

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9558 of 2014

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M/s D.M. Tiwary and Partners through Bibhav Nath Tiwari, son of late Ram Murti Tiwari resident of Mohallah - Shiva Jee Nagar, P.S. - Khajanchi Hat, District - Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Water Resources Department, Irrigation Building, Bihar, Patna.
3. The Engineer in Chief (North Bihar), Water Resources Department, Irrigation Building, Harding Road, Patna.
4. The Chief Engineer, Irrigation Department, Darbhanga.
5. The Superintending Engineer, West Koshi Canal Circle, Birpur, District - Saharsa.
6. The Executive Engineer (Planning and Monitoring) Division No. 1, Water Resources Department, Irrigation Building, Harding Road, Patna.
7. The Executive Engineer, Western Koshi Canal Division No. - 1, Kanhauli, District - Supaul.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Tiwary, Adv
Mr. Amit Kumar Anand, Adv

For the Respondent/s : Mr. MD. NADIM SERAJ, GP 5
Mr Dhurendra Kumar, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 29-10-2018

This matter has been listed under the heading "For Order on petition". However, with the consent of the parties, the writ petition itself is taken up for disposal.

I.A. No. 8994 of 2014

2. This interlocutory application has been filed for substitution of the sole petitioner, namely, Ram Murti Tiwari, who died



on 01.10.2014, during the pendency of the writ petition.

3. Learned counsel for the respondents appears and has no objection to such prayer.

4. Having regard to the nature of the prayer, let the name of the petitioner be substituted with the name of his legal heirs, namely, Bibhav Nath Tiwari, son of late Ram Murti Tiwari, resident of Mohalla-Shivajee Nagar, P.S. K. Hat, District Purnea as described in paragraph-1 of the I.A. The interlocutory application stands disposed of.

5. Learned counsel for the petitioner is permitted to make necessary corrections in the array of the parties in course of the day.

C.W.J.C. No. 9558 of 2014

6. The main writ petition has been filed for the following reliefs —

(i) For issuance of an appropriate writ, order or direction directing and commanding the respondents to make payment of the admitted due amount of Rs. 13,61,282.70 out of the checked and passed bills of the petitioner along with Rs. 15,35,209/- of the final bills of the petitioner for the work done by the petitioner.

(ii) For issuance of an appropriate writ directing and commanding the respondents to pay the petitioner compound interest at market rate for delayed payment of his aforesaid amounts including admitted amount out of the checked and passed final bills of the petitioner till the date the actual payment is made.

(iii) For any other relief or reliefs to which the petitioner is



legally entitled to.

7. Learned counsel for the petitioner submits that having completed the work of construction of Panchi River Dam in terms of agreement, the petitioner is entitled to payment of Rs. 13,61,282.70 and Rs. 15,35,209/- which remain outstanding.

8. Learned counsel for the respondents submits that the petitioner has already been paid the outstanding amounts against its final bills. However, in view of the decision of the Liability Committee dated 11.11.2009, no interest is payable to the Contractor and the same was duly accepted by the representative of one of the then partners Sri Ram Murti Tiwari who has also signed the proceeding (Annexure-C to the counter affidavit).

9. In the rejoinder the petitioner has accepted that payment of Rs. 29,86,948/- has been made, but it is stated that the petitioner is entitled for interest.

10. Having heard the parties and on consideration of the materials on record, it appears that the main grievance of the petitioner with regard to non-payment of final bills has been redressed during the pendency of the writ petition. However, there is undisputedly some delay in making payment to the petitioner, considering that the Liability Committee in its meeting held on 11.11.2009 found the petitioner to be entitled for Rs. 29,86,948/-



which amount was however, finally paid to the petitioner by Cheque No. BB618626 dated 03.03.2015. The respondents have not been able to satisfactorily explain the reasons for such delay except stating that such payment was made immediately upon allotment of funds. It has also not been stated by the Liability Committee specifically that the petitioner would not be entitled to interest. This Court is of the view that the delay in allotment of fund cannot constitute a valid ground for denying payment to the petitioner for the work done and liability admitted.

11. In the above circumstances, the writ petition is disposed of with a direction to the Executive Engineer, Western Koshi Canal Division No. I, Kanhauli, District Supaul (Respondent No. 7) to ensure payment of interest calculated @ 6% per annum on Rs. 29,86,948/- for the period from 11.11.2009 upto the date of payment on 03.03.2015. Such payment of interest shall be made to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this judgment.

(Vikash Jain, J)

Chandran

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.11.2018
Transmission Date	NA

