(2012) 09 JH CK 0026

In the Jharkhand High Court

Case No : L.P.A. No. 419 of 2011

Anil Kumar Sinha APPELLANT

Vs

The Union of India and Others RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Citation : (2012) 09 JH CK 0026

Hon'ble Judges : Prakash Tatia, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : M.S. Mittal and Mr. Krishna Murari, for the Appellant; Prabhash Kumar, CGC, for the Union of India, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. The appellant is aggrieved against the judgment dated 08th October 2011 passed in W.P. (C) No. 1073 of 2008 whereby the writ petition of the petitioner has been dismissed.

2. The petitioner claims for payment of certain dues towards the work done by him and according to the petitioner, admitted dues under the respondents is to the tune of Rs. 41,63,016/- along with interest from February 2005. Learned Single Jude held that there are certain objections by the Auditor General and therefore, the Water Resources Department is unable to make payment to WAPCOS and, WAPCOS, in turn, is unable to make payment either to C-SEC or LASA. Learned Single Judge also held that the dispute also involves determination of the issues between the private individuals i.e. C-SEC or LASA. In view of the above reasons, the writ petition was dismissed.

3. Learned counsel for the appellant vehemently submitted that in the writ petition itself, orders were passed by the learned Single on 5th September 2011 after observing that since the amount payable to the petitioner is unequivocally admitted and the only pretext for non-payment of the amount is that their objection is pending before the Auditor General which has not been disposed of

since the last three years.

4. Counsel for the State on 5th September 2011 sought time to approach the Auditor General so that necessary compliance of the High Court''s direction can be made. Before that order, one order was passed on 15th January 2010 whereby it has already been taken note that sizable amount is to be recovered from the State of Jharkhand by respondent nos. 3 to 5 and who, in turn, will get the amount from respondent nos. 6 to 7 and the petitioner has to receive the amount from respondent nos. 6 and 7. It is also taken note by the learned Single Judge that all are agreeable except the State of Jharkhand.

5. Be that as it may be, it appears from the facts of the case that in view of the above orders, it was understood by the respondents that the Accountant General may be asked to drop the concerned para of objection. Obviously, objection has been raised with respect to the certain payments which is mentioned at para-19 of the reply/counter affidavit filed by the respondent nos. 10 to 13, which clearly stated that "in the light of the direction passed by the Hon''ble Court the Water Resources Department has requested the Accountant general to drop the concerned para on the basis of reply submitted by the Department". However, it will be worthwhile to mention here that respondent nos. 3 to 5 in the writ petition, submitted reply/counter-affidavit wherein they have disputed the claim of the writ petitioner as well as they submitted that the petitioner has not stated the correct state of affairs. As per the respondent nos. 3 to 5, as per the agreement of association executed on 1st of October 2002 amongst WAPCS, the lead partner and the two associates (LASA and Centre of Social and Environmental Care (C-SEC), the task of topographic survey and planning work was the responsibility of WAPCOS. Accordingly, tenders for the said work was invited by WAPCOS, but the work was not awarded to any agency since the responsibility of carrying out the said work of survey and planning had been shifted from WAPCOS to C-SEC through an addendum to Agreement of Association executed on 29th August 2003. It was the associate, C-SEC who in discharge of its responsibility had further hired the services of Sri A.K. Sinha, (writ petitioner) as Consultant/Sub Contractor for the said survey and planning work through issue of a work order. Earlier, tendering by WAPCOS does not have any relevance in the present context because award of work was never finalized. It is also submitted that the petitioner, by linking it with the award of survey and planning work to him by C-SEC, is trying to prove that the work had been awarded to him by WAPCOS and thus, trying to mislead the Hon''ble Court by holding WAPCOS, a Government of India Undertaking, and thus Ministry of Water Resources, Government of India (Respondent Nos. 1 and 2) responsible for all his woes. It is further stated that WAPCOS, the answering respondent, had no dealing with the petitioner and like each associate having its own independent contingent of staff/consultants/sub contractors for carrying out its respective allotted task, the petitioner is also one of the staff or sub contractor of C-SEC. As such, he has to address all his claims, complaints, etc. to C-SEC only and none else. WAPCOS owes no obligation to him.

6. We have given one of the objection from the counter-affidavit filed by the respondent nos. 3 to 5 and one of the part of the objection raised in the supplementary counter affidavit filed by the respondent nos. 10 to 13 to demonstrate that it was not a simple case as projected by the writ petitioner-appellant before us, so as to take the benefit of the judgment of the Hon''ble Supreme Court delivered in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, and relied upon the judgment of this court in which one of us (Prakash Tatia, C. J) was party, in the case of M/s Setu Vs. State of Jharkhand and Others, . It is no doubt in view of the judgment of the Supreme Court in ABL International Case (supra), the court may not dismiss the writ petition merely because of the involvement of some dispute on questions of facts and the court may also issue writ in private contract matter if the contract is with the Government. However, all these depends on the facts of the case. We have already noticed here that because of the passing of the order during the pendency of the writ petition in which it was understood that the objection raised by the Accountant General is required to be dropped and such consequence may happen because of misunderstanding of order passed by the court which is clear from the orders dated 5th September 2011 and 15th January 2010 which nowhere directed Auditor General to drop the objection. No detailed enquiry was held before passing said orders under the writ jurisdiction. Therefore, we are of the opinion that the facts of the case in the above two judgments have no application in view of detailed reply filed by the respondents. We are of the opinion that the proper remedy for redressal of the petitioner''s grievance is either before the Civil Court or any other appropriate forum. So far as the observation of the learned single judge for submitting a representation by the petitioner/appellant to the respondents is concerned, we are not inclined to interfere in that direction because it is a free will of the parties to decide the matter according to their own understanding and therefore, if the petitioner wants to submit a representation, he may submit it and the same may be considered and disposed of by the appropriate authority, but strictly in accordance with law, within a period of three months from the date of receipt of the representation. However, the representation will be considered without being prejudiced by any of the observation made by us because the learned Single Judge has not entertained the writ petition and we are also not entertaining this Letters Patent Appeal on the questions of facts. Therefore, we dismiss the Letters Patent Appeal.

