

Pyrites Phosphates and Chemicals Ltd. Vs. State of Bihar and ors.

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Court : Patna

Decided On : May-19-1997

Judge : Aftab Alam, J.

Acts : Consitution of India - Article 226; [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 2

Appeal No. : C.W.J.C. No. 10002 of 1996

Appellant : Pyrites Phosphates and Chemicals Ltd.

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Shivajee Pandey, Adv.

Disposition : Petition allowed

Prior history : Aftab Alam, J. 1. An extraordinary feature of litigations in this State is the filing of writ petitions, under Article 226 of the Constitution, seeking direction to the State Government, and its agencies, to make payment of 'admitted dues'. What usually happens is that a contractor or a supplier having completed the work or having made the supplies in terms of a Government contract has to wait indefinitely, sometimes for years, for payment for the work done or against the supplies made. The Go

Judgement :

Aftab Alam, J.

1. An extraordinary feature of litigations in this State is the filing of writ petitions, under Article 226 of the Constitution, seeking direction to the State Government, and its agencies, to make payment of 'admitted dues'. What usually happens is that a contractor or a supplier having completed the work or having made the supplies in terms of a Government contract has to wait indefinitely, sometimes for years, for payment for the work done or against the supplies made. The Government department with which the contract was made does not deny the contract nor the contractor's/supplier's claim that the work was duly performed and/or the supplies were duly made in terms of the contract. Yet, the payment in terms of the contract remains withheld for many years. The usual plea in such cases is paucity of funds. Such a situation, as can be: easily imagined, lands to same further undesirable consequences and in some cases allegations are made that the department/authorities were clearing bills and making payments only for extraneous considerations.

2. In a number of cases it is also seen that

though a cheque for payment against the contractor's bill was issued by the concerned Government department, the payee could not encash it as the Government treasury refused to make payment on account of some Government instruction imposing a ban on payments of certain kind by the treasury.

3. In such predicament Government contractors/suppliers have been approaching this Court in large numbers for direction for payment of their 'admitted dues'. In such cases if it was found that the liability was admitted and the payments were not being made on pretexts not sustainable in law, this Court consistently issued directions for making payments within a specified time. It was considered that in cases where the liability was admitted, the action of the Government or its agencies in not making payments on legally untenable grounds was per se unreasonable and called for an interference by this Court. In such cases it was considered injudicious to relegate the claimant to a civil Court to obtain a money decree and then to realise his dues by getting the decree executed.

4. In cases, however, where the Government or its agencies disputed the liability for any reason whatsoever, this Court declined to interfere and left the claimant to seek his remedy by filing a money suit before a Civil Court of competent jurisdiction.

5. It may further be noted that as regards the question whether or not the dues were admitted, this Court did not accept the petitioner's claim regarding the dues being admitted merely on the basis of the averments made in the writ petition or the documents and papers enclosed with the petition which would show that the department was either accepting the liability or atleast it was not denying the liability. In all such cases, adopting a much more cautious approach this Court invariably asked the respondent authorities to take a stand in this regard by filing a counter-affidavit and it was only in case that dues and the liability to make payments were admitted in the counter-affidavit filed on behalf of the respondent authorities that this Court proceeded on the basis that the dues were admitted. In case in the counter-affidavit the liability was disputed or denied, this Court declined to examine the petitioner's claim notwithstanding the enclosures, mostly departmental documents supporting his claim as

that would involve an appraisal or evidence in a case of disputed claim.

6. It is in the back ground of the aforesaid observations that this Court proposes to examine the facts and circumstances of this case.

7. The petitioner is a Government company and an undertaking of the Central Government; as its name suggests, it is engaged in the manufacture and sale of chemicals including fertilizers. Respondent N. 2 is also a company, an undertaking of the State Government; respondent No. 3 is its Managing Director.

8. According to the petitioner on the orders placed by respondents 2 and 3 it made supplies of 6213.25 metric tonnes of Single Super Phosphate fertilizer to the Corporation's godowns in different districts during the year, 1990-91. The total price of the fertilizer came to Rs. 54,18,591.96 against which payments of Rs. 51,41,657.96 were made and thus an amount of Rs. 2,76,934/- remains as outstanding balance against the Corporation, the details of the supplies made are furnished in the writ petition. It is also stated that as the Corporation failed to clear the outstanding balance despite countless reminders, the petitioner company was forced to come to this Court in this writ petition.

9. This writ petition was first taken up for admission on 17-1-1997 when notices were directed to be issued, under registered cover, to respondents 2 and 3. As neither the registered envelope nor the acknowledgment cards were received back, the officer took the notices to have been served under the deeming provision and put up the case before the Court. Not being satisfied with the deemed service of notice, this Court by order dated 7-4-1997 directed the petitioner to have a second notice served directly in the office of the Managing Director, Bihar State Agro Industries Development Corporation. In this regard, it was directed, that a person duly authorised by the petitioner should serve a copy of the writ petition complete with annexures along with copy of the order dated 7-4-1997 in the office of the Managing Director, Bihar State Agro Industries Dev. Corporation and should then affirm an affidavit regarding the service of notice. Following this order, an affidavit was filed on 21-4-97 which is affirmed by one M.P. Mishra, presently posted as the Sales Officer I of

the petitioner company. According to this affidavit, the directions of this Court were duly complied with and a notice of the case was personally served in the office of respondent No. 3. This affidavit also enclosed, as Annexure X, a receipt showing service of notice in the office of respondent No. 3. Despite this, respondents 2 and 3 have chosen not to appear or to file any counter-affidavit in this case.

10. Having given my careful thought to this matter, I am of the considered view that the respondents cannot be allowed to frustrate the process of the Court by adopting the easy option of not appearing despite valid service of notice and,

therefore, applying the doctrine of non-traverse it must be held that the respondents do not deny and they accept the claim raised by the petitioner against them.

11. The petitioner's claim thus not being denied and no reason, much less any lawful reason, being pleaded before the Court for not making the payment, this Court sees no reason not to allow the petitioner's claim. This writ petition is accordingly allowed and the respondents 2 and 3 are directed to make payment of all admitted dues lawfully payable to the petitioner within two months from the date of receipt/production of a copy of this order.

12. In the result, this application is allowed.

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