

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 919 of 2020**

M/s Ritesh Kumar Agrawal Partner- Ritesh Agrawal, Aged About 35 Years, S/o Natwar Agrawal, R/o Ward No. 05, Near Durga Temple, Baradwar, Tahsil And Police Station Sakti, Civil And Revenue District Janjgir Champa Chhattisgarh. Mo. No. 9993775004

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mantralaya, Atal Nagar Raipur, Tahsil And District Raipur Chhattisgarh
2. Chief Engineer, Hasdeo Basin, Water Resources Department Bilaspur, Tahsil And District Bilaspur Chhattisgarh
3. Superintending Engineer, Water Resources Circle Bilaspur, Tahsil And District Bilaspur Chhattisgarh
4. Executive Engineer Kharung, Water Resources Division Bilaspur, Tahsil And District Bilaspur Chhattisgarh
5. Sub Divisional Officer, Water Resources Surveyor, Sub Division Bilaspur, Tahsil And District Bilaspur Chhattisgarh

---**Respondents**

For Petitioner	: Shri Ratnesh Kumar Agrawal, Adv.
For State	: Shri Abhyunnati Singh, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

16/03/2020

1. The present writ petition has been filed substantially claiming for the following relief:-

“10.2 That, this Hon'ble Court may kindly be pleased to direct to the respondent authority to finalize the work of the petitioner firm and further be pleased to direct to the respondent No. 4 to make final payment to the petitioner firm as per the direction issued by the respondent No. 2 dated 31.08.2019 (Annexure – P/1)”

2. The brief facts of the case is that the petitioner is a contractor and has got a contract for the work of construction of Main Canal from R.D. OM to R.D. 9930M including its minor canal and their canal structure of Sildaha Diversion Scheme, thereafter, the work order was issued on 05.10.2016.
3. According to the Counsel for the petitioner firm, the petitioner firm has completed 90% of the work awarded to him but due to non

availability of land, the remaining part of the work order could not be executed. The non execution of balance of 10% work was exclusively on account of fault on the part of the State Government and the petitioner firm was not in any manner responsible for the same. According to the Counsel for the petitioner firm, petitioner firm thereafter had intimated the authorities for final settlement of his contract as on account of non availability of land, the work could not be carried out any further. This, the respondents have not finalized till date in spite of recommendation being made by the respondent No. 2 in this regard.

4. At this juncture, this Court is of the opinion that the Writ Petition would not be maintainable for the reason that, the claim of the petitioner firm for making the final payment payable to the petitioner firm as the payment payable to the petitioner firm arises out of contractual agreement between the petitioner and the State Government. Moreover, the agreement entered into between the parties specifically has a clause for settling the dispute by way of an arbitration proceeding.
5. What also needs consideration is that, the Writ Court or the Writ Petition can not be converted into money suit. Another reason on which this Court finds this writ petition not sustainable is the fact that the claim of the petitioner are all questions of fact in as much as it needs determination, whether the petitioner firstly has completed 90% of the work, secondly, whether the work is executed for to the satisfaction of the respondent-authorities, thirdly, whether the balance of 10% work incompleted or unconcluded was on account of fault on the part respondent/State or not. All these are facts, which need an adjudication by leading of evidence which again

would not be permissible under the Writ jurisdiction of this Court.

6. In case of **Kisan Sahkari Chini Mills Ltd. & Ors. Vs. Vardan Linkers & Ors**, AIR 2008 SC 2160, it has been in a very categorical terms laid down by the Supreme Court that public law remedy under Article 226 of the Constitution of India is not available to seek specific performance of contract or even damages for breach of a contract unless the contractual dispute has a public law element. It has been time and again held by the Supreme Court that powers under Article 226 are to be exercised by applying the constitutional provision and judicial guidelines and violation, if any, of the fundamental rights, and the courts should be reluctant to exercise the power of judicial review in rights on the basis of contracts.
7. It is also settled position of law that a contract would not become statutory simply because it has been awarded by a statutory body and therefore, the writ petition to enforce contractual claim was not maintainable.
8. Similar view has also been taken by the Supreme Court in case of **Jagdish Mandal Vs. State of Orissa & Others**, 2007(14)SCC517, wherein it has been held that the power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest or to decide the contractual disputes. It was also held that a writ petition in the contractual matters would be entertained only if there is an element of public interest.

The same view has been further re-iterated by the Supreme Court in case of **Godavari Sugar Mills Ltd. Vs. State of Maharashtra**, 2011(2)SCC 439, wherein discussing the judicial pronouncements on the subject, again laid down the legal proposition holding that normally a writ petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of breach of contract. The aggrieved party will have to agitate the question in a Civil Suit. The said view has already been a settled position of law since long, as would be evident from the case of **Food Corporation of India & Ors. Vs. Jagannath**

Dutta & Ors., AIR 1993 SC 1494 and **State of UP & Ors. Vs. Bridge & Roof Co. (India) Ltd.**, JT1996(7)395.

9. Given the facts and circumstances of the case and the legal position as it stands in support of aforesaid judgments, this Court is of the prima facie view that the claim for recovery of money from the respondents can not be decided while exercising the writ jurisdiction of this Court. Reluctance of this Court in entertaining of the writ petition would not preclude the petitioner from availing other remedies open to him under law.
10. The writ petition thus stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Jyotijha