms of Clause 2A and in all fairness the State Corporation should have come out with a fair stand to encourage the persons like the present petitioner who had completed the contract work well before the stipulated period.

7. Learned counsel submits that in terms of the contract the petitioner submitted his final bill and, therefore, at this stage, it was incumbent upon the Corporation to pay bonus because they were fully aware of the fact that the petitioner had completed the entire work well within time which had made him entitled for the bonus amount in terms of and within the limit of the prescribed schedule provided under Clause 2A of the SBD.

8. Learned counsel therefore submits that the State Corporation has not acted fairly and has rejected the claim of the petitioner, even though in the earlier judgment as contained in Annexure-4 to the writ application passed in CWJC No. 17373/2015, the learned writ court has made it clear that if a representation is filed by the petitioner enclosing the copy of the scheme of the government then the authority shall consider the same and give the benefit of the



said scheme, if the petitioner qualifies the condition. Learned counsel submits that the order dated 16.01.2017 passed in CWJC No. 17373/2015 has attained finality as no appeal was preferred by the State Corporation against the said order. Learned counsel submits that once the petitioner qualifies under the prescribed conditions, as per direction of the learned writ court the State Corporation was liable to give the benefit of the said scheme to the petitioner.

9. Having heard learned counsel for the parties and upon perusal of the records, we are of the considered opinion that the learned writ court has rightly set aside the impugned order passed by the Managing Director of the Bihar State Building Construction Corporation. The grounds set forth in the impugned letter/decision of the Managing Director do not inspire confidence in the admitted facts of this case. The contention of learned Senior counsel for the appellant that the petitioner should have indicated in the proforma about the applicability of Clause 2A of the SBD cannot be said to be a bona fide plea on behalf of the State Corporation because the State Corporation was fully aware of the fact that the petitioner had completed the contract work



well before the completion period provided under the contract, and, therefore, there was no reason as to why he would not be entitled to get the bonus amount in terms of Clause 2A. The Court seldom finds a contract work having been completed well within time, in the present case the petitioner has completed the work in time, and therefore, the Managing Director of the Corporation should have shown him bona fide by taking a positive view of the matter in terms of the agreement itself by paying ‘bonus’ to encourage such contractors.

10. We find no merit in the appeal. It is, accordingly, dismissed. The direction of learned writ court must be complied with within a period of two months from the date of receipt/production of a copy of this order.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.03.2018
Transmission Date	NA

