

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6242 of 2015

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The Ambika Construction Through Its Proprietor Manindra Kumar Singh S/o
Late Prabhu Nath Singh Gopi Babu Ka Hata, PO/PS- Salempur at Chapra

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Chief Engineer , Department Of Water Resources, Patna
2. The Junior Engineer , Saran Canal Circle, Chapra At P.O. Chapra, P.s - Town Thana, chapra841301
3. The Assistant Engineer,Saran Canal Circle, Chapra At P.O. Chapra, P.s - Town Thana, chapra841301
4. The Executive Engineer, Saran Canal Circle, Chapra At P.O. Chapra, P.s - Town Thana, chapra841301
5. The Superintendent Engineer, Saran Canal Circle, Chapra At P.O. Chapra, P.s - Town Thana, chapra841

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dharmesh Kumar Shrivastava
For the Respondent/s : Mr.Gyan Prakash Ojha (G.A. 7)

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 18-07-2024

1. The writ petition has been filed for the following

reliefs:-

“i. To hold and declare that the amount agreed to be paid vide agreement made between the parties, was an admitted amount to be paid to the petitioner, which could not be denied at the time of payments by bringing afterthoughts excuses.

ii. To hold and declare that it was the responsibility and the duty of the respondents to supervise and to scrutinize the job allotted to any contractor like this petitioner on regular basis.



iii. To hold and declare that it was also the duty and the responsibility of the respondents to prepare total MB (measurement book) of any contract being awarded to any contractor like this petitioner.

iv. To hold and declare that the respondents are liable to pay the amount of 2,32,799 (two lakhs thirty two thousand seven hundred and ninety nine) only to the petitioner as legitimate due against the work done by him.

v. To hold and declare that the letter issued to the petitioner annexed to this petition vide annexure no -3 was an afterthought device to deny the payments of the petitioner. Hence the same is fit to be set aside.

vi. To hold and declare that the respondents were liable to pay the interest and damages to the petitioner, which has been incurred by him out of this contract, and to further declare that the respondents were bound by the provisions of Indian Contract Act, 1872 and to declare and hold that the respondents were responsible and liable for punishment for inducing the petitioner to invest money on their (respondent's) behalf for nothing."

2. The brief facts of the case are that the petitioner has earlier filed a writ petition bearing C.W.J.C. No. 11779 of 2012 which was disposed of by this Court vide Order dated 24.07.2012. Pursuant to the said order, the petitioner has also filed contempt case bearing M.J.C. No. 1084 of 2014 for willful



disobedience of the aforesaid order which was dismissed vide Order dated 25.11.2014.

3. The brief facts culled out of the petition are that the petitioner had entered into an agreement with the respondents to heap and fortify the banks of river canals and executed the work of strengthening the river bank and completed the same to the satisfaction of the respondents in the year 2011-12. Thereafter, he raised his bills. As the said amounts were not paid by the respondents, he was constrained to file C.W.J.C. No. 11779 of 2012.

4. It is specific contention of the Learned counsel for the petitioner that he has executed the work as to the satisfaction of the respondents and pursuant to the disposal of the writ petition the respondents has passed the impugned order vide Annexure – 3, which is under challenge.

5. It is relevant to mention that this Court disposed of the writ petition bearing C.W.J.C. No. 11779 of 2012 with a direction to the concerned respondents, responsible for payment of amount of the bills of the petitioner, to examine his/its bills in the light of the work done by him/it and ensure release of admissible amount of the bills to the petitioner positively within three months from the date of receipt/production of copy of this



order, if necessary, by arranging fund for the same, failing which, the respondents shall be liable to pay an interest on the amount, @ of 12% compoundable yearly, from his own pocket.

6. As the respondents did not comply the order within the stipulated time, MJC No. 1084 of 2013 was filed. During pendency of the contempt case, Annexure 3 i.e. the order dated 10.10.2012 has been passed. Now the present petition is filed challenging Annexure – 3 i.e. Letter Reference No. 1080 dated 10.10.2012, apart from the other reliefs.

7. It is specific contention of the Learned counsel for the petitioner that the outstanding dues from the agreement was Rs. 5,80,000/- but the respondents have paid only Rs. 3,47,000/- and still the respondents are due for an amount of Rs. 2,32,799/- and therefore, seeks a direction to direct the respondents to pay the said amount by setting aside the order dated 10.10.2012.

8. A detailed counter affidavit was filed by the respondent denying all the allegations made in the Writ petition. On perusal of the Annexure 3, it is evident that there are three items for which the works has to be executed by the petitioner i.e.:-

(i) Earthwork in maintenance of
canals having discharge less than 28



cumecs (1000 cusecs) in ordinary soil (vide classification of soil item A) including clod breaking and rough dressing of soil with all leads and lift all complete as per specification and direction of E/I.(S.O.R.- 5.1.17). Quantity of the work as per the agreement is 1553.38 m³. Quantity of the work executed by the petitioner is 923.07 m³. Total amount of the work done by the petitioner is Rs. 3,43,972.00/-. Payment made against the said work is Rs. 3,47,264.00/-.

(ii) Earthwork by mechanical means with the help of excavator, Tipper Spreader in canal banks all types of work like filing and making of canal banks earth free from logs roots or any other ingredients including cutting, loading, carriage from pit to banks, unloading, spreading including rough dressing and clods breaking maximum 60mm cube placing the earth in layers not exceeding



225mm thick with lead beyond $\frac{1}{2}$ KM but up to 1.00 KM and all lift all complete as per specification and direction of E/I. (S.R. No.-5.1.46.2). Quantity of the work as per the agreement is 4980.17m³. Quantity of the work executed by the petitioner is 3354.04m³.

(iii) watering and consolidation of earth laid in 150mm to 225mm layers by manual labour with C.I. Hammer to achieve minimum 85% of dry density including cost and carriage of water and necessary tools and plants all lead and lift all complete as per specification and direction of E/I. (S.R. No.-5.1.38). Quantity of the work as per the agreement is 2139.62m³. Quantity of the work executed by the petitioner is nil.

9. It is specifically contended in the counter affidavit that as per the agreement the quantity of work to be performed in Item No. 1 was 1553.38 cubic meter for which the measurement of actual quantity of work executed by the



petitioner comes to 923.07 cubic meter. So far as Item No. 2 the petitioner has performed earthwork by mechanical means to a tune of 4980.17m³ but the petitioner performed work of 3354.04 cubic meters. Similarly in Item No. 3 no work was done by the petitioner. On calculation against the work done by the petitioner in item nos. 1 and 2, they have made an over payment of Rs. 3292/- and therefore, the final bill was passed to Rs. 3,47,264.00/- against the work done by the petitioner. Further it denotes that the work commenced on 10.12.2011 and the completion date is 08.01.2012. The petitioner has made an application for extension of time but the Department/respondents have not granted any extension of time and therefore, prayed to dismiss the Writ petition as devoid of merits.

10. Heard Learned counsel for the petitioner and Learned counsel for the respondent-State. Perused the records.

11. On perusal of the records, it is evident that respondents have paid an amount of Rs. 3,47,264/- against the work done by the petitioner for item nos. 1 and 2. In spite of it, the petitioner contends that the respondents have to pay an amount of Rs. 2,32,799.00/-. It is purely a question of fact which cannot be decided by this Court. Further, no rejoinder is filed by



the petitioner to rebut the contents of the counter affidavit. If at all, the petitioner has any grievance against the disputed amount, he is at liberty to approach the appropriate forum for the said relief.

11. With the aforesaid observation, the writ petition stands disposed of.

12. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.07.2024
Transmission Date	N/A

