



2023:JHHC:30205-DB

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No. 4076 of 2022

M/s Sri Sai Krsnha Constructions

.... Petitioner.

Versus

1. The State of Jharkhand
2. The Chief Engineer, Water Resource Department, Jal Bhawan, Ranchi.
3. The Superintending Engineer, Waterways Division-2, Chainpur, Gumla.
4. The Executive Engineer, Waterways Division-2, Chainpur, Gumla.
5. The Sub-Divisional Officer, Waterways Sub Division, Chainpur, Gumla.

...

..... Respondents

**CORAM: SRI SANJAYA KUMAR MISHRA, C.J.
SRI ANANDA SEN, J.**

For the Petitioner: Mr. Rajesh Kumar, Advocate.

For the State: Mr. Jayant Franklin Toppo, G.A.-V.

06/Dated: 28.08.2023:

Upon hearing the learned counsel for the parties, this Court passed the following, (Per, Ananda Sen, J.)

ORDER

By filing this petition, the petitioner has prayed for direction upon the respondents to release the balance payment of the petitioner along with interest in compliance of the orders of the respondent No. 1 as the petitioner has already completed the work allotted to him within time frame and completion certificate to this effect has been issued on 6.9.2019. A prayer has also been made to release the security deposit. A prayer has further been made for direction upon the respondents to pay bonus to the petitioner on account of completion of the whole work, prior to the completion date.

2. Counsel for the petitioner submitted that admittedly the petitioner has completed the renovation work of right, left main canal including lining of right main canal (5.49 km) and left main canal (11.40 km) and repair work of damage structure of left and right canal at Bishunpur Weir Scheme much before the period so fixed for completion. He further submitted that the respondents have also given a completion certificate to the petitioner. In the minutes of the meeting dated 5.8.2021, the then Chief Engineer, Water Resources Department, Government of Jharkhand has acknowledged, on the basis of the statement given by the Executive Engineer, that the work has been completed and some extra work has also been done by the petitioner, but 08 numbers of work has not been executed. As there were some operational difficulties and the area is dominated by extremist, thus a request has been made by the petitioner to close the agreement. As per the



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petitioner, in the said minutes, the Chief Engineer had directed the Executive Engineer to prepare the final bill and start the process for execution of eight numbers of work, thus the minutes of the meeting, according to the petitioner, is an admission on the part of the respondents that the petitioner has completed the work, therefore, the petitioner is entitled for the relief, as claimed for. He further argues that the petitioner has completed the work much ahead of the time so fixed, as per the agreement, thus he is entitled for the bonus. Further, a prayer has been made to pay interest on the amount due, which has been withheld by the respondents. Thus prayer has been made to release the security deposit and pay the balance amount which the petitioner is entitled to.

3. In reply, the counsel for the State submitted that this writ petition is not maintainable and dues are not at all admitted. By referring to the counter affidavit, counsel for the respondents submitted that the petitioner did not complete the work at five spots yet on demanding work completion certificate and on the request of the petitioner, the Executive Engineer granted the work completion certificate to the petitioner with a condition that the work at five spots, which was not completed, should be completed by him during the defect liability period. He further submits that special inspection was conducted and accordingly a report was prepared which was sent to the Superintending Engineer, Waterways Division-2, Chainpur, Gumla vide letter No. 145 dated 12.5.2020 stating therein that the petitioner had to complete the number of works during the defect liability period. He further submitted that the petitioner was requested to repair the damages of the left bank of canal at 2.90 km but the petitioner continuously neglected the responsibility, as a result of which, due to rain on 3.10.2020 the said left bank of canal at 2.90 km completely collapsed. The damages occurred during the defect liability period, but the petitioner instead of repairing the same, asserted to release the security deposit and balance. He further submitted that the defect liability period was thus extended. The amount of final bill will only be released after the completion of the said work. It is the case of the respondent that an Enquiry Committee was constituted vide Office Order No. 85 dated 11.1.2023 wherein a direction was given to enquire into the issue of issuance of wrong completion certificate by the then Executive Engineer. During course of hearing, the learned counsel for the State further submitted that he has received information that a departmental proceeding has been initiated against the Executive Engineer and departmental charge-sheet has also been issued. On this background, he submitted that the dues are not admitted by the respondents and the petitioner is not entitled to get any relief in this petition, filed under Section 226 of the Constitution of India.



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4. After hearing the parties, we find that the petitioner, being the contractor, was awarded the renovation work of canal including lining of right main canal (5.49 km) and left main canal (11.40 km) and repair work of damaged structure of left and right canal at Bishunpur Weir Scheme vide order Order No. 02 SBD /2018-19 dated 10.9.2018. The schedule completion period of the project was 18 months (i.e. 9.3.2020). An agreement to that effect was executed between the petitioner and the respondents on 10.9.2018.

5. It is the case of the petitioner that inspite of completion of work, the respondents have kept 50% of the security deposit for the defect liability period and have also withheld other amounts. The petitioner has also not been paid bonus. The petitioner has heavily relied upon the minutes of the meeting which has been brought on record vide Annexure-6 to this petition. The said minutes of the meeting so far as the work relating to the petitioner is concerned, at Sl. No. 5, has been mentioned that out of sanctioned work valued at Rs.1929.435 lakhs, Rs.1975.17 lakh has been spent and the Executive Engineer had stated that the work has been completed but eight remaining work were not executed for which, there was a direction to close the agreement and start the process afresh to complete the eight number of jobs. From perusal of the said document, we find that there is nothing to suggest that the respondents have admitted any amount, which the petitioner is entitled to receive. In fact, there is no admission of any dues, rather from the counter affidavit, we find that the respondents have taken a plea that the petitioner was under the obligation to rectify the damages which was caused during the defect liability period, which is one year from the date of issuance of completion certificate and if the petitioner fails to rectify the damages, the defect liability period of one year will be extended. In paragraph 9, the respondents have specifically taken a plea that the work at five spots were not completed by the petitioner and the same has been admitted by the petitioner himself. The Executive Engineer granted the completion certificate subject to the completion of work at the five spots, which should have been completed during the defect liability period.

6. The issuance of this completion certificate is under scanner for that an enquiry has been initiated against the said official and, in fact, as per the statement given by the counsel for the respondents, a departmental proceeding has been initiated against the said officer. Thus, the issuance of the completion certificate itself is under cloud. Further in paragraph 11 and 12 of the counter affidavit, it has also been stated that the petitioner has neglected to carry out the work and rectify/repair the damages, which has occurred due to rain fall, as the petitioner was duty bound to repair the damages during the defect liability period. There is allegation that due to neglect of the petitioner, the left bank of canal at 2.90



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km completely collapsed. In paragraph 13 of the counter, it has specifically been mentioned that during spot inspection conducted on 2.2.2022, and as per the report it is clear that the petitioner has not completed the work. Further in paragraph 14 of the counter affidavit, it has also been stated that after the completion of the remaining work i.e. the date of actual completion of the work and its subsequent approval by the department, remaining 50% of the amount will be released to the petitioner.

7. This Court in the case of **Nitesh Kumar Singh Vs. State of Jharkhand and Ors. [WP(C) No. 4665 of 2018]** vide judgment dated 17.7.2023 dealt with the issue of admitted dues vis-a-vis filing of the writ petition. In paragraph-9 of the aforesaid judgment, this Court after referring the case of **Joshi Technologies International Inc. versus Union of India & Others** reported in **(2015) 7 SCC 728** has held that there is absolutely no bar in maintaining a writ petition even in contractual matters, but normally the court should not exercise such discretion in respect of money claim. Be it noted that in paragraph 69.4 of the aforesaid judgment, the Hon'ble Supreme Court has held that the money claims *per se* particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

8. In paragraph 19 of the aforesaid case, this Court has also held as under;

*Now, the question is what would be the nature of admission to bring a money claim within the ambit of "admitted dues". In our opinion, a party must raise a claim of money and there has to be specific claim with an assertion that the dues are admitted by the other side. Once the said claim is made, the person against whom the said claim is made, must admit the claim made by the former. The said admission must be clear, specific and unambiguous, then only the same can be used against the person making them. The admissions have to be clear and must have a binding effect on the person making such admission. The Hon'ble Supreme Court in the case of **Bharat Singh versus Bhagirathi** reported in **AIR 1966 SC 405** at paragraph 19 thereof has held as under:*

"19. Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17, and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a



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witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence.”

9. In paragraph 21 of the aforesaid judgment, this Court has held that when a party claims any relief, which they are claiming to be admitted by the other side, then the Court has to see that the admission is conscious, unambiguous and categorical and the person is showing intention that he is bound by it.

10. Thus, relying upon the aforesaid judgment and the facts of this case, as dealt herein above, we find that there is no admission on the part of the respondents that the petitioner is entitled to receive any amount, rather the petitioner has neglected to repair the damages. In several paragraphs of the counter affidavit, it has been stated that the work is yet to be completed and the petitioner has not repaired the damages, which has occurred during the defect liability period. Thus, we find that there is serious dispute in the question of fact and the present case cannot come within the ambit of admitted money claim.

11. In that view, we are not inclined to entertain this petition, filed under Article 226 of the Constitution. Accordingly, the same is **dismissed**.

12. However, the petitioner is at liberty to approach appropriate forum to raise his claim, if any.

13. There shall be no orders as to costs.

14. Pending application, if any, stands disposed of.

15. Grant urgent certified copy of this order as per the Rules.

(Sanjaya Kumar Mishra, C.J.)

(Ananda Sen, J.)