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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06th FEBRUARY, 2024

IN THE MATTER OF:

\+ **W.P.(C) 1680/2024**

K R ANAND ..... Petitioner

Through: Mr. Bharat Bhushan Bhatia, Advocate

versus

DELHI METRO RAIL CORPORATION & ORS. ..... Respondents

Through: Mr. Tarun Johri, Mr. Ankur Gupta and Mr. Vishwajeet Tyagi, Advocates for R-1 and 2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

CM APPL. 6965/2024 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 1680/2024 & CM APPL. 6966/2024

1. The Petitioner has approached this Court with the following prayers:

> *"(a) Direct respondent no.1 i.e. Delhi metro rail corporation ltd. to release the legitimate dues which have been withheld on account of contractual payments payable amount to the tune of Rs 3,17,04,956/- to the sub-contractors/vendors out of which the petitioner's dues are Rs 1,38,80,242/- along with interest wherein the petitioner's fundamental rights have been infringed by the respondents.*
>
> *(b) Pass any other writ / order / directions as this*

Hon'ble Court may deem fit in the nature and circumstances of the case and in the interest of justice."

2. The Petitioner herein is a sub-contractor engaged by Respondent No.3/FEMC-Pratibha JV for road work at Bikaji Cama Cut and Cover and South Ex for DMRC Project, CC-18. The said work forms part of the Project of design and construction of the tunnel by Shield TBM Tunnel Stations and ramp by Cut and Cover method between Motibagh and Lajpat Nagar Stations for underground works for CC-18 (*hereinafter referred to as "project"*) which was given for execution by Respondent No 1/Delhi Metro Rail Corporation to Respondent No.3/FEMC-Pratibha JV who is the main contractor

3. It is submitted by the learned Counsel for the Petitioner that the Petitioner was engaged as a sub-contractor by Respondent No.3 for the project on the basis of a letter of award dated 08.03.2014 issued by Respondent No.3. It is further submitted by the learned Counsel for the Petitioner that the work was being carried out by the Petitioner without any delay and was completed in the year 2017. It is submitted that despite completing the work on time, the legitimate dues accruable to the Petitioner amounting to Rs 1,38,80,242/- along with interest for the completion of work under the project has been deliberately withheld by the Respondents.

4. It is stated in the writ petition that a piece of information has been received by the Petitioner under RTI that the Chief Project Manager of Respondent No.1 has kept funds in the custody of Respondent No.1 to the tune of Rs.3,17,04,956/- against the bills raised by the contractors on the project which are yet to be released. It is further stated that one of the

partners of the joint venture Respondent No.3/FEMC-Pratibha JV is not traceable, and therefore, the Petitioner has been constrained to approached this Court for release of funds by Respondent No 1.

5. Material on record discloses that the Petitioner and Respondent No.3 entered into the contract through a letter of award dated 08.03.2014 issued by Respondent No.3 to the Petitioner for the project of design and construction of the tunnel by Shield TBM Tunnel Stations and ramp by Cut and Cover method between Motibagh and Lajpat Nagar Stations for underground works for CC-18. Clause 28 of the said contract entered into between the Petitioner and Respondent No.3 indicates that the Petitioner has agreed not to raise any claim against Respondent No.1/DMRC and any claim/dispute arising out of the above work between the Petitioner and Respondent No.3 shall be resolved in terms of the contract. Clause 24 of the said contract provides for a dispute resolution clause and indicates that the dispute between the Petitioner and the Respondent No.3 shall be resolved by resorting to arbitration proceedings under the Arbitration and Conciliation Act, 1996. Clauses 24 and 28 of the said contract reads as under:

> *"**24.0 Applicable law and Arbitration***
>
> *This Contract shall be governed by and take effect in accordance with the Indian Laws and all disputes shall be subject to Mumbai Jurisdiction only.*
>
> *In the event of any dispute or difference between M/s FEMC-PRATIBHA JV (First Party) and M/s K.R. Anand (Second Party) which cannot be amicably settled between the Parties, arising at any time before the date of completion or termination of the contract, all disputes, whether in contract or at law, arising from or in connection with this Contract shall be referred to*

and finally and exclusively settled by a panel of three conciliators in the conciliation proceedings, each party may appoint one conciliator and the parties may agree on the name of third conciliator, who shall act as a presiding conciliator. The findings of the panel of three arbitrators shall be accepted as final and binding upon the parties. The Arbitration proceedings shall be in accordance with the "The Arbitration & Conciliation Act 1996" and any other amendment released thereafter. The venue of arbitration shall be Mumbai and shall be governed as per the law of India and the jurisdiction of only Mumbai Court shall apply.

The result of the Arbitration process with regard to both findings and award of Arbitration cost shall be final and binding on both M/s FEMC-PRATIBHA JV (First Party) and M/s K.R. Anand (Second Party) and both parties waive their rights to any form of appeal insofar as such waiver can validly be made.

All documentation shall be prepared, the arbitration proceedings shall be held and the resulting award shall be given, in English language.

28.0 Dispute Resolution

As per Clause 4.5.4 of DMRC Contract, it is confirmed that any claim/dispute arising out of the above work shall be resolved in terms of agreement and shall not be raised before DMRC and also you shall not make any claim against DMRC before any forum/court."

6. Undoubtedly, there is no privity of contract between the Petitioner and Respondent No.1. It is stated that an RTI information has been obtained that the Chief Project Manager of Respondent No.1 has kept funds in the custody of Respondent No.1 to the tune of Rs.3,17,04,956/- against the bills

raised by the contractor on the project. A copy of the said RTI application and reply has not been filed along with the writ petition. There is nothing on record to disclose that the work under the project has been completed to the satisfaction of the Respondent No.1 or to the satisfaction of Respondent No.3. There is nothing on record to show that the amount claimed by the Petitioner has been admitted by the Respondent No.1. The present writ petition is actually in the nature of a suit for recovery of money. The amount claimed by the Petitioner is not an undisputed amount which an instrumentality of State is bound to pay in a contract.

7. It is well settled that that a writ petition should not be entertained to settle the monetary claims, especially, when the claims are not admitted.

8. The Apex Court in State of Bihar v. Jain Plastics and Chemicals Ltd., **(2002) 1 SCC 216** has observed as under"

> *"3. Settled law — writ is not the remedy for enforcing contractual obligations. It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226."*

9. The Apex Court in Orissa State Financial Corpn. v. Narsingh Ch. Nayak, **(2003) 10 SCC 261** has observed as under:

> ***"6.*** *The said order is under challenge in this appeal. On a plain reading of the impugned order it is manifest that the High Court while considering the writ petition filed by the owner of the vehicle for quashing of the notice of auction-sale and for other consequential reliefs has passed order drawing up a fresh contract between the parties and has issued certain further directions in the matter; the Corporation has been directed to advance a fresh loan to the writ petitioner to enable him to purchase a new truck; to enter into agreement for realization of the balance loan amount in accordance with law; to write off the remaining amount of Rs 16,500 and to order waiving of the interest till date etc. The order, to say the least, was beyond the scope of the writ petition which was being considered by the High Court and beyond the jurisdiction of the Court in a contractual matter.* ***No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution the High Court has wide power to pass appropriate order and issue proper direction as necessary in the facts and circumstances of the case and in the interest of justice. But that is not to say that the High Court can ignore the scope of the writ petition and nature of the dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contract and introducing a fresh contract in its place.***
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> *(emphasis supplied)*

10. There is no privity of contract between the Petitioner and the Respondent No.1. There is no admission on the part of the Respondent No.1 admitting that they are liable to pay the amount. In the absence of any material on record to show that the aforesaid amount claimed by the Petitioner has been admitted by Respondent No.1 or the same amount has been reflected in the balance sheet or there is any communication to Respondent No.3 or to the Petitioner to the effect that the said amount is due

and payable by Respondent No.1. The Petitioner had specifically agreed not to raise any claim against the Respondent No.1/DMRC. After entering into the agreement, it is not open for the Petitioner to turn around and make a claim against the Respondent No.1/DMRC with which it has no privity of contract. In the facts and circumstances of the case, this Court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India.

11. Resultantly, the writ petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 6, 2024
S. Zakir