

(2011) 10 JH CK 0065
In the Jharkhand High Court
Case No : Writ Petition (C) No. 1073 of 2008

Anil Kumar Sinha

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 JCR 125

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Judgement

1. The petitioner has claimed for payment of arrears towards the work conducted by him and prayer is for a direction to respondents No. 3 to 7 to ensure payment of admitted dues to the tune of Rs. 41.63.016/- along with interest from February, 2005. The work executed by the petitioner is by way of consultancy services for Gram Bhagirathi Yojna.

2. When the writ petition was argued on the last occasion i.e. 5th September, 2011 it was brought to the notice of the Court that there is an objection pending before the Auditor General at the behest of Water Resources Department and the payment is not made on account of the pendency of the said objection. The writ petition has been listed today for admission.

3. Counsel appearing on behalf of all the respondents are present. On a close scrutiny of the documents and on consideration of the arguments advanced by the respective counsel, it is not disputed that certain work was handed over to the petitioner by respondents No. 4, 5, 6 and -7 i.e. Water & Power Consultancy Services India Limited (for short "WAPCOS"), Centre for Social & Environmental Care (for short "C-SEC") and LEA Associates, South Asia (for short "LASA") Private Limited. Thus apparently it is the said respondents who have not been paid their dues by the Water Resources Department. In the circumstances, evidently the payment to be received by the petitioner is either from WAPCOS or C-SEC or LASA. The Water Resources Department is not directly answerable to

the petitioner.

4. Learned counsel appearing on behalf of the petitioner has emphasised on certain payment, vouchers at the instance of WAPCOS, which is a Government of India undertaking and, therefore, on the basis of those tender documents, claim is made under Article 226 of the Constitution of India. Annexure 3 is a tender document which denotes that such document was issued by WAPCOS. It is the WAPCOS who was the sole authority and, therefore, the claim made by the petitioner which is an admitted claim cannot be refused.

5. Learned counsel also placed reliance on two decisions of the Apex Court in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, and Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, . These citations are in support of the argument that in an appropriate case, the writ Court has jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar in regard to grant of relief in such a case, especially if it pertains to interpretation of documents or parts thereof. It is argued that the said rule is one of the discretion and not compulsion. I am in complete agreement with these two decisions but in the facts and circumstances of the case, apparently the petitioner is claiming certain dues not from the Water Resources Department, since there is no record to substantiate that there was any agreement relating to a Government contract with the petitioner, but in fact, he was given certain work as a sub-contractor by C-SEC or LASA who was appointed by WAPCOS and an agreement with the Government authority was directly between the Water Resources Department and WAPCOS. The petitioner has not brought to my notice any written agreement executed between the Water Resources Department and WAPCOS and, therefore, the claim made in the instant writ petition cannot be allowed.

6. In the circumstances, I am of the considered view that such a loose rope cannot be given to the petitioner while exercising jurisdiction under Article 226 of the Constitution of India. No direction can be given for payment of arrears even if it is an admitted dues, according to the assertion made in the writ petition, there are certain objections by the Auditor General and, therefore, the Water Resources Department is unable to make payment to WAPCOS and the WAPCOS in turn is unable to make payment either to C-SEC or LASA. This has resulted in certain arrears of the petitioner.

7. In view of what has been stated above, I find no ground to issue any direction to the Water Resources Department, more so to a private individual i.e. C-SEC or LASA. I decline to issue a writ of mandamus for the reasons discussed above. However, it is open for the petitioner to make a representation before the concerned respondents for payment in accordance with the terms and conditions of the agreement which shall be examined and appropriate steps be taken for redressal of his grievance.

8. With these observations, this writ petition stands disposed of.

Petition disposed of.