(2008) 05 PAT CK 0063

In the Patna High Court

Case No : CWJC No. 10830 of 2007

M/s Speedcrafts Limited APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Citation : (2008) 2 PLJR 750

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Petitioner is a manufacturer of Road Construction Machineries. Pursuant to tender issued by the Road Construction Department, petitioner had tendered and Purchase Order was placed for supply of Bitumen Sprayers. These Bitumen Sprayers had to be manufactured as per orders. After supply of three Bitumen Sprayers, out of four, there were some differences amongst the parties. The petitioner asserts it was ready for supply after inspection by the respondent in January, 1995 but delivery was not taken. This again was as a consequence of some dispute amongst the parties. Ultimately, lot of correspondences were exchanged and by Annexure-9, being letter dated 15.2.2006, petitioner agreed to refund the entire money, which had been received after inspection without raising any claim for loss caused for holding back the machine for over ten years. This was as a full and final settlement. This was, responded to by the Executive Engineer by Annexure-9/A, dated 28.2.2006 wherein they agreed to accept the payment as full and final settlement provided it was made immediately. In the offer, as made by the petitioner, to refund they had categorically shown that they were making an adjustment of Rs. 19,551/- against some alleged amount due. Immediately thereafter payments were duly made by the petitioner. After one year the respondent then instituted certificate proceedings against the petitioner for recovery of an amount of Rs. 28,37,567/-. Petitioner asserts that this is an unlawful pressure tactics, as applied by the respondent. Apart from other, it would be seen that four certificate proceedings were initiated for the same amount though the claim was singular and the notices showing different case numbers for the four certificates are also part of Annexure-10 series. The petitioner submits that the entire proceedings are wholly without jurisdiction.

2. In the counter affidavit, it is stated that apart from Rs. 19,551/- the rest of the certificate amount reflects the interest which the Government thinks it is entitled to suit for late refund of the money. Thus essentially the question is whether the Government demand of interest by way of compensation for delayed refund can be a Public Demand or not.

3. Having heard learned counsel for the parties and with their consent this writ application is being disposed of at the stage of admission itself.

4. In my view, no such demand can at all be raised. Secondly, even if State considers it competent to raise such demand, the recovery thereof cannot be by way of present proceeding. The reasons are thus:

First when the petitioner made offer to refund the amount, petitioner clearly stated that this would be towards full and final settlement of all disputes and differences as between the parties, meaning thereby no further claim would be entertained by either party. This was specifically accepted and it is on this acceptance that payment was made. Payment having been received pursuant to acceptance by the State and having been encashed, now the State is estopped from resiling. It is well established principle of law that a party cannot approbate and reprobate at the same time. Petitioner''s offer was conditional, inasmuch as it was towards full and final settlement of all disputes and claims. This was specifically accepted. Once this was accepted by the State and the State received payment thereof and appropriated the payment to itself it cannot, in law, be permitted to resile, and raise a fresh dispute and a fresh demand. This is wholly illegal and without jurisdiction. Then even if such a demand could be raised, it is a matter, which requires adjudication by Civil Court as to the rights of the parties. Such a demand does not arise out of any clear contractual obligation. State cannot assume to itself a jurisdiction to decide the liability against a party and then choose to enforce it as a public demand. We are still living in a democratic society governed by rule of law. We are not an autocratic society governed only by Government. In this connection I may also refer to instruction issued under Public Demands Recovery Act by the Board of Revenue and in particular Instruction 10 thereof. The said instruction clearly specifies that if there is a dispute with regard to liability then Government must resort to resolve the dispute in Civil Court rather then enforce the payments of amount in a certificate Court. Apart from this no entry in the schedule detailing public demand cover such a demand raised and assessed unilaterally by the respondent. It is not a public demand.

5. For the reasons aforesaid, all four certificate proceedings are held to be wholly

without jurisdiction and quashed as such. The writ application is allowed.

