

(2019) 12 JH CK 0183

In the Jharkhand High Court

Case No : Letter Patents Appeal No. 423 of 2016

Jharkhand Education Project Council

APPELLANT

Vs

M/s S. Dinesh & Company And Ors

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Citation : (2019) 12 JH CK 0183

Hon'ble Judges : H. C. Mishra, J;Deepak Roshan, J

Bench : Divison Bench

Advocate : Krishna Murari, Raj Vardhan, N.K. Pasari, Vishakha Gupta, Sidhi Jalan, Vaibhav Vishal, Pratyush Kumar

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant, learned counsel for the contesting respondent writ petitioner, learned counsel for the Union of India, as also learned counsel for the State.

2. The appellant Jharkhand Education Project Council (herein after referred to as the 'Council'), is aggrieved by the impugned order dated 18.3.2016, passed by the Writ Court in W.P.(C) No. 5568 of 2014, whereby, the appellant Council was directed to pay the admitted dues to the writ petitioner within the time prescribed by the Writ Court.

3. The case relates to the supply of text books for the financial year 2013-14 to the appellant Council under Sarva Shiksha Abhiyan. Though the books were supplied by the writ petitioner, but their payment was withheld by the appellant, taking the plea that in view of the letter dated 18th October, 2013, issued by the Ministry of Human Resources Development, Department of School Education and Literacy, Government of India, the payment

could not be made to the supplier writ petitioner. It is an admitted position that the said letter had not been challenged in the writ application before the

Writ Court.

4. The same issue had arisen with another supplier, in W.P. (C) No. 151 of 2015, which was also allowed in favour of the book supplier by Judgement

dated 19.09.2017, in which also the said letter dated 18th October, 2013, was not under challenge.

5. Two L.P.As., bearing L.P.A. Nos. 600 of 2017 and 03 of 2019, were filed against the aforesaid Judgement, one by the Council and other by the

State, which were partly allowed by a Coordinate Bench of this Court, by common Judgment dated 23.4.2019, in the following terms:-

â??20. However, we find that the admissibility of the dues stands admitted by the JEPC. The State Government has also not denied the

admissibility of the dues except that it has requested the MHRD, GOI to lift the prohibition for payment from the SSA funds. The amount has

been deposited as per the impugned direction in the Registry of this Court in pursuance of the contempt proceedings. The writ petitioner

claims to be suffering recurring interest over the loans taken by it towards execution of the work. We therefore deem it fit and proper to

direct that 40% of the admitted dues which constitutes the State Governmentâ??s share as per the SSA Scheme, under deposit with the

Registry, be released in favour of the writ petitioner. However, for payment of the remaining dues, we are of the considered opinion that the

question of liability for payment between the Central Government and the State Government, needs to be adjudicated upon by the learned

Writ Court. We do not agree with the submission of the writ petitioner that this issue has no connection with the payment of its entire

admissible dues since it had entered into an agreement with the JEPC alone. The fact that the procurement of text books and supplies were

made under the centrally sponsored scheme by the JEPC for the year 2013-14 cannot be brushed aside. We therefore remand the matter on

this limited question of adjudging the liability of the State Government and the Central Government to the learned Writ Court. Since the

letter dated 18th October 2013 is already on record and the petitioner had also made a prayer for calling it in order to lay challenge to it,

been dismissed by the Hon'ble Apex Court.

6. Upon going through the record, we find that this matter is squarely covered by the aforesaid Judgment passed by the Coordinate Bench of this

Court. In the present case also, admittedly the share of the State Government to make the payment to the supplier writ petitioner is 40% of the total

bill, and it is an admitted position that the books have already been supplied.

7. In that view of the matter, in conformity with the Judgment passed by the Coordinate Bench, we direct that 40% of the admitted dues which

constitute the State Government's share, be released in favour of the writ petitioner within a period of one month from today.

8. We set aside the impugned Judgment dated 18.03.2016, passed by the Writ Court in W.P.(C) No. 5568 of 2014, and remand the matter to be

decided afresh in terms of the Judgment dated 23.04.2019, passed in L.P.A. No. 600 of 2017 with L.P.A. No. 03 of 2019.

9. This appeal accordingly stands allowed, with the direction as above.