
(2019) 09 PAT CK 0050

In the Patna High Court

Case No : Miscellaneous Jurisdiction Case No. 34 Of 2018, Civil Writ Jurisdiction
Case No. 3569 Of 2014

Kamladitya Constructions Pvt. Ltd

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 09-09-2019

Acts Referred:

Citation : (2019) 09 PAT CK 0050

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Y.V. Giri, Ashish Giri, Rajat Kumar, Sunil Kumar Jha, Anjani Kumar

Final Decision : Disposed Off

Judgement

1. Heard learned counsel for the petitioner and learned AAG 4 for the State.
2. The petitioner has moved the Court alleging deliberate and wilful disobedience of order dated 06.10.2016 passed in CWJC No. 3569 of 2014.
3. The writ Court after noticing the stand of the parties, where the petitioner had contended that Rs. 42 crores was still payable and the State had taken the stand that Rs. 8.99 crores was to be recovered from the petitioner, had observed that the admitted dues of the petitioner be paid after keeping an amount of Rs. 8.99 crores, within a period of three months. Further, liberty was given to the parties to raise all such issues before the Arbitration Tribunal and till the time the same was not disposed off, no coercive action shall be taken against the petitioner.
4. The factual position today, on record, is that the contention of the authorities is that not only Rs. 8.99 crores, but finally an amount of over Rs. 42 crores, was recoverable from the petitioner. It is the further stand that nothing was due and payable.
5. Learned counsel for the petitioner submitted that during the course of hearing earlier in the present proceeding the Court had noticed such stand. It was

submitted that the authorities had not disputed with regard to the petitioner having completed the work and that the bills of the petitioner for Rs. 42 crores were payable and in such background, the stand of the authority that Rs. 8.99 crores was to be recovered, clearly implies that out of Rs. 42 crores, Rs. 8.99 crores had to be withheld and rest was to be paid.

6. Learned counsel for the State pointed out that in the writ petition itself a clear-cut stand was taken that it was only the claim of the petitioner of over Rs. 42 crores, but the same was never admitted and rather a case for recovery of Rs. 8.99 crores was made out against the petitioner.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that there is no deliberate or wilful disobedience by the authorities of the order dated 06.01.2016 passed in CWJC No. 3569 of 2014.

8. From the entire pleadings on record, it is clear that only the contention of the petitioner that his bill for over Rs. 42 crores was pending and of the authorities that Rs. 8.99 crores was to be recovered from the petitioner, was noticed. This clearly indicates that the Court had noted the contention of the parties and in such background, had directed for payment of the admitted dues of the petitioner keeping back an amount of Rs. 8.99 crores. The mere fact that the amount is said to be recoverable indicates that final adjudication with regard to the dues has not been made. Thus, only because the petitioner may have raised a bill of Rs. 42 crores would mean that from the same only Rs. 8.99 crores is not to be paid. If that had been the case, the amount would not have been shown to be recoverable, and instead the amount would have been shown to be not payable or less payable. The moment the order is for recovery, it clearly indicates that the amount is to be recovered from the payments already made, otherwise the same would just have been adjusted from the final bill, if the full amount is not payable and less amount is found payable. In such view of the matter, the Court clearly indicating that the amount was recoverable from the petitioner means that it was from the payments already made and nothing to do with the bills filed by the petitioner for payment. The authorities taking the stand that after final reconciliation, over Rs. 24 crores has been found recoverable is also neither here nor there. Thus, the writ Court had given liberty to the parties to move before the Arbitration Tribunal.

9. In view of the aforesaid, in the considered opinion of the Court, no contempt is made out against the authorities for the simple reason that the act has to be deliberate and wilful. In the present case, as has been discussed earlier in this order, there was no mandamus to pay any particular amount. This, coupled with the fact that there is serious contest on merits, the same has to be adjudicated before the Arbitration Tribunal.

10. For reasons aforesaid, the application stands disposed off.

11. The Court would also observe that even the writ Court had observed that it

had not expressed any opinion on the merits and had left it to the parties to raise all issues before the Arbitration Tribunal.

12. It has been brought to the notice of the Court by learned counsel for the petitioner that the State has preferred LPA No. 803 of 2018 against the order passed in the present proceeding on 15.05.2018. Learned counsel for the State submitted that the same shall be withdrawn.