

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4224 of 2018

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Pankaj Kumar Yadav son of Yogendra Prasad Yadav, resident of Village-
Bareta, P.O.- Maina Gram, P.S.- Mahishi, District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Water Resources, Government of Bihar, Patna.
2. The Principal Secretary, Department of Water Resources, Government of Bihar, Patna.
3. The Chief Engineer, Water Resources Department, Birpur, District- Supaul.
4. The Superintending Engineer, Eastern Koshi Embankment Division, Saharsa.
5. The Executive Engineer, Eastern Koshi Embankment Division, Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pramod Mishra, Advocate Mr. Suraj Kumar, Advocate
For the Respondent/s	:	Mr. Rewti Kant Raman, AC to SC-11

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-03-2023

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

**"1. That the petitioners
above-named craves for indulgence of this
Hon'ble Court for issuance of any**



appropriate writ preferably in the nature of mandamus commanding and directing the Respondents concerned to pay the petitioner due amount of contractual bill amounting to Rs. 1,46,320/- (One Lakh Forty Six thousand three hundred and twenty only) as also the deducted amount of security with 18% upto date penal interest, as the petitioner being a registered works contractor has been awarded the work of Anti erosion at 83.40 K.M. Spur of Eastern embankment of Koshi River under Agenda No. EE/S/01/2014 vide contract agreement No. 56F2/2013-14 29/93-94 dated 18.01.2014 which has been completed well in time i.e. 15.05.2014, but till date a sum of Rs. 1,46,320/- is still pending for payment and even deducted amount of security deposit has also not been paid to petitioner in want of allotment. And/or any other relief or reliefs for which the petitioners are found entitled in the facts and circumstances of this case."

3. *Prima facie*, certain disputed facts are forthcoming with reference to pleadings and relief sought but the disputed facts cannot be adjudicated under Article 226 of the Constitution as held by the Apex Court in the case of *Shalini Shyam Shetty & Another Vs. Rajendra Shankar Patil* reported in (2010) 8 SCC 329 read with *M.P. Power Management Company Ltd., Jabalpur Vs. Sky Power Southeast Solar India Private Limited and Others* reported in (2023) 2SCC 703. In the case of *Assistant Commissioner (CT) LTU, Kakinada & Others Vs. Glaxo Smith Kline Consumer Health Care Ltd.*



reported in **(2020)19 SCC 681**, wherein Apex Court has specifically taken note of alternative remedy available to the concerned aggrieved person under statute.

Gist of the aforementioned judgment reads as under:-

"The SC on May 6, 2020 {Assistant Commissioner (CT) LTU, Kakinada & Ors. v. M/s. Glaxo Smith Kline Consumer Health Care Limited} held that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

It was further held by the SC Bench, comprising of Justice A.M. Khanwilkar & Justice Dinesh Maheshwari, that even though the High Court can entertain a writ petition against any order or direction passed/ action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law.

The Supreme Court held that, indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on it under Article 142 of the Constitution. It was held that Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties.

The moot question in this lis before the SC was: whether the High Court in exercise to writ jurisdiction under Article 226 of the



Constitution of India ought to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stood foreclosed by the law of limitation? The SC answered it in negative.

In the present case, the High Court allowed the Writ petition vide the impugned judgment and order on the ground that the statutory remedy had become ineffective for the respondent (writ petitioner) due to expiry of 60 days from the date of service of the assessment order. It was reasoned by the HC while allowing the writ petition that inasmuch as, the appellate authority had no jurisdiction to condone the delay after expiry of 60 days, despite the reason mentioned by the respondent of an extraordinary situation due to the act of commission and omission of its employee who was in charge of the tax matters, forcing the management to suspend him and initiate disciplinary proceedings against him. The SC found the said reasoning of the HC for entertaining writ petition patently erroneous and against the settled law.

The SC relied upon Oil and Natural Gas Corporation Limited VS. Gujarat Energy Transmission Corporation Limited & Ors., (2017) 5 SCC 42, in which it concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act. To put it in a different way, it was held by the SC in that case, the prescription of limitation when the statute commands that the SC may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It was held that it is equivalent to Section 3 of the Limitation Act. Therefore, it was held therein that it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."



4. In the light of the principle laid down by the Apex Court in the aforementioned decision, the present petition is not maintainable. Accordingly, the present petition stands dismissed reserving liberty to the petitioner to invoke statutory remedy which is available in terms of the agreement.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

rakhi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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