

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24725 of 2018

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Kumari Narmada Rani Sinha Wife of late Arvind Kumar Resident of village-
Noma, Post Office- Noma, Police Station- Halsi, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Irrigation,
Government of Bihar, Patna
2. The Engineer-in-Chief, Department of Irrigation, Govt. of Bihar, Patna
3. The Superintending Engineer, Irrigation Circle Jamui District Jamui.
4. The Executive Engineer, Irrigation, Government of Bihar, Jamui District
Jamui.
5. The Executive Engineer, Irrigation, Govt. of Bihar, Darkha (Pakri Barawan),
Nawada
6. The Executive Engineer, Irrigation Circle, Sikandra, District Jamui

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Vinay Pd. Singh @ Sanjay, Advocate
For the Respondent/s : Mr. Vinay Kriti Singh, Sr. Adv. (GA 2)

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 19-11-2024

1. It is pertinent to mention here that during the pendency of the Writ petition, the original Writ petitioner died on 01.05.2022 and his widow Kumari Narmada Rani Sinha was substituted as his legal heir and now Kumari Narmada Rani Sinha claims for the admitted dues of the deceased Writ petitioner/Arvind Kumar.



2. The original Writ petitioner has filed the Writ petition for the following reliefs:

(i) A Writ in the nature of certiorari setting aside the order bearing letter no. 1087 dated 6.11.2018 issued from the level of Respondent no.3 (S.E) as contained in Annexure-6 under which the claim of petitioner for payment of due amount against the work already done and necessary measurement has also been approved by the competent authority but payment couldn't be made to the petitioner.

(ii) To pay the outstanding dues of Rs. 1,05,727 (One Lakh Five Thousands Seven hundred twenty seven) with interest to the petitioner which has been admitted by the respondents in the impugned order itself.

(iii) Any other order/orders for granting any other relief/reliefs for which the petitioner is found entitled in the facts and circumstances of the case.

2. The brief facts culled out of Writ petition are that the original petitioner was the Secretary of Shramik Sahyog Samit Ltd. Nauma and he entered into an



agreement vide No. 168F-2/-85-86 with the respondent for doing the contract work of soil from channel No. 579 to 582, of Main Nahar of Upper Kuel Jalasay (Water Tank). The duration period of work was for three months, which was completed in the month of November, 1986. After completion of work, the measurement was noted under the supervision of the Engineer of respondents and a final bill was prepared and submitted before the authority on 21.06.1988. The estimated cost of the total work was Rs. 27,900/-. During the course of work some payment were made, however, on completion of entire work an amount of Rs. 1,05,727/- remained outstanding. The petitioner filed various representations before the respondents on 22.06.1988, 18.11.1997, 24.09.1998, 09.08.2008 and 16.06.2010.

3. On 16.06.2010, the petitioner suffered with paralysis and got bed ridden. Later, the petitioner failed to approach the respondents. In order to demonstrate his illness the medical prescription of paralysis attack were



brought on record. The petitioner was constrained to file CWJC NO. 15808 of 2018 to direct the respondents to pay the due amount and this Court vide order dated 17.09.2018 directed the petitioner to file a representation before the 3rd respondent, within a period of two weeks, from the date of the order and directed the respondent to dispose of the representation by a reasoned and speaking order, within a period of four weeks thereafter. Pursuant to the orders of this Court, the petitioner made a representation before the respondent No. 3. The respondent No. 3 considered the relevant documents and called for the report, from the 4th respondent and found that the allotted work was completed by the petitioner, as per agreement and part payment was made and the last bill that was prepared amounts to Rs. 1,05,727/- which was mentioned by the Junior Engineer, but the Assistant Engineer and Executive Engineer have not taken any decision for making the payment of due amount for which the respondent Executive Engineer has been directed to



place the matter before the Department Liability Committee and necessary order has been communicated vide letter No. 1087 dated 06.11.2018. In spite of, it no payments were made therefore, the petitioner was constrained to file the present Writ petition to direct the authorities for payment of the admitted dues.

4. A detailed Counter affidavit was filed by the respondent Nos. 1 to 6 contending that the Writ petition is not maintainable, on the ground of delay and laches and that the petitioner has approached this Court after lapse of 38 years. In support of their contention, the respondents have relied on the judgment of the Hon'ble Apex Court in the case of **Surjeet Singh Sahni Vs. State of U.P. & Ors.** reported in **2022 Livelaw (SC) 232** in which their Lordships have held as follows:-

“5. As observed by this Court in a catena of decisions, mere representation does not extend the period of limitation and the aggrieved person has to approach the Court expeditiously and within a reasonable time. If it is found that the Writ petitioner is guilty of



delay and laches, the High Court should dismiss it at the threshold and ought not to dispose of the Writ petition by relegating the Writ petitioner to file a representation and/or directing the authority to decide the representation, once it is found that the original Writ petitioner is guilty of delay and laches. Such order shall not give an opportunity to the petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action.”

5. The Learned counsel for the respondent, further relied on the citation of this Court in the case of **Dhirendra Kumar Sharma Vs. The State of Bihar and Or.s (CWJC No. 5425 of 2023)** wherein this Hon’ble Court has held as follows:

“4. The case essentially relates to recovery of dues in terms of Limitation Act. Suit for recovery of money has to be filed within a period of three years from the date it is due. The time period has elapsed long back. Even if there is an admission of dues, the time period for filing of a suit is 12 years



under the Limitation Act which too has expired long back.”

6. It is contended in the counter that the agreement that was entered between the petitioner and the respondent Executive Engineer was in the year 1986 for construction of Main Canal at Channel 579 to 582 under Upper Kiul Reservoir Scheme. As per agreement, the petitioner has to complete the aforesaid work within three months i.e. by 10.06.1986. The value of the agreement was Rs. 2,93,612/-. The petitioner commenced the work, but did not complete the entire work. Against the works done by the petitioner, an amount of Rs. 25,976/- was paid on 23.03.1986 and second bill of Rs. 80,554/- was paid on 09.09.1986. Further, an amount of Rs. 66,554/- was paid on 10.01.1987. Thus, the total amount of Rs. 1,73,274/- was paid to the petitioner till 10.01.1987. The petitioner had completed only 476500 cubic feet of earth work out of 810000 cubic feet of earth work and the petitioner did not complete the remaining work. The fourth and the



final bill of the work was noted by the concerned Junior Engineer on 21.06.1988 in the measurement book for the work executed up to 22.04.1987 and the said measurement book was not forwarded to the Executive Engineer, who is the competent authority. Further, the record of measurement book was closed on 03.06.1997 by the Executive Engineer, Irrigation Division, Sikandra.

7. The counter further disclose that several letters were addressed by the Executive Engineer, Sikandra to the petitioner to complete the left over work, otherwise the agreement will be closed and action will be taken against him. In spite of it, the petitioner did not finish the left over work. Later the work jurisdiction was transferred to the Executive Engineer, Irrigation Division, Darkha Camp Pakri Barwan (Nawada) in the year 1991. The then Executive Engineer has addressed a letter dated 27.10.1997 to the petitioner directing him to be present on 18.11.1997 for final measurement of the work, but the petitioner did not appear. Earlier also



the Executive Engineer, Irrigation Division Sikandra vide Letter No. 2496 dated 19.10.1989 communicated to the petitioner that the agreement was closed as the work was not completed by the petitioner and he was directed to be present on site for final measurement of the work. Again, the petitioner was informed by another letter vide letter No. 117 dated 21.01.1998 to be present 27.01.1998 for final measurement. But the petitioner did not appear before the concerned authority for the final measurement of the work. The petitioner has made an application dated 06.01.1998 to Executive Engineer that the Junior Engineer has noted the measurement at Chain No. 579 to 582. Upon that the Executive Engineer enquired into the matter and found out that the measurement was not done as per the agreement. Further, the Chief Engineer, Water Resource Department, Bhagalpur, vide letter No. 3708 dated 28.12.2010 directed the concerned Executive Engineer to inquire into the matter and submit the report before the undersigned. The Executive Engineer vide letter No.



52 dated 01.02.2011 communicated with the Superintending Engineer, Irrigation Circle, Jamui stating that the petitioner was requested twice to appear before the concerned authority, in order to note final measurement of the work, but the petitioner failed to appear before the authority.

8. Pursuant to the orders passed in CWJC No. 15808 of 2018, the Superintending Engineer, Irrigation Circle, Jamui directed the Executive Engineer, Irrigation Division, Sikandra to place the matter along with all relevant record, before the Departmental Liability Committee for considering the claim of the petitioner. The claim of the petitioner as well as concerned records were placed before the Departmental Liability Committee in its meeting on 08.05.2019 and the said Committee found that the claim of the petitioner cannot be considered, as the final bill was not prepared and the final measurement was also not done. Further, the Committee decided that the claims of the petitioner will be considered only after completion of final bill as well



as the final measurement of the work. The decision of the Departmental Liability Committee as well as the proceeding of minutes of the Liability Committee were brought on record vide Annexure-C/9. The Superintending Engineer, Irrigation Circle Jamui vide Letter No. 426 dated 28.05.2019 directed the Executive Engineer, Irrigation Division, Sikandra to take action, as per provision of Bihar PWD Code/ Bihar Financial Rule/Bihar Public Account Rule, as well as other relevant circular issued by the Department. The Executive Engineer, Irrigation Division, Sikandra after considering all the aforesaid provisions informed the Superintending Engineer, Irrigation Circle, Jamui that the bill is not payable. The Superintending Engineer, Irrigation Circle, Jamui considered the view of the Executive Engineer, Irrigation Division, Sikandra as well as other materials available on record and passed a reasoned order contained in Memo No. 821 dated 21.08.2019 and revised its earlier order contained in Memo No. 1087 dated 06.11.2018.



9. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents. It is the specific contention of the Learned counsel for the respondents that inspite of the repeated instructions by the then Executive Engineer, the petitioner did not appear at the site for final measurement, to resolve the dispute and the last correspondence from the petitioner was only up to 1989. Thereafter, from 1998 onwards the petitioner addressed letters stating that the final measurement was done. It is contended by the Learned counsel for the respondents that the arithmetic value of the last disputed measurement is reproduced for the value of Rs. 1,20,499/- for consideration on merit before the Departmental Liability Committee and the concerned Executive Engineer considered the claim of the petitioner and found the claim is not payable to the petitioner.

10. On perusal of the record, it is evident that the petitioner has completed the works before 1989. Thereafter, the petitioner was called several times by the



respondents to appear before them for noting final measurement of the works. In spite of it, the petitioner did not approach and kept quiet for nine long years and made representations stating that the admitted dues are to be paid to him and knocked the door of this Court in the year 2018 by filing CWJC No. 15808 of 2018 and this Court has disposed of the Writ petition directing the petitioner to make a fresh representation before the competent authority.

11. It is the claim of the petitioner that the dues are admitted for which, the respondents are liable to pay, but there is no material on record to show that the dues were admitted. On the other hand the Departmental Liability Committee has found that the claim is not payable to the petitioner.

12. Pursuant to the order of this Court vide Writ petition bearing CWJC No. 15808 of 2018, the respondents authorities have passed a reasoned and speaking order which is challenged in the present Writ petition. Admittedly, the Writ petition was filed after a



lapse of 38 years. In the absence of any final measurement, this Court cannot direct the authorities for payment of dues. It is important to note that the petitioner did not appear before the authorities, when he was called for noting the final measurement.

13. In my considered view, as well as the view taken by the Co-ordinate Bench of this Court in **(CWJC No. 5425 of 2023) (supra)**, this Writ petition suffers from gross latches of unexplained delay, further, the original petitioner did not appear before the authorities, when he was called for noting the final measurement. In the light of the said facts and due to lack of proper documents, the prayer made in the Writ petition cannot be considered.

14. As such, the Writ petition stands dismissed.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2024
Transmission Date	

