

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14293 of 2021

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Fragrance Media through its Director Smt. Khushboo W/o - Sri Manish Kumar resident of House no. - C20, Indrapuri Colony, Ram Nagri More, Ashiana Nagar, Phulwari, P.S. - Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar the Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Engineer - In - Chief, Building Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, South, Building Construction Department, Government of Bihar, Patna.
4. The Superintendent Engineer, Building Construction Circle, Building Construction Department, Government of Bihar, Patna.
5. The Executive Engineer, Building Construction Department, Building Division, Banka, P.S and District- Banka.
6. The Assistant Engineer, Building Division, P.S. and District- Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Choubey, Advocate

For the Respondent/s : Mr. Amit Prakash, GA 13

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 17-01-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following



relief(s):-

- I. For issuance of appropriate writ/writs order/orders direction/directions to the respondents to make payment of the pending bills of the petitioner with 18% interest from the date of submission of the bills till final payment on account of supply of various materials as published in the advertisement under valid agreement by the respondents for which different bills have been submitted by the petitioner and also several representations to the respondent authorities have been made.
- II. For issuance of appropriate writ/writs order/orders direction/directions to the respondent authorities to immediately pay the admitted bills of the petitioner which has also been verified by the respondent authorities but, till date payment has not been made and the petitioner is in dire need of money.
- III. For issuance of any other appropriate writ/writs order/orders direction/directions for which the petitioner may be found entitled to under the facts and circumstances of the case.

Relying upon a decision rendered by the learned Single Judge in CWJC 25434 of 2019, titled as **Sri Ram Yad Sah Vs. The State of Bihar & Ors**, learned counsel for the petitioner states that the matter may be disposed of in terms thereof. The said order reads as under:-

"The petitioner had participated in the State sponsored Fair under an agreement with the respondents but his final bill has not been cleared, despite sanction of the amount by the Building Construction Department, Banka Division. Notwithstanding two legal notices having been served upon the Executive Engineer, Building Construction Department, Banka Division, no



steps have been taken up till now for payment of the rightful dues of the petitioner. The petitioner has been informed that such payment has not made because of paucity of funds and non-release/sanction of the dues by the Government Department.

This information is absolutely incorrect.

The learned counsel for the petitioner has brought to the notice of this Court the sanction letter for Rs. 1,06,43,163/- which includes the final claim of the petitioner. The aforesaid sanction letter dated 03.01.2019 is being kept on record. It clearly indicates that except for red-tapism or for reasons which are inexplicable to this Court, the payments have been withheld.

Since no response from the respondents has been elicited, this Court has some reservation in passing orders for payment of interest on such bill.

However, this Court directs that in case the final bill of the petitioner is without any cloud over it, it must be cleared by the respondents, particularly respondent no. 3 within a specified time frame, preferably within a period of three months to be counted from the date of production of a copy of this order. Needless to state that if there is any dispute over the claim of the petitioner, necessary communication shall be made to him in that regard.

With the aforesaid direction/observation, the writ petition stands disposed of.”

We notice that the dispute in question emanates out of Works Contract.

According to the petitioner, for execution of the work, the respondent has admitted the amount found



due and payable to the petitioner whereas, according to the State mere request made by an Executive Engineer to the higher authorities for making payment of bill cannot be said to be an admission, unconditional and unequivocal at that.

In fact, we find that the matter pertains to the year 2017-18 and the supplies were effected in 2019. The Petitioner chose not to take any remedial measures enforcing is right and only filed the instant petition on 9th of August 2021.

Be that as it may, our attention has been invited to the provisions of the Bihar Public Works Contract Disputes Arbitration Tribunal Act (hereinafter referred to as the Act). The Tribunal constituted thereunder is competent to deal with all issues efficaciously and effectively raised by the petitioner in the present petition. Disputed questions are best to be settled by an alternate adjudicatory authority.

We notice that the work in question squarely falls within the ambit of the Act and this issue was never raised in **Sri Ram Yad Sah** case (supra), which was decided in the given facts, not similar to the instant petition.

In view of the same, we dispose of the



present petition reserving liberty to the petitioner to take recourse to such alternative remedies which are equally efficacious and readily available in accordance with law.

The petition stands disposed of.

Interlocutory application stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.01.2022
Transmission Date	

