
(2006) 09 PAT CK 0020
In the Patna High Court
Case No : CWJC No. 8819 of 2004

Ram Pravesh Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 PLJR 273

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Judgement

Navaniti Pd. Singh, J.—The petitioner was given the Work Order and an agreement was duly executed in this regard for supply of stone metals etc. on Jehanabad-Arbal road. The agreement executed-as between the parties is Annexure-1 and is not disputed. It was executed by the Executive Engineer, Road Construction Department, Road Division No. 1 Jehanabad on behalf of Governor of Bihar. The work was taken up, various measurements done and thereafter the problems started. The work was completed in the year 1995-96. Payment of petty amount was made and no further made thereafter on one pretext or the other which has nothing to do with the contract. Thus, being disgusted with the arbitrary attitude of the Government this writ application was filed on 3.8.2004. This writ application having been filed the State decided to set up a Liability Committee to assess the claim of the petitioner. As usual though the Committee is known as Liability Committee its function is to find some lacuna in the contract or the work done in order to reject the claim. This is the case on hand also. The ground for rejection of claim is not that no agreement was executed. It is not that no work was done. It is not that work was incompetently done. The rejection is on the ground that the Work Order was issued not strictly in accordance with Government guidelines. The verification of work was not done as per required departmental circular. The claim of the Liability Committee was that the officials of the State failed to perform their part. It is not their case that the petitioner failed to perform his part of the agreement. It is, therefore, clear that the

Liability Committee is merely a colourable exercise of power. The Committee itself was constituted to examine the claim in the year 2005 in relation to a work done in 1995 and that too after writ application was filed. It is nothing but a colourable exercise of power to deny legitimate payment. This Court, therefore, has no option but to quash the decision of the State Government which is per se arbitrary and capricious. It feels to take notice that if work was done for and on behalf of the State a person is entitled to receive payment. No work is gratuitous. In *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, , the Supreme Court has clearly held after review of past judgment that in contractual matters writ would lie. Even direction for payment of money can be made as a consequence of the proceedings. Specific questions were decided with regard to jurisdiction of this Court under Article 226 in such matters. It has been held thus:

" A writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a Court in the exercise of its jurisdiction under Article 226 of the Constitution, but there is no absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. It has been held that in a writ petition, if the facts require, oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact."

2. The State has placed reliance in the case of *Binny Ltd. and Another Vs. V. Sadasivan and Others*, and in particular paragraph 31 thereof wherein the Apex Court has held that in contractual matters even in respect of principle of judicial review has got limited application. There the case was primarily in relation to a contractual agreement for employment as between the employee and private employer and the writ application was filed praying for issuance of a writ in private employment. However, the Apex Court has not held that in contractual matters there cannot be judicial review as held by the Apex Court in the case of *A.B.L. Corporation (supra)* the question with regard to contractual matters was specifically raised and decided.

3. In that view of the matter, the Court having found that the action of the respondents was nothing but an arbitrary and colourable exercise of power. The writ is to be issued directing the State to make proper allocation of fund for payment of dues as claimed. Let an appropriate Writ be issued accordingly.

4. Before I part with, the Liability Committee has found fault with its officials let State file counter affidavit showing as to what action it has proposed and/or taken against those erring Officers. If no action has been initiated whether they propose to initiate any action or not because it is primarily because of their non-compliance petitioner was said to be denied his payment. The State Government cannot take the plea that for failure of its officers citizen have to be deprived of

their legitimate claim. If the Liability Committee standby its recommendations the State must immediately report action against erring officers.

5. For this limited purpose let this writ application be listed under the heading Orders after fifteen days when the State Counsel will reply and file affidavit in this regard.

6. In the counter affidavit it has been explained that a direction had been given to the counsel well in time but because of change in panel the instructions were misplaced. In that view of the matter, the order dated 19.8.2006 with regard to payment of cost stands withdrawn.

7. Put up after three weeks. Let a copy of this order be given to Sri Prabhakar Tekriwal, G.A. I.