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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1510 of 2019**

CYBERNET SYSTEM, through its Proprietor - Shri Santosh Singh
Aged About 47 Years, S/o Shri R. N. Singh, Having its office at
Shop No. 22, Ekatm Parisar, BJP Complex, Rajbandha Maidan,
Raipur Chhattisgarh.

---- Petitioner**Versus**

1. Bastar University, through its Registrar, Bastar Vishwavidyalaya, Jagdalpur, Dharampura, District Bastar Chhattisgarh.
2. State of Chhattisgarh, Through the Secretary, Department of Higher Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur Chhattisgarh
3. Vice Chancellor, Bastar University, Jagdalpur, Dharampura, District Bastar Chhattisgarh.
4. S.P.Tiwari S/o Late J.P. Tiwari, aged about 64 years (Ex - Registrar Of Bastar Vishwavidyalaya) at present working as Assistant Professor in Government Danteshwari Women College, Jagdalpur District Bastar Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Shobhit Mishra, Advocate.
For Respondent/University	:	Shri Neeraj Choubey, Advocate
For Respondent/State	:	Shri Chandresh Shrivastava, Deputy Advocate General

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per P.R. Ramachandra Menon, Chief Justice****19.10.2020**

1. The Petitioner has moved this Court with the grievance that Annexure P/2 purchase order dated 16.03.2016 issued by the 1st Respondent-University has been cancelled/terminated as per Annexure P/1 order dated 06.07.2017. The prayer is to quash the said order passed about

3 years ago and to direct the Respondents to make payment of Rs.26,27,625/- with penal interest for the product supplied by the Petitioner to the University.

2. Shri Mishra, the learned counsel for the Petitioner submits that pursuant to the Annexure P/2 purchase order issued by the 1st Respondent-University in the name of M/s. HCL Infosystems Limited, New Delhi, for supplying 65 sets of HCL (Acer) Desktop Computers to the University as per DGS&D rates, M/s. HCL Infosystems Ltd. had issued Annexure P/3 authorisation dated 30.03.2016 showing the Petitioner as the business partner for supply of the computers to the University. According to the Petitioner, 65 sets of desktop computers were supplied to the University on 27.04.2016 as borne by Annexure P/5, and the inspection is also stated as carried out. On 26.04.2016, the Petitioner raised a bill for Rs.26,27,625/- to the University in respect of the supply of 65 Desktops as above, as discernible from Annexure P/4. Despite many a representation, the University did not take any steps to honour the payment and issued some letters/proceedings to the HCL Infosystems Ltd. in connection with the purchase order issued to them. It is also pointed out that the 1st Respondent-University treated the computers supplied by the Petitioner as unauthorised and made some police complaints as well. This, according to the Petitioner was at the instance of the 4th Respondent, the then Registrar of the University who was allegedly having personal animosity with the Petitioner. It is also the case of the Petitioner that the then Vice Chancellor of the University (3rd Respondent) had written Annexure P/16 letter dated 29.07.2016 to the 1st Respondent asking to effect the payment without delay; which however was not honoured, despite the various reminders as borne by Annexure P/17. It is further brought to the notice of this Court that the matter was taken up by filing a complaint on 16.06.2017 against the Respondents before the Lok Ayog, Raipur under the provisions of the Chhattisgarh Lok Ayog Adhiniyam,

2002 and that the Lok Ayog had directed the 2nd Respondent to set up a departmental enquiry against the 4th Respondent and inform the outcome. This is stated as put to challenge by the 4th Respondent in a writ petition filed as Writ Petition (S) No. 4477 of 2018 which is stated as pending. The cancellation of the purchase order and the non-payment of the amount due to the Petitioner in respect of the product supplied is stated as highly arbitrary and malafide and hence sought to be interfered by this Court.

3. The 1st Respondent-State has filed a return to the effect that the grievance is actually against the University and that the State is only a formal party. A return has been filed on behalf of the Respondent-University as well; primarily contending that the cause of action is hopelessly barred by limitation; it being a challenge raised against Annexure P/1 order passed about three years ago. It is further pointed out that the grievance project in the writ petition is virtually of 'civil nature' and it involves disputed questions of facts, which is not liable to be entertained in a writ petition under Article 226 of the Constitution of India. Reliance is sought to be placed on the verdicts passed by the Apex Court in this regard as reported in ***Union of India v. Ghaus Mohammad***; {AIR 1961 SC 1526}, ***K.S.C.M. Ltd. v. Satrugan Nishad***; {AIR 2003 SC 4531} and ***U.P. State Bridge Corporation Ltd. v. U.P.R.S.N.S.K.Sangh***; {AIR 2005 SC 4067}.

4. With regard to the merit involved, it is pointed out that there is no privity of contract between the Petitioner and the Respondent-University and that purchase order (Annexure P/2) was never issued to the Petitioner but in favour of M/s. HCL Infosystems Ltd. It is pointed out that, despite the work order and the communications issued by the University, there was no proper response from the side of the HCL Infosystems Ltd. They even refused to give any undertaking about the Desktop computers supplied by the Petitioner. Since the HCL Infosystems Ltd. had not acted upon the purchase order dated 16.03.2016 of the University, the then Registrar had preferred Annexure R/2

complaint before the State Government and informed the irregularities committed by the then Vice Chancellor in the matter of purchase; seeking for an enquiry. A complaint was also preferred by the then Registrar (4th Respondent) before the Police Station concerned and his statement was recorded. In the meanwhile, the Government conducted an enquiry in respect of some other irregularities which was committed by the then Vice Chancellor and found him guilty. Invoking the power and jurisdiction under the provisions of the relevant enactment, the Government removed the then Vice Chancellor from the post and the Commissioner, Bastar Division was put as 'in-charge Vice Chancellor' of the Bastar University, as borne by Annexure R/5 proceedings. Later, the service of the 4th Respondent was transferred in January, 2017 and another person by name Harilal Nayak has taken charge of the post of Registrar in the University. It is pointed out that the University had constituted a Committee to enquire into the transactions and that the Committee has found a number of irregularities in the purchase. The recommendation made by the Committee was accepted by the University and on 06.07.2017, the University cancelled the Annexure P/2 purchase order dated 16.03.2016 issued to the M/s. HCL Infosystems Ltd. vide Annexure P/1 and informed the Petitioner to take back the 65 sets of Desktop computers supplied by them without obtaining any purchase order from the University.

5. The learned counsel for the University submits with reference to the contents of the reply filed; that the regular Vice Chancellor appointed by the State Government was required by the Lok Ayog to look into the matter, pursuant to the complaint preferred by the Petitioner. The new Vice Chancellor of the University also gave a finding that the University was not responsible for making any payment to the Petitioner firm and the position was informed to the Lok Ayog accordingly. This was followed by subsequent proceedings of the Lok Ayog and pursuant to the directions issued in this

regard, the Vice Chancellor of the University heard both the parties again and found that the University had not issued any purchase order to the Petitioner for supplying 65 sets of Acer brand Desktop computers and hence was not entitled to get any payment from the University. This was communicated to the Lok Ayog, who has proceeded with further steps. Serious allegations have been levelled against the Lok Ayog as well, complaining about the alleged coercive tactics. Reference is also made to Writ Petition (S) No. 4477 of 2018 preferred at the instance of the 4th Respondent before this Court, where interim stay with reference to the proceedings of Lok Ayog has been granted on 10.07.2018 by a learned Judge of this Court as per Annexure R/14. It is the version of the Respondent-University that the Petitioner has simply dumped the computers in the University without obtaining any purchase order from the University and hence, the University on many a time has written letters and requested to take back the computers supplied unauthorisedly. The University has also made request to the District Administration for taking appropriate steps in this regard, as discernible from Annexure R/15.

6. On considering the rival pleadings and the submissions made from both the sides, it is revealed that the cause of action virtually amounts to a civil dispute in relation to the supply of 65 sets of Desktop computers by the Petitioner to the University, admittedly, without getting any purchase order from the University, but for Annexure P/2 purchase order issued by the University in favour of M/s. HCL Infosystems Ltd. The supply was effected based on the understanding between the Petitioner and M/s. HCL Infosystems Ltd. and there is no privity of contract between the Petitioner and the University. That apart, when the supply has been effected by the Petitioner on the basis of the instructions given by the HCL Infosystems Ltd., the Petitioner has not chosen to implead the HCL Infosystems Ltd. in the party array. If the Petitioner has effected supply on the basis of the

instructions given by M/s. HCL Infosystems Ltd. (based on the understanding between them) and no payment has been made, it is always open for the Petitioner to proceed with appropriate steps against M/s. HCL Infosystems Ltd. with regard to which we do not intend to express any opinion. The rights arising out of an agreement/understanding between the Petitioner and the HCL Infosystems Ltd. for effecting supply of 65 Desktop Computers to the Respondent-University (without involvement of the University) is virtually sought to be enforced through the writ petition, seeking for a direction to be given to the University to effect the payment. We find it difficult to entertain the prayers as it is purely a civil cause of action, if at all any, and further that there is no 'privity of contract' between the Petitioner and the University. That apart, there are serious 'disputed questions of fact', which cannot be adjudicated in a writ petition under Article 226 of the Constitution of India.

7. In the above circumstance, we decline interference and the writ petition is dismissed without prejudice to the rights and liberties of the Petitioner to pursue other appropriate remedies in accordance with law, to the extent it is legally maintainable against the parties concerned.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE