

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6520 of 2021

-
1. M/s Jamurat Lal Abdul Rasid Tent Contractor through its Proprietor Harun Rasid having its head office at Mohalla- Ashok Rajpath, Dargah Road, P.O. Mahendru, P.S.- Sultanganj, District- Patna.
 2. Harun Rasid Son of Jaiful Haque Resident of Mohalla- Ashok Rajpath, Dargah Road, Pathar Ki Masjid, P.O.- Mahendru, P.S. Sultanganj, District- Patna.

... .. Petitioners

Versus

1. The State of Bihar through the Chief Electoral Officer, Bihar, Patna.
2. The Chief Electoral Officer, Bihar, Patna.
3. The District Election Officer-cum-District Magistrate, Supaul.
4. The Additional Collector, Supaul.
5. The Deputy Election Officer, Supaul.
6. The Senior Treasury Officer, Supaul.
7. The Deputy Commissioner, State Tax, Supaul.
8. The Executive Engineer, Building Division, Supaul.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Gaurav Govind, Advocate
For the Respondents	:	Mr. Prashant Pratap, G.P.-2
		Mr. Lala S.N.Rais, AC to G.P.-2

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 22-02-2022

The petitioners in the present writ application are seeking quashing of a report dated 06.11.2019 submitted by a five-member committee, whereby against a total bill of Rs.1,99,16,043.57 as submitted by the petitioners, a sum of Rs.20,66,161.00 has been approved and paid to the petitioners. The petitioners are further seeking issuance of a writ in the nature



of writ of *mandamus* directing the respondents to pay the remaining amount of Rs.1,78,49,882.00, which, according to the petitioners, has been illegally deducted by the respondents from their bills. The said impugned report dated 06.11.2019 has been brought on record by way of Annexure-3 to the writ application.

2. It has been stated that petitioner No.1 is a partnership firm engaged in undertaking contractual work of supply of tent *shamiyana*, pipe *pandal*, chair, table carpet etc. having its office at Patna. Petitioner No.2 is the proprietor of petitioner No.1, the firm.

3. It is the petitioners' case that for the Lok Sabha elections 2019, a tender notice was issued for supply of various articles for the election work in Supaul district by providing tent *shamiyana* etc. It is their further case that the petitioners' technical bid was opened and it was declared successful, whereafter a decision was taken to open the financial bid. It is the petitioners' further case that they being the lowest amongst the tenderers, the work was awarded to them, and the work order was issued under the signature of the District Election Officer-cum-District Magistrate, Supaul. There are averments made in the writ petition in respect of the materials and the services provided by the petitioners during the course of the said election. It is the



petitioners' specific case in the writ application that they are entitled to a sum of Rs.1,99,16,043.57 against the works executed by them under the orders of the authorities from time to time, but the respondents, based on an illegal report of a committee dated 06.11.2019, have paid only a sum of Rs.20,66,161.00.

4. A counter affidavit has been filed on behalf of the respondents. Paragraphs 9 and 10 of which read as under: -

“9. That out of above agencies M/s Ashiyana Tent House, Samastipur submitted it's bill worth Rs.25,64,844.00, M/s Subh Lakshmi Tent House, Saharsa submitted it's bill worth Rs.8,67,024.00 where as the petitioners agency submitted it's bill worth Rs.1,99,16,043.57.

10. That the bills submitted by the agencies appeared to be the bills of excess amount and hence it was thought proper to verify and examine the amount of bills submitted by the agencies through a competent committee and hence upon the orders of the District Election Officer-cum-District Magistrate, Supaul the Additional Collector constituted a five men committee comprising of (1) Additional Collector, Supaul (2) Deputy Election Officer, Supaul (3) Sale Tax Commissioner, Supaul (4) Executive Engineer, Building Division,



Supaul and (5) Senior Treasury Officer, Supaul vide memo no.1676-2/Ele. Dated 06.07.2019 and there after all the bills submitted by the agencies were issued to the five men committee for it's verification and examination."

5. In paragraph 14, it has been stated that as against the bill of Rs. 1,99,16,043.57 submitted by the petitioners, a sum of Rs.20,66,161.00 was found payable and accordingly recommended for payment to the petitioners. The petitioners have received the said amount of Rs.20,66,161.00, but with certain objections.

6. Mr. Gaurav Govind, learned counsel appearing on behalf of the petitioners has strenuously attempted to convince this Court that the report of the five-member committee dated 06.11.2019, having been submitted without giving the petitioners an opportunity of hearing, deserves interference by this court in a proceeding under Article 226 of the Constitution of India and this Court should, after quashing the said report, direct the respondents to reconsider the petitioners' claim for payment of the amount as raised in different bills submitted by them.

7. We are not persuaded by the submissions advanced on behalf of the petitioners. The report dated 06.11.2019, which is under challenge in the present writ application, cannot be



considered to be an adjudication by any *quasi-judicial* authority, which would have required giving the petitioners an opportunity of hearing. The said report is simply a determination of the amount payable to respective contractors. The petitioners are, in substance, disputing the amount which has been determined by the respondents payable to the petitioners. Apparently, the petitioners have raised a money claim arising out of a contract between them and the State respondents. Admittedly, the claim, which the petitioners have raised in the present writ application is disputed not only in the counter affidavit but also in the report of the five-member committee, which is under challenge in the present proceeding.

8. The Supreme Court's decision in the case of ***Joshi Technologies International Inc. v. Union of India*** reported in (2015) 7 SCC 728, can be usefully referred to in this regard, the relevant portion of which reads as under :

“55. Law in this aspect has developed through catena of judgments of this Court and from the reading of these judgments it would follow that in pure contractual matters the extraordinary remedy of writ under Article 226 or Article 32 of the Constitution cannot be invoked. However, in a limited sphere such remedies



are available only when the non-Government contracting party is able to demonstrate that it is a public law remedy which such party seeks to invoke, in contradistinction to the private law remedy simpliciter under the contract. Some of the case law to bring home this cardinal principle is taken note of hereinafter.

69. The position thus summarized in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, it can refuse to exercise. It also follows that under the following circumstances, “normally”, the Court would not exercise such a discretion:

69.1. The Court may not examine the issue unless the action has some public law character attached to it.

69.2. Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the



said mode of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.

69.3. If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

69.4. Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances”.

9. In the case of ***Thansingh Nathmal v. Supdt. of Taxes*** (AIR 1964 SC 1419), the Supreme Court, dealing with the scope of jurisdiction of the High Court under Article 226 of the Constitution has held that jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the said Article. The exercise of the jurisdiction, however, is discretionary, which is not exercised merely because it is lawful to do so. The Supreme Court further held that resort to jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. The Supreme Court in most uncertain terms has held that the High Court does not



generally enter upon a determination of questions, which demand an elaborate examination of evidence to establish the right to enforce which in the writ is claimed.

10. In *Suganmal v. State of M.P.* (AIR 1965 SC 1740), the Supreme Court has held that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax.

11. In the case of *Smt. Gunwant Kaur v. Municipal Committee, Bhatinda*, reported in (1969) 3 SCC 769, the Supreme Court again emphasized that when a petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account, the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. The Supreme Court has further held in the case of *Smt. Gunwant Kaur* (supra) that rejection of a petition in *limine* will normally be justified, where the High Court is of the view that the petition is



frivolous or because of the nature of the claim made, dispute sought to be agitated or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction or for analogous reasons.

12. Placing its reliance in the case of *Smt. Gunwant Kaur* (supra), the Supreme Court in the case of *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, reported in (1974) 2 SCC 706, reiterated that when the petition raises complex questions of fact, which may for their determination require oral evidence to be taken and on that account and the High Court is of the view that the dispute should not appropriately be tried in writ jurisdiction, the High Court may decline to try a petition.

13. On perusal of the pleadings on record and on examination of submissions advanced on behalf of the petitioners, we are satisfied that it is purely a money claim arising out of a contract between the parties, which has been raised in the present writ application. The claim of the petitioners may require adduction of oral or documentary evidence. For the foregoing reasons, we are not inclined, in the present writ proceeding under Article 226 of the Constitution of India, to entertain the dispute.



14. We do not find any merit in this application. This application is accordingly dismissed.

15. The petitioners shall, however, be at liberty to raise their claim before the appropriate forum/Court since we have not gone into the merits of such claim.

16. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.03.2022.
Transmission Date	N/A

