

Court No. - 40

Case :- WRIT - C No. - 32252 of 2023

Petitioner :- M/S Shri Sharda Construction

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Priya Tiwari, Kamlesh Kumar
Tiwari, Yogesh Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard learned counsel for the petitioner and Sri Ambrish Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. By means of the instant petition, petitioner has prayed for following principal reliefs:-

"(i) Issue a writ order or direction in the nature of certiorari, set aside the order passed by Executive Engineer dated 23.02.2023 (Annexure No.16), canceling the licence of the petitioner.

(ii) Issue a writ order or direction in the nature of mandamus direct the respondent No.2 to pay the amount of the constructed work done by the petitioner.

(iii) Issue a writ order or direction in the nature of mandamus, direct to the respondent No.2 not to make the black list of the petitioner's firm."

3. Factual matrix of the case, as is reflected from the record, is that the petitioner is a registered firm (in category B) in the irrigation department vide registration certificate dated 28.03.2017. Time to time the same was renewed and lastly it was renewed for three years valid upto 30.6.2025. It appears that the Irrigation Department, State of U.P. had floated a tender inviting applications for construction of new dug well in District Jhansi. The petitioner's tender was accepted and an agreement was also executed between the parties on 27.2.2021. It is contended that after executing the agreement, the petitioner started to raise construction of well but due to standing crops the petitioner could complete only 25-30% work. Thereafter, Covid-19 pandemic started and as such the work was stopped. On 27.1.2022 a letter/ notice was sent to the petitioner by the Executive Engineer concerned that the work had to be completed by 7.6.2021 but the same could not be completed within time and as such it was directed to the petitioner to complete the work in any condition upto 15.2.2022 otherwise the bills will not be cleared. The said notice was replied by the petitioner stating that due to rainy season, standing crops as well as covid pandemic only 25-30% work could be completed and as such some further time has been asked for. Consequently, the petitioner has asked the authority vide letter dated 13.9.2022 to increase the rate for

construction of work as the labour charges have been increased. Eventually, the concerned Executive Engineer vide order impugned dated 23.2.2023 had cancelled the agreement of the petitioner and forfeited the security money and also directed for blacklisting the firm of the petitioner.

4. Learned counsel for the petitioner, in this backdrop, has vehemently submitted that due to rainy season, standing crops, covid pandemic as well as increase of labour charges, the work could not be completed well within time as stipulated in the agreement. He submits that said situation was beyond his control, therefore, it cannot be said that there was some malafide intent on his behalf not to complete the work. Moreover, the order impugned cannot sustain as no opportunity of hearing was extended to the petitioner and as such same is also hit by principle of natural justice.

5. On the other hand, learned Addl. Chief Standing Counsel has vehemently opposed the writ petition. In response to the earlier order, he has placed detailed instructions dated 16.10.2023 sent by the Executive Engineer, Minor Irrigation Division, Jhansi, which is taken on record. On the basis of instructions he submits that looking to the unforeseen circumstances/ ground realities, the time for completion of work was extended several times. Even several notices were also issued to the petitioner to complete the work. But the petitioner, instead of completing the work in time, has lingered on the matter for one reason or another. As such it cannot be said the no opportunity was extended to the petitioner before passing the order impugned. Learned Addl. Chief Standing Counsel has also submitted that in contractual matters a writ petition under Art.226 of the Constitution is ordinarily not maintainable and as such no interference is required in the matter.

6. Heard rival submissions, perused the record as well as the categorical instructions produced by learned Addl. Chief Standing Counsel. From the perusal of instructions, sent by the Executive Engineer, Minor Irrigation Division, Jhansi, this much is reflected that agreement in question took place on 27.2.2021 for construction of new dug well at Jhansi. For construction of new dug wells under the Scheme of Bundelkhand Package (Third Stage) for the year 2021 following work was assigned to the petitioner:-

Sl. No.	Date of Agreement	Place of work	Cost of Construction (In Rs.)	date of start of work	Date of completion of work
1.	8.3.2021	Village Mustara, Vikas Khand Baragaon	16,82,850	8.3.2021	7.6.2021
2.	8.3.2021	Village Birguan, Vikas Khand Baragaon	3,99,629	8.3.2021	7.6.2021
3.	8.3.2021	Village Birguan, Vikas Khand Baragaon	4,09,077.02	8.3.2021	7.6.2021
4.	8.3.2021	Village Mustara, Vikas Khand Baragaon	16,98,450	8.3.2021	7.6.2021
5.	8.3.2021	Village Birguan, Vikas Khand	4,05,389.34	8.3.2021	7.6.2021

		Baragaon			
6.	27.2.2021	Village Birguan, Vikas Khand Baragaon	4,13,409.60	27.2.2021	20.6.2021
7.	27.2.2021	Village Birguan, Vikas Khand Baragaon	4,05,539.36	27.2.2021	20.6.2021
8.	27.2.2021	Village Birguan, Vikas Khand Baragaon	4,11,068.90	27.2.2021	20.6.2021
9.	27.2.2021	Village Birguan, Vikas Khand Baragaon	4,00,107.19	27.2.2021	20.6.2021
10.	27.2.2021	Village Birguan, Vikas Khand Baragaon	4,11,079.49	27.2.2021	20.6.2021

7. As per the instructions, this much is reflected that the work had been commenced but on account of Covid-19 pandemic the lock down was declared on 23.3.2021 and the work was stopped. Meanwhile, the time stipulated for execution of work had also lapsed. Even though since May 2021 the department had permitted the petitioner to commence the work on small scale but the petitioner firm could not commence the work. Thereafter, the Executive Engineer, Minor Irrigation, Distt. Jhansi had made various correspondences to the petitioner through letter nos.1540, 1541, 1542, 1543, 1544, 1569, 1571, 1572, 1573 and 1575 dated 27.1.2022 but the petitioner firm has not commenced the work. Thereafter, again Executive Engineer concerned sent letter nos.1882, 1888, 1887, 1886, 1906, 1907, 1909, 1915 and 1917 dated 8.3.2022 but the petitioner firm has not commenced the work. Considering the exigency to perform the work in the water scarcity area another reminders were sent on 24.3.2022 vide letter nos.747, 749, 750, 751, 752, 757, 758, 759, 760, 761. Thereafter, the petitioner moved an application for permitting him to complete the work upto 24.3.2023. The same was duly endorsed by the Executive Engineer, Minor Irrigation, Jhansi on 28.12.2022 and the time was extended to complete the work upto 24.3.2023. In spite of increase of time span, the petitioner firm had not taken any concrete steps to complete the work in terms of the agreement. The respondents have also taken stand that even for part work, which has been carried out by the petitioner firm, the running bills were cleared by the department. It is also alleged that just to get further time for completion of work, the petitioner firm had deliberately moved applications on 4.1.2023, 17.1.2023 and 22.2.2023 for refixation of rate, even though the said applications were not maintainable in view of original contract. It has also come on record that even prior to passing the order impugned, notices were issued to the petitioner firm on 5.12.2022 and 19.12.2022, wherein the department had warned the petitioner that in case the work is not completed well within time, the respondents would take action against the petitioner firm. Once there was no progress of the work on spot, the Asstt. Engineer, Minor Irrigation had no other option except to recommend the Executive Engineer to take action against

the petitioner firm vide his letter dated 18.1.2023. Even at the said stage also, another opportunity was extended to the petitioner to complete the work. In spite of repeated indulgence accorded by the respondents, the petitioner firm had not executed the work, hence the order impugned has been passed. It is not the case where the work under the contract had been satisfactorily carried out by the petitioner firm.

8. The aforementioned facts could not be disputed by learned counsel for the petitioner. The scheme in question was initiated by the State Government for welfare of the farmers and specially to provide water in the rural areas. The Jhansi region is drought prone area and as such the State Government had launched the scheme to provide adequate water not only to the dwelling units but also to cater the need of the farmers for agricultural purposes. The contract was executed on 27.2.2021, wherein specific time was stipulated to complete the entire work in three months. Surprisingly, in spite of substantial period of more than two years, admittedly the work had not been completed by the petitioner firm even after receiving several notices and getting extension of time. Nowhere, it is brought on record that at any time the State Government had declined to clear the running bills. Time to time it had also been cleared but anyhow the work had not been completed in spite of enhancement of time. The order impugned has been passed with due notice/opportunity.

9. We are also of the considered opinion that in contractual matters a writ petition under Art.226 of the Constitution is ordinarily not maintainable. Hon'ble the Apex Court in **Kerala State Electricity Board & Anr. Vs. Kurien E.Kalathil & Ors., (2000) 6 SCC 293** has observed as under:-

"10 Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory

or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition."

10. In Hindustan Petroleum Corporation Limited & Anr. Vs. Dolly Das, (1994) 4 SCC 450, Hon'be the Apex Court observed:-

"In the absence of constitutional or statutory rights being involved a writ proceeding would not lie to enforce contractual obligations even if it is sought to be enforced against the State or to avoid contractual liability arising thereto. In the absence of any statutory right, Article 226 cannot be availed to claim any money in respect of breach of contract or tort or otherwise."

A Division Bench of this Court in M/s R.S. Associate Vs. State of U.P. & Ors. Writ-C No.11544 of 2014, decided on 24.02.2014 has observed:-

"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."

11. In the aforesaid facts and circumstances of the case, we do not find any infirmity or illegality in the order impugned so as to exercise our discretionary jurisdiction under Art.226 of the Constitution of India. The writ petition stands **dismissed accordingly.**

Order Date :- 18.10.2023

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