

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18885 of 2015

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Kishori Singh, son of Devbaran Singh, Resident of village- Poiwan, Police Station- Aurangabad Muffasil, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Inspector General Prison Old Secretariat, Patna.
3. The District Magistrate, Aurangabad.
4. The Superintendent of District Jail, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Akhilesh Kumar Sinha, Advocate
For the Respondent/s : Mr. Jitendra Kumar, A.C. to Ex-AAG-11

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**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY**

ORAL ORDER

10 17-09-
2024

Re:-I.A. No. 01 of 2021

I.A. No. 01 of 2021 is filed for substituting the sole petitioner Sri Kishori Singh, Son of Deobaran Singh to that of his legal heirs the petitioner i.e. petitioner nos. 2 to 5 on the record. The Interlocutory Application disclose that the sole petitioner Late Kishori Singh died on 03.01.2021 leaving behind his two sons and one daughter. The Writ petition was filed by Late Kishori Singh for payment of entire dues amount with penal interest from the period 1988 to 1995 as the principal amount alone was paid by the respondent in the year 2011 without interest.

2. The brief facts culled out the Writ petition is that the petitioner was appointed as contractor supplying the food material



and other essentials to the respondent authorities from 1988 to 1995 and the respondent prison authorities have not paid total amount of Rs. 11,96,209/- (Eleven lakh ninety six thousand two hundred nine). Further, after verifying the accounts of the petitioner, it was found that the respondent authorities had paid an amount of Rs. 9,20,909/-(Nine lakh twenty thousand nine hundred nine) in the year 2011 without any interest. The entire grievance of the petitioner was about the interest on the principal amount. The only contention of the Learned counsel for the petitioner is regarding the amount of Rs. 9,20,909/- (Nine lakh twenty thousand nine hundred nine) which was supposed to be paid to the petitioner in the year 1995 and was withheld with the respondent authorities till 2011 and, therefore, the petitioner is entitled for penal interest over the said amount.

3. A detailed counter was filed on behalf of respondent nos. 3 and 4 denying all the allegations made by the petitioner in the Writ petition. The counter disclose that in the year 1995, the petitioner submitted a bill for an amount of Rs. 7,35,735/- (Seven Lakh thirty five thousand seven hundred thirty five) for its payment. There were some differences in the claim submitted by the petitioner as well as the entries made in the official Register of Supply. Due to the aforesaid differences, the Inspector General of



Prison, vide letter no. 5619, dated 26.12.1995 directed the 4th respondent to get the matter enquired by the District Magistrate, Aurangabad i.e. respondent no. 3 and it was decided that after verification and enquiry, the amount shall be paid to the petitioner. Pursuant to the directions of the Inspector General of Prison, the District Magistrate, Aurangabad through his letter no. 58/MU dated 08.03.1996 accorded permission for payment of Rs. 1,41,350.80/- (One lakh forty one thousand three hundred fifty and eighty paise) to the petitioner. The said amount was paid to the petitioner vide bill nos. 74/95-96 and 75/95-96. Further, Rs. 504 (Five hundred four) was also paid. In the year 2000 for the period 1989 to 1994, the petitioner has submitted another bill for payment of Rs. 11,96,337/- (Eleven lakh ninety six thousand three hundred thirty seven) and upon verifying the contents of the bill along with the jail records, a report was called for by the I.G. (Prison) through his letter no. 3580, dated 03.07.2000 for the estimated payment to the petitioner which was responded by the letter no. 1001, dated 12.07.2000 of the Superintendent, Aurangabad recommending payment of Rs. 10,76,444.55/- (Ten lakh seventy six thousand four hundred forty four and fifty five paise) to the petitioner. Again I.G. (Prison) through his letter No. 5662, dated 18.10.2000 directed the 4th respondent to get the matter enquired by the District Magistrate,



Aurangabad. Pursuant to the instructions given by the Inspector General of Prison, the District Magistrate, Aurangabad conducted a detailed enquiry and accorded permission for payment of Rs. 5,30,930/- (Five lakh thirty thousand nine hundred thirty) against the proposed claim of Rs. 11,96,337/- (Eleven lakh ninety six thousand three hundred thirty seven). Accordingly, the 4th respondent has processed the bills of the petitioner and paid amounts in the financial year 2003-2004.

4. The counter also disclose that no payment could be made without verification of the records and that all the amounts which are due by the respondent authorities, have been paid to the petitioner.

5. Admittedly, the petitioner is only claiming for the penal interest on the payment received by him for an amount of Rs. 9,20,908/- (Nine lakh twenty thousand nine hundred eight).

6. Perused the entire records. Heard the arguments of the Learned counsel for the petitioner as well as the Learned counsel for the respondents. On perusal of the entire records, it is evident that the payments were received by the petitioner in the year 2011 vide bill nos. 128/2010-11 and 142/2010-11 that to after deducting the back payment. The Writ petition was filed by the petitioner no.1 in the year 2015 demanding the respondents to pay the penal



interest for the amount already paid by the respondent authorities in the year 2011. Admittedly, the dues were received by the petitioner from the respondent authorities in the year 2011 and whether any objection was raised at the time of receiving the payments are not known to this Court. No other material was brought on record, that the petitioner has received the amounts subject to payment of interest or not.

7. Under Article 226 of the Constitution of India, the Writ petition is maintainable only when the fundamental rights of the individual are infringed. Admittedly, the fundamental right of the petitioner is in no way infringed in this case. If at all, the petitioner has any grievance against the authorities for receiving the penal interest, the petitioner ought have filed a suit before the Civil Court for recovery of the penal interest against the principal amount received by him. As per Limitation Act as suit for recovery of money has to be instituted within a period of three years. The petitioner has not availed any remedy by filing a suit before the Civil Court for recovery of amount within the stipulated period of three years, and the present Writ petition is filed for a time-barred debt, commanding the authorities for payment of the penal interest to the petitioner, in the absence of any document.

8. Apart from that, I.A. No. 01 of 2021 is filed for



substitution of the legal heirs of the petitioner on 25.03.2021. Except the affidavit of Rahul Kishore, there is no other material on record to show that they are alone the legal heirs to be substituted in the Writ petition. The family member's certificate is also not enclosed along with the Writ application.

9. Therefore, I.A. No. 01 of 2021 stands dismissed. Further, the Writ application is filed by the first petitioner Kishori Singh in the year 2015 that to after four years of receiving the amount for the purpose of penal interest, which is not maintainable under Article 226 of Constitution of India.

10. In view of the above, the Writ petition is dismissed as devoid of merits.

(G. Anupama Chakravarthy, J)

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