

(2014) 08 CAL CK 0050
In the Calcutta High Court

Case No : Writ Petition Nos. 103 and 266 of 2014

J.J. Offset Printers and Others

APPELLANT

Vs

Andaman and Nicobar Administration

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 1 CHN 265

Hon'ble Judges : Subhro Kamal Mukherjee, J.

Bench : Single Bench

Advocate : Krishna Rao, for the Appellant; Mohammed Tabraiz, for the Respondent

Final Decision : Dismissed

Judgement

Subhro Kamal Mukherjee, J. These two writ applications are taken up for hearing analogously as those are interrelated. The Executive Engineer, Construction Division, Kamorta, on February 25, 2014, placed an order for supply of printing forms and registers to Central Co-operative Welfare Society, Port Blair.

2. On receipt of the said order, the Central Co-operative Welfare Society, outsourced the contract to R. Jagannathan Pillai, the proprietor of the J.J. Offset Printers, asking him to arrange for supply to the Executive Engineer, Kamorta, as early as possible.

3. It is alleged that the items were delivered in the office of the Executive Engineer and bills were raised.

4. As payments have not been made to the Central Co-operative Welfare Society and, consequentially, the Central Co-operative Society could not pay its contractor, the said J.J. Offset Printers filed a writ petition being No. 103 of 2014, principally, seeking direction for payment of its dues.

5. The writ petition, by J.J. Offset Printers, is, in my view, wholly misconceived as

there is not privity of contract between J.J. Offset Printers and the Executive Engineer, Kamorta.

6. The Central Co-operative Society, also, moved an application under Article 226 of the Constitution of India, which has, since, been registered as W.P. No. 266 of 2014, for a direction on the said Executive Engineer to accept the goods delivered to him and to arrange for payment.

7. Miss Shyamali Ganguly, learned advocate appears for the Central Cooperative Society. Mr. Krishna Rao, learned advocate appears for J.J. Offset Printers and Mr. Mohammed Tabraiz, learned advocate appears for the Administration.

8. Miss Shyamali Ganguly, strenuously, argues that, after delivery of the goods and submission of bills, the order could not have been cancelled and payments could not have been withheld by the Executive Engineer, Kamorta.

9. Mr. Krishna Rao, supports Miss Shyamali Ganguly and submits that due to dispute between Co-operative Society and the Administration, his client is suffering.

10. Mr. Mohammed Tabriaz, however, submits that the qualities of the goods were not up to the mark and bills were submitted at a very inflated rates. As such, the Administration had to cancel the supply order.

11. As I have, already, indicated hereinabove that there is no privity of contract between J.J. Offset Printers and the Administration, and, therefore, the writ petition filed by it is not maintainable for the reasons as stated above.

12. If the J.J. Offset Printers has any grievance against the Co-operative Society, it is for the J.J. Offset Printers to approach the appropriate forum.

13. Therefore, rejection of this writ petition filed by it shall not prevent the J.J. Offset Printers to approach the appropriate forum in accordance with law for recovery of its alleged dues.

14. Normally, a decree for money cannot be passed in a proceeding under Article 226 of the Constitution of India converting it into a suit.

15. The Supreme Court of India in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, held that a writ petition involving serious disputed questions of fact, which required consideration on evidence, which was not on record, would not normally be entertained under Article 226 of the Constitution of India.

16. Therefore, I think that the disputed claim of the Co-operative Society cannot be adjudicated in this proceeding under Article 226 of the Constitution of India.

17. However, it will be open to the Co-operative Society to approach the appropriate forum for challenging the said order of cancellation of supply and for payment of its alleged dues in accordance with law.

18. I, however, express no opinion in relation to the claims and the counter claims of the parties.

19. Both the writ applications are, therefore, rejected. I make no order as to costs.