

## **Kumar and Kumar Vs The State of Jharkhand, The Superintending Engineer, Building Construction Department and The Executive Engineer, Building Construction Department, Building Division**

**Court:** Jharkhand High Court

**Date of Decision:** Nov. 4, 2009

**Hon'ble Judges:** Dhirubhai Naranbhai Patel, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### **Judgement**

D.N. Patel, J.

The present petition has been preferred for recovery of money from the respondents for the work done by the petitioner

contractor, on the basis of Annexure-5, a letter written by some Executive Engineer, Dhanbad. Thus, the present writ petition is a money suit type

of petition.

2. Learned Counsel for the petitioner submitted that looking to Annexure-5, the letter written by the Executive Engineer, Dhanbad, the State

Government has admitted the amount, payable to the petitioner, and the said admitted amount of Rs. 1,95,030/- has not yet been paid.

3. Learned Counsel for the respondents submitted that a detailed counter affidavit has been filed, wherein, it has been denied by the respondents

that any amount is legally payable to the petitioner, as per Annexure 5 to the writ petition. On the contrary, looking to paragraph Nos. 13 and 14

of the counter affidavit, the legally payable amount has already been paid to the petitioner, as per the Measurement Book No. 1127, submitted

before the answering respondent, and after proper verification and checking, an amount of Rs. 12,57,970/- has been paid to the petitioner vide

Voucher No. 19 dated 23rd December, 2003. Looking to paragraph No. 14 of the counter affidavit, subsequently an amount of Rs. 1,95,030/- +

Rs. 20,000/- has been shown as due amount by the petitioner, but, as stated above, as per the Measurement Book No. 1127 the legally payable

amount has already been paid to the petitioner and now nothing is required to be paid by the respondents to the petitioner. The impugned decision

has been taken by the Secretary, Building Construction Department, Government of Jharkhand, Ranchi, after giving an adequate opportunity of

being heard to the petitioner and, therefore, there is no substance in this writ petition and the same deserves to be dismissed.

4. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case:

(i) It appears that the present writ petition has been preferred in the nature of a money suit;

(ii) It appears that the petitioner is claiming an amount of Rs. 1,95,030/- + Rs. 20,000/- for the work done by the petitioner as a contractor;

(iii) It appears from the counter affidavit at paragraph Nos. 13, 14 and 15 that an amount of Rs. 12,57,970/- has already been paid to the

petitioner vide Voucher No. 19 dated 23rd December, 2003, on the basis of Measurement Book No. 1127, which was submitted before the

answering respondent. Thus, upon proper verification of the Measurement Book, the legally payable amount has already been paid by the

respondents to the petitioner;

(iv) It also appears that previously a writ petition bearing W.P.(C) No. 176 of 2007 was instituted by the petitioner, which was disposed of by this

Court with a direction that the claim of the petitioner should be considered by the respondents, in accordance with law and, therefore, the

Secretary, Building Construction Department, Government of Jharkhand, Ranchi, has given an adequate opportunity of being heard to the

petitioner and has taken the decision dated 29th March, 2007, which is at Annexure 7 to the memo of petition.

(v) Looking to the impugned order, in detail, it appears that the whole case of the petitioner has been considered and a detailed speaking order has

been passed by the Secretary, Building Construction Department, Government of Jharkhand, Ranchi and the claim of the present petitioner for Rs.

1,95,030/- + Rs. 20,000/- has rightly been discarded by the respondent-State. I am in agreement with the reasons given by the respondents in the

impugned order. Thus, the whole case of the respondents is based upon the Measurement Book No. 1127, which is referred in paragraph No. 13

of the counter affidavit. Paragraph Nos. 13 & 14 of the counter affidavit read as under:

13. That it is humbly stated and submitted that thereafter bill for Rs. 14,53,000/- as per Measurement Book No. 1127 was submitted before the

answering respondent and after proper verification and checking an amount of Rs. 12,57,970/- was paid to the petitioner vide Voucher No. 19

dated 23.12.2003.

14. That it is humbly stated and submitted that the petitioner again agitated the payment of rest amount of the said original bill amount to the tune of

Rs. 1,95,030/- + Rs. 20,000/-, illegally, as the payment of the actual payable amount, as found payable after proper verification and checking by

the answering respondent, was already made to the petitioner.

(vi) There is no rejoinder filed by the petitioner of the aforesaid two paragraphs of the counter affidavit, filed by the respondents.

5. Thus, in view of the aforesaid reasons and as a cumulative effect, I see no reason to entertain this writ petition for the claim of Rs. 1,95,030 +

Rs. 20,000/-. There is no substance in this writ petition and, hence, the same is hereby dismissed.