

(2011) 01 PAT CK 0013
In the Patna High Court
Case No : CWJC No. 13868 of 2004

Ramesh Shankar Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Citation : (2011) 1 PLJR 692

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the Petitioner challenging order dated 19.5.2003 (Annexure-4) by which the Engineer-in-Chief, Road Construction Department, Govt. of Bihar, Patna (Respondent No. . 3) rejected the claim of the Petitioner with respect to liability amount on the ground that it did not fulfill the pre-condition laid down in Sub-clauses (ka), (kha) and (ga) of Clause 10 of Enclosure No. 2 of letter dated 30.3.1982 (Annexure-5) issued by the Takniki Parikshak Koshang providing general guidelines and also for directing the said Respondents to pay the entire contractual dues alongwith 18% per annum interest thereon and further for declaring that the decision and finding of the Liability Committee in favour of the Petitioner had attained finality with respect to his claim and the same cannot be reviewed by the Engineer-in-Chief (Respondent No. 3) in any manner whatsoever.

2. Learned Counsel for the Petitioner claimed that the Petitioner is a registered contractor and in pursuance of tender notice dated 16.7.1995 floated by the Respondents-authorities, the Petitioner made an offer and being lowest bidder was awarded tender for repair of Timber Bridge in the 4th KM of Sheohar-Minapur Road for the year 1995-96 and accordingly agreement dated 29.7.1995 was duly executed by the Executive Engineer, Muzaffarpur, Road Division No. II (Respondent No. 5) and the Petitioner for the consideration of Rs. 2,31,904.00 and the work was to be executed within a period of ten days. It is also claimed

by the Petitioner that he executed the contract within the stipulated period for which the measurement book was duly checked and passed by the Executive Engineer and Rs. 92,206.00 was paid to the Petitioner by the end of 1996, but even thereafter Rs. 1,31,715.00 remained outstanding.

3. Learned Counsel for the Petitioner submitted that he filed CWJC No. 5355 of 1998 for payment of the admitted dues, but subsequently the Petitioner withdrew the said writ petition on 14.12.1998 (Annexure-2) but in the said order it was specifically mentioned that the Petitioner will not be precluded from approaching any other forum available to him under law for the redressal of his grievance. It was also stated that thereafter the Petitioner approached the Liability Committee which was constituted under the Chairmanship of Chief Engineer, North Bihar Circle and the said Committee made a detailed inquiry and inspection and vide its report dated 9.9.2000 (Annexure-3) sent to the Engineer-in-Chief (Respondent No. 3) recommended payment of liability amounting to Rs. 1,31,715.00 to the Petitioner.

4. Learned Counsel for the Petitioner also stated that even thereafter no payment was made to the Petitioner in pursuance of the said recommendation and after about three years Petitioner received the impugned order dated 19.5.2003 (Annexure-4) passed by the Engineer-in-Chief (Respondent No. 3) by which the claim of the Petitioner was rejected. Against the said order, the Petitioner preferred a representation before the Engineer-in-Chief (Respondent No. 3) for review of the said order, but the said representation was rejected by the said authority vide order dated 22.11.2003 (Annexure-7).

5. Learned Counsel for the Petitioner argued that recommendation of the Liability Committee was ignored and the claim of the Petitioner was rejected by the Engineer-in-Chief (Respondent No. 3) vide impugned order dated 19.5.2003 (Annexure-4) only on the ground that pre-conditions laid down in Sub-clauses (ka), (kha) and (ga) of Clause 10 of Enclosure-2 of the General Guidelines issued by the Takniki Parikshak Koshang vide letter dated 30.3.1982 (Annexure-5) were not fulfilled, but the said sub-clauses were for the authorities concerned to comply and the authorities had duly complied the same which was apparent from the money bills (Annexure-6 series) duly checked and passed by the authorities concerned. He also averred that in any view of the matter, there being no deficiencies on the part of the Petitioner he cannot be legally punished for the fault of the authorities.

6. In this connection, learned Counsel for the Petitioner relied upon four decisions of Patna High Court. In case of Anil Kumar Pandey Vs. The State of Bihar and Others, it was held that mandamus was to be issued for payment as the State's own officer failed to maintain records or submit report and liability of contractor being third party cannot be jeopardized. In case of Patna Municipal Corporation Vs. Abhinash Kumar Singh and Others, a Bench of this Court held that the reasons given by the Liability Committee would show that none of the grounds were with regard to any dereliction in any manner on the part of the

Petitioner and since no person can be made to suffer for the fault of another the Petitioner cannot be punished or deprived of his payment and accordingly directions to the Department was issued for making payment of the Petitioner's outstanding bill within a time frame. In case of Krishna Choudhary and Others Vs. The Bihar Rajya Jal Parishad, a Bench of this Court held that Jal Parishad was expected to produce all the records as a party in default cannot take advantage of his own default and once it is found that the work was done then denying payment for not maintaining proper accounts by Respondents was not justified. In case of Sudhir Prakash v. The State of Bihar and Ors. 2010(2) PLJR 209 it was held that once the Committee appointed by the District Authority submitted its favourable report nothing remained but the payment to be made.

7. On the other hand, learned Counsel for the Respondents stated that Liability Committee is only a recommending authority and the final authority is the Secretary of the Department for taking decisions and hence the report dated 9.9.2000 (Annexure-3) was not binding upon the final authority. It was further stated that administrative instructions given by the Takniki Parikshak Koshang vide letter dated 30.3.1982 (Annexure-5) were regulatory provisions which governed such matters and hence when the provisions of Clauses 10(ka), (ga) and (gha) were not complied, there was no question of making any payment and the impugned order dated 19.5.2003 (Annexure-4) was passed by the Engineer-in-Chief (Respondent No. 3) as per the specific rules.

8. Learned Counsel for the Respondents further stated that even if the provisions of sub-clauses of Clause 10 of the aforesaid administrative instructions were not complied by the authorities, the State Government is not bound by any promissory estoppel for the acts of its subordinate done in violation of specific directions and/or administrative instructions already provided by the higher authorities and hence no fault can be found in the impugned order on the said account. It was also stated that in any view of the matter, an alternative remedy was always available with the Petitioner by way of filing a suit for recovery of the said amount.

9. In this connection, learned Counsel for the Respondents relied upon two decisions of two Full Benches of this Court. In case of Chetlal Sao and Anr. v. The State of Bihar and Ors. 1986 P.L.J.R. 149, it was held that the State was not bound by the doctrine of promissory estoppel for the acts of its officials directly contrary to its general instructions and specific orders and directions. In case of Rita Mishra and Ors. v. Director, Primary Education, Bihar and Ors. 1987 PLJR 1090, the aforesaid decision of the Full Bench in case of Chetlal Sao (supra) was reiterated.

10. So far the aforesaid decisions of the Full Bench of this Court in case of Chetlal Sao (supra) and in case of Rita Mishra (supra) are concerned, there the question of promissory estoppel was involved with respect to fishery rights and payment of salary respectively and the question of work done and amounts to be paid were in dispute. In the instant case, the question of work done by the

Petitioner is not in dispute and hence the said case laws are not applicable to the facts and circumstances of this case. Here the question is as to whether the Petitioner can be legally made to suffer for the fault of others, when he had duly completed his work as per the agreement.

11. From the arguments of learned Counsel for the parties as well as from the materials on record, it is quite apparent that Petitioner has specifically claimed in paragraphs 4 and 561 the writ petition that in view of agreement dated 29.7.1995 the Petitioner executed entire contract work within the stipulated period by 6.8.1995 and his measurement book was duly checked and passed by the Executive Engineer concerned. This fact has not been specifically denied by the Respondents in their counter affidavit and it is only stated in paragraph 8 of the Respondents' counter affidavit that since the State Government has not admitted the claim of the Petitioner, therefore, there is no question of payment to the Petitioner. It is also apparent that inquiry was duly held by the Liability Committee in accordance with law which submitted its report in detail on 9.9.2000 (Annexure-3) clearly showing that the Petitioner had completed the contractual work within the stipulated period and hence the remaining amount was due to be paid.

12. This aspect of the matter had been completely ignored by the Engineer-in-Chief (Respondent No. 3) while passing his impugned order dated 19.5.2003 (Annexure-4) in which the claim of the Petitioner was rejected only on the ground that pre-condition laid down in Sub-clauses (ka), (kha) and (ga) of Clause 10 of Enclosures of the Administrative Instructions issued by the Takniki Parikshak Koshang vide letter dated 30.3.1982 (Annexure-5). were not fulfilled. On perusal of the said Administrative Instructions dated 30.3.1982 (Annexure-5) especially Clause 10 of its Enclosure No. 2 it is quite apparent that Sub-clause (ka) laid down that the Sub-Divisional Officer shall enquire the entire second form except the first form of the agreement, whereas Sub-clause (kha) required the Assistant Engineer and the Executive Engineer to check the first and final bill and Clause (ga) thereof required the Executive Engineer to check the bill as per 10% of the agreement and amount of bill and out of 10 at least one bill must be checked.

13. Learned Counsel for the Petitioner had produced relevant papers, including money bills as Annexure-6 series to the writ petition, and had specifically claimed in paragraph 13 thereof that the said bills clearly showed that the Assistant Engineer-cum-Sub-Divisional Officer had checked the required bills and had also approved first and final bill submitted and prepared by the Junior Engineer and thus Sub-clause (ka) of Clause 10 of the aforesaid Instructions stood fully complied. It was also claimed that the Assistant Engineer and Executive Engineer had clearly made entries "checked and passed" on the money bills and hence Sub-clause (kha) also stood complied. It was further claimed that Executive Engineer had made an entry "checked and passed" with respect to the entire amount payable which was clearly found in the report of the Liability Committee

and hence Sub-clause (ga) of Clause 10 of the said Administrative Instruction was also complied. These facts stated in the writ petition were supported by documents attached to the writ petition as Annexure-6 series. The said statements and the annexures had not been specifically denied by the Respondents in their counter affidavit and they merely harped on the baseless point that the said sub-clauses were not complied with and hence the agreement was found to be doubtful and only on its basis the recommendation of the Liability Committee was rejected.

14. No material at all has been produced by the Respondents to show that any inquiry was made or any report was submitted before the authorities concerned after the report in question dated 9.9.2000 (Annexure-3) was submitted by the Liability Committee and hence there was no occasion for the authority concerned to ignore the report of the Liability Committee and reject the claim of the Petitioner only on unproved frivolous grounds. Hence after the aforesaid report of the Liability Committee in favour of the Petitioner, there remained nothing but the payment to be paid by the authorities to the Petitioner as has been held by a Bench of this Court in case of Sudhir Prakash (supra).

15. Furthermore, it is quite apparent from the impugned order that no dereliction in any manner on the part of the Petitioner was found and hence there was no occasion for punishing the Petitioner for none of his fault especially when it could not be denied that the Petitioner had completed the contractual work within the stipulated period as per the agreement. In this regard, reference may be made to the decisions of this Court in cases of Anil Kumar Pandey (supra), Krishna Choudhary (supra) and Mundrika Singh (supra).

16. In the aforesaid facts and circumstances, this writ petition is allowed, the impugned orders/letters are quashed and the Respondents-authorities are directed to make payment of the Petitioner's outstanding bills with interest at the rate of 8% per annum from the date it became due till the date of its payment. The said amount must be paid at the earliest and not later than three months from the date of production of a copy of this order before Engineer-in-Chief (Respondent No. 2).