NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1273 of 2020

M/s Shreejikrupa Project Limited, A Company Incorporated Under The Provisions Of The Companies Act, 1956 Having Its Registered Office At Krishna Complex - 2, Near Jaipark Nana Mava Main Road, Rajkot 360001 (Gujarat) And Its Branch Office At 289, Sunder Nagar, Behind CSEB Office, Raipur 492013 Chhattisgarh, Through Its Managing Director, Karsanbhai, Bachubhai Varsani.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Public Works, Department, Atal Nagar, Raipur, 492001, Chhattisgarh.
2. The Chief Engineer Public Works Department, Bastar Zone, Jagdalpur 494001, Chhattisgarh.
3. The Superintending Engineer Public Works Department, Bastar Circle, Jagdalpur 494001, Chhattisgarh.
4. The Executive Engineer Public Works Department (B&R), West Bastar Division Bijapur 494444, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Kshitij Sharma, Advocate
For State	:	Mr. Siddharth Dubey, Dy. G.A.

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

07/08/2020

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.5,20,09,090/- 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 a tender for construction of "***Government Political Building at Beejapur"*** which included the electrical work. The duration to complete the work was of 16 months.

The petitioner executed the work to the satisfaction of the respondents without any demurrer. The respondents also issued a completion certificate on 02.09.2019.

3. According to the counsel for 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.5,20,09,090/- even though about 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 that the balance of amount has not been released on account of not receiving administrative sanction. On account of not releasing the balance of funds, the petitioner is finding it difficult to settle the dues 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. This has led to the filing of the present writ petition. The respondents in the instant case have also filed a reply on 13.07.2020 and in the reply they have taken a categorical stands that the claim of the petitioner is under consideration at the Government level and the Government expects to resolve the grievance of the petitioner within a period of 4-6 months.

5. The contention of counsel for 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. Non-granting of administrative sanction 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 a money Suit, which under Article 226 of the Constitution of India is not maintainable. 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 above said 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 Hon'ble 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) SCC 439**, 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 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 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 any statutory deductions to be made from the dues payable to the petitioner. Let the amount be paid to the petitioner within a maximum period of 120 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 @ 6 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 off.

Sd/-
(P. Sam Koshy)
Judge

Ved