

(2003) 09 PAT CK 0130
In the Patna High Court
Case No : C.W.J.C. No. 3100 of 2003

Sheo Shankar Construction Company (P) Limited	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 01-09-2003

Acts Referred:

Citation : (2003) 3 BLJR 2038 : (2003) 4 PLJR 514

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : S.S. Asghar Husain and Abbas Haider, for the Appellant; A.P. Jittu, S.C. II, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—The petitioner, a company incorporated under the Companies Act has come to this Court through its Director, challenging the action of the respondent authorities in taking steps for recovery of Rs. 10 lakhs from the payments made to the petitioner over twelve years ago for execution of a project under a Government contract.

2. A counter affidavit has come from the respondents and, therefore, the relevant facts of the case can be taken note of as viewed by the respondents themselves.

3. In para 4 of the counter affidavit, it is stated that after inviting tenders the work order was issued to the petitioner for removal of over burden in Durgawati Spillway between chain No. 0.00 to 5.78 up-stream and spillway access and chain No 0.00 to 2.57 down-stream of spill way access, The petitioner had entered into agreement No. 26 F-2 of 1987-88 under which 2/3rd of the work was allotted to the petitioner and the remaining 1/3rd was given to the Bihar State Construction Corporation. But the Bihar State Construction Corporation failed to execute the agreement and hence, the remaining 1/3rd work was also allotted to the petitioner and a separate agreement bearing No. 1 F2 of 1988-89

was executed in that regard. The petitioner was to complete the work as per the agreements upto December, 1987 and October, 1988 respectively. For the work under agreement No. 26 F2 of 1987-88 the petitioner was allowed extension of time upto 30-6-1988 and the last payment for the work done under this agreement was made on 23-12-1989. The total payment involved (under this agreement) was Rs. 33 lakhs and the petitioner was paid a total of Rs. 28.89 lakhs. The amount involved in the other agreement bearing No. 1 F2 of 1988-89 was Rs. 10.70 lakhs out of which only Rs. 5.94 lakhs was paid to the petitioner. The last payment under this agreement was made on 5-12-1989. The total payment made to the petitioner against the work done under the two agreements was Rs. 34.83 lakhs.

4. In the counter affidavit it is further stated that after payments were made to the petitioner, the flying squad of the Irrigation Department inspected the site and submitted report, dated 30-11-1991. According to this report, excess payment to the tune of Rs. 10 lakhs would be recoverable from the petitioner if it was found that 8.50 cft. work done by the Field Machinery Division, Bhitribandh was in the same group No. 1 as that of the petitioner. It is further stated that later during further enquiry recovery of the amount was established.

It may be noted here that on the respondents' own showing the report of the flying squad was provisional and evidently subject to further enquiry. A copy of the report of the flying squad is at Annexure "A" in which it is stated as follows:--

"M/S. SHEO SHANKAR CONSTRUCTION CO.:--

"VARTAMAN MAIN IN KA ANTIM VIPATRA HO GAYA HAI, KINTU KANDIKA-1.2 EWAM 2.3 MAIN YATHAWARNIT AGAR CHETRA YANTRA PARMANDAL, BHITRIBANDH DWARE YEH SIDH KAR DIYA JATA HAI KI GROUP-1 MAIN OON KE DWARA 8.30 LAKH DH. FE. KARYA KARAYA GAYA HAI TO LAGBHAG 10.00 LAKH RUPAYEE SAVED SE WASOOL KARNE SAMBANDHI KARWAI KARNI PARE GI."

Though in the last sentence of para 4 of the counter affidavit, it is vaguely stated that in course of further enquiry the recovery of the amount was established, absolutely no material in support of the averment is brought on record. There is nothing to indicate what kind of enquiry was held and whether the petitioner was given an opportunity to present its side of the case.

5. Be that as it may, more than twelve years after the payments were made and more than ten years after the submission of the report by the flying squad the authorities have taken steps for recovery of the amount and on the basis of a requisition a certificate is issued for Rs. 23,59,863 : Rs. 10 lakhs being the amount recoverable and Rs. 13,59,863 being the interest on the principle amount.

6. In course of hearing Mr. Jittu was completely unable to satisfy how the alleged dues would qualify as public demands and how the recovery could be made by issuing a certificate under the Bihar & Orissa Public Demands Recovery Act. Mr.

Jittu was unable to satisfactorily place the money sought to be recovered in any of the entries under Schedule-I of the Act.

7. In support of the contention that the money was recoverable under the Public Demands Recovery Act, Mr. Jittu relied upon a decision of the Board of Revenue, Bihar in Jaishree Singh v. State of Bihar 1962 (MI) B.R. & L.J. 59 (Revenue Section). In that decision the recovery of a sum of Rs. 1902 and odd, being the payment made in excess to the petitioner for repair of a village Aahar in a scheme executed under the Bihar Private Irrigation Works Act, 1922 was upheld by the Board of Revenue.

8. Any reliance placed upon that decision is totally misconceived because that case was decided on the basis of an amendment incorporated as Rule 13A in the rules promulgated u/s 40 of the Bihar Private Irrigation Works Act. The provision of Rule 13A provided that any advance or part thereof which was found due after final adjustment by the Collector for carrying out any work of repair or construction under the Act would be realisable as arrears of land revenue. The work/project in this case was certainly not under the Bihar Private Irrigation Works Act. No similar provision was brought to my notice that might justify the realisation of the alleged dues from the petitioner under the Public Demands Recovery Act.

9. The requisition and the certificate (Annexure-C and C/1 respectively) are, therefore, held to be bad, invalid and illegal and are, accordingly quashed.

10. In the result, this writ petition is allowed but with no order as to costs.