

(2008) 02 PAT CK 0159
In the Patna High Court
Case No : CWJC No. 7088 of 2004

Mundrika Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-02-2008

Acts Referred:

Citation : (2008) 2 PLJR 670

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Akhoury Kamal Kishore Sahay, for the Appellant; Manoj Kumar Jha, for the Respondent

Judgement

Navaniti Pd. Singh, J.—It is not in dispute that pursuant to three agreements, as executed between the petitioner and the respondent-State, the petitioner had done some work for the State. As usual, payments remained due. Some payment, in the meantime, was made and for balance, petitioner was told that/as financial years had changed, payments could only be made when fresh allotments are received in regards the works. Having waited, the petitioner sent a legal notice. A legal reply was received wherein part payments were admitted and it was said that so long as fresh allotments are not received, the respondents-officers are unable to make payment. This brought the petitioner to this Court for a direction to respondents to make allocations of fund for payment of petitioner's bills. It seems the writ application having been filed in the year 2004, the matter was referred to the Liability's Committee of the Department for ascertaining the dues. The report of the Liability's Committee, which has rejected the entire claim in toto, is annexed as Annexure-A to the counter affidavit. The report of the Liability's Committee in respect of all three agreements admit the nature of work contract. It is not disputed that agreements were duly executed but still payments have been denied on the ground that in some cases, there was no newspaper advertisement before agreements were entered into, the Junior Engineer, the Assistant Engineer and

the Executive Engineer did not maintain the records properly as per Government instructions. There is no finding or even suggestion that work was not done. Part payments having been made is also not in dispute. On basis of the above defence, the learned counsel for the State submits that the Liability's Committee having enquired into the matter and rejected the claim on the aforesaid ground, no writ shall issue by this Court. Having heard the parties and with their consent, the application is being disposed of at this stage itself.

2. It appears earlier by order dated 12.4.2007, a Bench of this Court had directed the respondents to bring on record any proceedings that they had initiated against the officers concerned for dereliction of duty in view of the findings of the Liability's Committee and directed the petitioner to file copies of the agreement. Such affidavits have been filed from which it is clear that agreements were duly executed as between the parties. In any view of the matter, this was actually not in dispute as the Liability's Committee has acknowledged the agreements itself. Coming to the counter affidavit of respondent No. 1, it was pointed out that there were five officers concerned with the petitioner's work out of which the two seniormost officers had already retired long back and nothing can be done against them. One has been transferred to Jharkhand against which recommendation has been made for initiating departmental proceedings for the first time after the order of this Court in February 2008 and so far as the remaining two are concerned, departmental proceedings have been initiated in February this year after the order of this Court. In my view, these acts of the State clearly establish that they had initially intended to find some excuse to deny the legitimate payment that was due. Once this was exposed in the Court now after ten years of the work having been done, proceedings are being sought to be initiated against some of them. It was not thought proper at any point of time before to initiate any proceeding even though there were serious observations against those officers by Department's own Liability's Committee. This Court understands that first the Liability's Committee sought only to give that as an excuse to deny payment but now are forced to follow its up to its logical conclusion. The actions are per se arbitrary.

3. From the reasons given by the Liability's Committee, it would be found that none of the grounds are any dereliction in any manner on part of the petitioner. Nowhere it is denied that the work was not done. Only what is being said is now after such a long period, physical reverification is not possible. Here again unfortunately, the State is to blame for its own action. State cannot say that as my officer has committed a default and my officers have slept for such a long time, therefore, for fault of my officers, the contractor a party who was not involved in any manner, is to suffer. This is against all established canons of law. No person can be made to suffer for fault of another. I can only refer to a case of All India Groundnut Syndicate Limited vs. Commissioner of Income Tax, Bombay City since reported in AIR 1954 Bombay 232 wherein Chief Justice Chagla held thus:

"But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under subsection (2) of Section 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person—we take it that the Income Tax Department is included in that definition—can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because "I have committed a default and the right is lost because of that default."

4. I may also refer to the judgment of the Apex Court in the case of *M/s Hindustan Sugar Mills vs. State of Rajasthan and Others* since reported in AIR 1981 Supreme Court 1681 wherein the Apex Court clearly held that the State must do what is just and fair and could not resort to technical pleas to defeat the legitimate claims of citizens and drive the citizens to suits on basis of technical pleas.

5. In view of my finding above that none of the derelictions or default in any way associated with the petitioner, the petitioner cannot be punished or deprived of his payment. Payments were denied earlier not because work was not done or payment was not due but because there was no adequate allocation of funds as part payments were made. Therefore, I reject the report of the Liability's Committee on basis whereof the Secretary of the Department has passed an order rejecting the claim of the petitioner. I, accordingly, direct that the Department should make adequate allocation of funds for payment of the petitioner's outstanding bills at the earliest and not later than one month from production of a copy of this order before respondent No. 1 and the payment must be made to the petitioner within two months from today. The State would, however, be at a liberty to realize the said amount from any or all of the officers who were found in default. The writ application is, thus, disposed of.