

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7356 of 2023

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M/s Ananya Media Consultant 406, 4th Floor, Block-A, Capital Tower, Frazer Road, Patna, P.S. Kotwali, District Patna through its Proprietor rakesh Kumar Sharma, aged about 50 Years, Gender-Male, Son of Kailash Mistri, Resindent of House No. 3, Kailash Bhawan, Road NO.1, Near Beur Akhara, P.S. Beur, Distirct-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Information and Public Relations Department, Bihar, Patna,
2. The Director, Information and Public Relations Department, Bihar, Patna,
3. The Secretary, Bihar State Minorities Financial Corporation Ltd. Haj Bhawan, Harding Road, Patna.
4. The Joint Secretary-Cum-Director, Minorities Welfare Department, Bihar, Patna.
5. The Managing Director, Bihar State Minorities Financial Corporation Ltd. Haj Bhawan, Harding Road, Patna.
6. The Assistant Director-Cum-Account Officer, Bihar State Minorities Financial Corporation Ltd. Haj Bhawan, Harding Road, Patna.
7. The Director, Information and Public Relations Department, Bihar, Patna,

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar
For the Respondent/s : Mr. Prashant Pratap (Gp2)

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT

Date : 03-10-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“(i) For issuance of writ in the appropriate nature commanding and directing the Respondent authorities to make payment of the dues along with statutory interest till the payment against the publication in the Newspaper in view of the work order dated 07.07.2022 and 18.07.2022 given by the Respondent authorities to the petitioner’s firm



and after publication for one and another reason the payment has not been made.

(ii) For further direction to the Respondent authorities to dispose of the representation of the petitioner by reasoned and speaking order within time framed.

(iii) And for any other relief/ reliefs for which the petitioner is found to be entitled in the eye of law.”

3. Learned counsel for the petitioner has stated that pursuant to the work order issued by the respondent authorities, the petitioner has carried out advertisements on their behalf in the 19 newspapers and, thereafter, the petitioner has submitted the bills. Though, the advertisements were issued in the year 2022, the authorities till date have not paid the amounts due to the petitioner. Learned counsel has stated that the petitioner left with no other option has approached this Hon'ble Court by way of the present writ petition. Learned counsel for the petitioner has drawn the attention of the Court to the documents filed along with the writ petition more particularly, Annexure-P/2 which is a letter dated 07.07.2022 issued by the respondent No. 05 directing the petitioner to issue the required advertisements in the newspapers. Further, learned counsel has stated that the fact that the petitioner has issued the advertisements on behalf of the respondent No. 05 has not been denied by respondent No. 5, therefore, they cannot deny the payments to the petitioner. Further, it is stated by the counsel for the petitioner that once the advertisements have been



published in the newspapers, the respondents cannot deny the bills claimed by the petitioner on one pretext or the other. The contention of the respondents that the advertisements issued by the respondents authority were in violation of the Bihar Advertisement Policy, 2016 cannot be a ground for denial of the rightful claims of the petitioner. That even if there is any violation of the said policy, the same are due to the lapses of the official respondents but not the mistake made by the petitioner herein. Learned counsel has stated that the petitioner cannot be blamed or made scapegoat for the lapses committed by the authorities and prayed this Hon'ble Court to direct the respondents to make the necessary payments as per the bills submitted.

4. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the advertisements issued by the respondent No. 05 were against the Bihar Advertisement Policy, 2016. That the respondent No. 6 was directed to withhold the payments due to the petitioner as the advertisements issued in the newspapers by the petitioner were in violation of the above said policy. Learned counsel has stated that the petitioner has an alternative and efficacious remedy of either invoking the arbitration clause or approaching the Civil Court for



payment of the bills due to him. Further, it is stated that there are disputed questions of fact involved in the present writ petition which cannot be adjudicated by this Court under Article 226 of the Constitution of India. Learned counsel has prayed this Hon'ble Court to dismiss the present writ petition.

5. Learned counsel appearing on behalf of the respondent Nos. 3, 5 & 6 while admitting that the authorities have issued the work orders to the petitioner for carrying out the advertisements in the local newspapers has however, stated that due to the instructions received from the Department of Information and Public Relation Department, Govt. of Bihar, the authorities have withheld the payment due to the petitioner. Learned counsel has stated that due to the above letter issued by the State Government, the authorities are unable to process the bills submitted by the petitioner and make the necessary payments.

6. Learned counsel appearing on behalf of the respondent-State has relied on the judgment of this Hon'ble Court in the case *State of Bihar & Others vs. Nikhar Construction & Anr.* passed in LPA No. 848 of 2018 dated 21.08.2021 and also the judgment in the case of *Madhusudan Choudhary vs. State of Bihar And Ors.* dated 15.04.1998 reported in *AIR 1999 PAT 159* to buttress his case.



7. Admittedly, in this particular case, the petitioner was issued a work order vide letter dated 07.07.2022 by the respondent Nos. 3, 5 & 6 and the petitioner has carried out the work i.e., issuance of the advertisement in the local newspapers numbering 19. The fact that the respondents have issued the work order and the petitioner has got the same published in the newspapers is not denied by any of the respondents herein. However, the respondent-State has taken a stand that the advertisements issued on behalf of the respondent Nos. 3, 5 & 6 were in violation of the Bihar Advertisement Policy, 2016. These guidelines were issued pursuant to the directions of the Hon'ble Supreme Court.

8. Learned counsel has stated that the authority duly taking into consideration that the advertisements which were issued on behalf of the respondent Nos. 3, 5 & 6 contained the pictures of the Hon'ble Chief Minister and the issuance of the advertisement without taking prior permission from the concerned Department is in violation of the Bihar Advertisement Policy, 2016. Therefore, the Department has directed the respondent Nos. 3, 5 & 6 to withhold the payments.

9. After going through the pleading and hearing, the submission of the learned counsels, this Court is of the opinion that the question as to whether the advertisement issued on behalf



of the respondent Nos. 3, 5 & 6 are in violation of any guidelines issued by the Government or against the Bihar Advertisement Policy, 2016 are immaterial for the purpose of paying the bill amount to the petitioner. Once the work order has been issued by the competent authority and the said work has been completed without any deviation, the lapses, if any, committed by the authority cannot be a ground for denial of the payment to the petitioner. The rightful claim of the petitioner cannot be denied on the ground that the respondent authority i.e., the respondent Nos. 3, 5 & 6 while issuing the work order have committed any irregularities or violated the Bihar Advertisement Policy, 2016, the petitioner cannot be left high and dry by denying the payments. That in so far as the contention of the respondents that the petitioner is having an alternative remedy of invoking the arbitration or approaching the Civil Court for payment of his dues is concerned, the Hon'ble Supreme Court in catena of cases has time and again held that availability of an alternative and efficacious remedy cannot be a ground for denying the relief sought for under Article 226 of the Constitution of India. Further, there are no disputed questions of facts which would have bound this Court to relegate the petitioner to the Civil Court or invoke Arbitration Clause. With all due respect to the learned counsel



appearing on behalf of the respondent-State, the judgments relied are not applicable to the facts of this particular case and are distinguishable.

10. In *Whirlpool Corporation v. Registrar of Trademarks, Mumbai*²¹, The Hon'ble Supreme Court after reviewing the case law on this point has held as under:

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

*15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. **But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.** There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."*

(emphasis supplied)"

11. The authorities are supposed to act in a fair and transparent manner, once the work order has been issued and the



work has been completed by the contractor, the official respondents are expected to clear the bills promptly but they cannot deny the payments one pretext or the other. Even if any irregularities or lapses are committed which were not attributable to the contractor, the payment of the bills cannot be denied. If any irregularities or lapses have been committed by the official respondents, they themselves have to be blamed for it and necessary departmental action has to be taken against them, but the dues payable to the contractor for the work done by him cannot be stopped or denied on such clumsy, legally untenable grounds.

12. In this particular case, the petitioner cannot be blamed for the lapses if any committed by the authority, irrespective of the fact as to whether the advertisements were made against the guidelines issued under the Bihar Advertisement Policy, 2016 or any other guidelines issued by the Government, the payments of the bill amount cannot be denied to the petitioner.

13. Having regard to the above mentioned facts and circumstances, the present writ petition is allowed. The respondent Nos. 3, 5 & 6 are directed to pay the bill amounts due to the petitioner as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order. The authorities are also directed to make necessary arrangements or



extend necessary cooperation to the respondent No. 3, 5 & 6 for payment of the admitted dues. In case the amount due to the petitioner are not paid within the stipulated time, the petitioner would be entitled to simple interest at the rate of 8% per annum from the date of submission of the bills till the date of actual realization.

14. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.10.2024.
Transmission Date	NA

