
(2006) 09 PAT CK 0081
In the Patna High Court

Bhairabi Nandan Sinha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

Citation : AIR 2007 Patna 28 : (2006) 4 PLJR 228

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—Heard the parties.

2. The petitioner, under a duly approved work plan, had entered into an agreement for doing certain work for the State. Substantial work having been done, it is not disputed that detailed measurements of work done was made in October-November, 2002." This is evident from Annexure-2 being the letter of Executive Engineer to the Superintending Engineer and the measurement statistics and cost prepared in October-November, 2002 wherein it was shown that out of a total work cost of about Rs. 5.81 lacs, the petitioner had completed work of about Rs. 4.11 lacs. Funds were requested for payment of the said money to the contractor for work already done. Thereafter, there are communications of the Chief Engineer noting the progress of work and need to extend the time. Again, the work actually done was measured and found to be the same as per progress certificate signed by all Engineers in December, 2003. From this, it is clear that petitioner had completed almost 70 to 75% of the work and that too in the year, 2002 itself. This writ application having been filed for non-payment of the bill in spite of request by the Engineers. The matter seems to have been taken up by the Liability Committee set up by the State Government. The State has filed its counter-affidavit annexing the decision of the Liability Committee. In the meantime on or about 28-8-2004, the Chief Engineer ordered for a fresh measurement. Now when the measurement is taken after two years, it is said that only about 33.65% of the work was found done for which

petitioner was liable to payment of about Rs. 1.78 lacs. This was reported to the Liability Committee. Liability Committee,; on consideration of this report and holding that no extension of time was ever prayed for, rejected the entire claim of the petitioner. Liability Committee took the view that hardly 30% of the work was done and that too not within the time stipulated with no prayer to extend the time, no payment could be made. This is what has been challenged by the petitioner.

3. Admittedly, the work was restoration of embankment of river Bagmati by earth filling. The work was done in the year, 2002. I fail to understand of what relevance is a measurement of such a work done after more than two years. Further, the earlier measurement was duly certified by all Engineers. It was certified twice at the time itself yet those reports were ignored and a fresh measurement was called for. I am sure that members of the Liability Committee being senior responsible Engineers would appreciate that in respect of the work of the nature done by the petitioner, measurements after several years, with floods intervening, is of little relevance. Further, no reason has been given why earlier report was not even looked into much less rejected. The Court is of the opinion that this is a colourable exercise of power only for the purpose of denying legitimate liability to the petitioner. I may further note that the Liability Committee has proceeded as if the work was not completed because of petitioner's fault and no extension was sought for. It is as if petitioner abandoned work in between. All these are wrong and incorrect on the face of the record. In the writ application, there are contemporaneous documents which are not denied by the State which estimate the work, recommends extension of time because of seasonal factor, recommends for sanction of money for payment to the petitioner. Such correspondences emanate from the Chief Engineer's office itself. All those correspondences have been brushed aside as if they never existed. This fortifies my view that the exercise by the Liability Committee was not to assess the liability but only to find out ways and means how Government could escape its liability. I have no option in the aforesaid facts but to set aside the decision of the Liability Committee and direct that it should decide afresh about the liability of the Government for the work done by the petitioner. In case, they found any reason to deny the liability, they will clearly notice the petitioner in this regard and the petitioner shall have a right to reply either in writing or in person or by a duly authorised representative. If any amount is ultimately found due, the State shall immediately within a fortnight pay the same to the petitioner. I may mention here that if it is found that any Government directives or circulars have not been followed by officers of the State, that cannot be made an excuse to deny liability to the petitioner. The State cannot be heard to say that its officers failed to execute the order", of the State and, as such, the citizen would lose his right to receive money for work done by it. If such is the position then the Liability Committee would recommend disciplinary action against the erring Government officials before even deciding liability to the petitioner.

4. In view of the aforesaid, the decision of the Liability Committee is set aside

with the observation above. This writ application is, accordingly, allowed.

5. It is expected that final decision of the Liability Committee will be taken within three months from today and be communicated to the petitioner.

6. A copy of the order may be given to Shri Manoj Kumar Jha, JC to GA I.