(2012) 03 PAT CK 0129

In the Patna High Court

Case No : CWJC No. 7104 of 2010

Seva Dharm Sansthan APPELLANT

Vs

Patna Municipal Corporation and Another RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 2 PLJR 355

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Advocate : Binod Kr. Sinha - 2, for the Appellant; Bishwa Bibhuti Kr. Singh, for the Respondent

Final Decision : Allowed

Judgement

Samarendra Pratap Singh, J.—The petitioner is a Non-Government Organization represented through its Secretary and is duly registered under the Societies Registration Act. The petitioner prays for directing the respondent authorities to pay outstanding dues for the work performed by it for improvement of sanitation in Ward No. 33 subsequently converted into Ward No. 44 and Ward No. 34 in the township of Patna. In order to streamline the sanitation work, the Patna Municipal Corporation (Respondent No.1) decided to rope in non-government organizations (N.G.Os.) including the petitioner to maintain cleanliness during festive occasions, strikes and troubled times, when the Corporation is itself unable to manage the sanitation work. In the month of May, 2006, the sanitation employees of the Patna Municipal Corporation went on indefinite strike in Patna and as such (Respondent No. 2), the Municipal Commissioner-cum-Chief Executive Officer assigned the N.G.Os. to carry out cleaning work. The petitioner was given the work of Ward Nos. 33 and 34 provisionally vide letter no. 46 dated 8.5.2006 (Annexure-1).

2. The Corporation finding it difficult to carry out sanitation and cleaning work satisfactorily all by itself decided to outsource the work of cleaning and

sanitation. Tenders were invited for works in different Wards vide publication dated 30.5.2006 in ''Hindustan'' a popular daily having wide circulation all over the State. The tender offered by the petitioner was accepted and was assigned the work of door to door garbage collection from Ward Nos. 33 and 34 vide separate letter nos. 509 and 510, both dated 7.7.2006 respectively (Annexures-3 and 3/A). The rate of work fixed for Ward No. 33 was Rs. 30,000/- per month and for Ward No. 34 was Rs. 41,600/- per month. On 3.8.2006 by letter no. 657, dated 3.8.2006 the Corporation rescinded the earlier letter no. 509 dated 7.7.2006 (Annexure-3) and entrusted the entire sanitation work of Ward No. 33 to the petitioner as against door to door garbage collection assigned earlier.

3. in the meanwhile, on account of delimitation of the areas, Ward No. 33 was re-numbered as Ward No. 44 after amalgamating some areas of other wards. The respondent no. 2 namely Municipal Commissioner-cum-Chief Executive Officer vide its office order dated 26.7.2009 contained in memo no. 1500 directed the petitioner also to undertake sanitation work of additional area of newly constituted Ward 44 for which payment would be made on proportionate basis.

4. One of the main contentions of the petitioner is that though it did the sanitation work in the additional areas of Ward No. 44 constituted from erstwhile Ward No. 33, the respondents have totally ignored the bills submitted for additional areas for a sum of Rs. 16,44.510/- which constituted only 75% of the due amount.

5. The petitioner submits that as substantial amounts against work done remained pending, the N.G.Os including petitioner filed a Detailed joint representations dated 7.12.2006 (Annexure-6) to Respondent No. 2 with copies to Hon''ble Urban Development Minister, Secretary, Urban Development Department and others. On 12.2.2007 the Corporation evaluated the work of various N.G.Os. A copy of evaluation report contained in Annexure-7 was also communicated to respondent no. 2.

6. The petitioner vide its letter dated 14.9.2009 submitted its bills for the work done in Ward No. 33 (subsequently converted to Ward No. 44) and Ward No. 34. The petitioner also annexed copies of the certificates granted by the Ward Councillors as well as the Chief Sanitary Inspector and Sanitary Inspectors of the Corporation. The Empowered Standing Committee after considering the materials on record sanctioned payment of 75% of work done in Ward No. 44 by the petitioner. A copy of the resolution dated 17.11.2008 is at Annexure-11.

7. The petitioner states that as against total bill of Rs. 56 lacs and odd, payment has only been made for an amount of Rs; 30 lacs and odd. The Chairman of Bihar Municipal Corporation in its resolution dated 17.11.2008 approved 75% of the amount claimed by the petitioner. A Bench of this court by order dated 29.7.2010 observed that 75% of Rs. 56 lacs would come to Rs. 42 lacs and as such a sum of Rs.12 lacs of admitted dues still remain unpaid after adjusting payment of Rs. 30 lacs. The learned Judge as such directed the Municipal

Commissioner-cum-Chief Executive Officer, Patna to pay balance of Rs.10 lacs within two weeks.

8. It appears that the Corporation went in appeal against the order directing to pay a sum of Rs.10 lacs. The matter has been remitted by the Division Bench for fresh consideration after allowing an opportunity to the Corporation to state their case.

9. The case of the petitioner is that two bills have wrongly not been considered for payment which is as follows:--

(i) A bill of Rs. 16,44,510/- for the work done pursuant to order of Municipal Commissioner-cum-Chief Executive Officer (Respondent No. 2) contained in memo no. 1500 dated 26.7.2007 in respect of Ward No. 44 constituted by adding some more areas to Ward No. 33 for the period August, 2007 to November, 2008;

(ii) A bill for the work done pursuant to letter no. 510 dated 7.7.2006 for the period July 2006 to December, 2006 amounting to Rs. 1,87,200/- in respect of Ward No. 34.

10. The petitioner''s case is that even if 75% of bill is approved which has been considered and approved in many cases, the amount due would be Rs. 16,44,510/-in case of item no. (i).

11. Mr. Lalit Kishore, learned Senior Advocate appearing for the Patna Municipal Corporation while referring to paragraph 3 of the counter affidavit submits that only a sum of Rs. 59,666/- is to be paid besides a sum of Rs. 1,68,470/- which has been deduced as security. The sum of Rs. 59,666/- is due for the period 8.5.2006 to 17.6.2006 for the work of door to door collection of garbage of Ward No. 34. In paragraph 9 of the counter affidavit it has been stated that letter no. 509 dated 7.7.2006 was recalled by an order contained in memo no. 657 dated 3.8.2006 (Annexure-4). Thus the work of door-to-door collection of garbage was withheld by the Corporation and as such no admitted dues remained outstanding consequent to letter no. 509 dated 7.7.2006. In paragraph 10 it has been stated that no work order was issued pursuant to letter no. 1500 dated 26.7.2007 (Annexure-5) for doing the work of additional territory of Ward No. 44, which was converted from Ward No. 33 after amalgamating some more areas. He further submits that where the monetary claim is disputed, this court would not go into the issue of amounts payable to the parties.

12. It appears that the main contention of learned counsel for the Corporation is that as no work order was issued pursuant to the letter dated 26.7.2007 issued by the Municipal Commissioner, Patna Municipal Corporation (Annexure-5), the Corporation would not be responsible to make payment even if the petitioner has performed sanitation work in respect of territories which was added to Ward No. 33 in constituting new Ward No. 44.

13. On the other hand, counsel for the petitioner submits that the order dated 26.7.2007 contained in Annexure-5 is the order of the Municipal Commissioner

himself who is the Chief Executive Officer of the Corporation. The work performed for the additional territories has been duly verified by the Ward Councillors as well as Sanitary Inspectors. It would not lie in the mouth of respondents to say now that they would not make any payment for the work so performed on the direction of the head of the Corporation. The petitioner submits that in similar circumstances many NGOs had approached this court for payment of balance outstanding. This court in similar circumstances in one of its order dated 18.3.2008 passed in C.W.J.C. No. 9914 of 2007* has observed as follows:--

... By making 75% payment, the Corporation is neither doing any charity nor can it expect the petitioner to be obliged to it because it was the obligation of the Corporation to make payment and it has in discharge of that, payment has been made. All I can say that it is because of this poor financial responsibility on part of Government Organizations that people are reluctant to come forward in this State to do the work on behalf of Government or Governmental Organizations. The sufferers unbeatingly are the citizens.

14. The court found that the work done by the parties including NGOs have been duly verified whereupon 75% of the payment has been sanctioned. The Court directed the Corporation to make balance payment within two weeks from the date of that order.

15. I have heard counsel for the parties. As noticed earlier in the instant writ application the petitioner seeks a direction to the respondent authorities to pay the balance amount of outstanding dues for the work done in Ward No. 33 (converted into Ward No. 44) and Ward No. 34.

16. One of the two broad contentions of the petitioner is that a sum of Rs. 16,44,510/- which is a modest 75% of bills submitted for doing sanitation work in additional territories of newly constituted Ward No. 44 has not been considered and paid. The non-payment of the bill has been made on the ground that the order dated 26.7.2007 issued by Respondent No. 2 was not followed by any work order. The ground mentioned by respondent Corporation is not tenable in the eyes of law. The petitioner was earlier assigned the sanitation work of Ward No. 33 which was subsequently converted into Ward No. 44 by adding more territories to it. When the petitioner did not start sanitation work in the additional territory, the Municipal Commissioner by order dated 26.7.2007 (Annexure-5) directed the petitioner to do sanitation work in public interest and payment would be made on proportionate rate. As the bone of contention centres round the order dated 26.7.2007 (Annexure-5), the same is quoted herein below:--

17. If the order is issued by the highest authority of the Corporation in public interest and a person in terms of the order and promise alters his position to his disadvantage by making huge expenditure in performing the work of cleaning and sanitation, the former cannot make a total turn around and take a plea that no work order was issued. He is estopped in law in taking such stand on principle

of promissory estoppel and fair play and reasonableness which are essential ingredients and facets of Article 14 of the Constitution. The issuance of work order if at all required was the internal arrangement of the Corporation. The contractor or the NGO cannot be held responsible and be put to disadvantage, more so, when the order directed execution of sanitation work with immediate effect. A reasonable person cannot stipulate that the order of the Municipal Commissioner-cum-Chief Executive Officer, who is a senior officer, would not be worth the name. Furthermore, the order does not state that a work order would follow. On plain reading it is evident that the order is complete in itself and in fact is a work order, particularly when seen in the context that order dated 26.7.2007 of Respondent no. 2 (Annexure-5) is culmination of series of orders entrusting sanitation works of one kind or the other to the writ petitioner necessitated on account of change and addition in constitution of territory of the ward. The raison d''etre for such order being to provide sanitation in additional area also, which is a statutory duty and obligation of respondent authorities u/s 45 of the Patna Municipal Corporation Act, 2003. The respondents do not dispute the issuance of order dated 26.7.2007 or the work executed by the petitioner pursuant to the terms of the said order. It is even not the case of Respondents that the order dated 26.7.2007 (Annexure-5) has been recalled or rescinded. The order even has talked about the rates that would be payable which would be in proportion to the earlier rates vis-a-vis the additional territories. It is true that the Court would not go into the disputed facts in respect of monetary claim as observed in the cases reported in 1995 PLJR 321, 1994(1) PLJR 219, AIR 1973 Patna 112(DB), (2000)X SCC 649 and (1995) Suppl. 4 SCC 577. But where a claim in his entirety is not being considered arbitrarily on erroneous ground, the court can definitely interfere and direct consideration of same and pay the amount due to prevent perpetration of injustice. The bills have been duly certified by the Ward Councillors and the Sanitary Inspectors and ought to have been settled.

18. In the instant case the respondents have acted arbitrarily and unreasonably in not considering the bills submitted by the petitioner for performing the work of sanitation and cleaning in the newly amalgamated territories added to Ward No. 33 to constitute Ward No. 44. The Court would direct respondents to examine the bill and make due payment.

19. The respondent Corporation has also not considered the bill submitted by the petitioner for removal of door-to-door garbage in respect of Ward No. 34 for the period July 2006 to December, 2006 amounting to Rs. 1,87,200/- on the ground that letter no. 510 dated 7.7.2006 has been recalled vide memo no. 657 dated 3.8.2006 (Annexure-4). The stand of the respondent is fallacious. The memo no. 657 dated 3.8.2006 contained in Annexure-4 only recalls letter no. 509 dated 7.7.2006 which is in respect of Ward No. 33 and it does not at all refer to Ward No. 34. Hence, I find that the respondent Corporation is not correct in assuming that memo no. 657 dated 3.8.2006 also recalls letter no. 510 dated 7.7.2006 in respect of work assigned for Ward No. 34. The respondents thus erred in not

considering the bill for Ward No. 34 in respect of removal of garbage from door-to-door for the period July 2006 to December, 2006.

20. In the backdrop of discussions made above, I direct the respondents to consider the bills to the tune of Rs. 16,44,510/- submitted by the petitioner for performing the work pursuant to order dated 26.7.2007 issued by Respondent No. 2 contained in Annexure-5 and bill for a sum of Rs. 1,87,200/- in respect of item no. 2 pursuant to work order dated 7.7.2006 contained in letter no. 510 (Annexure-3A) within four months from today and pay the admitted dues promptly. If the admitted dues are not paid within four months, the petitioner would be entitled to 9% simple interest on the amount due till the date of its payment. In the result, this writ application is allowed.