

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.3187 OF 2015

ORDER:

The petitioner prays for Mandamus declaring communication No.VJW/KBR/KAREDU dated 05.02.2015 of the 3rd respondent, as illegal and violative of the principles of natural justice.

The 3rd respondent addressed the impugned letter to petitioner and it reads as follows:-

“To
The Service Provider,
B.P. Karedu,
Vulavapad Mandal,
Prakasam District.

Kind attention: Mr.Major K.B.Reddy

Ref: Service provider agreement dated
01.03.2012.

Sub: Fraud at B.P.Karedu for an amount of
Rs.83,00,800/-.

With reference to above subject, in connection with the misappropriation done at B.P.Karedu, you are hereby requested to pay an amount of Rs.83,00,080/- immediately to BPCL account.

Since it is a serious offence, kindly remit the payment at the earliest.”

The petitioner and respondents entered into agreement dated 01.03.2012. The petitioner has accepted a few obligations for discharge by him at BP-Karedu COCO outlet on NH-5, Karedu Village, Prakasam District. The petitioner *inter alia* provides services as stipulated in the agreement dated 01.03.2012 at company operated MS/HSD retail outlet. The petitioner submits that on 26.05.2012, he along with his family members met with an accident, lost his son and was bed ridden for a long period. The subject outlet is for all purposes operated by the company through its officer and on account of the

intervening unfortunate circumstances, he was not looking after the day-to-day affairs. The petitioner suggestively refers to lack of proper supervision and embezzlement of cash at the subject outlet.

It is stated that the impugned letter dated 05.02.2015 is addressed to the petitioner calling upon him to pay Rs.83,00,800/-, which is illegal and arbitrary. It is stated that the non-payment, if any, from the subject outlet to respondent company is on account of credit supplies to a few regular customers and these are recoverable debts. Without reference to the amounts already paid, settlement of accounts between parties, demand of Rs.83,00,080/- and threatening to encash bank guarantee are illegal and arbitrary acts. Hence, the writ petition.

The respondents filed counter-affidavits and explained the circumstances under which the impugned letter is addressed. The respondents *inter alia* opposed the maintainability of writ petition under Article 226 of the Constitution of India.

The respondents refer to earlier correspondence on the subject and the assurance given by the petitioner for settlement of the amount. It is stated that time was given to petitioner to pay the amount and the issue is very serious. Therefore, to protect the interest of Corporation, demand to pay Rs.83,00,800/- is made through the impugned letter. It is contended that the writ prayer is misconceived and the payment is due from subject outlet and no exception can be taken. The respondents pray for dismissal of the writ petition.

The learned counsel appearing for the parties have substantially reiterated the stand taken in the respective pleadings.

The issue is - whether the impugned communication firstly can be challenged under Article 226 of the Constitution of India and secondly whether the same suffers from illegalities or arbitrariness, as

alleged by the petitioner.

The petitioner through the impugned letter was called upon to pay the amount due to the Corporation. The amount is claimed from the petitioner in pursuance of and in terms of the agreement dated 01.03.2012. The petitioner is not disputing the liability to respondent Company, but contends that the subject outlet is in the combined supervision and responsibility of petitioner as well as the company officer. Further, the respondents failed to give proper credits to the amounts already paid by the respondent company. Even assuming that these circumstances are present in the case on hand, still in the opinion of this Court, the writ petition against the impugned demand is misconceived and this Court at this stage of the matter cannot examine the merits of petitioner's claim or accept the assertions of respondents. Through the impugned communication, the petitioner is called upon to pay a sum of Rs.83,00,800/-. The petitioner can certainly place the account details at his disposal or available defence. Alternatively, the petitioner can sit with the Corporation, finalize the accounts and determine the exact misappropriation or embezzlement in this behalf. Without taking recourse to these options, the petitioner could not have filed the writ petition questioning the very demand. If the petitioner wants verification of record or finalization of accounts, this Court has no reason to believe that respondents will decline such a reasonable request. In the view of this Court, on this short ground, the writ petition is liable to be dismissed.

The writ petition is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V.BHATT, J

17th March, 2015

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