

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20873 of 2019

Thakur Constructors and Developers Pvt. Ltd. through its Managing Director, Ashutosh Kumar Thakur, Son of Vijay Chandra Thakur, Resident of Village and O.P. Bishanpur, P.S. Katra, District- Muzaffarpur having its registered Office at and P.O. Bishanpur, P.S. Katra, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Engineer in Chief, (North), Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resources Department, Darbhanga.
4. The Superintending Engineer, Western Kosi Canal Circle, Water Resources Department, Darbhanga.
5. The Executive Engineer, Western Kosi Canal Division, Benipur.
6. The Executive Engineer, Western Kosi Canal Division, Darbhanga.
7. The Assistant Engineer, Western Kosi Canal Division, Darbhanga.
8. The Sub Division Officer-I , Kalhuai, Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindyachal Singh, Sr. Advocate Mr. Sanjay Prakash Verma, Advocate
For the State	:	Mr. Anjani Kumar (AAG 4) Mr. Deepak Sahay Jamuar, AC to AAG-4

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-03-2023

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

“i. For issuance of a writ in the nature of writ of certiorari or any other appropriate writ/ order/ direction for quashing the letter no.371 dated 31.05.2019 issued by the Executive Engineer,



Western Kosi Canal Division, Darbhanga by which the petitioner has been directed to refund Rs.1,00,99,072.92(after adjusting the security deposit of Rs.23,81,594.00) on the claim that the petitioner was earlier paid Rs.2,97,69,920.00 by the previous Division through thirteen bills in connection with agreement no. 01 S.B.D./2009-10 whereas on closer of the said agreement on 31.05.2019 and on final measurement a final bill of Rs.1,24,80,662.92 has been made available to his Division.

ii. For issuance of an appropriate Writ/Writs, direction/ directions in the nature of mandamus for directing the respondents to refund the security amount of Rs. 23,81,592.00 as deducted by the thirteen running bills of the petitioner.

iii. For further directions to the concerned competent authority to act in accordance with letter no. 1283 dated 04.10.2013 issued by the Engineer in Chief (North), Water Resources Department, Bihar, Patna to the Chief Engineer, Irrigation Creation, Water Resources Department Darbhanga, which is with respect to close the agreement no.01 S.B.D./2009-10 and to make payment of security deposit to the petitioner. Copy of the said letter has also been communicated to all concerned vide letter no. 1907 dated 05.10.2013.

iv. For further kind indulgence of this Hon'ble Court to look into the matter and the concerned respondents may be directed to produce all connected for kind perusal for passing an appropriate order.

v. For issuance of a direction to pay an admitted interest on the due amount of the petitioner.

vi. For any other appropriate relief/ reliefs to which the petitioner is found entitled in the facts and circumstances of this case including the cost of litigation.”

2. From perusal of the records, it is evident that certain



disputed facts are involved in the present *lis*. Apex Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada & Ors. Vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***(2020) 19 SCC (681)*** elaborately discussed as to how writ-petition is not maintainable when a party has a statutory remedy under a statute. The principle laid down in the aforementioned decision are as follows:-

“ 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 of its 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 the 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 and 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.”*

3. In the present case, the petitioner has remedy before appropriate forum in light of Clause 25 of the agreement. Clause



25 is relating to settlement of dispute and arbitration.

4. Accordingly, the present petition is not maintainable and writ-petition stands disposed of reserving liberty to the petitioner to invoke appropriate forum. The appropriate forum may take note of Section 14 of the Limitation Act, 1963 or any other relevant provision of law for the purpose of condonation of delay in approaching the appropriate forum.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Himanshu/
Daya/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.03.2023
Transmission Date	NA

