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HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 2504 of 2019

M/s Niranjan Lal Agrawal A Proprietorship Firm Having Its Office at Tulsi Marg, Korba Chhattisgarh Having Its Proprietor Shri Raj Agrawal, S/o Late Niranjan Lal Agrawal, Aged 38 Years, R/o House No. 03, Tulsi Marg Korba Chhattisgarh, District : Korba, Chhattisgarh

---- Petitioner

Versus

1. Coal India Limited Through Its Chairman, 10, Netanji Subhash Road, Kolkata, West Bengal, District : Kolkata, West Bengal
2. South Eastern Coal Field Limited Mini Ratna Company Subsidry Of Coal India Limited Through Its Chairman-Cum-Managing Director, Secl, Bhawan, Sipat Road, Sarkanda Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
3. General Manager (Operation) South Eastern Coal Field Limited, Jamuna And Kotma Area, Anuppur M. P., District : Anuppur, Madhya Pradesh
4. Idbi Bank Limited Through Its Brnach Manager, Idbi Bank, Plot No. 26, Transport Nagar, Korba Chhattisgarh, District : Korba, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Malay Shrivastava, Advocate
For Respondent/s	:	Mr. Vivek Chopda, Advocate

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

14/01/2020

1. The present writ petition has been filed seeking for a direction to the respondents for releasing of an amount of Rs. 1,031,3737/- with interest at the rate of 18% per annum from the date of completion of work i.e. 09.08.2016 till the date of release of same.

2. The brief facts of the case is that the petitioner had participated in the tender process for mechanical transfer of coal into tippers for transportation of coal to Govinda Siding. The petitioner's offer was accepted and an agreement was also executed between the petitioner. It is also submitted that in pursuance to the contract agreement, the petitioner executed the work. The further contention of the petitioner is that for the purpose of executing the contract entering into an agreement the petitioner had to provide certain bank Guarantee and FDR's as a security. The grievance of the petitioner now is that though they have executed the work, the respondents have not released an amount of Rs.1,0313737/- and for which the petitioner has been running from pillar to post in the office of the respondents and finally the petitioner is compelled to file the present writ petition.

3. According to the petitioner, there is no unsatisfactory report, so far as the aforesaid contract is concerned. The completion certificate also has been issued by the concerned authority yet, the authorities are not releasing the undisputed amount payable to the petitioner.

4. Per contra, counsel appearing for the SECL opposing the petition submits that the amount and the security of the petitioner has not been released on account of specific instructions received from the department of the Central GST and Central Excise under the Government of India. According to the counsel for the respondent they had received specific instructions from the Ministry of Finance, Department of Revenue Annexure R-4 dated 24.08.2016 whereby

the respondent SECL was specifically directed by the authorities of the Central Excise Intelligence Department not to release the bank guarantee and also to withhold of payment of security deposits falling due to the petitioner until further orders. According to the counsel for the respondent SECL similar correspondences have been made by the department at later stages also. It was for these reasons that the amount payable to the petitioner was not released. It was also the contention of management of SECL that bank guarantee which was executed by the petitioner in favour of the SECL was since released for its realization by the Central Excise Department and necessary instructions in this regard was given to the bank authorities also. The counsel for the management of SECL submits that there was another reason for not releasing the dues to the petitioner as there were certain dues recoverable from the petitioner to the SECL in respect of a different contract which the petitioner had executed in a different area and all these reasons justify the action of the part of the respondents in not releasing the dues. Moreover, the respondents have also raised a preliminary objection to the maintainability of the writ petition on the ground that it consists of disputed questions of facts and for adjudication of the same it would require recording of evidence which otherwise would not be permissible under the writ jurisdiction of this Court. There was yet another objection raised by the respondent that the petition deserves to be rejected on the ground of non-joinder of necessary party. According to the counsel for the respondent the department of Central GST and Central Excise is a necessary party for the reason that the petitioner is fully aware of the fact that the payment by the respondents have been withheld at the instance of the said department of the Government of India and which the answering respondents were duty bound to honour and without the said department being a respondent in the present writ petition it would be difficult to adjudicate the claim raised by the petitioner in the present writ petition.

5. Having heard the contentions put forth on either side and on perusal of records what clearly reflects from the pleadings and submission put forth on either side is that the petitioner admittedly had entered into a contract which petitioner had also in course of time executed and there were certain dues which were yet to be settled.

6. There is also no dispute from the pleadings that on the charge of evasion of service tax the concerned department had instructed the management of SECL for stopping the further release of payment payable to the petitioner and for withholding of the dues of the petitioner establishment. Admittedly, the Excise Department is not a party to the writ petition. So far as the demand of the service tax from the petitioner establishment by the department of Central GST and Excise Department the petitioner establishment has already approached the CESTAT(Central Excise Service Tax Appellate Tribunal). The respondents have also raised a claim from the petitioner establishment of certain dues recoverable in respect of another contract in a different area of SECL which was executed by the petitioner.

7. From the aforesaid factual matrix, it is evidently clear that the claim of the petitioner becomes a disputed claim so also what clearly reflects is that amount payable has been withheld on account of specific instruction issued by the Service Tax Department.

8. The Supreme Court in the case of State of **Kerala & others Vs. M. K. Jose** reported in **2015 (9) SCC 433** has held that the writ petition is not the proper proceedings for adjudication of disputes related to contractual obligations. It has been held by the Supreme Court that ascertaining of facts based on contents of affidavit is impermissible particularly in contractual disputes. Such disputes and issues are required to be decided after considering the evidences adduced by either side which is not normally permissible before the Writ Court. For the High Court to exercise the extraordinary powers under Article 226 of the Constitution of India there has to be facts and grounds based on sound judicial principles and which are totally undisputed. It has further been held by the Supreme Court in the said judgment that when the petition raises questions of fact of complex nature, which may for their determination require oral evidence to be taken, and on that account the dispute may not appropriately be tried in a writ petition, the High Court may decline to entertain such a writ petition. It is by now a well settled position of law that no writ would lie to enforce a right which is founded purely on contract.

9. In the instant case, the entire claim of the petitioner arises out of a work contract entered into between the petitioner and the respondents. It is not a case between the parties of breach of contract. What has to be seen is that after the petitioner has

discharged its contractual obligations, the respondent Management has itself released the periodical dues payable to the petitioner. However, by the time the contract was culminated, the respondents received a specific instruction from the Govt. of India, Ministry of Finance to firstly stop all the releasing of further dues payable to the petitioner and secondly to withhold the security amount lying with the respondents including any bank guarantee and other fixed deposits as security. This aspect is not disputed by the counsel for the petitioner. The said Central Service Tax and Central Excise Department is not a party before this Court.

10. Given the said facts, this Court is of the opinion that it would not be proper for the writ Court at this juncture for invoking the extraordinary writ jurisdiction under Article 226 of the Constitution of India directing the respondents for releasing the dues payable to the petitioner or for issuance of any sort of writ.

11. The writ petition therefore fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Rohit