
(2005) 05 PAT CK 0004
In the Patna High Court
Case No : CWJC 10843 of 2003

Mr. Harkamal Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 13-05-2005

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1), 16, 17, 22, 25

Citation : (2005) 3 PLJR 381

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Udayan Chaudhary No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—None appears for the petitioner. Counsel for Bharat Wagon & Engineering Company Ltd. is present. Petitioner has filed this application for a direction to the respondent to make payment of dues amount of contract work done by the petitioner and for which the bill duly certified and verified has been submitted.

2. Petitioner's case is that in pursuance to the short tender notice No. BWH/Com 1/55/2000/4124 dated 22.12.2000, petitioner submitted his tender on 29.12.2000 for work of fabrication, supply erection, commissioning and testing of Pantoon bridge across the river Gerua in Bhagalpur-Kahalgaon section of NH-80. The petitioner was allotted the work, started and completed the same within prescribed period, to the full satisfaction of the respondent. On completion, the execution of the work, the respondent inspected and appreciated the work done by the petitioner. The petitioner, thereafter, submitted his bill on 4.12.2001 but it has not been paid to the petitioner by the Respondents though neither any objection nor denial has been made by the respondents.

3. Counter-affidavit has been filed by the Respondent wherein it has been stated

that the petitioner has not been paid as the bill which he has submitted has not been settled in absence of "Labour Payment Certificate."

Further, the objection has been made regarding the maintainability of the writ application stating that the respondent-company has been declared sick by the Board for Industrial and Financial Reconstruction (BIFR), Ministry of Finance, Government of India u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. u/s 22 of the Act, in respect of an Industrial Company, if an inquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof [and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority. Petitioner has placed reliance on a reported decision of 2000(4) PLJR 217 where in the same circumstances, it has been held that in case of an industry declared sick, bar of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 also includes filing a writ application, as it is covered under word "suit", once inquiry u/s 16 or 17 of the Act has stated any claim of recovery is not maintainable in terms of Section 22 of the Act. Considering the fact that the petitioner's application is not tenable u/s 22 of the Act as the company-respondent has been declared sick, this application is dismissed as being not maintainable.