

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22598 of 2011

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Modi Construction Company, Kanke Road, Ranchi - 834008, Through Its
Director Pradip Modi, S/O Sri Sita Ram Modi Resident of Mohalla - 9/1, Basant
Vihar, Kanke Raod, P.S. - Gonda, P.O. - Ranchi, Ranchi - 834008, District -
Ranchi - State, Jharkhand

.... Petitioner

Versus

1. The State of Bihar through the Commissioner Cum Secretary, Water
Resources Department, Govt. of Bihar, Sinchai Bhawan, Patna
2. The Engineer In Chief (North), Water Resources Department, Govt. of Bihar,
Sinchai Bhawan, Patna
3. The Chief Engineer, Water Resources Department, Birpur, Distt. - Supaul
4. The Superintending Engineer, Canal Circle, Saharsa, District - Saharsa
5. The Executive Engineer, Investigation and Research Division, Birpur, Distt. -
Supaul
6. The Executive, Engineer, Irrigation Division, Birpur, District - Supaul

.... Respondents

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Appearance:

For the Petitioner: Dr. Krishna Nandan Singh, Sr. Advocate
Mr. Sriram Krishna, Advocate

For the Respondents: Mr. Vivek Anand Amitesh, AC to SC 28

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 16-07-2018

The present writ petition has been filed for the following
reliefs –

- (i) *For quashing of communication as contained under
memo no. 02 dated 28.10.2010 (Annexure-23 to the
present writ application) of the Chief Engineer, Water
Resources Department, Birpur-cum-Chairman of the
Committee constituted by the respondent State in
compliance of the order of the Hon'ble Court dated
27.11.2009 passed in CWJC No. 4945 of 2009*



(hereinafter to be referred as 'the Committee') addressed to the Joint Secretary (Engineering), Water Resources Department, Government of Bihar, Patna whereby and whereunder it has been informed that claim of the petitioner firm for payment for Disposal of Earthwork by mode of mechanical mean is not payable and there is no need for modification in the decision taken by the said Committee in their meeting dated 18.03.2010. And therefore claim of the petitioner for payment of transportation by mechanical means upto half kilometer is not valid.

- (ii) For quashing of the decision of the Committee dated 18.03.2010 communicated vide memo no. 1182 dated 31.03.2010 (Annexure-19 to the writ application) whereby and whereunder it came to the conclusion that entire work of disposal of earth work between R.D.14.70 to 43.80 is by means of Head Load basis only and the claim of the petitioner's firm for payment for disposal of silt with a lead upto half km. is not valid.*
- (iii) For quashing of communication of the respondent no. 2 as contained under letter no. 45 dated 13.04.2005 (Annexure-11 to the writ application) with respect to payment of bills to the petitioner firm in accordance with order Hon'ble Court dated 27.11.2009 passed in CWJC No. 4945 of 2009.*
- (iv) For issuance of appropriate writ/writs, order/orders, direction/directions commanding the respondent authorities to make payment of due amount in accordance with their own approved measurement of actual work recorded at material time before allowing flow of water into the canal on 26.06.2005 and*



forwarded to the Chief Engineer, W.R.D. Birpur vide letter no. 2347 dated 21.12.200 of the Superintending Engineer, Canal Circle, Saharsa (Annexure-22 to the present writ application).

(v) For any other relief/reliefs to which the petitioner firm is entitled for in the present facts and circumstances of the case.

2. Heard learned counsel for the parties at length. The main grievance of the petitioner is that the reports of the Committee dated 19.03.2010 and 30.06.2010 (Annexure-19 and 23 respectively) do not accord with the earlier Committee's report dated 17.12.2004 (Annexure-8) wherein, in principle, it was observed that for Group 'C' only about 4.13% of the work was possible through head load relating to a distance of 150 meters. The impugned reports of the Committee have been drawn up without properly considering the petitioner's representations dated 16.11.2007 and 13.04.2010 (Annexures 12 and 20 respectively).

3. Learned counsel for the respondents, on the other hand, opposes the writ petition, *inter alia*, submitting that the Committee's report dated 19.03.2010 (Annexure-19) has dealt with the factual aspects in detail. Reference has been made to a meeting of the Committee held on 22.11.2005 comprised of technical experts who have reported that the entire work should have been done through head load and not through mechanical means. It has further been



observed on the basis of the report of the Flying Squad as referred to in the Department's letter dated 06.08.2008 that payment in respect of head load had to be made for the first half kilometer. The amount payable in terms of the agreement was Rs. 7,67,16,477/- and any payment made in excess thereof was recoverable from the petitioner.

4. I have heard the parties at length and considered the materials on record. Primarily the dispute relates to the extent of work done by the petitioner through head load and through mechanical means. Learned counsel for the respondents has not been able to show from either report of the Committee that a finding has been recorded in this regard. The reports proceed on the basis of the meeting of the Committee dated 22.11.2005 and report of the Flying Squad, neither of which were made available to the petitioner, which speak only of the work which ought to have been done through head load without any finding of fact with regard to the extent of work actually done through head load. On the other hand, the petitioner has submitted that most of the work has been done by mechanical means. This stands supported from the Committee's report dated 17.12.2004 itself (Annexure-8) to the effect that it was not possible to carry out more than 4.13% of the work through head load. It also transpires that two earlier letters of the Department dated 03.10.1977 and 15.06.1986 have been referred to in the impugned letter dated 13.04.2005 (Annexure-11 series), but such



letters were not made available to the petitioner.

5. In the above circumstances, I am of the view that the interest of justice will be met if the impugned letter dated 13.04.2005 (page 83 of the brief), the Committee’s first report dated 19.03.2010 (page 112 of the brief) and the Committee’s second report dated 30.06.2010 (page 132 of the brief) are hereby quashed and the matter remanded to the Committee to pass orders afresh having regard to its report dated 17.12.2004 (Annexure-8) and record a finding, as far as possible, with respect to the extent of work actually carried out by the petitioner through head load and through mechanical means, after grant of proper opportunity of hearing to the petitioner.

6. The writ petition stands disposed of.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.07.2018
Transmission Date	NA

