IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14733 OF 2017

Jain Irrigation Systems Ltd.,
Jain Plastic Park, P.O. Box 72,
National Highway No.6
Jalgaon .. Petitioner

Versus

1. The Union of India
Through its Ministry of New and
Renewable Energy (Solar Group),
Block No.14, CGO Complex,
Lodhi Road, New Delhi

2. Indian Renewable Energy Development
Agency Ltd.
A Government of India Enterprise,
3rd Floor, August Kranti Bhawan,
Bhikalji Cama Place, New Delhi. .. Respondents

...

Mr. Subodh P. Shah, advocate for the petitioner
Mr. Ajay G. Talhar, Advocate for Respondent no.1
Mr. R.F. Totala, Advocate for Respondent No.2

...

CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.

RESERVED ON : 27.09.2022
PRONOUNCED ON : 03.10.2022

JUDGMENT (*PER* SANDEEP V. MARNE, J.) :

1. Present Petition is filed to enforce money claim against the Respondents. Petitioner seeks direction to the respondents to disburse

amount of Rs.3,00,64,762/- along with interest at the rate of 18% towards reimbursement of benefits provided by it to the end users. The claim is raised towards subsidy for installation of Solar Water Heating Systems from time to time under the program of 'Off-Grid and Decentralized Solar Applications'. The petitioner has sought following prayers:

> '*A] The Hon'ble High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order of direction in the nature of writ and thereby direct the Respondents to honour the commitment made to the present petitioner as a channel partner for implementation of Jawaharlal Nehru National Solar Mission.*
>
> *B] The Hon'ble High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ and thereby direct the Respondents to disburse an amount of Rs.3,00,64,762/- along with interest @18% to the petitioner towards the reimbursement of benefits provided by the petitioner company to the end users.*
>
> *C] Pending hearing and final disposal of this Writ Petition, the Hon'ble High Court may be pleased to direct the Respondents to maintain the balance amount of Rs.56 Crores as it is with Respondent No.2.*
>
> *D] Any other just and equitable relief to which the petitioner may be found entitled may be granted.*'

2. The amount of Rs.3,00,64,762/- represents claims under several heads and which have been rejected by the Respondents citing different reasons for each claim. By filing their respective affidavits-in-reply, both respondent nos.1 and 2 have opposed the

claim of the petitioner stating that the same involves factual disputes.

3. We therefore put across to Mr. Subodh Shah, the learned Counsel appearing for the petitioner as to how writ petition under Article 226 of the Constitution of India could be entertained to decide money claim involving factual disputes. Mr. Shah would contend that there are no disputed questions of fact and the entitlement of the petitioner can be decided only by perusal of documents and interpreting the provisions of the scheme. That the action of the Respondents is barred by principles of promissory estoppel. He contends that even if some artificial disputes are created by Respondents in respect of other claims, the first claim of Rs. 2,04,42,980/- did not involve any factual dispute and can be adjudicated and awarded by this Court in present Petition.

4. Mr. Shah would rely upon following decisions in support of his contentions:

(i) **ABL International Ltd and another Vs. Export Credit Guarantee Corporation of India Ltd and Others** (2004) 3 SCC 553

(ii) **Food Corporation of India and another Vs. SEIL Ltd and Others** (2008) 3 SCC 440

(iii) **Popatrao Vyankatrao Patil *Vs*. State of Maharashtra and Others** (2020) 19 SCC 241

(iv) **Motilal Padampat Sugar Mills Co. Ltd *Vs.* State of Uttar Pradesh and Others**, (1979) 2 SCC 409.

(v) Decision of the Single Judge of the Andhra Pradesh High Court in **Rayapureddy Srinivasa Rao and Others Vs. Government of Andhra Pradesh**, 2021 SCC OnLine AP 3084

5. Mr. Talhar, learned A.S.G. appearing for respondent no.1 and Mr. Totala, learned Counsel appearing for respondent no.2 have opposed the petition and have taken us through each head of the claims of the petitioner and justification cited in the affidavits-in- reply for rejection of the same. They would submit that each of the claim of the petitioner involves disputed questions of fact and therefore, this Court should not entertain the petition.

6. After having heard the learned Counsels for the parties at length and after perusal of the pleadings and documents on record, we are of the considered view that the petition does involve disputed questions of fact. The total money claim of the petitioner of Rs.3,00,64,762/- comprises of several sub claims. The details of each claim along with the reasons for their rejection as disclosed in the affidavits-in-reply can be summarized as under:

Sr. No.	Claim	Reasons for rejection
(a)	Rs.2,04,42,980/-	The claim is in respect of systems which were installed / commissioned during previous years beyond approved sanctions.
(b)	Rs.45,92,921/-	Non compliance of guidelines to the effect that no subsidy would be given in relation to

		systems to which invoices were raised after 12.08.2014.
(c)	Rs.43,43,346/-	Discrepancies in the form of :- (i) improper joint inspection reports, (ii) non mentioning of dates on reports, (iii) missing details in documents such as Collector area, invoice date etc., (iii) overwriting / fraudulent documents, (v) missing details of tag number and negative feedback of customers etc.
(d)	Rs.2,37,600/-	Joint Inspection Report was after cut of date of 30.09.2014.
(e)	Rs.1,83,600/-	Negative report of end user.
(f)	Rs.96,429/-	non response to various queries raised for processing the claim.
(g)	Rs.85,485/-	Negative SMS of end user to the effect that system was not in working condition.
(h)	Rs.82,401/-	Overwriting in invoices.

7. After considering the aforesaid reasons for rejection of various claims raised by the petitioner, we are of the firm view that determination of such claims not only involves disputed questions of fact, but such determination would also require leading of evidence. Therefore, such monetary claims of the petitioner cannot be decided in writ jurisdiction.

8. Faced with the difficulty as indicated hereinabove, Mr. Shah attempted to press only first claim of Rs.2,04,42,980/- by

submitting that this claim does not involve any disputed question of fact. He therefore urged before us to at least consider the first claim of Rs.2,04,42,980/-. We are however unable to agree. Firstly, the petitioner cannot file writ petition for one claim and suit for rest of the claims when all of those arise out of same transaction. Secondly, even in respect of the claim for Rs.2,04,42,980/- we are of the view that the disputed questions of facts are involved. The respondents have taken a specific stand that the said claim involves installation / commission of systems beyond approved sanctions.

9. Mr. Shah did make an attempt to urge before us that there is no such concept as approved sanction and that subsidy was required to be released in respect of all systems that were installed prior to the discontinuation of the scheme. This contention itself is indicative of the fact that several disputed questions are involved like, whether there was any approved sanction limit, whether the claim is in respect of systems installed within the approved sanctions, whether the petitioner had set the target, whether the systems for which the claims are disallowed fall within such target etc. We therefore do not agree with the submission of Mr. Shah that the first claim of Rs.2,04,42,980/- does not involve any disputed questions of facts.

10. Even otherwise the money claim raised by petitioner is in respect of systems installed / commissioned during the years 2011 to 2014 and the present petition has been filed to press such money claim on 30.11.2017. The issue of limitation would also arise if such money claim was to be pressed by way of filing a suit. This appears to be one of the reasons why the petitioner has chosen to file the present petition rather than filing a suit.

11. What remains now is to deal with various judgments relied upon by Mr. Shah. In **ABL International Ltd** (supra), no doubt the Apex Court has held that in an appropriate case this Court would have a jurisdiction to entertain a writ petition involving disputed questions of fact and that there is no absolute bar in that regard. However, the said findings are recorded by the Apex Court in the light of the following factual position before it.

> *'30. While considering this issue, it has to be noted at the outset itself that the first respondent is an instrumentality of State for the purpose of Article 12 of the Constitution is not disputed and rightly too. It is also not disputed that the first respondent is a monopoly Corporation in its field.*
>
> *31. The fact that the appellant to the extent covered by the contract of insurance had agreed to insure the risk of non payment of its consideration for the tea exported to the Kazak Corporation is also not disputed;*
>
> *32. The fact that the appellant has exported 8.70 lakh kilograms of tea to Kazakhstan between 8-10-1993 and 30-10-1993 is also not disputed.*
>
> *33. The fact that the Kazak Corporation did not pay the consideration for the tea received by it in cash in US dollars is also not disputed.*

> *34. The fact that the Kazakhstan Government stood as a guarantor for prompt payment for the goods received by the Kazak Corporation and that the said Government failed to honour its guarantee is also not disputed.*
>
> *35. The fact that the Reserve Bank of India permitted the appellant to receive cash consideration in the form of US $ instead of barter payment is also not disputed.*
>
> *36. What is disputed is the obligation of the first respondent to cover the risk of non-payment of consideration by cash in US currency on the ground that the risk covered by the first respondent is a risk arising out of non-supply of goods by the barter method only.*
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> *37. In our opinion, this limited area of dispute can be settled by looking into the terms of the contract of insurance as well as the export contract, and the same does not require consideration of any oral evidence or any other documentary evidence other than what is already on record. The claim of the contesting parties will stand or fall on the terms of the contracts, interpretation of which, as stated above, does not require any external aid.'*

12. Thus, in **ABL International Ltd** (supra) most of the aspects were not disputed and the claim could be decided by merely interpreting the terms of the contract without any necessity of leading oral evidence. It is in the light of these circumstances that the Apex Court held writ petition filed under Article 226 of the Constitution to be maintainable.

13. **Food Corporation of India** (supra) essentially follows the decision in **ABL International Ltd** (supra). In that case, the issue was with regard to alleged shortage in supply of sugar leading to withholding of No Dues Certificate. The Apex Court recorded a finding in para - 12 of the judgment that the Central Government had

verified the bills in terms of Circular / letters issued by it from time to time. It is in the light of these circumstances that writ petition filed under Article 226 of the Constitution of India was held to be maintainable.

14. In **Popatrao Vyankatrao Patil** (supra) the issue involved was about refund of amount on account of non excavation of estimated quantity of sand. In that case, the possession of the sand spot was not handed over to the petitioner, which led to non excavation of sand. It is in these circumstances that the Court directed refund of the amount deposited by petitioner therein on account of non excavation of sand. The issue involved is completely different and therefore, the judgment is distinguishable.

15. In **Rayapureddy Srinivasa Rao** (supra) a Single Bench of the Andhra Pradesh High Court arrived at a finding that there was a public law element in respect of the entitlement of the petitioners therein that clearance of their bills for work executed under Mahatma Gandhi National Rural Employment Guarantee Scheme. In the present case, we do not find involvement of any public law element and that decision is clearly distinguishable.

16. In **Motilal Padampat Sugar Mills Co. Ltd** (supra) the

issue was in respect of principle of promissory estoppel. Since we are not going into the merits of the claims of the petitioner, we do not think that there is any occasion to decide the issue of promissory estoppel.

17. Consequently, we find that this Court would not be in a position to decide monetary claims of the petitioner under several heads on account of disputed questions of fact. The present petition is thus not maintainable and the same deserves to be dismissed.

18. However, it is clarified that we have not considered any of the claim of the petitioner on merits and the petitioner would be at liberty to file appropriate proceedings before appropriate forum in respect of its claims. The Forum, where the proceeding may be filed, shall consider the time spent in prosecuting the present writ petition under Section 14 of the Limitation Act, 1963. Writ Petition is accordingly dismissed. Costs made easy.

(SANDEEP V. MARNE, J.) **(MANGESH S. PATIL, J.)**

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