Bhawani Build Con And Project (P) Ltd Vs State Of Bihar

Court: Patna High Court

Date of Decision: Dec. 8, 2022

Acts Referred: Constitution Of India, 1950 â€" Article 39A
Code of Civil Procedure, 1908 â€" Section 89

Hon'ble Judges: Sanjay Karol, CJ; Partha Sarthy, J

Bench: Division Bench

Advocate: Manish Chandra Gandhi, Archana Meenakshee

Final Decision: Disposed Of

Judgement

Heard learned counsel for the parties.

The petitioner has prayed for the following relief(s):-

Ã¢â‚¬Å“(i) That this application is being filed for issuance of writ in the nature of Mandamus direction to the respondents to make payment of dues

contract amount of Rs.12,45,323 (Rupees Twelve Lacs Forty five thousand three hundred Twenty three) in pursuance to Agreement No.18-2013

dated 18.10.2013 and maintenance cost of two years in pursuance to the Agreement No.18/2009-2010 dated 18.9.2010 alongwith the Bank rate

interest computed from the date of actual date of payment

(ii) For any other writ/writs order/orders direction/directions for which petitioner may deemed entitled under the facts and circumstances of the

case.Ã¢â‚¬â€‹

Learned counsel for the petitioner prays that the instant petition be disposed of exactly in the same terms as contained in judgment dated 14.09.2022

passed by this Court in CWJC No.13024 of 2022, titled as M/s. Raghoji House of Distribution Vs. The State of Bihar & Ors.

No objection to such prayer being allowed.

In the instant case, allegedly, petitioner is not being paid the dues of Rs. 12,45,323/- submitted by him by the respondents together with interest

thereon.

Petitioner made repeated requests to the authorities concerned.

There is no response to the petitionerÃ¢â‚¬â„¢s request.

The dispute still survives and petitioner's request for clearance of dues remains pending.

Well, without going into the merits of the issues, on all counts, the dispute could have been resolved in terms of the Bihar State Litigation Policy, 2011.

In M/s. Raghoji House of Distribution (Supra), We had passed the following observations and directions:-

Ã¢â‚¬Å“5. We also notice that even in those cases where the parties are governed by the Dispute Resolution Mechanism, provided in terms of the

agreement(s) or statutes, parties are forced to litigate endlessly before different legal foras, be it this Court or the statutory Tribunals.

6. We see no reason as to why the respondent State does not apply and take recourse to the mechanism provided under its own policy termed as the

Ã¢â‚¬Å“Bihar State Litigation Policy,2011Ã¢â‚¬. We also see no reason as to why the respondent State does not resort to the provisions of Section 89 of the

Code of Civil Procedure, 1908.

7. Unfortunately, parties are made to run from pillar to post, and as we have noticed, it is only where the officers of the State are interested, be it for

whatever reason and consideration, that case of few favoured individuals are settled and issues resolved, leaving the significant majority to litigate.

8. The instant case, in our considered view, is the best example where the officers and the officials of the State are found to have been lacking in

adhering to the litigation policy, even worse, responding to the petitionerÃ¢â‚¬â„¢s request made in terms of written communications. For the purposes of

setting up a stall as part of Krishi Pradarshani, during the Sonepur Mela, petitionerÃ¢â‚¬â„¢s services were availed. He erected a tent and submitted his

bill for which only part payment was released.

9. Petitioner claims the outstanding amount to be Rs.21,67,056. The District Agriculture Officer, Saran, Chapra, the concerned officer, has already

forwarded favourably, request for release of the amount, to the higher authorities. This is vide communication dated 17.08.2019. Unfortunately, the

superior officers slept over the matter and despite petitionerÃ¢â‚¬â„¢s repeated request and reminders, and the last one being on 01.07.2022 (Annexure-3),

no action stands taken, forcing initiation of current proceedings.

10. The Litigation Policy does state that-

Ã¢â‚¬Å“1.1 (b) Responsible litigant means:

a. That litigation will not be resorted to for the sake of litigating.Ã¢â‚¬â€¹Ã¢â‚¬Â¦

Ã¢â‚¬Â¦ Ã¢â‚¬Å“1.2 This Policy is also based on the recognition that it is the responsibility of the Government to protect the rights of the citizens, to respect

fundamental rights and that those in charge of the conduct of Government litigation should never forget these basic principles.Ã¢â‚¬â€¹

Ã¢â‚¬Å“1.3 The twin underlying objective of this Policy is to reduce pressure on the overloaded judiciary and expedite dispensation of justiceÃ¢â‚¬Â¦Ã¢â‚¬â€‹

Ã¢â‚¬Å“IV. PREVENTION/CONTROL OF AVOIDABLE LITIGATION

A

4.A Setting up Grievance Redressal System

4.A (1). Very often the major causes of litigation involving the State Government are from arbitrariness in decision making or non application of mind

or non-response/ improper response to representations made by employees, including retired employees/ parties. It is seen that in most cases in

respect of service matters the cause of action arises out of relief not being given as per the Rules, Government instructions or policy decisions as are

in force. It is also seen that in most cases before the matter reaches the Court the affected party undeservedly spends a lot of his time and effort over

redressal of his grievance through normal administrative channels. In this situation all Departments of the State Government shall set up effective

Grievance Redressal Committees in order to pre-empt a large number of avoidable litigation.

4. A(2). It shall be mandatory for employees, including those retired, to seek redressal, at the first instance, through this system before approaching the

Courts.

4. A(3). A time limit of eight weeks or so may be fixed for deciding such representations.

4. A(4). Such Grievance Redressal Committees shall be set up in each Department at the State Level, District Level and Sub-Divisional Level and

each of them shall have a Grievance Cell. All cases and issues at the request of the aggrieved party shall be reviewed to redress genuine grievances.

4. A(5) The Department Level Grievance Committee shall be headed by the Principal Secretary/ Secretary of the Department concerned and shall

meet once a month to review the efficiency of the Grievance Redressal System in the Department. Similarly at the District and Sub-Divisional Level,

the Committee shall be headed by the District Magistrate or Sub Divisional Officer, as the case may be. The District Sub Divisional Level Grievance

Redressal Committees shall meet once every month on the first Tuesday of each month; if this is a holiday, the Committee will meet on the next

working day excluding ""Janata ka Darbar"" days, i.e., Mondays and Thursdays. Where it is found that certain Government instructions require to be

reviewed, it shall refer the same to the State Level Empowered Committee. As seniority matters are a major source of litigations these shall be

resolved expeditiously by the Department and seniority lists should be updated, printed and published regularly.Ã¢â‚¬â€‹

Ã¢â‚¬Å“4.B. Quick Action on Representations/ Legal Notices

4.B(1). A legal notice is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the

claim is being resisted. Nowadays such notices have become a formality. When such a legal notice is served upon any Department asking for the

relief the same should be decided expeditiously in accordance with the prevalent Rules/ Instructions and by a detailed speaking order. Timely response

would avoid waste of public money and promote expeditious work in Court in cases which deserve to be attended to.Ã¢â‚¬â€‹

(Emphasis supplied)

11. Though in relation to a Government employee, but in reference to the Litigation Policy, in LPA No.1322 of 2018 titled as The District Manager,

Bihar State Food and Civil Supplies Corporation Ltd. Begusarai v. Anuradha Devi & Ors . disposed of on 01.02.2022, we had issued the following

directions:-

Ã¢â‚¬Å“17. We notice that State has formulated a Litigation Policy with the avowed object of not only reducing litigation, saving avoidable cost on

unproductive litigation, reducing avoidable load on judiciary with respect to Government induced litigation. This is in tune with the mandate of Article

39-A of the Constitution of India, obligating the State to promote equal justice and provide free legal aid. In fact, by virtue of the clauses of the State

Litigation Policy, the State is under an obligation to take steps to reduce litigation, wherever possible. Now, if the employees are not paid their dues

within time, obviously, they are left with no remedy but to rush to the Courts.

18. Of late, litigation pertaining to employees of the State has increased more so on account of illegal actions. The action assailed is of mis-governance

or avoidable omissions on the part of the Government. Why should the State force an employee/legal heir to litigate in a case where emoluments,

which are undisputed, are not disbursed in time. An employee/legal heir has a constitutional right to receive the same within time, so also State is under

a constitutional obligation and duty to disburse it within time.

19. In the light of the aforesaid discussion, we dispose of the appeal in the following manner:-

(a) The present Appeal stands dismissed upholding the the judgment and order dated 25.06.2018 passed by a learned Single Judge of this Court in

CWJC No.11609 of 2014 titled as Anuradha Devi Versus The State of Bihar & Ors.

(b) The appellant shall positively pay the entire amount in terms of the impugned judgment to the writ petitioner, namely Anuradha Devi, within a

period of three weeks from today, failing which she shall be entitled to interest @ 12% per annum. Appellant shall ensure the same, else the amount

of interest shall be recovered from his salary. Affidavit of compliance shall be filed within two months from today.

(c) Joint Registrar (List) shall ensure supply copy of this order to all concerned. For compliance, matter be placed before the Court on 05.05.2022.

(d) The Chief Secretary to the Government of Bihar, shall ensure providing a mechanism, enabling the employees to vent out their grievances of non-

disbursement of due and admissible wages/salaries/emoluments. One such mechanism being of setting up a Ã¢â‚¬Ëœ Web PortalÃ¢â‚¬â„¢ at the level of the

Principal Secretary/ Secretary of the concerned Department(s), where the employees can lodge their grievances/complaints. Such grievances/

complaints shall be processed and adequately responded to within a period of reasonable period. This would facilitate speedy redressal of genuine

grievances and prevent unnecessary litigation, clogging the wheels of administration of justice. Such endeavour shall only be in the spirit of Litigation

Policy, framed by the State Government. We see great advantage in the use of information and technology. Not only it would result into effective and

efficient redressal of grievances, if any, but also improve efficiency in the affairs of governance of the State, further instilling confidence and trust

amongst the employees.

(e) Non disbursement of monetary benefits, except in the event of the dictum of law would entail consequences of recovery of the amount of interest

from the delinquent officer incharge for such disbursement.Ã¢â‚¬â€‹

(Emphasis supplied)

12. In this view of the matter, we are constrained to dispose of the present petition with the following direction(s):-

(a) The Chief Secretary, Government of Bihar, shall issue appropriate directions to the heads of all the concerned departments ensuring expeditious,

consideration of the claims/counter claims set up by the parties, including that of the State; disposal of requests/representations; and disbursement of

money undisputedly found due and payable;

(b) The person empowered and authorized to take such a decision be directed to have the needful done within a reasonable period which normally,

unless the laws otherwise prescribes, should not be more than six months from the date of receipt of such claim;

(c) In the event of the authority concerned sitting over the matter or not taking any action, appropriate action be taken/proceedings initiated against

such person;

(d) In so far as the instant case is concerned, Respondent No. 2, namely, the Principal Secretary, Agriculture Department, Government of Bihar,

Patna, is directed to have the petitionerÃ¢â‚¬â„¢s case examined and ensure early decision and disbursement of petitionerÃ¢â‚¬â„¢s legitimate dues payable

under the work order. This, positively be done within a period of two months from today.

13. We may clarify that in the instant case, we have not adjudicated the claims on merits and leave it open for the authority concerned to take a

decision in accordance with law.Ã¢â‚¬â€‹

As mutually agreed, the instant petition stands disposed of in terms of judgment passed by this Court in M/s. Raghoji House of Distribution (Supra) and

the directions contained therein shall also govern the instant case mutatis mutandi, to the extent possible.

In so far as the instant case is concerned,

(i) Respondent no. 4, namely, The Executive Engineer Maharanapratap Colony R.W.D. Division-1, Hajipur, Vaishali, is directed to have the

petitionerÃ¢â‚¬â„¢s case examined and ensure early decision and disbursement of petitionerÃ¢â‚¬â„¢s legitimate dues payable, if any, under the work order.

As also consideration of all claims. This, positively be done within a period of two months from today, failing which costs of Rs.5,000/- shall be paid to

the petitioner to be recovered from the personal salary of the officer concerned.

(ii) Respondent No. 1, namely, the Principal Secretary, Rural Works Department, Government of Bihar, Patna, shall ensure putting in place effective

mechanism for grievance redressal. This must also be done on a digital platform. Also the general public be informed of availability and functioning of

such mechanism.

(iii) Failure would result into initiation of proceedings for having deliberately violated the order and consequential action of stoppage of salary of the

concerned officer.

(iv) All issues, on merit, facts and law, are left open to be decided by the decision making authority. However, such decision has to be in compliance

of all principles of natural justice.

(v) Liberty reserved to the parties to initiate a fresh action, should the need so arise.

(vi) The Respondent no. 4, namely, The Executive Engineer Maharanapratap Colony R.W.D. Division-1, Hajipur, Vaishali, shall file an affidavit of

compliance of the order within a period of three months from today and on failure, Registry shall place the file on the judicial side.

(vii) Smt. Archana Meenakshee, learned GP 6, appearing for the Respondents, undertakes to immediately communicate a copy of this order, both to

Respondent No. 1, namely, the Principal Secretary, Rural Works Department, Government of Bihar, Patna, and Respondent no. 4, namely, The

Executive Engineer Maharanapratap Colony R.W.D. Division-1, Hajipur, Vaishali. This he shall do by all modes.

Writ petition stands disposed of with the aforesaid observations and directions.

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