

Jharkhand High Court

Nand Bihari Singh vs Bharat Coking Coal Ltd. & Ors. on 9 May, 2011

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No.4764 of 2004

Nand Bihari Singh

... ..

Versus

Bharat Coking Coal Ltd., Dhanbad & Others

.... .... Respondents

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CORAM: HON'BLE MRS. JUSTICE POONAM SRIVASTAV

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For the Petitioner: Mr. Naresh Prasad Singh, Advocate

For the Respondent: Mr. Anoop Kumar Mehta, Advocate

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03 /09.05.2011

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

Instant writ petition has been preferred for a direction to the respondents for payment of Rs.1,80,710/- in lieu of a bill passed on 31st March, 2003, to refund Rs.3600/- (Rs.1800 + 1800) towards earnest money and also to complete the required formalities for payment of Rs.75,000/- approximately, for the work done by the petitioner in respect of house wiring under limited tender notice dated 19th February, 2002. In addition to the aforesaid claim, interest and cost of litigation has also been claimed by the instant writ petitioner.

It appears that a limited tender inquiry was invited by the respondents for the work of electrical renovation and rewiring of residential and non-residential buildings of washery division township, Saraidhella, Dhanbad. The petitioner participated in the tender and he was given work and according to him, the work was completed and he is entitled for the payment of his claim. According to the petitioner, the aforesaid payments are all in lieu of admitted bills and therefore, there is no dispute whatsoever regarding payment.

A counter affidavit has been filed on behalf of the respondents. The claim of the petitioner has been countered against the work order dated 17th March, 2000 for an amount of Rs.1,80,710/-. It is further stated that though the bill was passed by the Superintending Engineer, Electrical and Mechanical, but in the process of scrutiny the Finance Department has raised a number of objections while refusing to clear the bills and therefore, according to the respondents, it cannot be said to be an 'admitted amount'. The amount of earnest money has already been refunded which is not disputed by the counsel appearing on behalf of petitioner. So far Rs.75000/- for the work done by the petitioner is concerned, it is denied. It is alleged that the petitioner has not completed any such work and therefore, the direction to complete the formalities for payment of Rs.75,000/- is neither here nor there.

After hearing the respective counsels and going through the writ petition as well as the counter affidavit evidently it cannot be said that the amount claimed in the writ petition is 'admitted amount'. The respondents have specifically and unequivocally disputed the amount. However, the petitioner's counsel has laid stress on the certificate issued by the Engineer who has certified that

the work was satisfactorily discharged and has passed the bill. This certificate has not been disputed by the respondents since it is a matter of record but the payment is always subject to scrutiny and approval by the Finance Department. Since there is a specific objection raised by the Finance Department, the amount cannot be said to be admitted but it has now become a disputed amount. Besides, the question of maintainability of the claim of the disputed amount and the claim thereof under Article 226 of the Constitution of India is also raised by the counsel appearing on behalf of the respondents. Reliance has been placed on a number of decisions of the Apex Court whereby payment or dispute regarding bills in a contractual matter cannot be raised or adjudicated under Article 226 of the Constitution of India. Such controversies could be decided only after examining the factual aspects relating to the work done vis-a-vis the disputed payments or the alleged admitted payments made to the petitioner. In the case of National Highways Authority of India Vrs. Ganga Enterprises and Another reported in (2003) 7 SCC 410 the Apex Court followed its earlier decision of Bareilly Development Authority Vrs. Ajai Pal Singh reported in (1989) 2 SCC 116 and Kerala SEB Vrs. Kurien E. Kalathil reported in (2000) 6 SCC 293 and State of U.P. Vrs. Bridge & Roof Co. (India) Ltd. (1996) 6 SCC 22 and Verigamto Naveen Vrs. Govt. of A.P. (2001) 8 SCC

344. It is settled law that the contractual disputes which calls for factual adjudication of payment of money after taking evidence can only be decided in a civil suit. Jurisdiction under Article 226 of the Constitution of India is an extraordinary jurisdiction for enforcing fundamental rights. In fact, if the question is a disputed question of fact, it can only be ascertained and decided in a suit and therefore, in my view the claim raised in the instant writ petition cannot be allowed in the facts and circumstances of the case. The learned counsel for the petitioner, in the end, has tried to draw my attention to the fact that the objection of the Finance Department is not on record but only an assertion in the affidavit of the respondent and therefore, objection regarding passing of the bill by the Superintending Engineer and his certificate can not be discarded. Assuming the assertion of the learned counsel to be correct, even then the documents which is brought on record can not be accepted as a gospel truth. It requires proof by means of evidence and that could only be done in a civil suit. In view of these circumstance, I am not inclined to accept the contention raised by the counsel appearing on behalf of the petitioner and issue direction for payment.

For the reasons, discussed above, the disputes raised in the instant writ petition cannot be decided under Article 226 of the Constitution of India. Accordingly, this writ petition is dismissed.

If the petitioner wishes to invoke other jurisdiction, it goes without saying that the period of limitation shall be looked into and decided and question of condonation of delay can be considered in appropriate proceedings in accordance with law.

(Poonam Srivastav, J.) NKC