

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10446 of 2017

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Ran Vijay Kumar Builder Pvt. Ltd. through its Managing Director namely
Ran Vijay Kumar, son of Narsingh Prasad Singh, Resident of Village-
Paijuna, Police Station- Ghoswari, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Water Resources, Government of Bihar, Patna.
2. The Chief Engineer, Flood Control Division, Anisabad, Patna.
3. The Superintending Engineer, Punpun Flood Control Division, Anisabad, Patna.
4. The Executive Engineer, Punpun Flood Control Division, Anisabad, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Ram Vinay Pd. Singh @ Sanjay
For the Respondent/s	:	Mr.Vikash Kumar, SC-11
		Mr.Akash Chaturvedi, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 28-03-2019 The petitioner in the present case is seeking the
following reliefs :-

“(i) A writ in the nature of certiorari setting aside the office order bearing Letter No. 665 dated 17.06.2017 issued under the signature of Respondent No. 4 whereby in pursuant to order dated 4.4.2017 passed in C.W.J.C. No. 15944 of 2016 under which order of recovery dated 8.11.2016 passed by the same respondents was set aside with liberty to the respondents to pass fresh order after giving opportunity to the petitioner and in that context despite response submitted by the petitioner without considering the same again same order has been passed which amounts to review of the order passed by this Hon’ble Court actuated with whims and arbitrariness.

(ii) For a direction upon the respondents concerned to refund back the securities amount deposited in the Department as petitioner has completed the work



what was assigned to him and necessary payment was made after due verification and approval made by the competent authority at the relevant time but now present Respondent No. 4 in place of making rest of the payment against the work already done by the petitioner, now passed order for recovery of the amount which has already been paid much earlier on the basis of Flying Squad Report which has been prepared after six years of completion of works in flood affected area which is not proper in eye of law. (iii) Any other order/orders for granting relief/reliefs for which the petitioner is found entitled to in the facts and circumstances of the case.”

Earlier while hearing the writ application this Court passed order dated 07.02.2019 which is quoted hereinunder for a ready reference :-

“Learned counsel for the State is permitted to file a supplementary counter affidavit stating as to why no action towards closure of the contract was taken pursuant to the Letter No. 199 dated 06.02.2010, for a period of over 5 years.

It appears from perusal of Annexure-9 which is impugned in the present writ application that the said letter was issued informing the petitioner that because he had not completed the work, the contract in question shall be closed.

This Court would like to know from the respondents that whether in case of ‘closure’ of contract which is said to have been proposed vide Letter No. 199 dated 06.02.2010, there may be forfeiture of security in terms of the contract documents and then in case the measurement has been taken after about 5 years, why it should be taken as a laches on the part of the respondents.

As prayed for on behalf of the State, list this case on 1st March, 2019 under the same heading.”

Now a supplementary counter affidavit has been filed on behalf of the respondents. On perusal of the supplementary



counter affidavit it appears that in paragraph-6 a statement has been made that the petitioner failed to complete the work in the stipulated time. It is also stated that on perusal of the details of the bills paid to the petitioner, it was clear that the petitioner has completed only the work of value amounting to Rs. 20,91,786.00. In further paragraphs of the supplementary counter affidavit it is stated that when the petitioner failed to complete the work within the extended period up-to 31.12.2009, as per provision of Clause 8 of the agreement, the respondent authorities had to prepare the final bill in accordance with prevailing rules of the department within the month of the date fixed for completion of the work. In Paragraph-9, 10, 11,12 and 13 of the supplementary counter affidavit what have been stated would *prima-facie* give an impression that it is either the one wing or the another wing of the department which remains sitting over the matter and despite the instructions of the department vide its letter No. 1719 dated 15.07.2009 to the departmental flying squad to carry on an inspection and submit a report which is essential for final payment of the work of Zamindari Bundh, the inspection was finally carried some times in the year 2014.

The counter affidavit is indicating towards the laches on the part of the department in sitting over the matter, the reasons provided



to justify the delay is that the previously a single flying squad circle was established which was not capable to examine such a large number of works. To resolve this problem, it is stated that a new circle namely flying squad circle no. 2 was re-organized vide notification no. 2288 dated 29.08.2013 of the Water Resources Department.

Whatever be the reasons, it is apparent on the face of the record that there had been an inordinate delay of 5 years in conducting the inspection.

At this stage, learned counsel representing the State has taken a plea that the disputes which have been raised by the petitioner over the impugned office order as contained in Letter No. 665 dated 17.06.2017 may be decided by the learned Arbitral Tribunal constituted by virtue of the Bihar Public Works Contract Arbitration Tribunal Act, 2008 which is functioning in the State of Bihar.

In the aforesaid view of the matter while relegating the petitioner to seek his remedy before the learned Arbitral Tribunal in accordance with law by filing an appropriate application within a period of 30 days from today, this Court would direct that the State-Respondents shall not take any coercive action against the petitioner for recovery of the amount



as indicated in Letter No. 665 dated 17.06.2017 for a period of 90 days from today within which the petitioner shall approach the Arbitral Tribunal and will seek interim relief from the Tribunal itself.

In case any question of limitation arises before the learned Arbitral Tribunal, the same will be considered keeping in view the fact that the petitioner had moved this Court in its writ jurisdiction and was pursuing his remedy before this Court.

This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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