

Om Enterprises Vs. State of Bihar and ors.

Om Enterprises Vs. State of Bihar and ors.

SooperKanoon Citation : sooperkanoon.com/128145

Court : Patna

Decided On : Jan-22-2008

Judge : Navaniti Prasad Singh, J.

Appellant : Om Enterprises

Respondent : State of Bihar and ors.

Disposition : Application allowed

Judgement :

Navaniti Prasad Singh, J.

1. The petitioner was given orders for supply of plastic coated maps by the respondent-District Magistrate-cum-Chairman, District Literacy Committee, Muzaffarpur. This order was placed by him on 11th June, 2005. Petitioner, in accordance with the said order, made supplies in the month of July. The supplies were accepted and not rejected. Petitioner then sought payment. On one pretext or the other payment was not made and ultimately petitioner had to come to this Court for the same. In the counter affidavit, the fact that order was placed is not denied. The fact that the supply was made is not denied. The fact that the supplies were accepted is not denied. The fact that the supplies were not returned is not denied. What is stated is that the District Literacy Programme, which was a programme sponsored by the Central Government, was itself stopped in the month of July by the Central Government. The supplies having been made, bills

were submitted thereafter which is creating difficulty in getting allotment of funds to make the payment. But the fact remains that the petitioner was never told not to supply. Petitioner's orders were not cancelled. On the contrary, supplies were duly accepted and utilized.

2. In my view, it is well settled law under the Sale of Goods Act that where a party has a right to repudiate the contract and/or right to reject the goods but he does not do so on the delivery of the goods. This is an acceptance in terms of Section 42 of the Sale of Goods Act 1930. Once goods are accepted, there is a simultaneous obligation to make payment thereof for no services are gratuitous. On these principles, the State cannot escape its liability to make payment. State urges that the money had to come from the Central Government and, as such, the petitioner should approach the Central Government for payment. In my view, such a plea is not available for the simple reason that the privity of contract is between the petitioner and the respondent-District Magistrate who gave the order. Petitioner is not concerned with under what circumstances or under whose delegated authority the District Magistrate acted. The District Magistrate having given the order and under his authority the supplies having been accepted, the obligation is on the District Magistrate to make the payment, how and from where he gets reimbursement does not concern the petitioner. Denial of payment because of inter-departmental confusion and dispute is not a legitimate ground to deny legitimate payment to the petitioner.

3. I, therefore, have no option but to hold that the denial of payment is arbitrary on the face of it and, as such, direct the respondent-District Magistrate, Muzaffarpur to ensure that payment is made to the petitioner within a period of thirty days from the production of a copy of this order before him in respect of the supplies made by the petitioner pursuant to orders issued from his office.

4. The writ application, with the aforesaid direction, is allowed.