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

+ **W.P.(C) 2181/2016**

A.K. BHUTANI

..... Petitioner

Through: Mr. Ashish Kapur with Mr. Tribhuvan
Rathi and Ms. Chhavi Luthra, Advs.

versus

CENTRAL WAREHOUSING CORPORATION..... Respondent

Through: Mr. K.K. Tyagi, Adv.

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Date of Decision: 15th March, 2016

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN**

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present writ petition has been filed seeking a direction to the respondent to release the payments to the petitioner with effect from December, 2015. The prayers in the writ petition are reproduced hereinbelow:-

“a) Issue a writ of mandamus or any other similar writ or order directing the Respondent to release the payment w.e.f. December 2015 till date.

b) Issuance of any other Writ or order or direction which this Hon'ble Court may deem fit and proper in the circumstances as pleaded.

c) The record of the Respondent relating to the present matter be called for its appreciation.

d) Costs of this petition be awarded in favour of the Petitioner against the Respondent."

2. It has been averred in the writ petition that an agreement dated 25th September, 2014 was executed between the respondent and the petitioner in accordance with which the petitioner was to deploy 57 guards at the respondent's inland container depot.

3. It has further been averred that the respondent alleged theft of imported cargo contained in one of its container and an FIR No.006 of 2016 was lodged.

4. Learned counsel for the petitioner states that the respondent has not cleared the bills of the petitioner for the months of December, 2015, January and February, 2016 without any valid reason.

5. From a perusal of the paper book, it transpires that the respondent has withheld the payment of dues on the ground that in accordance with general terms and conditions as well as specific conditions of the contract, the petitioner is liable to compensate for losses on account of theft/burglary/pilferage/robbery/dacoity etc.

6. In any event, this Court is of the opinion that a writ petition solely praying for refund of money against the State is not maintainable.

In *Suganmal v. State of Madhya Pradesh AIR 1965 SC 1740*, the Supreme Court has held as under:-

“6. On the first point, we are of opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. We have been referred to cases in which orders had been issued directing the State to refund taxes illegally collected, but all such cases had been those in which the petitions challenged the validity of the assessment and for consequential relief for the return of the tax illegally collected. We have not been referred to any case in which the Courts were moved by a petition under Article 226 simply for the purpose of obtaining refund of money due from the State on account of its having made illegal exactions. We do not consider it proper to extend the principle justifying the consequential order directing the refund of amounts illegally realised, when the order under which the amounts had been collected has been set aside, to cases in which only order for the refund of money are sought. The parties had the right to question the illegal assessment orders on the ground of their illegality or unconstitutionality and therefore could take action under Article 226 for the protection of their fundamental right, and the courts, on setting aside the assessment orders, exercised their jurisdiction in proper circumstances to order the consequential relief for the refund of the tax illegally realised. We do not find any good reason to extend this principle and therefore hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right.

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9. We therefore hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction.”

7. Since the petitioner also has an alternative effective remedy by way of an arbitration, this Court is of the view that the present writ petition is not maintainable.

8. Accordingly, the present writ petition is disposed of with liberty to the petitioner to file appropriate proceedings in accordance with law. The pleas and defences of all parties are left open.

MANMOHAN, J

MARCH 15, 2016
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