
(2000) 02 PAT CK 0056
In the Patna High Court
Case No : C.W.J.C. No. 2682 of 1999

Roy Construction and Company and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

Citation : (2000) 2 PLJR 724

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Suresh Prasad Bhakt, for the Appellant; Bishwajeet Singh, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This is the Petitioners' second attempt before this Court which, on the very face of it shows degradation of the bureaucracy of this State to the utter harassment of the citizens.

2. The Petitioners by this writ petition seek to realise a sum of Rs. 61,196.77 P. from Respondent Nos. 2 to 5, the Bihar State Tourism Development Corporation Ltd., the break-up of which is as follows:

- (i) 21,325.00 - 50% of the earnest money.
- (ii) 21,325.00 - 50% of the security money.
- (iii) 10,000.00 - keep-back amount.
- (iv) 8,545.77 - The differential of the amount in the final bill.

Total Rs. 61,196.77

3. The Petitioner is a civil contractor, and was given civil contract for construction of a cafeteria at Nalanda and the total contracted amount was Rs. 9,26,500/-. According to paragraph 4 of the counter-affidavit, the Petitioner was given a total

period of nine months to complete the contract work i.e. up to 5.6.92, whereas the work was completed on 15.9.94. Therefore, the Petitioner is being deprived of the aforesaid sum of Rs. 61,196.77 P.

4. After the work was completed on 15.9.94, the Petitioner made attempts to realise the amount. It is manifest from letter No. 1047 dated 17.12.94 (Annexure-5), from the Executive Engineer of the Corporation to the Petitioner, that the bills could not be finalised on account of the delay in the former's office. It further states that he had personally inspected the civil construction on 15.9.94, and had found it to be generally satisfactory. The Petitioner was called upon to contract the Executive Engineer for finalisation of the bills. It appears that the amount in question was not paid and, therefore, the Petitioner had to move this Court in CWJC No. 10452 of 1995 (M/s. Roy Construction and Co. v. State of Bihar and Ors.), which was disposed off by a learned single Judge of this Court by order dated 30.7.96 (Annexure-1), whereby the Managing Director of the Corporation was directed to dispose off the representation of the Petitioner within a period of six weeks from the date of receipt of the representation and he was further directed to release the payment within one month if the bills were found to be due. The Petitioner's representation has been disposed of by the impugned order dated 22.9.97 (Annexure-3), passed by S.K. Singh, Managing Director of the Corporation, who is impleaded as Respondent No. 3 in this writ petition. By the impugned order, the Petitioner's entire claim has been rejected on the ground that he completed the work belatedly. The Petitioner had in the meanwhile preferred a contempt application in this Court for the gross delay on the part of the Managing Director in disposing of the Petitioner's representation in terms of this Court's order dt. 30.7.96 (Annexure-1), which was registered as MJC No. 3110 of 1996, and was disposed off by a learned single Judge of this Court by order dated 28.1.99 (Annexure-4), whereby this Court dropped the contempt proceeding in view of the impugned order (Annexure-3), and liberty was given to the Petitioner to agitate the entire matter afresh. Hence the present writ petition.

5. While assailing the impugned action of the Respondent authorities, learned Counsel for the Petitioner submits that there was undoubtedly some delay in completing the construction. He further submits that there has been no complaint whatsoever about the quality of construction or that the work was not completed. On the contrary, in his submission, the aforesaid letter dt. 15.9.94 (Annexure-5), clearly says that the Executive Engineer had on personal inspection of the cafeteria on 15.9.94 found the construction to be quite satisfactory, and that the issue relating to the bills of the Petitioner could not be disposed of entirely for the delay attributable to the Corporation and its functionaries.

6. Learned Counsel for the Corporation submits that the work was surely completed and to the satisfaction of the Corporation, but the payment is being deducted on account of the delay in completing the construction. He invites my

attention to paragraph 5 of the counter affidavit which is set out hereinbelow for the facility of quick reference:

5. That it is stated that a bare perusal of annexure 5 to the writ petition shows that the construction was complete although unsatisfactory only on 15.09.94.

7. Having considered the rival submissions of the parties, I am of the view that this writ petition has to be allowed. The delay and arbitrariness attributable to the bureaucracy of this State has become proverbial. The Corporation has been completely unmindful of the delay it caused in processing the bills of the Petitioner. The construction was completed on 15.9.94, and the representation has been finally disposed off by the impugned order dated 22.9.97, which is in gross violation of this Court's order dated 30.7.96 (Annexure-1). This Court had directed the Managing Director to dispose off the Petitioners' representation within six weeks, i.e. on or before 15.9.96, whereas the same was disposed of on 22.9.97, after a delay of one year, and that too after contempt proceeding was initiated in this Court. It is to the despair of this Court that hardly any order of this Court is implemented without the threat of action in contempt proceeding, to the utter harassment of the Petitioner and the chagrin of this Court. The administration in this State seems to be in the abyss of despair, and this Court at a loss how to protect the citizen from the misgovernance and ungovernance in this State. On being questioned, learned Counsel for Respondent Nos. 2 to 5 is unable to explain the gross delay which" stares in the face of S.K. Singh, the Managing Director, in passing the impugned order in utter violation of this Court's order. So much for the conduct of S.K. Singh, the Managing Director of the Corporation. This Court strongly condemns his inaction which speaks of an irresponsible approach towards the orders of this Court and gross dereliction of his essential duties and functions.

7.1. The counter affidavit of the Corporation has been sworn by one Ashok Kumar Sinha, Manager (Administration) of the Corporation, who has made an unsubstantiated and irresponsible statement in paragraph 5 of the counter affidavit reproduced hereinabove that the work executed by the Petitioner was unsatisfactory. On the contrary, it is manifest from a plain reading of Annexure-5 that the Executive Engineer had on local inspection found the work to be satisfactory. This Court deems it to be a brazen attempt on the part of Ashok Kumar Sinha to mislead this Court.

7.2. This Court condemns the conduct of A.K. Sinha, Manager (Administration), of the Corporation, for the way he has treated this Court. Writ petitions are decided on the basis of affidavit evidence. It would lead to great injustice at the hands of this Court if such irresponsible acts are allowed to go unpunished. The arbitrary and irresponsible action attributable to the Corporation and its functionaries is writ large on the records of this case. Both the functionaries are warned to be careful in future.

8. It is in the aforesaid background that they delay attributable to the Petitioner

in completing the contract in question has to be seen. It is quite easy for this Court to see the condition of the hapless Petitioner who must be running from pillar to post for ventilation of his grievances. How would one see the delay on the part of the Petitioner in juxtaposition to the conduct of the Corporation and its functionaries. This Court is in no doubt that the latter far outweighs the former and is characterised by arbitrariness, gross and unexplained delay, as well as flasehood in an effort to take this Court up the garden path.

9. In the result, this writ petition is allowed with interest and costs. The Managing Director of the Corporation (Respondent No. 3), is hereby directed to release the aforesaid sum of Rs. 61,196.77 P. with interest calculated at the rate of 11% with effect from 15.9.94 till the date of payment. The cost of this writ petition is quantified at Rs. 25,000/-, which shall be paid personally by S.K. Singh, Managing Director, and A.K. Sinha, Manager (Administration), half and half each to the Petitioner along with the aforesaid sum of Rs. 61,196.77 P. Let the condemnation of this Court be entered in the personal character rolls of the aforesaid two officials of the Corporation who are guilty of misconduct and willful disregard of the orders of this Court.