
(2001) 12 JH CK 0002
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5968 of 2001

Gajo Saha

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 12 JH CK 0002

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Rajiv Sharma and S.K. Dubey, for the Appellant; Md. Shamim Akhtar, SCII, JC to SCII, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. Heard the parties.

2. Petitioner has challenged the order as contained in letter No. 609 dated 26.11.2001 issued under the signature of Executive Engineer, Sichai Pramandal, Littipara, Pakur, whereby petitioner's agreement for construction of Check Dam (C.D.) of Chain No. 826 of the Main Canal on Gumani River under the Gumani Barrage Scheme/project has been terminated.

3. I have come across several cases where the termination cancellation, modification of the agreement executed by the various departments of the Government for construction of Dam, Canal, road, sewerage are challenged by invoking writ jurisdiction of this Court. Admittedly these types of contracts are not statutory contract rather the Government in exercise of their executive function enters into such contract. These contracts normally contain various clauses i.e. consequences of termination/cancellation of the contract remedy, in case dispute arises with regard to the validity and executability of contract. Such contracts which have got no statutory force, can not be amenable to writ

jurisdiction under Article 226 of the Constitution of India. This question has been set at rest by the Supreme Court in the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, .

4. In the Instant case, the petitioner has annexed a copy of the agreement as Annexure 2 to the writ application. This agreement shows various terms and conditions including remedy for claiming compensation in case of termination or cancellation of contract and further in case of dispute, invoking jurisdiction of arbitrator for adjudication of the claim. The Supreme Court in one case has also laid down the law that if the agreement be it a statutory or non-statutory contains Arbitration Clause then the High Court has no jurisdiction to entertain the writ application under Article 226 of the Constitution of India. In this connection reference may be made to the decision rendered by the Supreme Court in the case of Bisra Stone Lime Co. Ltd. and Another Vs. Orissa State Electricity Board and Another, .

5. In that view of the matter in my opinion even assuming cancellation or termination of the contract by the respondents exercising their executive power is illegal, petitioner has remedy to claim compensation damages for illegal termination of contract. The non-statutory contract can not be specifically enforced and that too in exercise of the power under Article 226 of the Constitution of India.

6. For all these reasons. I am not inclined to grant any relief to the petitioner in this writ application, which is accordingly dismissed.

7. Writ dismissed.