

Ct. 05
Item No.24
01.05.2023
(Suvendu)

WPA 5574 of 2023

**Joyram Enterprise & Anr.
Vs.
The State of West Bengal & Ors.**

Mr. Sudip Deb
Mr. Joy Chakraborty
Mr. Sumitava Chakraborty
Mr. Aranyak Saha
Ms. Ipsita Ghosh

.....for the petitioners

Mr. Shounak Mukhopadhyay
Mr. Sattik Rout

...for the respondent nos. 2-4

Ms. Madhumanti Das

.....for the State

1. Although Manjusha initially took a point of the writ petition not being maintainable, this point was not urged in the course of submissions which would also be evident from Manjusha making a payment of Rs. 3.50 lakhs to the petitioners during the course of hearing of the matter.
2. The point of maintainability is however being dealt with.
3. *State of U.P v. Bridge & Roof Company (India) Ltd.; (1996) 6 SCC 22* held that the Civil Court is the appropriate forum for a dispute in the

realm of private law involving a non-statutory contract. *Pimpri Chinchwad Municipal Corporation v. Gayatri Construction Company*; (2008) 8 SCC 172 came to a similar finding with regard to interference in a contractual dispute. The agreement in that case however provided for in-house remedy for settlement of disputes. *Joshi Technologies International Inc. v. Union of India*; (2015) 7 SCC 728 summarized the principles in relation to interference by a Writ Court and held that the issue must have a public law character attached with it and money claims *per se* were not to be entertained except in exceptional circumstances. *Radha Krishan Industries v. State of Himachal Pradesh*; (2021) 6 SCC 771 reiterated the principles of exceptions to the rule of alternative remedy but held that an alternative remedy does not by itself divest the High Court of its power under Article 226 of the Constitution.

4. However, considering the Supreme Court decision in *ABL International Ltd. & Another v. Export Credit Guarantee Corporation of India Ltd.*; (2004) 3 Supreme Court Cases 553, and the more recent decision of the Supreme Court in *M.P. Power Management Company Limited, Jabalpur v. Sky Power Southeast Solar India Private Limited & Others*, (2023) 2 Supreme Court Cases 703, which

refers to all the decisions on the subject, this Court is of the view that there is no absolute bar on a writ court to entertain a petition involving a disputed question of facts or for relief arising out of contractual obligation including for payment of money. *M.P. Power*, which has exhaustively discussed the precedents, held in paragraph 82.6 that the State can indeed be called upon to honour its obligations of making payment unless the State raises a serious and genuine dispute to the question of its liability to make payment.

5. In the present case, Manjusha's action of making a substantial payment of Rs. 3.50 lakhs to the petitioners after filing of the writ petition and during the course of hearing makes it clear that Manjusha does not have a serious or genuine dispute against the petitioners' claim. This Court is accordingly of the view that the writ petition is maintainable and the orders passed at various stages of the hearing stand testimony to that view.

6. Admittedly, Manjusha has paid an amount of Rs. 3,50,559/- to the petitioner after 5th April, 2023 that is after filing of the present writ petition. The petitioners' claim of Rs. 47000/- is on account of the penalty imposed by Manjusha. On 24th April, 2023, the State was directed to file an affidavit for indicating as to whether the State has

disbursed any amount to Manjusha for the three cancelled orders reflected at page 14 of the affidavit-in-opposition of Manjusha. The State was also directed to give particulars of the payments made to Manjusha in respect of the cancelled orders. The Report of the State, however, states that the Department of MSME and Textiles is not aware of the dispute and is not in a position to make any comment on the subject matter of the dispute. The affidavit further states that the Department which has placed the orders to Manjusha is the appropriate respondent to provide the particulars of the payments made to Manjusha.

7. Learned counsel appearing for the petitioners submits that the writ petition may be disposed of by giving leave to the petitioners to approach the appropriate forum which in this case is the Department of Health, Government of West Bengal. Admittedly, the Department of Health placed the orders to Manjusha which in turn were to be supplied by the petitioner no. 1 and given to Manjusha.

8. WPA 5574 of 2023 is accordingly disposed of with liberty to the petitioners to make an appropriate application before the concerned authority namely the Department of Health,

Government of West Bengal to the extent of the petitioners' claim of Rs. 47,000/- on account of the penalty imposed by Manjusha. As made clear in the order passed by this Court on 24th April, 2023, the petitioners shall also have the liberty of challenging the subsequent decision of Manjusha cancelling all orders given to the petitioners.

9. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)