

Court No. - 40

Case :- WRIT - C No. - 25725 of 2023

Petitioner :- M/S Avika Industries

Respondent :- The State Of U.P. And 3 Others

Counsel for Petitioner :- Radhey Shyam Dwivedi

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Sri R.S. Dwivedi, learned counsel for the petitioner and Ms. Uttara Bahuguna, learned Additional Chief Standing for the respondents.

2. By means of this petition the petitioner has sought following reliefs:-

(I) Issue a writ, order or direction in the nature of certiorari to set aside the inquiry report dated 21.02.2022 passed by respondent No.3.

(II). Issue a writ, order or direction in the nature of mandamus directing the respondent no.2 to re-inquire the matter according with law and pay due amount to the petitioner."

3. Learned counsel for the petitioner submits that the petitioner is a proprietorship firm and it is engaged in the business of development of the villages. The Pradhan of Gram Panchayat Khindauda, Vikas Khand Murad Nagar, District Ghaziabad had issued a work order to the petitioner firm on 28.05.2019 for some work of electric light in the said village and the same was carried out by the petitioner. Thereafter, the Pradhan of the said village had given a cheque of Rs.13 lacs to the proprietor of the petitioner firm but the same was bounced. Thereafter, the petitioner moved an application before the respondent authority on 17.08.2022. The son of the petitioner had also moved an application before the respondent no.2 on 02.12.2021. On the said complaint, the Block Development Officer, Murad Nagar, Ghaziabad conducted an enquiry and submitted the enquiry report to the District Magistrate, Ghaziabad on 21.02.2022 but no decision has been taken till date.

4. In response of the order dated 26.9.2023, Ms. Uttara Bahuguna, learned Additional Chief Standing Counsel has placed detailed instruction dated 16.10.2023 sent by Block Development Officer, Vikas Khand Muradnagar, Ghaziabad and the same is taken on

record.

5. In the aforesaid instruction, precise objection is taken that the work order has never been given to the petitioner and on the said document, the competent authority has not made any endorsement. She has also raised an objection that so far as the work order, which has been assigned to the firm, is concerned, the said firm has already executed the work and the amount has also been paid to it.

6. In a similar case, **M/s R.S. Associate Vs. State of U.P. & Ors.** Writ-C No.11544 of 2014, decided on 24 February 2014, a Division Bench of this Court had declined to entertain a prayer for similar reliefs with the following observations:

"These are purely contractual matters and we are not inclined to entertain a petition under Article 226 of the Constitution in this regard. Whether the work under the contract has been satisfactorily carried out; whether the rates quoted are in accordance with the terms of the agreement and the applicable schedule of rates; whether the work has been carried out properly are issues which have to be addressed, among other questions, by the competent authority before an appropriate decision is taken. The jurisdiction of the Court under Article 226 of the Constitution cannot appropriately be exercised in such matters. The remedy of the contractor, if he is aggrieved by non payment, would be to either file an ordinary civil suit or if there is an arbitration agreement between the parties, to invoke the terms of the agreement.

.....It is true that there is no absolute bar in entertaining a petition in a contractual matter. However, in cases such as the present, several issues on facts which have been noted in the earlier part of this judgement have to be determined by the competent authority. The exercise of jurisdiction under Article 226 is not warranted for what the petitioner seeks in essence is a decree in a civil suit which cannot be granted in this proceeding, particularly having regard to the nature of the issues involved.

The Court, therefore, declines to entertain this petition."

7. Following the earlier view of the Division Bench and for the reasons indicated above, we decline to entertain the petition and relegate the petitioner to pursue the ordinary civil remedy or, if there is an arbitration agreement, to invoke the terms of the agreement.

8. Accordingly, the writ petition is disposed of.

Order Date :- 18.10.2023

RKP