

(1997) 02 PAT CK 0027

In the Patna High Court

Case No : Misc. Judicial Case No. 235 of 1995 (R)

Arvind Techno Engineers Limited

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 21-02-1997

Acts Referred:

Citation : (1997) 1 BLJR 890

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—The present contempt application has been filed at the instance of the petitioner for violating the orders dated 23.1.95 and 15.2.95 passed in CWJC No. 3431/94 (R).

2. Some facts are necessary for appreciating the arguments advanced by the learned Counsel for the parties:- A prayer was made in the aforesaid writ application to command the respondents to make payment of the admitted dues of the petitioner for executing various works undertaken by him. Pursuant to an agreement executed by and between the State Government and the petitioner-company, it was entrusted with some contractual works for doing various jobs at Subarnarekha Multi Purpose Project, After completion of work, it was alleged, that bill submitted by the petitioner-company, the Executive Engineer, Subarnarekha Canal Division, Galudih found that petitioner was entitled to get some refund of the amount. As it happens in most of the cases no counter affidavit was filed on behalf of the respondents in spite of repeated opportunities given to it and as such by an order dated 23.1.95, without expressing any opinion on the merit of the case, this Court directed the petitioner to file a representation before the Chief Engineer (Irrigation), respondent No. 4. The respondent No. 4 was directed to dispose of the same within two months with a reasoned order. this Court also directed the respondent No. 4 that if he is of the opinion that the petitioner is entitled for payment, he will also consider the

payment of interest in accordance with law. This order was modified to some extent on 16.2.95 directing the respondent No. 4 that if he is of the opinion that the petitioner was entitled to some amount, he will consider the payment of interest in accordance with law and the same should be paid alongwith principal amount within three months from the date of passing of the order. It is need less to say that when the aforesaid two orders were passed, counsel on behalf of the respondents was also heard. However, the State Government filed a petition subsequently to modify the orders dated 23.1.96 and 16.2.95 on the ground that by suppressing some material facts the petitioner-company had obtained the aforesaid orders. It was submitted that without disclosing the fact that the petitioner had already invoked the jurisdiction of the Arbitrator pursuant to the Arbitration clause in the agreement itself and the Arbitrator was in seisin of the matter, the petitioner filed the writ and obtained the orders. This argument was countered by the counsel of the petitioner-company by saying that subject of arbitration was not in regard to the admitted dues but on the matter of disputed amount and the petitioner in the writ application prayed for payment of the dues which were admitted by one of the respondents himself. After hearing the parties, on 19.7.95 this Court refused to modify the orders dated 23.1.95 and 16.2.95 on the ground that after disposal of the representation by the Chief Engineer the matter was pending before the Government and as such no modification of the said two orders was required.

3. The main thrust in the contempt application is that pursuant to the order of this Court the Chief Engineer disposed of the representation filed by the Company and came to the conclusion that the petitioner is entitled to a sum of Rs. 52, 15, 083/- in-stead of Rs. 77, 40, 083/- as claimed. This amount was determined by the Chief Engineer after adjusting advanced amount of Rs. 25.00 lacs. The order of Chief Engineer is dated 4.4.95 which is Annexure 4 to the contempt application. On this basis the learned Counsel for the petitioner contended that this amount of Rs. 52.00 lacs and odd with interest ought to have been paid to the petitioner by the State Government and that having not been paid the concerned respondents have violated the order of this Court.

4. In reply to the same, in his show cause, the opposite party No. 4, the Secretary, Department of Water Resources, Government of Bihar, Patna took specific stand that the Chief Engineer, by his order dated 4.4.95, had opined that Government may consider for payment of Rs. 52.00 lacs and odd and he has not allowed the interest to the petitioner-company because there was no provision in the agreement for payment of interest to the contractor. The opposite party No. 4, while admitting that petitioner's representation was finally disposed of by the Chief Engineer, has submitted that the Chief Engineer unfortunately failed to notice Clause 8 of the General Conditions of the Contract Agreement No. 1 SMC/88-89 dated 14.4.88, by reason of which the Department itself is entitled for interest on the mobilisation advances granted to the petitioner-company.

5. It was contended on behalf of the opposite party No. 4 that uncontrovertedly

the petitioner company was given mobilisation advance to the tune of Rs. 56, 98, 000/-, out of which Rs. 31, 73, 000/- were adjusted and Rs. 25, 25, 000/- still remained to be adjusted as the principal advanced amount. On calculating interest on this amount, as per Clause 8 of the agreement, the Department was entitled to receive interest to the tune of Rs. 19, 57, 556/- up to 31st July, 1995. About 3rd contract, the stand of the Department is that a sum of Rs. 14, 24, 050/- was given to the petitioner company towards Government materials and out of that amount a sum of Rs. 7.13, 397/- was adjusted from 11th Account pay bill of the petitioner-company. Thus, according to the opposite party No. 4, a total sum of Rs. 26, 68, 290/- are still due to the Department from the petitioner. After giving detailed account the Secretary of the Department (opposite party No. 4) has admitted that the petitioner is entitled, after adjustment the aforesaid amount, a total sum of Rs. 25, 46, 864/-.

6. The learned Advocate General appearing on behalf of the contemnors, has submitted that by suppressing all those material facts, the petitioner obtained the orders dated 23.1.95 and 16.2.95 and, according to him, if this fact would have been disclosed, the order would have been otherwise.

7. Mr. Pawan Kumar, learned Counsel appearing on behalf of the petitioner, however, submitted that when the Chief Engineer himself has found that the petitioner was entitled to get a sum of Rs. 52.00 lacs and odd, it is too late for the alleged contemnors to suggest that the petitioner obtained those orders by suppressing of fact.

8. From various pleadings/and respective arguments advanced on behalf of the parties, I am of the view that confusion in this case has arisen for not filing counter affidavit in the writ application. This is not the first instance where in spite of several opportunities given to the State Government, counter affidavits are not filed, as a result of which the writ applications are being disposed of on the basis of statements made by the writ petitioners in the writ petition itself without getting an opportunity to verify the truthfulness/or otherwise of such statements.

9. In the instant case, pursuant to the order of the High Court, the Chief Engineer disposed of the representation finally on 4.4.95 holding that in stead of Rs. 77.00 lacs and odd the petitioner company was entitled to get Rs. 52.00 lacs and odd. This amount, according to the Chief Engineer, was after adjustment of the advanced amount of Rs. 25, 25, 000/-. However, it appears that the Chief Engineer has failed to notice that in view of Clause 8 of the agreement the Department itself was entitled to get interest on the amount of Rs. 25, 25, 000/- from the petitioner.

10. The statement made in paragraph 8 of the show cause filed by the opposite party No. 4 have not been categorically denied by the petitioner in its reply except that while passing the order dated 4.4.95 the Chief Engineer was having all these aspect into consideration and as such, the plea now taken by the

opposite parties is wholly erroneous and has been made to defeat the order passed by this Court.

11. In the supplementary affidavit filed on behalf of the respondents, it is stated that a cheque of Rs. 25, 46, 864/- has already been drawn up in the name of the petitioner-company and it was requested by Fax message to receive the said cheque. Thereafter on 12.10.95 a letter was sent to the company with the same request but the petitioner-company refused to accept the amount.

12. It is too well settled law that proceedings of contempt of court are of summary nature and such proceedings are not suitable for the decision by a hotly contested question of facts.

13. I have already noticed above that in absence of any counter affidavit the orders dated 23.1.95 and 16.2.95 were passed merely on the basis of averments made in the writ application. this Court did not direct the concerned respondents to make payment of any certain amount to the writ petitioner and realising that this shot of dispute cannot be settled by the High Court, directed the petitioner to file representation before the Chief Engineer. It is true that by order dated 16.2.95 the opposite party No. 6 was directed that if he was of the opinion that the petitioner was entitled for interest also, the same would be paid alongwith the principal amount within three months from the date of passing of the order. As the matter stands at present, it is crystal clear that though the Chief Engineer found that the petitioner was entitled to get Rs. 52.00 lacs and odd after deducting Rs. 25.00 lacs and odd towards mobilisation advance but he, inadvertantly, did not take into consideration that under Clause 8 of the Agreement, on the advance amount certain percentage of interest was to be paid by the petitioner company to the Government. Thus, in my view, when after order of the Chief Engineer dated 4.4.95 the matter was sent to the State Government and if it was found that amount of interest to be paid by the contractor to the State Government was not considered by the Chief Engineer, in my view, it cannot be said that opposite parties have deliberately disobeyed the order of the High Court.

14. As noticed above, according to the Secretary of the Department, after considering various aspect of the matter it has been found that the petitioner is entitled to get a total sum of Rs. 25.00 lacs and odd and for which a cheque has also been drawn up and the petitioner has been requested to collect the same and as such in my view, the respondents have not committed any contempt. Moreover, the terms "admitted amount, means the claim made by a party should be admitted by the other party. this Court directed the respondents to consider the case of the petitioner and to pay the amount after such consideration and if it was found by the Chief Engineer that the petitioner-company was entitled to get the same. After disposal of the representation by the Chief Engineer when the matter was finally scrutinised at Government level, it was found that the Chief Engineer failed to notice that some interest also payable by the petitioner-company towards the amount of mobilisation advance already given to the

petitioner-company. After coming to the conclusion the State Government has found that the petitioner-company is entitled to get total sum of Rs. 25.00 lacs and odd, for which a cheque is ready and this amount, in my view, is admitted one. It is now up to the petitioner either to accept the same cheque or to disown the same.

15. Considering entire facts and circumstances of the case, I am of the view, that no case for contempt has been made out by the petitioner.

16. I find no merit in this application and the same is dismissed. Rule is discharged.