
(2014) 04 AHC CK 0263
In the Allahabad High Court
Case No : C.M.W.P. No. 22394 of 2014

Budh Gramin Sansthan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 30-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 37
Constitution of India, 1950 — Article 226

Citation : (2014) 7 ADJ 29 : (2014) 105 ALR 280 : (2014) 124 RD 626

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : B.N. Rai and Sumit Kumar Srivastava, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Dr. Dhananjaya Yashwant Chandrachud, C.J. and Dilip Gupta, J.—The petitioners claim to have executed various work orders which were issued under the National Rural Health Mission, between 10 January, 2013 to 17 February, 2014. According to the petitioners, the work orders were allotted by the second, third and fourth respondents and payments were sanctioned after satisfactory completion of work. Thereafter, it is alleged that cheques were issued but were not honoured as payment was stopped by the drawers. The petitioners have, thereafter, submitted a representation. Eventually, the writ petition has been filed seeking a direction to the respondents to clear the cheques in the total amount of Rs. 13,35,983/- after withdrawing the stop payment order and for payment of interest at the rate of 12 percent per annum. On 18 April, 2014, we directed the learned Standing Counsel to take instructions as to why the stop payment order had been issued by the department. Accordingly, the learned Standing Counsel has placed on the record, the instructions received by him on 26 April, 2014 from the Chief Medical Officer, Siddharthnagar. The instructions reveal that certain irregularities were detected in the disbursement of funds under the National Rural Health Mission. This was brought to the notice of the District Health

Committee presided over by the Collector, Siddharthnagar, in pursuance of which an Inquiry Committee has been constituted and, in the meantime, directions were issued for stopping the payments. Insofar as the petitioners are concerned, it has been stated that on 5 April, 2014, a First Information Report was lodged against the proprietor of petitioners by the Superintendent, Community Health Centre, Dumariaganj, Siddharthnagar. In the FIR, it has been alleged that the proprietor of the petitioners had, on 29 March, 2014, together with 8 to 10 accomplices, visited the Community Health Centre and obtained cheques from the Superintendent under coercion and duress and threatened him of dire consequences.

2. Learned Counsel appearing on behalf of the petitioners, has submitted that on the one hand, a First Information Report was lodged on 6 April, 2014, and on the other hand, a certificate of satisfactory completion of work was issued by the Chief Medical Officer, Siddharthnagar on 19 April, 2014.

3. In view of the defence which has been set up by the State, it would not be appropriate, in our view, to entertain the petition under Article 226 of the Constitution and pass an order, that would essentially be a money decree. At the least, the defence would raise issues on which evidence would have to be adduced before a Civil Court. Quite independently of that, in a matter of this nature, remedies are available either in the form of a suit under Order XXXVII of the Code of Civil Procedure, 1908 or in the form a complaint u/s 138 of the Negotiable Instruments Act, 1888. The High Court must exercise a great deal of circumspection in granting relief of the nature sought, particularly when facts are brought to the notice of the Court which indicate that the State seeks to establish a defence on facts.

4. In a judgment of this Court dated 24 February, 2014 in M/s. R.S. Associate v. State of U.P. and others, (Writ-C No. 11544 of 2014), this Court declined to entertain a similar petition. The Court, inter alia, held as follows:

"2. These are purely contractual matters and we are not inclined to entertain a petition under Article 226 of the Constitution in this regard. Whether the work under the contract has been satisfactorily carried out; whether the rates quoted are in accordance with the terms of the agreement and the applicable schedule of rates; whether the work has been carried out properly are issues which have to be addressed, among other questions, by the competent authority before an appropriate decision is taken. The jurisdiction of the Court under Article 226 of the Constitution cannot appropriately be exercised in such matters. The remedy of the contractor, if he is aggrieved by non-payment, would be to either file an ordinary civil suit or if there is an arbitration agreement between the parties, to invoke the terms of the agreement.

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4. On the other hand, we have heard this petition for final disposal and we are firmly of the view that it will not be appropriate for this Court to exercise

jurisdiction in the matter. It is true that there is no absolute bar in entertaining a petition in a contractual matter. However, in cases such as the present, several issues on facts which have been noted in the earlier part of this judgment have to be determined by the competent authority. The exercise of jurisdiction under Article 226 is not warranted for what the petitioner seeks in essence is a decree in a civil suit which cannot be granted in this proceeding, particularly having regard to the nature of the issues involved. The Court, therefore, declines to entertain this petition."

5. Following the view which has been taken by the Division Bench in M/s. R.S. Associate (supra), we decline to entertain this petition and relegate the petitioner to the remedy available in law. This petition is, accordingly, dismissed. There shall be no order as to costs.