

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16142 of 2022

=====

Fragrance Media through its Director Smt. Khushboo (Female, aged about 36 years), W/o Sri Manish Kumar, resident of House No. C/20 Indrapuri Colony, Ram Nagri More, Ashiana Nagar, Phulwari, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Building Construction Department, Government of Bihar, Patna.
2. The Engineer-in-Chief, Building Construction Department, Government of Bihar, Patna.
3. The Chief Engineer, South, Building Construction Department, Government of Bihar, Patna.
4. The Superintendent Engineer, Building Construction Circle, Building Construction Department, Government of Bihar, Patna.
5. The Executive Engineer, Building Construction Department, Building Division, Banka, P.S. and District- Banka.
6. The Assistant Engineer, Building Division, P.S. and District- Banka.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ranjeet Choubey, Adv.
For the Respondent/s	:	Mr. Sushil Kumar (Gp22)
	:	Mr. Rakesh Ranjan, AC to GP22

=====

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

Date : 10-09-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“I. For issuance of appropriate writ/writs order/orders direction/directions to the respondents to make payment of the pending bills of the petitioner with 18% interest from the date of submission of the bills till final payment on account of supply of various materials as published in the advertisement under valid agreement by the respondents for which different bills have been submitted by the petitioner and also several representation to the respondent authorities have been made.



II. For issuance of appropriate writ/writs order/orders direction/directions for quashing the letter no:- 602 dated 30.03.2022 by which an amount of Rs. 2,75,461/- allegedly determined against the petitioner as recoverable amount and the petitioner has been directed to refund the said amount within a week.

III. For issuance of appropriate writ/writs order/orders direction/directions to the respondent authorities to immediately pay the admitted bills of the petitioner which has also been verified by the respondent authorities but, till date, payment has not been made and the petitioner is in dire need of money.

IV. For issuance of any other appropriate writ/writs order/orders direction/directions for which the petitioner may be found entitled to under the facts and circumstances of the case.”

3. The facts in brief are that the petitioner pursuant to the tender advertisement issued by the respondents, the petitioner has participated in the tender. Being the lowest bidder for the works advertised, the petitioner was selected and the Letter No. 1269 dated 17.11.2018 was issued directing the petitioner to participate in the negotiations with Building Circle, Bhagalpur on 17.11.2018. After the negotiations, the petitioner was issued the work order vide Letter No. 2292 dated 28.11.2018. The petitioner supplied the articles and completed the works as per the agreement entered by the parties on 09.03.2019. After completion of the work, the petitioner submitted the measurement book and the bills for total



amount of Rs. 23,37,323/-. The measurement book and the bills were verified and endorsed by the Assistant Engineer, Building Division i.e., respondent No. 06 herein. The bills and measurement book were submitted on 19.01.2019. Thereafter, an amount of Rs. 4,80,961 was paid to the petitioner as against the bill amount of Rs. 23,37,323/-. Though, the petitioner made several representations to the authorities to pay the balance amounts due, the same was met without any success. The petitioner then approached this Hon'ble Court by way of CWJC No. 14293 of 2021, the said CWJC was disposed of on 17.01.2022 directing the petitioner to approach the Bihar Public Works Contract & Disputes Arbitration Tribunal. The petitioner then approached the Arbitration Tribunal as directed by this Court and the said case was numbered as Reference Case No. 22 of 2022. The Tribunal after due deliberation came to the conclusion that the lis between the parties does not fall under the jurisdiction of the Tribunal and closed the said reference case. When the matter was pending before Arbitration Tribunal, the authorities have issued Letter No. 602 dated 30.03.2022, directing the petitioner to deposit an amount of Rs. 2,75,461/- on the ground that the said amount was paid excessively. That the actual amount payable to the petitioner for the material supplied was only Rs. 2,05,000/- whereas an amount



of Rs. 4,80,961/- was paid to the petitioner. Assailing the Letter No. 602 dated 30.03.2022 directing the petitioner to deposit an amount of Rs. 2,75,461/- the present CWJC is filed, the petitioner has also sought a direction to the respondents to pay the balance amount of the bills submitted by him for the works completed.

4. In the counter-affidavit filed by the respondent Nos. 1 to 5, it is stated that after the petitioner had completed the work and submitted his bills, the official respondents with a view to ascertain the quality of the work and also the nature of the work done by the petitioner had constituted an enquiry committee comprising of the Deputy Development Commissioner, Banka, Senior Deputy Collector, Banka, Senior Accounts Officer, Banka, Executive Engineer PHED, Banka, Executive Engineer R.E.O. Banka. The committee had enquired into the matter and submitted a report dated 06.03.2021 wherein, it was stated that the works undertaken by the petitioner were not upto the mark and of inferior quality. Along with the report, the committee submitted a measurement report of the work and recommended for payment of Rs. 2,05,000/-. As the petitioner was already paid a sum of Rs. 4,80,961/- the petitioner was put on notice to refund back the balance amount after deducting the amount of Rs. 2,05,500/- out of the Rs. 4,80,691/- paid. The rest of the counter-affidavit pertains



to the jurisdiction of the Tribunal constituted under the Bihar Public Works Construction Disputes Arbitration Tribunal Act, 2008.

5. Learned counsel for the petitioner in reply has stated that the petitioner was not put on any notice by the enquiry committee and the report of the enquiry committee was prepared behind the back of the petitioner. Learned counsel has further stated that the petitioner had supplied the requisite materials as per the tender and at the rates which were agreed between the parties. Once the works are executed, the authorities cannot unilaterally decide to reduce the amount on some flimsy excuses. Learned counsel has drawn the attention of the Court to the photos filed by the petitioner to show that the works completed are of the highest quality and even till date they are still in existence without any blemish. Therefore, the conclusion drawn by the committee that the works are of poor quality is factually incorrect and without any basis. Learned counsel has therefore prayed this Hon'ble Court to allow the present writ petition and direct the official respondents to pay the amount.

6. Admittedly, in this particular case, as seen from the record, the petitioner was entrusted with the work of supplying various arts and crafts materials. The petitioner has executed the



work and submitted the bills at the rates quoted by the petitioner which were accepted by the official respondents. In this particular case, it is pertinent to note that the petitioner being the lowest bidder was granted the contract. Once the petitioner has completed the works and submitted the bills which were verified and recommended by the respondent No. 6, the question of again re-verification being done by the committee does not arise. The authority instead of paying the amounts immediately after submission of the bills in January, 2019 ought not to have waited for a period of more than two years for constituting the committee to verify the works done by the petitioner. Even for the sake of argument, if it is taken that the District Magistrate had the power and authority to constitute an enquiry committee, the enquiry committee ought to have put the petitioner on notice and undertaken the verification in his presence. Admittedly, in the present case, the enquiry report was done behind the back of the petitioner, the said report submitted by the committee cannot be given any credence on this ground alone.

7. A perusal of the documents more specifically, the photos filed by the petitioner reveal that the petitioner has completed the work which was entrusted to him and all the photos show that they were geotagged. The photos also reveal that the



work done by the petitioner were of standard quality and it cannot be said that they are of inferior quality or that the work done by the petitioner was of a shoddy nature. Once the official respondents have entrusted the work to the petitioner and entered into the contract at the agreed rate, they cannot turn back and avoid paying the bills on the ground that the work done by the petitioner was of inferior quality. If the respondents had any doubt about the quality of the work done, they could have verified the work immediately after the submission of the bills but not after a gap of more than two years. It is pertinent to note that the respondent No. 6 after submissions of the bills submitted by the petitioner had verified the works and recommended the payment of the amounts to the petitioner. The measurement book filed by the petitioner as Annexure-P/4 reveals that the petitioner has completed the work which was entrusted to him. The Court is of the opinion that the act of the respondents in denying the payments to the petitioner after the work is completed is an arbitrary exercise of power not vested with the authority and smacks of red-tapism. The authorities more particularly, the Government authorities are expected to act in a fair and transparent manner and make necessary payments after the works are completed. They cannot



act as per their whims and fancies and deny the payment of the legitimate dues of the contractor on one pretext or the other.

8. Having regard to the above mentioned facts and circumstances, the impugned order dated 30.03.2022 directing the petitioner to refund the amount of Rs. 2,75,461/- is hereby set aside, the authorities are directed to make necessary arrangements for the payment of the admitted dues of the petitioner amounting of Rs. 23,27,323/- after deducting the amount of Rs. 4,80,691/- that has already been paid as expeditiously as possible preferably within a period of eight weeks from the date of receipt of a copy of this order. In case the amounts as directed by this Court are not paid within the stipulated time, the petitioner would be entitled to payment at the simple interest rate of 8% per annum from the date of submission of the bills till the date of payment.

9. 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	25.09.2024.
Transmission Date	NA

