
(2009) 05 PAT CK 0035
In the Patna High Court

Chandradeo Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Citation : (2009) 4 PLJR 318

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Judgement

Navaniti Prasad Singh, J.—A counter affidavit has been filed by the State, which is not on the record.

2. Learned Counsel for the State has made over a copy for Court's perusal.

3. Both parties agree to proceed with the matter.

4. Let office search counter affidavit and place it on record.

5. In the counter affidavit it is stated that on 3.1.2006 respondent-Chief Engineer No. 1 had considered the claim of the petitioner and rejected it. The order of the Chief Engineer as sent to the Executive Engineer is Annexure A to the counter affidavit. I am indeed surprised that such an order can be passed by supposedly such a responsible officer. If I may sum up in one line the order is- "my officers failed to discharge their duty properly, as such I punish you by depriving you of your payment."

6. The facts are thus. The petitioner was given contract to repair certain road. As per agreement the work had to be completed by 5.5.1999. The work on completion had to be certified by the Executive Engineer. The Chief Engineer referring to provision of P.W.D. Code states that the Executive Engineer had wrongly granted time upto 5.5.1999, to complete the work. In view of P.W.D. Code, time only upto 31.3.99 could have been granted. Obviously thus on 31.3.99 the work was not completed. The work not having completed, no payment could be made.

7. There cannot be anything more absurd than this and what surprises me more that it is coming from a person holding the post of Chief Engineer. The petitioner was not at fault. If the agreement stipulates completion by 5.5.1999 I think the agreement had to be amended under due process known to law otherwise parties continue to be bound by such an agreement. Such a pretence and pretext of an excuse cannot be accepted. If there is any bonafide in the stand taken by the Chief Engineer, he should have punished his subordinate officer for entering into a wrong agreement instead he chooses to punish the contractor who has nothing to do with him. The next reason given is that the work was incomplete and it was abandond. A perverse finding on the face, as apparent from the records. With what intention this Court would not like to dwelve in because in the very order it is mentioned that the final bill was prepared by the Junior Engineer on 5.4.99. To every person it is known that final bill is prepared on completion of work. I am sure that Chief Engineer would also appreciate the same. Then the third line to resist the payment is that though the Junior Engineer verified the measurement book and put it before the Executive Engineer, as the Executive Engineer has not verified, no payment has been made. That is putting the cart before the horse. Can a contractor suffer non-payment because Executive Engineer chooses not to do his job? That would be putting premium on the exercise of power by the Executive Engineer. Learned Chief Engineer does not even the question of Executive Engineer as to why he refused to verify the measurement book. It is not a case that he refused to do it on any ground. He simply did not do it. What proceeds is that for failure of Executive Engineer to do his job, the Chief Engineer is punishing the contractor. This shows that on all counts the order of the Chief Engineer cannot be sustained. It is a perverse on face of it and unsustainable in law. It is accordingly set aside. The Executive Engineer is directed to proceed to verify the contents of the measurement book and the respondent would proceed accordingly to pay the amount found admissible without referring to the absurd technical plea as taken earlier The process must be completed by the respondent- Executive Engineer within one month from the date of this order is produced before him. If any payment is due, the same shall be paid to the petitioner within one month thereafter fur which the Chief Engineer would be fully responsible.

8. With these observations and direction the writ petition stands disposed of.