

SC 22
6/12/12

IN THE HIGH COURT OF JUDICATURE AT PATNA

(MISCELLANEOUS JUDICIAL JURISDICTION CASE)

(Arising out of C.W.J.C. No. 18146 of 2011)

M. J. C. No. - 2012

ASHOK KUAMR SINGH**Petitioner.**

Versus

Shri Awadhesh Sharma, the Executive Engineer, Public Works
Department, Madhepura, District - Madhepura & Others

..... **Contemnor Respondents.**

INDEX

SUBJECT: CONTEMPT.

<u>Sl. No.</u>		<u>Page No.</u>
1.	Petition under Article 215 of the Constitution of India r/w Section 12 of the Contempt of Courts Act. along with affidavit.	1-9
2.	Annexure- 1 - A true typed/photocopy of the order dated 10.02.2012 passed in C.W.J.C. No. 18146 of 2011.	10-12
3.	Annexure-2 - A true typed/photocopy of the receiving of the order dated 10.02.2012.	13-15
4.	Vakalatnama.	

IN THE HIGH COURT OF JUDICATURE AT PATNA

(MISCELLANEOUS JUDICIAL JURISDICTION CASE)

(Arising out of C.W.J.C. No. 18146 of 2011)

M. J. C. No. - 2012

ASHOK KUAMR SINGH**Petitioner.****Versus**Shri Awadhesh Sharma, the Executive Engineer, Public Works
Department, Madhepura, District - Madhepura & Others..... **Contemnor Respondents.****SYNOPSIS**

1. That instant application is being filed for initiation of contempt proceeding against the Contemnor Respondents for willful disobedience and defiance of the order dated 10.02.2012, passed in C.W.J.C. No. 18146 of 2011 (Ashok Kumar Singh Vrs. The State of Bihar & Others) by Hon'ble Mr. Justice S. Nayer Hussain, by which his lordship was pleased to direct the Contemnor Respondent No. 1 to consider the rightful claim of the petitioner by speaking

order within two months from the date of receipt of the copy of the order.

Annexure -1.

2. That in pursuant to the order passed by this Hon'ble Court in C.W.J.C. No. 18146 of 2011, the petitioner submitted the copy of the order, which was duly received in the office of the Contemnor Respondent No. 1 & 2 on 21.02.2012 and 22.02.2012.

Annexure -2.

Hence, instant contempt application.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(MISCELLANEOUS JUDICIAL JURISDICTION CASE)

(Arising out of C.W.J.C. No. 18146 of 2011)

M. J. C. No. - 2012

In the matter of an application
under Article 215 of the
Constitution of India r/w
Section 12 of the Contempt of
Courts Act.

AND

In the matter of

ASHOK KUAMR SINGH, S/o - Late Ambika Prasad Singh,
resident of village + P.O - Alam Nagar, P.S. - Alam Nagar, District -
Madhepura.

.....**Petitioner.**

Versus

1. Shri Awadhesh Sharma, the Executive Engineer, Public Works Department, Madhepura, District - Madhepura.
2. Shri Banke Bihari, Alam Nagar Block Task Force, Alam Nagar, Madhepura, District - Madhepura.

3. The State of Bihar.

..... **Contemnor Respondents.**

To,

The Hon'ble Ms. Rekha M. Doshit, the Hon'ble Chief Justice of the High Court of Judicature at Patna and his Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner above named.

MOST RESPECTFULLY SHWETH :

1. That instant application is being filed for initiation of contempt proceeding against the Contemnor Respondents for willful disobedience and defiance of the order dated 10.02.2012, passed in C.W.J.C. No. 18146 of 2011 (Ashok Kumar Singh Vrs. The State of Bihar & Others) by Hon'ble Mr. Justice S. Nayer Hussain, by which his lordship was pleased to direct the Contemnor Respondent No. 1 to consider the rightful claim of the petitioner by speaking

order within two months from the date of receipt of the copy of the order.

A true typed/photocopy of the order dated 10.02.2012 passed in C.W.J.C. No. 18159 of 2011 is annexed herewith and marked as Annexure-1.

2. That it is relevant to state here that in pursuant to the order passed by this Hon'ble Court in C.W.J.C. No. 18146 of 2011, the petitioner submitted the copy of the order, which was duly received in the office of the Contemnor Respondent No. 1 & 2 on 21.02.2012 and 22.02.2012. Significant to clarify here that the Contemnor Respondents received the copy of the order over the photocopy of the order sheet dated 10.02.2012.

A true typed/photocopy of the receiving of the order dated 10.02.2012 is annexed

herewith and marked as
Annexure-2.

3. That it is relevant to state here that the Respondent No. 3 issued a short term tender notice for restoration of Traffic Work in Basanbara Panchayat Bhawan to Teliyari Basa Chamrup Basa Basanbara Masahri. The reason behind short term notice was due to unprecedented flood, which badly affected the life line of resident of Madhepura District.
4. That it is relevant to state here that in contemplation to the advertisement of short term tender notice, this petitioner purchased B.O.Q on 27.01.2009. The petitioner thereafter filled B.O.Q for the work mentioned and notified in Column No. 14, known as restoration of Traffic Work in Basanbara Panchayat Bhawan to Teliyari Basa Chamrup Basa Basanbara Masahri under Alam Nagar Task Force.
5. That it is relevant to state here that the face value of work notified was known as restoration of Traffic Work in Basanbara Panchayat Bhawan to Teliyari Basa Chamrup Basa Basanbara Masahri under Alam Nagar Task Force was

Rs. 3,49,759/- and the period for completion of work was scheduled in between 30.01.2009 to 05.02.2009.

6. That it is relevant to state here that in contemplation of filling of B.O.Q an agreement was entered in between the petitioner and the Respondent No. 3 on 30.01.2009. Significant to state here that in contemplation to deed of agreement was registered as Agreement No. 110 F-2/2008-09 having agreement value Rs. 3,49,759/- and the period for completion of work was seven days in 30.01.2009 to 05.02.2009.
7. That it is relevant to state here that the work order was granted simultaneously in favour of the petitioner on 30.01.2009.
8. That it is relevant to state here that the petitioner completed the work on 05.02.2009 and the completion of work was duly incorporated by the Respondents No. 5 & 6. Furthermore, the same was checked and passed by the Respondent No. 3 on 05.02.2009.

9. That it is relevant to state here that the Respondent No. 3 prepared the 1st On Account Bill amounting to Rs. 3,49,759/- (Rupees three lakh forty nine thousand seven hundred fifty nine) only and sent the same before the Treasury.
10. That it is relevant to state here that despite of the order passed by this Hon'ble Court, the petitioner fully complied the direction of this Hon'ble Court, but till date no action has been taken to ventilate the grievances of the petitioner.
11. That the actions of the Contemnor Respondents are obviously a naked example of deliberate defiance of the order.
12. That it is respectfully submitted that the Contemnor Respondents are liable to be prosecuted under Section 12 of the Contempt of Courts Act, as the Contemnor Respondents have no respect, even for judicial pronouncement.
13. That the petitioner having no alternative or efficacious remedy than to invoke the jurisdiction of this Hon'ble Court.

14. That the petitioner has not moved earlier before this Hon'ble Court for initiation of a proceeding for violation of the order dated 10.02.2012 passed in C.W.J.C. No. 18146 of 2011.

It is, therefore, prayed that your lordship may graciously be pleased to admit this application, issue Notice to show cause upon the Contemnor Respondents as to why an appropriate proceeding under Article 215 of the Constitution of India r/w Section 12 of the Contempt of Courts Act be not initiated for willful disobedience of the order passed by this Hon'ble Court in C.W.J.C. No. 18146 of 2011.

AND

Or pass any such other order
or orders as your lordship
may deem fit and proper.

And for this the petitioner shall ever pray.

A F F I D A V I T

I, **Ashok Kumar Singh**, aged about 35 Years, S/o - Late Ambika Prasad Singh, resident of village + P.O - Alam Nagar, P.S. - Alam Nagar, District - Madhepura, do hereby solemnly affirm and state as follows :-

1. That I am sole petitioner in this case and am well acquainted with the facts and circumstances of this case.
2. That the contents of this petition have been read over by me which is understood and they are true to my knowledge and belief.
3. That the statement made in paragraphs 3, 7, 10, 14 are true to my knowledge and the statements made in paragraphs 1, 2, 4, 5, 6, 8, 29 are derived from the records of the case and rests are by way of submissions.
4. That the annexures are true typed/photo copies of their respective originals.

4th - 1

PROJ/14/12

10

Annexure-1

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18146 of 2011

Ashok Kumar Singh S/O Late Ambika Prasad Singh Resident Of Village &
 P.S.-Alam Nagar, P.S.-Alam Nagar, Distt.-Madhepura.

..... Petitioner/s

Versus

1. The State Of Bihar.
2. The Commissioner Cum Secretary, Public Works Department, Government Of Bihar, Patna.
3. The Executive Engineer, Public Works Department Madhepura, District-Madhepura.
4. The Executive Engineer, Alam Nagar Block Task Force, Alam Nagar, Madhepura, District-Madhepura.
5. The Junior Engineer, Alam Nagar Block Task Force, Alam Nagar, Madhepura, District-Madhepura.
6. The Assistant Engineer, The Alam Nagar Block Task Force, Alam Nagar, Madhepura, District-Madhepura.

..... Respondent/s

Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava
 For the Respondent/s : Mr. Kundan Bhadur Singh Sc22

CORAM: HONOURABLE MR. JUSTICE S.NAYER HUSSAIN
ORAL ORDER

2 10-02-2012 Heard learned counsel for the petitioner and learned
 counsel for the respondents.

2. This writ petition has been filed by the petitioner for
 the following reliefs:-

(i) To issue a writ in the nature of mandamus commanding respondents no. 3 and 4, to ensure payment of admitted dues amount to Rs.3,49,759.00 in contemplation to the deed of agreement no.110 F-2/2008 (Annexure-1) and the final first on account bill prepared by respondent no.4(Annexure-3) as the petitioner completed the work assigned to him well within time.

(ii) To issue a writ in the nature of mandamus commanding respondents no.3 and 4 to ensure

payment of entire admitted dues. as the petitioner, completed the work well within the time framed, but merely by saying that the fund was not made available, by respondent no.2 the payment is not being made to the petitioner, though the restoration of traffic in Basanbara Panchayat Bhawan to Teliyari Basa Chamrup Basa Basanbara Masahari (Part-4) was completed on 05.02.2009 and the same was duly and properly incorporated in M.B.

(iii) To issue a writ in the nature of mandamus commanding respondents no.2 to 4 to make payment of admitted dues forthwith, as due to non-payment the status of the petitioner is extremely pitiable and by the deliberate act of respondents no.2 to 4 there is no way out to rescue the financial strain and constrain of the petitioner.


(iv) Any other relief or reliefs.

3. According to learned counsel for the petitioner the aforesaid dues are contractual dues, which has not been paid although the work has been completed by the petitioner and the bill has been prepared and transmitted to the treasury on 05.02.2009 which has not been disputed by the respondent authorities.

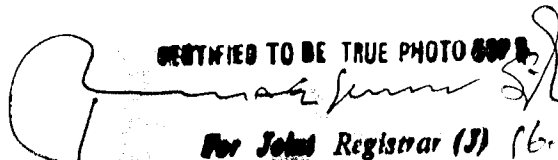
4. In the said circumstances, this writ petition is disposed of with a liberty to the petitioner to approach the Executive Engineer, Public Works Department, Madhepura by way of filing an application giving details of his claims of dues along with interest. If such an application is filed within 15 days from today along with a copy of this order, the said authority shall


12

consider the same in accordance with law and shall decide it by a speaking order within two months thereafter. If any amount or interest is found to be admitted and payable, it should be paid to the petitioner immediately thereafter. However, if any amount or interest is not found to be admitted and payable in the said order, the petitioner will be at liberty to challenge the same before an appropriate forum.

 (S.Nayer Hussain, J)

Harish/-


CERTIFIED TO BE TRUE PHOTO COPY
For Joint Registrar (J) 16.2.12
Patna High Court
Notarized U/S 76 Act I of 1973


10.2.2012
29.12.2011

COOL

Ann-2

P.O. 21/2/12

(12) (13)
Annexure-1

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18146 of 2011

Ashok Kumar Singh S/O Late Ambika Prasad Singh Resident Of Village & P.S.-Alam Nagar, P.S.-Alam Nagar, Distt.-Madhepura.

..... Petitioner/s

Versus

1. The State Of Bihar.
2. The Commissioner Cum Secretary, Public Works Department, Government Of Bihar, Patna.
3. The Executive Engineer, Public Works Department Madhepura, District-Madhepura.
4. The Executive Engineer, Alam Nagar Block Task Force, Alam Nagar, Madhepura, District-Madhepura.
5. The Junior Engineer, Alam Nagar Block Task Force, Alam Nagar, Madhepura, District-Madhepura.
6. The Assistant Engineer, The Alam Nagar Block Task Force, Alam Nagar, Madhepura, District-Madhepura.

..... Respondent/s

Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava
For the Respondent/s : Mr. Kundan Bhadur Singh Sc22

CORAM: HONOURABLE MR. JUSTICE S.NAYER HUSSAIN
ORAL ORDER

2 10-02-2012

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. This writ petition has been filed by the petitioner for the following reliefs:-

(i) To issue a writ in the nature of mandamus commanding respondents no. 3 and 4, to ensure payment of admitted dues amount to Rs.3,49,759.00 in contemplation to the deed of agreement no.110 F-2/2008 (Annexure-1) and the final first on account bill prepared by respondent no.4(Annexure-3) as the petitioner completed the work assigned to him well within time.

(ii) To issue a writ in the nature of mandamus commanding respondents no.3 and 4 to ensure

Received

AO
21/2/12

Received

AO
22/2/12

P.O. 21/2/12

13

14

payment of entire admitted dues, as the petitioner, completed the work well within the time framed, but merely by saying that the fund was not made available, by respondent no.2 the payment is not being made to the petitioner, though the restoration of traffic in Basanbara Panchayat Bhawan to Teliyari Basa Chamrup Basa Basanbara Masahari (Part-4) was completed on 05.02.2009 and the same was duly and properly incorporated in M.B.

(iii) To issue a writ in the nature of mandamus commanding respondents no.2 to 4 to make payment of admitted dues forthwith, as due to non-payment the status of the petitioner is extremely pitiable and by the deliberate act of respondents no.2 to 4 there is no way out to rescue the financial strain and constrain of the petitioner.

(iv) Any other relief or reliefs.

3. According to learned counsel for the petitioner the aforesaid dues are contractual dues, which has not been paid although the work has been completed by the petitioner and the bill has been prepared and transmitted to the treasury on 05.02.2009 which has not been disputed by the respondent authorities.

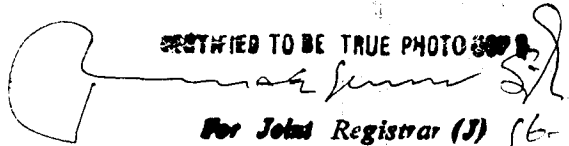
4. In the said circumstances, this writ petition is disposed of with a liberty to the petitioner to approach the Executive Engineer, Public Works Department, Madhepura by way of filing an application giving details of his claims of dues along with interest. If such an application is filed within 15 days from today along with a copy of this order, the said authority shall


15

consider the same in accordance with law and shall decide it by a speaking order within two months thereafter. If any amount or interest is found to be admitted and payable, it should be paid to the petitioner immediately thereafter. However, if any amount or interest is not found to be admitted and payable in the said order, the petitioner will be at liberty to challenge the same before an appropriate forum.

 (S.Nayer Hussain, J)

Harish/-


CERTIFIED TO BE TRUE PHOTO COPY
For Joint Registrar (J) 16-2-12
Patna High Court
Enacted 13/8/76 Act 1 of 1976


16.2.2012
29.1.2012