

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 95 of 2004****Judgment reserved on 11-7-2018****Judgment delivered on 24-7-2018**

1. State of Chhattisgarh through Executive Engineer, Public Health Engineering (Mechanical) Division, Jagdalpur (CG)
2. Executive Engineer, Public Health Engineer Jagdalpur (CG)
3. Sub Engineer Shri V. Singh, Public Health Engineering Jagdalpur (CG)

---- Appellants**Versus**

Shree Engineering Services, through Proprietor Dr. Shilpa Warwandkar, aged about 43 years, R/o Plot No. 3 Choubey Colony, Raipur, Principal-7 Navin Bazar, GE Road, Raipur (CG)

---- Respondent

For Appellants : Shri Sanjeev Pandey, Govt. Advocate

For Respondent : None though served.

HON'BLE SHRI JUSTICE RAM PRASANNA SHARMA**CAV Judgment**

1. This appeal is preferred against the judgment dated 23.1.2004, passed by the 6th Additional District Judge, Raipur in Civil Suit No. 124-B/1995, wherein the said Court had granted decree in favour of the respondent for a sum of Rs.2,80,952/- with interest on account of repairs and changing spare parts of BEC-6 machine.
2. As per pleadings of respondent/plaintiff, he is engaged in a business of diesel engines, compressor repairing, spare parts which is

carried in the name of Shree Engineering Services, located at 7 Navin Bazar, GE Road, Raipur (CG).

3. Appellant No.2/defendant used to get the machines repaired, engines overhauled and purchase spare parts through non-applicants 3 and 4 in the Civil Suit/ respondents. A machine BEC-6 was repaired on an order dated 17.11.1992 and certain parts of the machine were changed for which a number of delivery challans were issued by the appellants.

4. The trial Court after recording evidence and hearing both the parties, decreed the suit as mentioned above.

5. Learned counsel for the appellants submitted that no prescribed procedure was followed for any work and no work order was issued to the respondent, therefore, the appellants are not liable to make good the payment.

6. Perusal of documents Ex.P2 to P71 goes to show that the work was done upon delivery challan issued by appellant No.2 on various dates from 27.5.1993 to 19.11.1994 and the bills were submitted to the appellants for payment against the said delivery challans. No one from the appellants' side appeared before the court below and entered into witness box to rebut the delivery challans and bills submitted by the respondent.

7. Works manual is enacted for following the procedure by the departments and it is for officials of the department to follow such rule strictly. But if they are not following the rules and issuing order in

different way as mentioned in work manual and get the machines repaired by the respondent, the respondent cannot be faulted with because he is repairing the vehicle on the basis of delivery challan which was issued by the Executive Engineer and signed by him. Again, the Executive Engineer forwarded the copy of the said delivery challan to the Assistant Engineer and Auditor. Those documents goes to show that work was done as per order of appellant No.2 and same is done for government vehicles or machines, therefore, the argument on this count is not acceptable.

8. It is contended on behalf of the appellant that the work order was issued by the appellants during the tenure of Shri L.K. Jari, but Shri L.K. Jari was never arrayed as a party and therefore, in absence of verification of his signature, finding of the trial Court is not proper. In view of this Court, every government servant demits office upon superannuation. It does not mean that repair work is not done by the respondent. The work order was issued in official capacity and the same is not issued for any individual work. The Executive Engineer was working on behalf of Public Health Engineering (Mechanical) Division, Jagdalpur of State Government. The machines repaired were owned by the government, therefore, it is not a case in which any work is done in an individual capacity. Hence, it is the department who is bound to pay the dues and not any individual officer who was posted for the time being in the said division. In this view of the matter, Officer Shri L.K. Jari who was posted at the time of repairs is not a necessary party.

9. It is also contended on behalf of the appellants that the bill issued by the respondent is not the actual bill and the same is manipulated one, therefore, the appellants are not liable to pay for the same. In view of this Court, no evidence was adduced by the appellants to rebut the bill submitted by the respondent. Work Order was issued in form of delivery challan and against the same challan bill was submitted after work and for refusal of the same, the appellants were required to rebut it by entering into witness box or by some other mode of rebuttal, but no one appeared before the Court below to say as to what was the actual bill amount for works done by the respondent. In absence of rebuttal to oral or documentary evidence adduced by the respondents, the court below is right in holding that the appellants are liable to pay the bill amount and the same cannot be interfered with invoking jurisdiction of appeal. The grounds raised by the appellants are not sustainable.

10. Accordingly, the decree is passed against the appellants and in favour of the respondent as under :

- (1) The appeal is dismissed with cost.
- (2) The appellants will pay the cost to the respondent.
- (3) Pleaders' fee, if certified be calculated as per certificate or as per Schedule whichever is less.
- (4) A decree be drawn up accordingly.

Sd/

**(Ram Prasanna Sharma)
JUDGE**

