(1999) 09 PAT CK 0108

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7966 of 1993

National Building Construction Corporation Limited — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 30-09-1999

Acts Referred:
Bihar Finance Act, 1981 — Section 25A

Citation : (1999) 3 PLJR 957 : (2000) 118 STC 370

Hon'ble Judges : Sachida Nand Jha, J;Gurusharan Sharma, J

Bench : Division Bench

Advocate : B.P. Rajgharia, Pawan Kumar and Purnendu Singh, for the Appellant; Shashi Bhushan Kumar, JC to SC, 6, for the Respondent

Final Decision : Allowed

Judgement

Sachida Nand Jha and GURUSHARAN SHARMA, JJ

1. This writ petition has been filed on behalf of a Government company challenging the vires of Section 25-A of the Bihar Finance Act, 1981.

2. By judgment and order dated July 19, 1999 Reported in [2000] 117 STC 41 (Pat). in the ease of Larsen and Toubro Ltd. v. State of Bihar [C.W.J.C. No. 878/97(R)] and analogous cases, provisions of Section 25-A of the Bihar Finance Act, 1981 and other related provisions have been declared to be ultra vires. It is thus plain that this writ petition is squarely covered by the said decision.

3. Coming to the consequential relief, it is obvious that the provisions having been held to be ultra vires anything done or action taken by virtue of the impugned provisions have to be held to be bad in law.

4. Sri B.P. Rajgharia followed by Sri Pawan Kumar, learned counsel for the petitioner, however submitted that by virtue of the interim order passed by this Court on September 24, 1993 petitioner is also entitled to interest as may be fixed by this Court. Relevant portion of the order runs as follows :

"So far the interim relief is concerned, the respondents shall be at liberty to make deduction from the bills but such deduction shall be subject to the result of the writ application and the provisions of Sub-section (2) of Section 25-A of the amended Ordinance. However, in case of success of the writ application, petitioners shall be entitled for appropriate interest, fixed by the court at the time of hearing."

5. With utmost respect to the learned Judge we had some reservations in passing any order of the kind indicated in the above order. However, no interim order of stay or the alike having been passed as in other cases, the plea that the petitioner should be compensated by grant of interest cannot be rejected. In deference to the aforesaid interim order we are of the view that the petitioner should be allowed interest on the amount collected by virtue of the impugned provisions. In the circumstances of the case we fix the interest at 10 per cent per annum.

6. This writ petition is accordingly allowed, all actions and things taken/ done under the impugned provisions are held to be bad. The petitioner is held entitled to interest on the amount collected u/s 25-A of the Act at 10 per cent per annum. It will be open to the petitioner to apply for refund/ adjustment which shall be made within 12 weeks of the application.

No order as to costs.