

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18226 of 2013

Birat Contractors Pvt. Ltd. through the Managing Director, Santosh Kumar having its Principle Office At Basantpur, Near Court Colony, Virpur, P.O. Virpur, P.S. Virpur, District- Supaul

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Water Resources Department, Government Of Bihar, Patna
2. The Engineer -In- Chief, Water Resources Department, Government Of Bihar, Patna
3. The Chief Engineer, Water Resource Dept. District- Purnea
4. The Superintending Engineer, Water Resources Department, Government Of Bihar, Patna
5. The Executive Engineer, Drainage And Investigation Division, Kishanganj
6. The Assistant Engineer, Drainage And Investigation Division, Kishanganj
7. The Junior Engineer, Drainage And Investigation Division, Kishanganj

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Amaresh Kumar Sinha, Adv.
: Mr. Vaibhav Narayan, Adv.
For the Respondent/s : Mr.Mahtab Alam, AC to SC - 20

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 30-08-2024

I.A. No. 01 of 2023

1. This Interlocutory Application has been filed for amendment in prayer portion of para-1 of the writ petition by addition of the reliefs mentioned in Paragraph No. 1 of the Interlocutory Application.

2. I.A. No. 01 of 2023 is hereby allowed amending the prayer portion. The reliefs mentioned in Paragraph No. 1 thereof would form part of the writ petition.



Re:- C.W.J.C. No. 18226 of 2013

3. The writ petition is filed for directing the respondent authorities to release the payment of Rs. 21,36,507/- towards the work done by the petitioner-Company under the Agreement No. 36 F 2 of the Water Resources Department, Government of Bihar with interest @ 10% from the time the amount became due and further relief sought through I.A. No. 01 of 2023 to quash the letter bearing Memo No. 505 dated 30.01.2014 issued under the signature of the Engineer in Chief (Central), Water Resource Department, Government of Bihar, Patna whereby the petitioner-Company has been blacklisted.

4. The brief facts culled out of the petition are that the petitioner-company is registered under Companies Act, 1956 for doing Civil Engineering Works. The petitioner-Company was a contractor for the Water Resource Department upto 12.07.2014. A tender was floated by Water Resources Department for which the petitioner-Company applied and pursuant to it, entered into an agreement dated 19.03.2012 which was signed by the petitioner-Company and the Executive Engineer. The work assigned to the petitioner under the contract was to construct a porcupine on the right bank of Kankai River for a distance of 300 meters in two rows. During the course of work, the petitioner has constructed a



porcupine in a single row up to the distance of 600 meters and the said work got completed on 15.05.2012.

5. It is the specific contention of the learned counsel for the petitioner that the petitioner has completed the work as per the instructions of the Junior Engineer, Assistant Engineer and the Executive Engineer of Water Resources Department. As per the original design, the petitioner had to construct a double row porcupine along the right bank of Kankai River for 300 meter. But due to disturbances at the site, the Departmental Engineers deliberated on the issue and directed the petitioner to construct a single row porcupine for 600 meters instead of double row porcupine for 300 meter. Further the Departmental Engineers also assessed the work done by the petitioner and declared that it would be more effective for prevention of flood. The work was completed within the time frame. The quality control report dated 10.07.2012 issued by the Chief Engineer discloses that the quality of the work done by the petitioner was satisfactory in nature. Further the petitioner was informed that the cheque for payment of work done is ready and can be collected. But due to some Vigilance enquiry, the cheque was not disbursed and further three ante-dated letters dated 03.05.2012, 26.06.2012 and 09.07.2012



were dispatched to the petitioner in a single registered envelope which was received by the petitioner on 13.07.2012.

6. The petitioner submitted a detailed reply to the respondents dated 12.07.2012 wherein he explained the entire situation and also made representation to the Principal Secretary of the Department vide letter dated 30.04.2013.

7. The Superintendent Engineer vide letter dated 16.03.2013 has appreciated the good work done by the petitioner and also observed that the work done by the petitioner is more effective for preventing the flood. As the petitioner did not receive the payment of Rs. 21,36,507.00/- from the respondent, he was constrained to prefer the present writ petition.

8. A detailed counter affidavit was filed by the Respondent Nos. 3 to 6 contending that the petitioner is supposed to construct double row porcupine, instead of it a single row porcupine was constructed which is against the provisions of the agreement and therefore, payment was withheld. It is further contended that the Supervising respondents had prevented the petitioner-Company from doing the work in single row, but the petitioner-Company did not heed the directions. Further it is contended that there was no entry of the work in Field Measurement Book and as such no bill can be passed. The entire



counter affidavit further disclose that the petitioner-Company did not follow the instruction of the respondents and the petitioner has deviated the actual plan, therefore, the payments are not made to the petitioner.

9. Heard Learned counsel for the petitioner as well as learned counsel for the respondents. Perused the records.

10. On perusal of the entire record, it is evident that the specification are not mentioned either in the agreement which was signed by both the parties or in the tender notification which was published. In spite of giving directions to the respondent-State to submit the details of the work, no proper documents was placed before the Court, to prove that the work allotted to the petitioner is to construct porcupine in double row. It is an admitted fact that the petitioner has constructed the porcupine in a single row for 600 meters, to avoid the flood.

11. The petitioner relied on Annexure-P/8 which shows that the list of work in different districts wherein the petitioner work is mentioned as Agenda No. 115/10 of village Purandaha and the amount of the Administrative approval is 25.45 lakhs and the amount of technical approval is 25.15 lakhs. Further the date of the receipt of the tender is 20.02.2012 and the date of disposal of the tender is 15.03.2012. The learned counsel for the petitioner also



relied on Annexure-5 which is the letter addressed by Superintendent Engineer, Water Drainage Division, Purnea in favour of Chief Engineer, Water Resource Department, Purnea dated 16.03.2013. On perusal of the said Annexure, it is evident that it is a review report given by Superintendent Engineer. It is evident that the petitioner has to do the work like RCC Porcupine on the bank of river in two rows in order to evade the erosion of the river bank due to flood. After completion of some work near Purandaha village, it got interrupted due to insecurity, personal enmity and dispute between two of communities and on the intervention of the Senior Officials and on co-ordination with the regional officials, the work was completed in a single row in almost double the length of the work and the same was in notice of the Executive Engineer also. Further the review report discloses that in the current terrestrial situation, the most part of the length on which the work in single row has been completed, the porcupine set is either completely covered with silt or is about to get covered, as well as also clearly visible in some parts. Thus, the work of single row laying appears to be successful, useful and effective according to the current condition of the river. Therefore, as per the review report the work done is successful and effective and therefore, the Superintendent Engineer has recommended not



to withhold the payment and on the basis of the merits, the payment has to be made to the petitioner. In spite of the review report and recommendation of the Superintendent Engineer, Water Drainage Circle, Purnea the amounts of the petitioner were withheld and further the respondent has blacklisted the petitioner-Company from doing any further work of the Government.

12. There is no specification of work as per the agreement or under the tender notice. It is specifically admitted by the petitioner-Company that he has to construct the porcupine in double row, but as per the instructions of the Engineers he has constructed the porcupine in a single row, double the length i.e. upto 600 meters.

13. Annexure-5 the review report disclose that the Superintendent Engineer recommended the Chief Engineer to make the payment to the petitioner. In spite of said fact, the respondents did not pay the amounts for the works done by the petitioner-Company.

14. Therefore, this Court is of the considered view that the petitioner-Company is entitled for the payments for the work done by them and further the respondents are directed to delete the name of the petitioner from blacklist.



15. With the aforesaid discussion, the writ petitioner is allowed.

16. Interlocutory Application(s), if any, shall stands disposed of.

(G. Anupama Chakravarthy, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.09.2024
Transmission Date	N/A

