

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10286 of 2023

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M/s S.D. Medical System through its proprietor Sri Madhu Kumar @ Madhu Kumar Ram, Male, aged about 56yrs, S/o- Rangi Ram, R/o- Bhusaw, P.S.- Bhusaw, District- Saran at Chhapra, presently residing at Nandan Bhawan, Boring Canal Road, P.S.- Budha Colony, District- Patna ... Petitioner

Versus

1. The State of Bihar through its Additional Chief Secretary, Health, Govt. of Bihar, Vikash Bhawan, New Secretariat, Patna.
2. The Additional Chief Secretary, Health, Govt. of Bihar, Vikash Bhawan, New Secretariat, Patna.
3. The Superintendent, Patna Medical College and Hospital, Patna.
4. The Deputy Superintendent, Patna Medical College and Hospital, Patna.
5. The Head of the Department Pulmonary Medicine (TB and Chest), Patna Medical College and Hospital, Patna. ... Respondents

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Appearance :

For the Petitioner : Mr.Siddhartha Prasad, Adv.
For the Respondents : Mr.Manish Dhari Singh, Adv.

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

8 17-12-2024 Heard the parties.

2. The present writ petition has been filed for the following relief(s) :

“a) For issuance of appropriate writ(s)/order(s) commanding the respondents to make payment of legitimate dues of the petitioner amounting to Rs.25,20,178/- for installation of Gas Pipeline System, Oxygen & Vacuum in T.B. & Chest Ward Area of Patna Medical College Hospital, Patna in March, 2020 in pursuance of work order issued by the Superintendent, Patna Medical College Hospital, Patna under emergent and compelling circumstances of Covid-19 pandemic.

b) For issuance of appropriate writ(s)/order(s)



commanding the respondents to make payment of above said dues of the petitioner forthwith alongwith appropriate interests.

c) Pass such other order(s) directions(s) for which the petitioner is entitled to in the facts and circumstances of the instant case.”

3. It is the case of the petitioner that the pursuant to the tender issued by the Respondent No. 3, the petitioner was entrusted with the work of installation of Gas Pipeline System, Oxygen & Vacuum in T.B. & Chest Ward Area of Patna Medical College Hospital (PMCH), Patna, in the year 2018. That the agreement for the operation and maintenance was also entered between the petitioner and the Superintendent of the PMCH for a period of three years. Thereafter, the work order was issued to the petitioner and the petitioner has completed the installation work without any complaint well within the stipulated time. Thereafter, the Head of the Department T.B. & Chest Ward vide Letter No. 30 dated 01.06.2019 had felt the need for installation of Oxygen and Vacuum pipeline in T.B. & Chest Ward Area of the PMCH and to that effect the Superintendent has issued the work order 3546 dated 23.03.2020. Due to Covid-19 pandemic situation prevailing at that point of time the petitioner had to complete the work on war footing and after completion the same



was duly signed by the Deputy Superintendent, Head of the Department and the Service In-Charge. Thereafter, the petitioner has raised the bill for an amount of Rs.25,20,178/- in the month of October, 2021. That the petitioner thereafter has been sending the reminder letters for payment of the amounts but authority did not make the payments. That even after the gap of almost two years from the date of completion of the works, the bills raised by the petitioner were not paid. That the petitioner left with no other option had to approach this Hon'ble Court by way of C.W.J.C. No. 1135 of 2023. However, the said CWJC was withdrawn by the petitioner for bonafide reasons on 22.03.2023. That in spite of several requests made by the petitioner the bills submitted by the petitioner have not been cleared and therefore left with no other option, the petitioner has again approached this Hon'ble Court by way of the present Writ Petition. Counsel for the petitioner has relied on the judgments passed in C.W.J.C. No. 1021 of 2019, C.W.J.C. No. 14797 of 2019 to buttress his contention that the present Writ Petition is maintainable.

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present Writ Petition. Learned counsel



has stated that the present Writ Petition is not maintainable as the petitioner has earlier filed C.W.J.C. No. 1135 of 2023 which was dismissed as withdrawn on 22.03.2023. That the petitioner for the very same cause of action cannot maintain the second Writ Petition. Learned counsel has stated that the petitioner on the earlier occasion had withdrawn the Writ Petition on the ground that he would be approaching the Bihar Public Works Contract Disputes Arbitration Tribunal and the petitioner without availing the said remedy cannot again approach this Hon'ble Court by way of the present CWJC. Further it is stated that though the petitioner was initially given the work order for the installation of Gas Pipeline System, Oxygen & Vacuum in T.B. & Chest Ward Area in the PMCH, the same was done after calling for the tenders. Further it is stated that the contract entered between the petitioner and the Medical Superintendent, Works, for the purpose of maintenance of the above installation and the second work order which was issued to the petitioner was done without calling for any tender and the same is contrary to the well established procedure. That the work order issued by the Superintendent is totally illegal, highly irregular and done without calling for any tender. Leaned counsel has therefore prayed this Hon'ble Court to dismiss the present Writ Petition.



5. Though the counsel for the respondents has taken the ground that the second Writ Petition for the very same cause of action is not maintainable, it is to be noted that this Hon'ble Court in C.W.J.C. No. 14797 of 2019 has held as "***the petitioners are only seeking the remuneration of the period that they have worked, I would not be able to justify non-suiting them on the ground of an earlier petition filed by them having been unconditionally withdrawn. The facts of the cases which prohibit the courts from entertaining applications because of delay or for the second time, which have been cited do not apply to the facts of this case***" therefore, the contention of the respondents that the present CWJC is not maintainable is not correct and the same is rejected.

6. Admittedly as seen from the record, the issuance of work order in favour of the petitioner by the Medical Superintendent has not been denied neither the fact that the petitioner has completed the work as per the work order is also not denied. The only ground on which the payments due to the petitioner is not being done, is on the sole ground that the Superintendent who has issued the work order has not followed the tendering process. That without issuing any tender the work order was issued to the petitioner contrary to the procedure. It is



pertinent to note that the concerned authority instead of making the payments due to the petitioner is passing the buck by writing the letters to the State Government seeking guidelines for making the payments due to the petitioner. If there are any lapses in issuance of the work order, the petitioner cannot be blamed for the same. If at all any blame is to be made it is the person who had issued the work order is to be blamed. Further as seen from the from record the work order was issued without calling for the tender due to the Covid-19 pandemic situation prevailing at that point of time. The authorities duly taking into consideration the exigencies of the pandemic situation have issued the work order to the petitioner, who has successfully completed the work. Once the work has been completed the authorities are legally bound to pay the same more particularly when there is no fault which can be attributed to the petitioner. The issuance of work order by the Superintendent of PMCH and the subsequent execution of the work successfully completed by the petitioner is not denied, irrespective of the fact whether the work order is issued pursuant to the tender or not is immaterial, the authorities are legally bound to pay the bills raised by the petitioner. The authorities cannot pass the buck from one authority to another and keep the matter pending for years



together without paying the bills.

6. Having regard to the above above, the authorities are directed to pay the amounts due to the petitioner as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order. It is also made clear that in case the amounts are not paid to the petitioner out within the stipulated time, the petitioner would be entitled to a simple interest on the outstanding amount due to him at the rate of 8 per cent per annum from the date of bills till the actual payment.

7. With the above directions, this Writ Petition stands allowed to the extent indicated.

(A. Abhishek Reddy , J)

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