**(1991) 01 PAT CK 0024**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 2323 of 1984

Dumraon Industries Pvt. Ltd. and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

**Date of Decision :** 11-01-1991

**Acts Referred:**

**Citation :** (1991) 01 PAT CK 0024

**Final Decision :** Allowed

## Judgement

Shashank Kumar Singh, J.—In the present case a preliminary objection has been raised by Mr. P. K. Sahi, learned counsel, appearing on behalf of the State, that as the claim of the petitioner is a money claim, he should be directed to file a suit and should not be allowed to invoke the extraordinary jurisdiction of this Hon''ble Court. Present writ petition was filed on 2-5-1984 and admitted on 7-8-1984. The statutory period for filing the suit has already elapsed since long. This objection should have been taken at the time of admission itself. In view of the facts, as stated above, I am disposing of the aforesaid writ petition on merit, but, this shall be an exception and will not be treated as precedent in other similar cases.

2. That the petitioner No. 1 M/s. Dumraon Industries Private Limited is a private limited company incorporated under the Companies Act, 1956, and is indulged in manufacturing lanterns and is a registered Small Scale Industry, with the Industry Department, of Bihar, Patna. That on 16-4-1983 an advertisement was published in the Indian Nation, a local newspaper, inviting tenders for supply of one Lakh lanterns for the Adult Education Programme of the Government of Bihar. The said advertisement is appended as Annexure-1 to this writ petition. That pursuant to the said tender the petitioner submitted his application on 29-4-1983 stating therein the price of lanterns to be supplied by them at the rate of Rs. 205/- per dozen besides other taxes to be levied. A copy of the application dt. 29-4-1983, filed by the petitioner, is appended as Annexure 2 to the writ petition. That subsequently the petitioner''s application was accepted and after

negotiation the price of Rs. 195/- per dozen was fixed and was communicated to the petitioner vide letter No. 26/P 6-56/82-2152 dt. 8-10-1983, written by the Director, Adult Education, Department of Education, Government of Bihar, respondent No. 3. The petitioner accepted the offer of respondent No. 3 by his letter dt. 10-10-1983 with a request that the last day of supply of the lanterns may be extended because of intervening Dasahara Holidays. By letter dt. 12-10-1983 the petitioner No. 1 was directed by respondent No. 3, the Director, Adult Education, to supply 31,500 lanterns at the rate of Rs. 195/- per dozen in the various districts of the State of Bihar as per the details given by him in the aforesaid letter. A copy of the aforesaid letter is appended as Annexure-5 to this writ petition. The petitioners in pursuance of the direction, as contained in Annexure 5, supplied the lanterns to the various districts Head Quarters as directed and submitted his bill vide letter dt. 1-11-1983 and 7-11-1983 for Rs. 3,96,199.55 paise and Rs. 1,36,084.26 paise respectively totalling Rs. 5,32,283.81 paise. It has also been stated by the learned counsel for the petitioners that subsequently an agreement was signed between the representative of the petitioner No. 1 and respondent No. 3 as per the letter No. 2202 dt. 12-10-1983. A true copy of the agreement is appended as Annexure-7 to this writ petition. It has further been stated that after the supply was completed the petitioners approached respondent for making payment in time, explaining their difficulty in meeting their financial obligation, like payment of salary and liquidation of loans taken from the Bank and interest, etc. which they had to bear on that account. But the payments were not made. The petitioner company again wrote to respondent No. 3 vide letter dt. 3-1-1984 (Annexure-8) apprising him with the facts of the case and praying him for an early payment. Subsequently, on 1-2-1984 petitioner company was paid an amount of Rupees 3,83,906.25 paise by cheque as part payment still a balance of Rs. 1,48,371.56 paise remained due as against the supply of lanterns. The petitioner company again wrote to the Director, Adult Education, respondent No. 3 praying that the balance payment should be made at an early date. It has also been stated that in spite of the further reminders and representations, filed by the petitioner at various levels, no further payments was made to the petitioner as such they had no option but to move this Hon''ble Court.

3. It has further been submitted that respondent having agreed and promised to pay the price of Rs. 195/- per dozen for the supply of the lanterns are bound by the principles of estoppel and are duty bound to honour their demand and make payment at an early date. It has further been stated that the petitioner company which is a Small Scale Industry will have no option but to close down the industry itself as it is not in a position to sustain such a heavy loss and in any view of the matter not in a position to pay high bank interests and to meet other expenses, if the State authorities are permitted to act in such an arbitrary fashion. It has further been submitted that the belated payment is causing immense loss to the petitioner company as it has borrowed money from their banks and is paying interest at the rate of 16 per cent. per annum on the said

 

borrowed money and the interest is amounting for no fault of the petitioner Company.

4. It has also been submitted that during pendency of the writ petition the further amount of Rs. 40,000 was paid on 8-6-1984 and another amount of Rs. 28,000/ - has been paid on 23-7-1984. As such, it has been prayed that the State be directed to pay the remaining amount of about Rs. 80,000/- and odd. It has also been submitted that refusal to pay the prices agreed is violative of Article 14 of the Constitution and as such the Government be directed to pay the price agreed between the parties as if cannot unilaterally change the price, Reliance has been made on several cases, sported in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., and Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, Learned counsel appearing on behalf of the petitioner has also relied upon a decision, reported in : 1990 (2) SCC 746 for the proposition that all action of the Government must be in conformity with Article 14 of the Constitution of India.

5. Learned counsel appearing on behalf of the State on the other hand has stated that entire payments, as calculated by the department, have already been made to the petitioner and there is no due to be paid. He has further stated that an All India Tender was invited for supply of lanterns to the Education Department. M/s. Ruby Industry, Delhi, have the lowest tenderal the rate of Rs. 144/-per dozen. So far as the dealers of Bihar are concerned, minimum lender was of M/s Industries Complex, Patna, Bihar, which was at the rate of Rs. 174/- per dozen. As quoted above, the rate of Dumraon Industries was to the extent of Rs. 205/- per dozen. He has further contended that by letter dt. 8-10-1983 (Annexure 3) the petitioner was asked by the Director to execute the final agreement but no agreement has been executed by the petitioner till, date. If an agreement would have been entered into the final rate agreed upon should have been incorporated into the said agreement. The Government had taken a policy decision to give weight age of 15 percent, over the minimum quotation to the local industries, As already stated the minimum quotation was Rs. 144/- per dozen. A weight age of 15/- per cent, was given over the said lowest tender and payment on that rate has already been made to the petitioner. A minimum quotation of the local dealer was in the tune of Rs. 174/- per dozen and by a adding 15 per cent, over the said amount the amount comes Rs. 195/- per dozen and as the same figure was mentioned in some of the letters, written by the State Officials the petitioners want to take benefit of the same. The learned counsel for the State further submitted that the Chief Minister after examining the file found that the lowest tender as per All India Basis was to the tune of Rs. 144/- per dozen and hence after giving benefit of 15 per cent, more, payment should be made to the petitioners in accordance with the principles decided by the State Government. He has also staled that total payment as per the principle decided by the State Government has already been made and no due is left with the State Government.

6. In alternative the learned counsel for the State states that the matter relates to a contract in which the amount claimed is disputed and as such the only remedy for the petitioner is to seek relief through the Civil court and not by filing the present writ application which should be dismissed.

7. I had already indicated above that the preliminary objection of the State cannot be entertained at such a belated stage and as such the same is rejected. Though the formal agreement may not have been entered between the parties still through the exchange of letters and after accepting the supply of the lanterns at the rate quoted by the petitioners company and making partial payment on the basis of the said claim, now it is too late for the State to say that they will be pitying the price at a reduced rate as no formal agreement has been entered into till today. Annexure-5, letter of respondent No. 3, Director, Adult Education, to the petitioner placing an order of supply of 31.500 lanterns at the rate of Rs. 195/- per dozen under a specified period and subsequently the supply of the lanterns by the petitioner after accepting the offer binds the State Government as the said offer had been made from their side and accepted by the petitioner who has complied with the said demand. Subsequently, a part payment has also been made by the State as per the bill submitted by the petitioner. If the State had any objection to the rates as agreed between the representative of the company and the Director Adult Education, it should have objected to it at the first instance and not at this belated stage when the supply has already completed and only Rs. 80,000/- and odd is due with the State.

8. For the reasons, stated above, this writ application succeeds and respondents State is hereby directed to pay the balance amount of Rs. 80,000/- and odd to the petitioner at the earliest preferably within four months from the date of communication/production of a copy of this order.

9. With the observations, made above, the aforesaid writ application is disposed of but in the facts of the case there shall be no order as to costs.