

\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) No.8930/2015

M/S SHRI RAM RAJA SARKAR

LOK KALYAN TRUST

..... Petitioner

Through: Mr. Vikas Sharma, Adv.

Versus

UNIQUE IDENTIFICATION AUTHORITY

OF INDIA & ANR

..... Respondents

Through: Mr. Sanjeev Narula, Ms. Meha
Rashmi, Advs. and Mr. Ajay Kalra,
Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

01.10.2015

1. On 18th September, 2015 when this petition came up first before this Court the following order was passed:-

- “3. *The petition seeks a direction to the respondent No.1 Unique Identification Authority of India (UIAI) to review the rate of penalties levied on the petitioner under a contract entered into with the petitioner and to rationalise the structure of the penalties in terms of the Revised Methodology for Enforcing Process Guidelines and Data Quality issued by the respondent No.1 UIAI. Mandamus is also sought to the respondent No.1 UIAI to release the balance amounts due and payable to the petitioner.*
4. *The petition, though in the garb of mandamus, is but for recovery of money. The relationship of the petitioner with respondent No.1, UIAI is purely contractual. If according to the petitioner, any monies are due to the petitioner from the respondent No.1 UIAI under the said contract, the remedy of the petitioner is under the ordinary law by way of arbitration if applicable or a suit. The writ petition would not lie.*

5. *It is however not very evident from a reading of the petition as to under which clause of the contract, the penalties are being levied. The counsel for the petitioner, on enquiry, has been unable to show so.*
6. *None appears for the respondents inspite of advance copy stated to have been given.*
7. *Mr. Sanjeev Narula, Advocate present in the Court is requested to accept notice and obtain instructions particularly on the said aspect.*
8. *List on 1st October, 2015."*

2. The counsel for the petitioner has today argued further and has also handed over in the Court a copy of the Notification dated 28th January, 2009 along with The National Identification Authority of India Bill, 2010 and has relied upon ***Godavari Sugar Mills Limited Vs. State of Maharashtra*** (2011) 2 SCC 439 and ***Piramal Healthcare Limited Vs. Union of India*** 2013 (202) DLT 15.

3. Per contra the counsel for the respondent Unique Identification Authority of India (UIAI) has argued with the assistance of a note on arguments and has handed over (i) the draft of the Memorandum of Understanding between the respondent no.1 UIAI and its Registrars, (ii) the Registrar On-Boarding Process (Version 1.2), (iii) Request for Empanelment of Enrolling Agencies published by the respondent no.1 UIAI on 19th May, 2014, (iv) the Release Order dated 20th May, 2014 and (v) the Office Memorandum dated 4th July, 2014 qua rationalisation of amounts withheld from financial assistance on account of reported deficiencies.

4. I have further considered the maintainability of the writ petition.

5. Supreme Court, in ***Joshi Technologies International Inc. Vs. Union of India*** (2015) 7 SCC 728, on a conspectus of the case law has held that

though there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised, at the same time discretion lies with the High Court which under certain circumstances, can refuse to exercise. It was further held that 'normally' the High Court would not exercise such a discretion and would not examine the issue unless the action has some public law character attached to it and if there are very serious disputed questions of fact which are of a complex nature and require oral evidence for their determination and that money claims *per se* particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances. It was further explained that if the contract between the private party and the State/instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitutional of India and invoking its extraordinary jurisdiction.

6. Judged in this light, the case of the petitioner in a nutshell is (i) that for the total *Aadhaar Cards* generated by the petitioner the petitioner has received Rs.3,56,10,322/- against the total of Rs.5,62,33,742/- leaving a balance of Rs.2,06,23,420/-; (ii) that as per the reconciliation report issued by the respondent no.1 UIAI, a penalty of Rs.6,63,400/- has been imposed on the petitioner against demographic errors of 4712 enrolments and a penalty of Rs.1,86,67,100/- has been imposed on the petitioner against 42814 biometric and process errors; and, (iii) that the packets which have been rejected due to demographic errors and biometric errors, if got generated,

then the value of the same was Rs.14,12,680/- but the exorbitant penalty of total Rs.1,93,30,500/- (i.e. Rs.1,86,67,100/- + Rs.6,63,400/-) has been imposed.

7. It is thus evident that the petitioner does not controvert liability for penalty. The only dispute is as to the quantum of the penalty. However the petitioner has not cited any clause in the contract to demonstrate that the penalty imposed by the respondent no.1 UIAI on the petitioner is contrary thereto. All that the petitioner contends is that the rate at which penalty has been imposed is exorbitant and needs rationalisation/review.

8. In this regard the contention of the counsel for the respondent no.1 UIAI of the procedure for empanelment of enrolling agencies as the petitioner becomes relevant. It is the contention of the respondents that the enrolling agencies enter into contracts with the Registrar appointed by the respondent no.1 UIAI for different States and it is the Registrars who inform the respondent no.1 UIAI about the engagement of the enrolling agencies.

9. It is not the case of the petitioner that it has been singled out in any manner in the application of the rate at which the penalty has been imposed. It is also not the case of the petitioner that the respondent no.1 UIAI was not entitled to lay down the rate of penalty.

10. In these circumstances, when the petitioner is one perhaps of the hundreds of enrolling agencies engaged, I find no reason to entertain this petition. If the respondents have deducted any amount in excess of what they under the contract are entitled to deduct out of the dues of the petitioner, the petitioner upon establishing the same in a properly constituted civil proceeding would be entitled to recovery thereof. No public law character of the claim of the claim of the petitioner has been established. The claim in the

petition, as earlier observed, remains a money claim.

11. I therefore hold the writ petition to be not maintainable and dismiss the same. Needless to state the petitioner shall be entitled to avail of the appropriate remedy in law for recovery of its contractual dues if any from the respondents.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 1, 2015

‘pp’

(corrected and released on 30th January, 2016)