

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14301 of 2015

=====

Akhileshwar Prasad Singh son of Late Ramkeshwar Singh, resident of village- and P.O. Dharaut, P.S. Makhdumpur, Distt. Jehanabad

... .. Petitioner/s

Versus

1. The State Of Bihar through Commissioner-cum-Secretary, Food and Consumer Protection Department, Government of Bihar.
2. The Commissioner cum Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna.
3. The Collector, Jehanabad, Distt. Jehanabad.
4. Officer-in-charge, Makhdumpur Purchase Depo of PACS and Govt. of Bihar Paddy Procurement Centre, P.O. Makhdumpur, Dist-Jehanabad.
5. Sri Sheo Kumar Yadav, PACS President, Village Mahgupur, P.O. Dharaut, Distt. Jehanabad

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Pawan Kr. Singh, Advocate
For the Respondent/s	:	Mr. Upendra Pd. Singh, AC to GP 25
For respondent no. 5	:	Mr. Vijay Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 20-02-2023

1. The present writ petition has been filed for directing the respondent- authorities to pay cost of paddy to the tune of Rs. 70,774/- on account of sale of 27.75 quintals at the Purchase Center of PACS as also at the Paddy Procurement Center of the Government of Bihar at Makhdumpur, Dist-Jehanabad on 31.03.2015.

2. The brief facts of the case, according to the petitioner, are that he had taken 64 jute bags containing paddy to the Makhdumpur Purchase Center of PACS, Government of



Bihar on 31.03.2015 for selling the same. It is also alleged that out of 64 bags, Mansuri paddy (Dwarf) was packed in 55 bags containing 48 kg each and rest of the 09 bags were filled with Rupali and Komal weighing 38 kg each. It is the averment of the petitioner that the purchasing authority had directed that the farmers to bring paddy bags weighing 42.5 kg each at the Purchase Center so that the net quantity after deducting dust, moisture, empty jute bag totals upto 40 kg. It is also stated that the Purchase and Weight in-charge did not listen to the petitioner and averaged out the weight of the bags, resulting in the total weight being calculated @ 23.75 quintals each and the total sum was accordingly calculated to be a sum of Rs. 39,425/- i.e. @ Rs. 1600/- per quintal. It is the allegation of the petitioner that he was put to loss of 04 quintals, which totals up to a sum of Rs. 6,400/-.

3. The learned counsel for the petitioner has submitted that the total amount to be paid to the petitioner totals up to a sum of Rs. 70,774/-, including the cost of empty jute bags, cost of tractor fare, cost of packaging, stitching, loading and unloading, cost of paddy, penal interest and litigation charges. It is thus submitted that despite the petitioner having contacted the respondents, the aforesaid amount of Rs. 70,774/-



has not been paid to the petitioner, till date.

4. *Per contra*, the learned counsel for the respondents has submitted by referring to the counter affidavit filed in the present case that the petitioner has neither sold paddy at the Dharaut PACS on 31.03.2015 nor thereafter, hence the petitioner is not entitled to get any relief from this Hon'ble Court.

5. I have heard the learned counsel for the parties and gone through the materials available on record. I find that a disputed question of fact has arisen in the present case, inasmuch as while it is the contention of the petitioner that he had sold paddy to the PACS in question whereas it is the averment of the respondents that no paddy was sold by the petitioner, thus admittedly such disputed question of fact cannot be decided in a writ petition under Article 226 of the Constitution of India. In this regard, it would be gainful to reproduce paragraph no. 4 of the rejoinder affidavit filed by the petitioner in the present case, which is reproduced hereinbelow :-

“(4) On 31.03.2015, the petitioner brought his paddy in a hired tractor at the Purchase Center Makhdumpur get it unloaded, the Center Purchase Incharge got weighed the paddy bags and kept them in Godown, the weight of the aforesaid paddy was wrongly



recorded 4 quintal less than the actual weight in a Register. The petitioner demanded receipt of the purchase of the aforesaid paddy from the incharge and also pointed out of 4 quintal less weight but he told the petitioner that receipt is not required to be given as the register containing the weight of all farmers will be sent to PACS Chairman for payment.”

It is apparent from the aforesaid paragraph no. 4 of the rejoinder affidavit filed by the petitioner that the petitioner does not possess any receipt to show that he had sold the paddy in question, thus the present writ petition is based on ill-founded and unsubstantiated facts.

6. It is a trite law that the Court will not entertain a writ petition under Article 226 of the Constitution of India, where the petitioner has an alternative remedy, with which without being unduly onerous, provides an equally efficacious remedy as also where there is requirement of elaborate examination of evidence to establish the right to enforce the writ, which is claimed. It is equally a well settled law that no petition for the issue of a Writ of Mandamus should be entertained by the High Court for the purposes of merely ordering a refund of money, to which the petitioner claims by



way of Money Claim. In this regard, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court in the case ***Punjab National Bank and others v. Atmanand Singh and others*** reported in ***(2020) 6 SCC 256***, paragraphs no. 17 to 29 are reproduced hereinbelow :-

“ 17. The judgment of the learned Single Judge has completely glossed over these crucial aspects and the writ petition has been disposed of in a very casual manner. The Division Bench of the High Court committed the same error in upholding the decision of the learned Single Judge. The Division Bench has not even analysed the efficacy of the affidavits filed in support of the stand taken by the appellant Bank during the pendency of the LPA. It merely reiterates the view taken by the learned Single Judge in just two short paragraphs reproduced in para 7 above. It has not analysed the efficacy of the proceedings in Misc. Case No. 4 (DW 1) PNB/1989-90, as well as, the certified copy of the proceedings filed in appeal before it, in the context of affidavits of bank officials and report of the District Magistrate. The Division Bench was also misled by the voluminous documents relied upon by Respondent 1 and assumed that the same could not be a figment of imagination or a piece of fiction.

18. Even if the impugned judgments were to be read as a whole, there is no analysis of the relevant documents and in particular, the stand taken by the appellant Bank expressly denying the existence of the stated agreement and genuineness thereof, which plea was reinforced from the affidavits of the bank officials concerned and the report of the District Magistrate. Notably, the District Magistrate in the affidavit filed in compliance with the order dated 18-3-2016 had clearly denied the existence of the stated proceedings for want of



contemporaneous official record in that regard. This aspect has not been taken into account by the High Court at all. On facts, therefore, the High Court committed manifest error in disregarding the core jurisdictional issue that the matter on hand involved complex factual aspects, which could not be adjudicated in exercise of writ jurisdiction.

19. The appellant Bank has rightly invited our attention to the Constitution Bench decision of this Court in Thansingh Nathmal [Thansingh Nathmal v. Sudt. of Taxes, AIR 1964 SC 1419]. In para 7, the Court dealt with the scope of jurisdiction of the High Court under Article 226 of the Constitution in the following words : (AIR p. 1423)

“7. ... The 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 Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again 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 the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by



statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

(emphasis supplied)

20. Similarly, another Constitution Bench decision in *Suganmal* [*Suganmal v. State of M.P.*, AIR 1965 SC 1740] dealt with the scope of jurisdiction under Article 226 of the Constitution. In para 6 of the said decision, the Court observed thus : (AIR p. 1742)

“6. On the first point, we are of opinion 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 the 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. ... We do not find any good reason to extend this principle and, therefore, hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right.”

(emphasis supplied)

And again, in para 9, the Court observed as follows : (AIR p. 1742)

“9. We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The



aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases be appropriately raised and considered in the exercise of writ jurisdiction.”

(emphasis supplied)

21. *In Gunwant Kaur [Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769] relied upon by Respondent 1, in para 14, the Court observed thus : (SCC p. 774)*

“14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the 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. 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.”

(emphasis supplied)

22. We restate the above position that when the petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral and documentary evidence to be produced and proved by the party concerned and also because the relief sought is merely for ordering a refund of money, the High Court should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit. Had it been a case where material facts referred to in the writ petition are admitted facts or indisputable facts, the High Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with law.

23. In the next reported decision relied upon by Respondent 1 in Babubhai [Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] , no doubt this Court opined that if need be, it would be open to the High Court to cross-examine the affiants. We may usefully refer to para 10 of the said decision, which reads thus : (SCC pp. 715-16)

“10. It is not necessary for this case to express an opinion on the point as to whether the various provisions of the Code of Civil Procedure apply to petitions under Article 226 of the Constitution. Section 141 of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any court of civil jurisdiction as far as it can be made applicable. The words “as far as it can be made applicable” make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the court must take into account the nature of those proceedings and the



*relief sought. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, 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 should not appropriately be tried in a writ petition, the High Court may decline to try a petition (see *Gunwant Kaur v. Municipal Committee, Bhatinda* [*Gunwant Kaur v. Municipal Committee, Bhatinda*, (1969) 3 SCC 769] . If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of*



fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.”

(emphasis supplied)

This decision has noticed Gunwant Kaur [Gunwant Kaur v. Municipal Committee, Bhatinda, (1969) 3 SCC 769], which had unmistakably held that when the petition raises complex questions of facts, the High Court may decline to try a petition. It is further observed that if on consideration of the nature of the controversy, the High Court decides to go into the disputed questions of fact, it would be free to do so on sound judicial principles. Despite the factual matrix in the present case, the High Court not only ventured to entertain the writ petition, but dealt with the same in a casual manner without adjudicating the disputed questions of fact by taking into account all aspects of the matter. The manner in which the Court disposed of the writ petition, by no stretch of imagination, can qualify the test of discretion having been exercised on sound judicial principles.

24. *In Hyderabad Commercials [Hyderabad Commercials v. Indian Bank, 1991 Supp (2) SCC 340], on which reliance has been placed, it is clear from para 4 of the said decision that the Bank had admitted its mistake and liability, but took a specious plea about the manner in which the transfer was effected. On that stand, the Court proceeded to grant relief to the appellant therein, the account-holder. In the present case, however, the officials concerned of the Bank have denied of being party to the stated agreement and have expressly asserted that the said document is forged and fabricated. It is neither a case of admitted liability nor to proceed against the appellant Bank on the basis of indisputable facts.*



25. Even the decision in ABL International Ltd. [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] will be of no avail to Respondent 1. This decision has referred to all the earlier decisions and in para 28, the Court observed as follows : (SCC p. 572)

“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] .) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

(emphasis supplied)

26. For the view that we have taken, it is not necessary for us to dilate on the decisions of this Court in Bhinka [Bhinka v. Charan Singh, AIR 1959 SC 960 : 1959 Cri LJ 1223] and Kaliya [Kaliya v. State of M.P., (2013) 10 SCC 758 : (2014) 1 SCC (Civ) 142 : (2013) 4 SCC (Cri) 135], which have dealt with the efficacy and admissibility of certified copies of the relevant documents. Be it noted that these decisions are in reference to the suit/trial in the



case concerned, where the documents are required to be proved by the party relying upon it by examining competent witnesses to prove the existence thereof and also their contents.

27. A priori, we have no hesitation in taking the view that in the facts of the present case, the High Court should have been loath to entertain the writ petition filed by Respondent 1 and should have relegated Respondent 1 to appropriate remedy for adjudication of all contentious issues between the parties.

28. Accordingly, we are inclined to allow this appeal. As a consequence, the impugned decisions [Punjab National Bank v. Union of India, 2017 SCC OnLine Pat 164] · [Atmanand Singh v. Union of India, 2009 SCC OnLine Pat 49] of the learned Single Judge and the Division Bench are set aside and the writ petition filed by Respondent 1 shall stand dismissed with liberty to Respondent 1 to take recourse to other alternative remedy as may be permissible in law. The same be decided on its own merits in accordance with law uninfluenced by the observations on factual matters made in the impugned judgment and order of the High Court or for that matter, this judgment. In other words, all contentions available to both parties are left open including to proceed against Respondent 1 as per law, if it is found by the court/forum concerned that false and incorrect statement on oath has been made by Respondent 1 and that the documents produced by him are forged and fabricated documents.

29. In view of the above, this appeal succeeds. The impugned decisions [Punjab National Bank v. Union of India, 2017 SCC OnLine Pat 164] · [Atmanand Singh v. Union of India, 2009 SCC OnLine Pat 49] are set aside and the writ petition filed by Respondent 1 being CWJC No. 867 of 1999 stands dismissed with liberty as aforesaid. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.”



7. Considering the facts and circumstances of the present case and for the reasons mentioned hereinabove in the preceding paragraphs as also taking into account the well settled principle of law, laid down by the Hon’ble Apex Court in the case of *Atmanand Singh (supra)*, this Court finds that since the present case involves disputed question of facts, as is apparent from the materials available on record and discussed hereinabove, the present writ petition is not maintainable, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.04.2023
Transmission Date	NA

