

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No.688 of 2020

M/s Rajcon Engineers Pvt. Ltd. A Company Duly, Incorporated Under The Relevant Provisions of the Companies Act , 1956, Through Its Director Mr. Jayant Bhandari, Having Its Office At MIG - 11, Padmanabhpur, Durg Chhattisgarh.

---Petitioner(s)

Versus

1. State of Chhattisgarh Through Secretary, Public Works Department, Capital Complex, Mahanadi Bhawan, Atal Nagar, Naya Raipur Chhattisgarh.
2. Chief Engineer Public Works Department, Capital Complex, Mahanadi Bhawan, Atal Nagar, Naya Raipur Chhattisgarh.
3. Engineer- In - Chief Public Works Department, Capital Complex, Mahanadi Bhawan, Atal Nagar, Naya Raipur Chhattisgarh.
4. Executive Engineer Public Works Department, Durg Division, Durg Chhattisgarh.
5. Sub Divisional Officer PWD, Sub Division No. 2, Durg, District Durg Chhattisgarh.

---Respondents

For Petitioner	:	Shri Vivek Chopda, Advocate.
For State	:	Shri Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19.02.2020

1. The relief sought for by the petitioner in this petition is for a direction to the respondents to release admissible dues payable to the petitioner amounting to Rs.21,59,500/- against the work which the petitioner had done for the respondents.
2. Brief facts of the case is that, the petitioner is engaged in construction business and had got tender for the work of B.T. Renewal of Durg-Dhamdha-Bemetara (SH-7) from KM 11 to 41. The duration to complete the work was of 12 months including rainy season. Thereafter, vide letter dated 05.03.2015 a direction was issued to the petitioner for execution of certain additional work by the respondents after obtaining necessary approval from the competent authority vide letter dated 27.02.2015. The

petitioner executed the work to the satisfaction of the respondents without any demurrer. The respondents also issued a completion certificate on 02.02.2016.

- 3.** According to the petitioner, there has been no dispute between the parties in respect of nature, quality and quantity or time taken by the petitioner in the completion of work. The respondents have released substantial portion of the bills raised by the petitioner. However, subsequent to completion certificate being issued, the respondents have not released the balance amount of Rs.21,59,500/- towards additional works done by the petitioner even though more than three years have passed.
- 4.** The petitioner has been visiting the respondents repeatedly but to no avail. The petitioner also has made multiple correspondences in this regard. The grievance of the petitioner is that, the officers in the department has informed the petitioner orally that the balance of amount has not been released on account of lack of funds. On account of not releasing the balance of funds, the petitioner is finding it difficult to settle the dues against which the petitioner, in turn, has to give to the different suppliers from whom the petitioner had procured materials required for the execution of work of the respondents, which has led to the filing of the present writ petition.
- 5.** The contention of the petitioner is that, once when there is no dispute whatsoever in respect of the amount payable to the petitioner, there is no reason why the same should not be released. Paucity of funds can never be a ground for not releasing the admissible dues of a person.
- 6.** The State counsel, on the other hand, opposing the petition submits that the petitioner infact, by way of writ petition, has filed a Suit for recovery or money Suit, which under Article 226 of the Constitution of India is not

permissible. Further contention of the State counsel is that, for the settlement of dues or for settlement of claim arising out of a contract, writ remedy is not a solution. The petitioner ought to have approached the competent Civil Court or should have raised an arbitration dispute for releasing of the money, if any, if at all he is entitled for. Thus, prayed for rejection of the writ petition.

7. Having heard the contentions put forth on either side and on perusal of records, what cannot be lost sight of is that the admitted factual position that of petitioner being awarded a contract by the respondents. The petitioner discharged his contractual obligation by executing the work to the satisfaction of the respondents. From the correspondence that are made available with the writ petition, there does not seem to be any dispute in respect of quality and quantity in respect of executed work, nor is there any dispute in respect of time taken by the petitioner in the execution of the said work.
8. Under the given circumstances, the question is, should the petitioner be relegated to approach the Civil Court by filing a Civil Suit for redressal of his grievances particularly when there is no dispute between the parties.
9. The Hon'ble Supreme Court in the matter of ABL International Ltd. & Anr. V. Export Credit Guarantee Corporation of India Ltd. & Ors., (2004) 3 SCC 553 has held as under :-

“23. It is clear the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ

court can issue suitable directions to set right the arbitrary actions of the first respondent.”

26. Therefore, this objection must also fail because in a given case it is open to the writ court to give such monetary relief also.

27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition :-

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.”

10. The Supreme Court in the case of Food Corporation of India & Another Vs.

SECL Ltd. & Others, (2008) 3 SCC 440 in paragraph 15 to 18 has held as under :-

“15. When supply of sugar was made in terms of a statutory order as also on the directions issued by the Central Government and in the cases there did not exist any factual dispute, we do not see any reason as to why the writ petitions would not be maintainable.

16. It is now no longer res integra that contractual disputes involving public law element are amenable to writ jurisdiction. In these cases, the Central Government not only scrutinized the bills but also verified the claims of the respondents. A direction was issued to make payment. Appellant, which is a 'State' within the meaning of Article 12 of the Constitution of India, withheld payment without any legal justification.

17. The High Court referred to several letters issued by the Central Government to arrive at the conclusion that where sugar had been lifted by a third party without any complaint, protest or demur of shortages, there was no reason as to why payment therefore could not be made.

18. Appellant could not have withheld payment on the basis of the purported shortages in supply of sugar under the contracts made by the respondents many many years back, save and except under the terms of binding contract.”

11. Similar view was also taken by the Supreme Court in case of Godavari Sugar Mills Ltd. Vs. State of Maharashtra & Ors., 2011(2)SCC439, wherein it has been held that order of payment of money which is admissible and where there is no dispute, can be made in a writ proceedings in exercise of powers of the High Court under Article 226 of the Constitution of India.

12. Following the aforesaid judgments of Supreme Court, the Division Bench of this court also in Om Sai Traders & Tent House Vs. State of Chhattisgarh & Others, WA No.38 of 2015, decided on 19.02.2015, had set aside the judgment passed by the Single Bench dismissing a writ petition of similar nature and while allowing the Writ Appeal, relying upon the aforesaid judgments, has held as under:

“6. In absence of any disputed facts or dispute regarding the amount of money being involved, we are not inclined to relegate the Appellant to the remedy of a Civil Suit.

7. Let the remaining dues of the Appellant reckoned in accordance to the respondents letter dated 22.03.2014 and 26.03.2014, after adjustment of the payment already made, be paid to the Appellant within a maximum period of four weeks from the date of receipt and /or production of a copy of this order failing which the Appellant shall be at liberty to claim interest upon the same.”

13. Recently, this court also had in WPC No.544 of 2020 in case of Vijay Kumar Garg Vs. State of Chhattisgarh & Ors. decided on 06.02.2020, had again considered the aforesaid judgments and allowed the writ petition

directing the respondents to process the admissible claim of the petitioner and release the same at the earliest.

14. Given the aforesaid facts and circumstances of the case, this court is inclined to allow the present writ petition and direct the respondents to immediately process the claim of the petitioner and to release admissible dues payable to the petitioner after adjustment of any payment either already made or after deducting any statutory dues payable by the petitioner. Let the amount be paid to the petitioner within a maximum period of 90 days from the date of receipt of copy of this order, failing which the petitioner shall also be entitled for interest on the said amount @ 12 percent per annum from the date the amount fell due till the payment is actually made.

15. The writ petition accordingly stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge

inder