

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24.02.2009
Pronounced on: 23.03.2009

+ W.P. (C) 18968/2006

M/S NARYANAN CONSULTANCY Petitioner

Through: Mr. R.P. Bhatt, Sr. Advocate with
Mr. S. Udaya Kr. Sagar and Mr. Venayagam,
Advocates.

versus

INDIAN OIL CORPORATION LTD. AND ORS. Respondents

Through: Mr. Prabhat K. Srivastava &
Ms. Shweta Mishra, Advocates.
Ms. Geetanjali Mohan & Ms. Vaishnavi,
Advocates for Resp-3-4.
Ms. Ruchi Gaur Narula, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

S.RAVINDRA BHAT, J.

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1. The Writ Petitioner in these proceedings under Article 226 of the Constitution of India seeks various directions against the first respondent (Indian Oil Corporation Ltd, hereafter called "IOC") to pay service charge of Rs.15,69,597/- with interest and also pay further service charge amounting

to Rs. 2,00,70,000/- and settle its bill dated 9.9.2004. Similar directions to settle the petitioner's claim towards payments are also sought.

2. Briefly the necessary facts are that the IOC erected a link line (chord line) between Baroda – E Cabin to Chhaya Puri Railway Station of Western Railways in 1971. This line was used by the IOC to transport rakes booked from Bajwa to north of Vadodra and were directly dispatched thus reducing 11 Kms. Apparently, in spite of this, the Western Railways incorrectly continued to charge more freight by including the 11 Kms. distance. The question of refund of excess freight charges had been engaging the attention of IOC and the Western Railways. The petitioner claims that being aggrieved by Railway's inaction in regard to refund of such excess payments, the IOC entered into contract with it for consultancy service to secure settlement of such outstanding claims. The consultancy contract, entered into on 1.7.2001 was valid for one year and extendable with mutual consent of the parties. Clause 2 of the contract defined the scope of service; the petitioner as Consultant was responsible for pursuing the matter with the Railways and getting IOC's claims settled. The petitioner was entitled to charges for the service rendered, in accordance with the Schedule – A to the contract; the same is in the following terms: -

Sr. No.	Items of Works	Schedule of Charges
1	Claim for compensation of missing tank wagons and shortage/leakage claims.	(c) Rupees One Thousand per Tank Wagon. (d) Rupees Seven Hundred

	(a) Cases beyond and upto 31.03.1997 (b) Cases after 31.03.1997	per Tank Wagon.
2	Reduction/Abolition/Refund of freight charges from Railways on – (a) Regular Claims (b) Repudiated and Time Bar/Suit Bar Claim.	(a) i) 9 % of amount realized from the Railways within 4 months. (ii) 8% of amount realized from the Railways beyond 4 months but less than 7 months. (iii) 7% of amount realized from the Railways beyond 7 months. (b) 15% of amount realized from the Railways.
3	Refund of amount wrongly recovered by the Railways or any debit raised by the Railways for various services such as siding charges/shunting charges/To pay surcharge/cost of Railway staff/penalty overloading/wagon registration/shunting-siding charges/Electrification/overhead	15% of the amount realized or abolished or withdrawn or adjusted/credited by the Railways and accepted by the IOC.

	maintenance etc./debit raised/recovered on various grounds by the Railways including reconciliation of accounts etc.	
4	Freight audit of dispatching locations under Western Region/IOC.	15% of the amount realized from the Railways.

3. The petitioner claims to have followed up and “chased” 38,305 claims for the period 20.10.1996 to August, 2002. The initial term of the contract, which ended in end of June, 2001 was extended by mutual consent by a year. It is asserted that out of the 38,305 claims pursued, the petitioner was able to successfully secure settlements of 14,348 claims; 23,957 such claims continued to be pending. It is further alleged that IOC was beneficiary to the extent that Rs.14.7 Crores were settled out of a total quantum of Rs.33.92 Crores. The petitioner, therefore, claims that having regard to the progress achieved, the IOC should have ensured that its dues were paid.

4. The petitioner has filed copies of statements showing claims for refund for various periods when the consultancy contract subsisted between the parties. It also has placed reliance upon tabulated claim statements and several documents in support of its demand that the dues should be properly paid. It refers to and relies upon letters dated 28.9.2004, 1.11.2004, 3.1.2005, 18.1.2005, 31.3.2005 & 24.11.2005 etc. in support of the

allegation that by its efforts IOC benefitted to the tune of Rs.15.32 Crores despite which, its proper dues have not been paid.

5. The petitioner contends through its senior counsel, Shri R.P. Bhat, that all the facts necessary to afford relief in these proceedings exist with records and though facially the dispute pertains to facts in reality the IOC cannot deny having benefitted from the efforts exerted by it. It is contended that having availed all the services and obtained the refund of substantial amount, the IOC cannot refuse to honour the petitioner's bills dated 1.9.2003 and 9.9.2004 for Rs.15,69,597/- and Rs.2,00,70,000/-, respectively.

6. Reliance is placed upon the decision of the Supreme Court in *ABL International v. Export Credit Guarantee Corporation of India Ltd.* 2004 (3) SCC 553 to say that whenever a State or State agency acts unreasonably, and contrary to public good in any aspect of its functioning including in the contractual domain, it does so contrary to the mandate of Article 14 of the Constitution of India. The Court, under Article 226 of the Constitution, can in such cases make appropriate orders to mould the relief and secure ends of justice. Reliance is also placed on the judgment reported as *Mahabir Auto Industries v. Indian Oil Corporation* 1990 (3) SCC 752, to contend that every facet of state functioning has to be informed by reasons and free from the vice of arbitrariness.

7. The IOC in its return, does not dispute entering into a consultancy contract with the petitioner on 14.6.2001 or that its terms were extended. It,

however, states that out of the claims to an extent of Rs.33.92 Crores, Rs.1,31,95,854/- were realized during April-May, 2003. The IOC contends having paid Rs.19,79,378/- to the petitioner in June, towards consultancy charges. It submits that a further amount of Rs. 1,04,63,983/- was realized in September, 2003 after expiry of the consultancy contract. According to the IOC, the railway authorities informed it (the IOC) on 23.7.2004 that claims to the extent of Rs.14.7 Crores had been processed for adjustment, yet no such amount was disbursed and the IOC was constrained to prefer claims. This amount has not been realized till date. As a result, the IOC did not pay consultancy charges to the petitioner. It is further submitted that the amounts realized, especially after the consultancy contract ended, were through the independent efforts of the IOC with the Western Railways and the petitioner, therefore, cannot claim credit.

8. The IOC points to the Clause 1 of the agreement, which spells out the tenure i.e. one year. During the period the IOC was entitled to terminate the contract after giving 30 days notice. It is contended that such being the case, the entitlement of the petitioner has to be proved in regard to the amounts realized after the contract ended.

9. The Western Railways too has filed the counter affidavit. Apart from generally denying the facts, it states that disputes between the IOC and itself towards refund of alleged excess claims are *sub judice* and pending before the Railway Claims Tribunal, Ahmedabad and that the said Tribunal is the

most appropriate forum to adjudicate the dispute. It has produced the copy of the claim filed before the Tribunal, whereby the IOC has claimed a direction for payment of Rs.18,36,25,964/- as refund for the period 20.10.96 to 30.9.99 with interest. It is contended that this Court should not take cognizance of the disputes sought to be raised since writ proceedings are not appropriate for adjudication of the facts.

10. The above discussion would show that there is no serious dispute about facts pertaining to the consultancy contract or its terms. The petitioner's mandate was to follow up with the claims for refund lodged by the IOC with the Western Railways. The IOC admits having received some refund. It concedes paying a sum of Rs. 19,79,378/- as consultancy charges, to the petitioner. However, its contention is that, vis-à-vis amounts received after the expiry of the consultancy period/contract, the petitioner cannot lodge any claim towards such fees or charges. It avers, besides, that as regards the other claims that were allegedly processed by the petitioner, disputes are pending adjudication before the Railway Claims Tribunal.

11. Now, the jurisdiction of the Courts under Article 226 is recognized to be of wide amplitude. Long ago in *Dwarka Nath v. I.T.O.* AIR 1966 SC 81, the Supreme Court held that Article 226 confers a wide power on the High Courts to reach out to injustice, wherever it is found. The court held that High Courts can also issue directions, orders or writs in the nature of prerogative writs

and that the provision enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country.

12. The Courts have further expanded the scope of the writ remedy by holding that wherever an agency performs a public function or a part of its functions are relatable what are termed as “public law duties” regardless of the origin of such duties i.e. statutory or non statutory, such actions can be scrutinized by judicial review under Article 226 of the Constitution (see *Binny Ltd. v. V.V. Sadashivan & Ors.* 2005 (6) SCC 657). In the decision of the Supreme Court in *ABL International* cited by the petitioner, the Court no doubt stated that where essential facts are capable of adjudication by the High Court under Article 226, it would be inequitable to relegate the aggrieved party to the remedy of a Suit or civil proceedings. The Court also relied upon certain previous decisions.

13. This Court is, of course, mindful of the authority of the Supreme Court in *ABL International* (supra) and *Mahabir Auto Industries* - also cited on behalf of the petitioner. Yet the facts of this case disclose that the question of what is payable to the petitioner is not admitted by the respondents. Concededly 38,305 claims were preferred by it. The Railways does not admit to having allowed all of them; even the IOC does not concede to the Railways having settled even the claims mentioned by the petitioner. It only admits to having received a small part of the total claim of Rs.33.92 Crores. Further disputes between the IOC and the Western Railways are pending

adjudication before the Railways Claims Tribunal. There, is therefore, dispute on the essential facts.

14. In these circumstances, it would be imprudent and inexpedient for this Court to examine the feasibility and soundness of the petitioner's claim. Besides, assuming that the Court can consider the dispute, it would be also at some stage necessary to delve into the facts particularly as to the petitioner's claim for entitlement of the amounts received after the contract with IOC ended. The IOC has entirely disputed the petitioner's right to receive any consultancy charges or the amounts received after its contract ended. According to the IOC such amounts were received by independent initiative exerted on its part. It is evident that though this Court's jurisdiction to examine and decide on questions of facts may not be entirely ousted and in given circumstances if deemed appropriate, relief can be granted, yet the facts presented in these proceedings are not such that they can be appropriately or conveniently examined. They would necessarily involve recording of evidence and consideration of arguably voluminous documents and materials, for which Article 226 proceedings would be inappropriate. Lastly, the petitioner has approached this Court after a considerable delay. Even according to its averments, the payments were due sometime in October-November, 2002; yet it has chosen to prefer the present proceedings in December, 2006. In the circumstances, this is not an appropriate case for exercise of jurisdiction under Article 226 of the Constitution of India.

15. For the above reasons, the Writ Petition cannot succeed; it is, therefore, dismissed. There shall, however, be no order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

MARCH 23, 2009

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