

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

WRIT PETITION No.40469 of 2017

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, seeking the following relief:

“to issue an appropriate Writ, order or direction more particularly one in the nature of *Writ of Mandamus* declaring the action of the Respondents in forfeiting the raising cost amount of Rs.220/- Per CBM to the quantity of 70,000/- CBM vide Lr.6294/ M.I(1)2016-1 dt.29-08-2016 as illegal, null void and arbitrary and consequently direct the respondents to pay raising cost amount to the petitioners as per agreement dt.04-03-2016 and to pass such..”

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Mines and Geology representing respondent No.1 and the learned Government Pleader for Tribal Welfare representing respondent No.2 and Sri V.Pratap Reddy, learned Standing Counsel representing respondent Nos.3 and 4 and perused the prayer in the writ petition with supporting affidavit and the impugned proceedings dated 29.08.2016 in Lr.No.6294/ M.I(1)2016-1 issued by respondent No.1 and the reference cited therein dated 10.08.2016 and the agreement with raising contractor(society) for extraction of sand from specified sand bearing area between the Chenchu Lakshmi ST Isuka Labour Contract Cooperative Society Ltd. and the respondents 2 and 3.

3. A perusal of the mutual agreement dated 04.03.2016 between the petitioner-Society and respondent Nos.2 and 3 particularly clause (3) speaks the raising contractor shall

i) extract sand as per the quantity indicated from the specified sand bearing area as estimated, during the period of agreement in consonance with Approved Mines Plan/ Environment Clearance/ Consent for operation. ii) While extracting sand shall confine to the thickness i.e., 1 mtr specified in the Approved Mining Plan and to the boundaries fixed. iii) Extract indicated quantity of sand during the period of agreement and transport to specified stockyard. (iv) Maintain records of dispatch of sand from the specified sand bearing area to the specified stockyard and shall file monthly returns on the quantity of sand extracted to M/s.Telangana State Mineral Development Corporation Ltd., Warangal.

4. The quantity of sand to be extracted is 179452.80 CBM and the extent is 24.15 hectares with longitudes and latitudes of the sand bearing area covered by the Geo-coordinates. The sand extracted from 01.02.2016 to 15.05.2017 of Chenchupalli stockyard shows the quantity is 146350.50 CBM. There is a registration certificate issued by the Andhra Pradesh Cooperative Department in favour of the petitioner-Society as a registered society under Section 6(4)

of the Andhra Pradesh Cooperative Societies Act, 7 of 1964, with the President and Vice-President, Directors of the Executive Committee of the Society for its activity of extraction of the sand on remunerative basis and it is not a voluntary gratuitous service, undisputedly. The letter of respondent No.3 to respondent No.1 dated 10.08.2016 shows the petitioner-Society extracted manually about 98991.50 CBM and transported to stockyard, which is brought from the outside of specific sand bearing area. A quantity of 28,991.5 CBM was already dispatched by respondent No.3-Telangana State Mineral Development Corporation, Hyderabad, through online portal and sale amount remitted and transferred directly to the Government treasury and balance quantity of 70,000 CBM is available at stock yard. The sand has been extracted outside the specified sand bearing area, and the sand so extracted stacked properly in the authorized stockyard only. No quantity of sand has been illegally sold in the open market. Out of the sand extracted supra and whatever the sand so far as sold is only through respondent No.3 through online portal and there is no loss of revenue to the Government and a meeting was conducted on 28.04.2016 in this matter and decided to send a request to the Government to permit respondent No.3 to dispose the balance quantity of the sand in the stockyard through

respondent No.3 portal. In view of the above, requested the Principal Secretary to allow respondent No.3 to sell available sand at Chenchupally stockyard i.e., 70000 CBM by forfeiting raising cost of 220/- per CBM to the petitioner-Society. The permission accorded by the impugned letter there from by respondent No.1 to respondent No.3 dated 29.08.2016, which is the subject matter of impugnement in the writ petition, speaks that the Government allowing the request of respondent No.3 to sell the available sand at Chenchupally yard i.e., 70000 CBM by forfeiting raising cost of Rs.220/- per CBM to the petitioner-Society. It is the same now impugned.

5. Several contentions raised by the respondents on maintainability of the writ petition saying it is a sheer contractual liability or violation of a contract and requires adjudication as a civil suit and writ petition is not maintainable, mainly, for recovery of amount of the disputed amount if at all. Leave about the expressions of the Apex Court of even disputed question of fact can also be gone into and merely because the matter involves the monitory claim by itself is not a sole ground, though one of the grounds and particularly from the latest expression of the Apex Court in *Joshi Technologies International Inc. v. Union of India and others*¹, it is observed that there is no absolute bar to the

¹ 2015(7) SCC 728

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 also follows that under the following circumstances, 'normally', the Court would not exercise such a discretion:

(a) the Court may not examine the issue unless the action has some public law character attached to it.

(b) Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

(c) If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

(d) Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

6. Even taken into consideration of the criteria laid down in the expression which clearly says a writ petition even in contractual and money claims is maintainable by every person. A sheer contractual recovery of the amount is not maintainable to consider though there is no absolute bar if at all the court considers as an exceptional case in other respects where there are serious disputed questions of fact

which are of only complex nature may not entertain writ petition. Here, it is not such even to consider the case on hand comes under any of the limbs. It is, more particularly, for the reason that it is not the case of the respondents that the extraction of sand is in the absence of the persons concerned that the respondents under their monitoring and supervision it is only on their showing the extract can be done by the society in utilization of their hard labour for the extraction of sand as the case may be. If at all there is an excess excavation that too in their presence once it is not illegal but for exceeding the contractual limitations if any, that too, when not prevented timely and even by the impugned proceedings respondent No.1 permitted respondent No.3 to sell the sand already excavated and liability in it official on search through their official portal they cannot denied the service charges of excavation by the petitioner-society more particularly under the principle of quasi contract covered by sections 67 to 70 of the Indian Contract Act of the excavation is beyond the permissible limits of the contractual relation by such an irregularity, but for, at best to impose compensation for the act done by them as contemplated by Section 73 out of the remuneration payable to withhold a portion as compensation/penalty as the case may be.

7. Having regard to the above, from the settled principle on the scope of Sections 67 to 70 of the Indian Contract Act laid down by the expression of the Constitution Bench in the State of West Bengal v. B.K.Mondal and sons² of entitled to the amount under quasi contract invoking Section 70 of the Indian Contract Act, where the party has lawfully done some works not entertained to act gratuitously even if it is exceeding the same or outcome of irregularity and it is only, where the other party accepts the thing or enjoys the work done that liability under Section 70 of the Act definitely arise as they accepting extra excavated sand and want to reap the benefits for sale, they are bound to pay for it subject to impose of any compensation out of the amount payable.

8. With the above observations , the Writ Petition is disposed of directing the respondents to pay the remuneration, subject to deduction of reasonable amount out of it as compensation.

9. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.01.2018
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² AIR 1962 SC 779