

(2010) 03 JH CK 0040
In the Jharkhand High Court

Kameshwar Singh

APPELLANT

Vs

Central Coalfields Limited and Others

RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 03 JH CK 0040

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—Present writ petition has been preferred by the Contractor for non-payment of the money or consideration for the work, done by the present petitioner.

2. Learned Counsel appearing for the petitioner submitted that the petitioner has repaired several vehicles of the respondents and the sizable amount to the tune of Rs. 4,81,102/- (Rupees four lacs eighty one thousand one hundred and two only) has not been paid to him and, therefore, the present petition has been preferred.

3. Learned Counsel for the respondents submitted that they have already filed a counter affidavit and it is stated in paragraphs 5, 6 and 7 of the counter affidavit that no such work has been executed by the present petitioner and, therefore, he is not entitled for any amount as claimed by him in this petition. It is also submitted by learned Counsel for the respondents that the facts are in gross dispute and, therefore, it requires evidence to be taken before the trial court and, therefore, this Court may not entertain this writ petition. In fact, this writ petition is nothing, but, a money suit and, therefore also, this petition deserves to be dismissed. The petitioner has not submitted any bills nor the work has been executed by the petitioner. In view of these facts also, the present petition deserves to be dismissed.

4. Having heard learned Counsels for both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this writ petition mainly for the following facts and reasons:

(i) The petitioner is claiming consideration for the work done of the repairing of the vehicles. Thus, the claim of the petitioner is arriving out of the breach of the contract.

(ii) It appears from the counter affidavit, filed by the respondents, that the petitioner has never executed the work as alleged by him in (he memo of petition as stated in paragraphs 5, 6 and 7 of the counter affidavit, filed by the respondents. Paragraphs 5, 6 and 7 of the counter affidavit read as under:

5. That with reference to the statements made in paragraph 1 to the writ application it is stated that in fact the petitioner has not executed any work for which he has claimed for payment of a sum of Rs. 4,81,102/-.

It is stated that the respondent company has got process to make repairing of vehicle through the Contractor which are as follows:

- i) To make the proposal/estimate.
- ii) To get the proposal approved by the competent authority.
- iii) To invite tenders through advertisement/notice.
- iv) To demand quotations from tenderers.
- v) To issue work order to the lowest rate of contractor after competent approval and financial concurrence.
- vi) After completion of work the bill is to be submitted by the work executor.

6. That with reference to the statements made in paragraph 3(A) of the said writ application it is stated that the petitioner has not executed the repairing and maintenance work of vehicles of Kargali Washery hence there is no question of entitlement of the said amount and with-holding the same.

7. That with reference to the statements made in paragraphs 3(B) of the said writ application it is stated that the respondents have searched the official records in this regard and it has been found that the petitioner has not submitted any bills against the claim of the petition and the petitioner has not executed any work.

(iii) In view of the aforesaid paragraphs, the facts as stated in the petition that the petitioner has executed the work and the amount is not paid to the tune of Rs. 4,81,102/- (Rupees four lacs eighty one thousand one hundred and two only) is in gross dispute. In view of these facts, I am not inclined to entertain this writ petition as it requires cogent and convincing evidence to be laid before the trial court that which vehicle was entrusted on which date and what repairing was done and which part of the machine is inserted, which cost how much.

Everything will be required to be proved by cogent and convincing evidence before the trial court. In these set of circumstances, when the facts are in dispute, I am not inclined to entertain this writ petition in exercising powers under Article 226 of Constitution of India. There are further denials in the reply by the respondents also.

(iv) Learned Counsel for the petitioner is unable to point out any detail that which vehicle was entrusted on which date and what repairing was done and which part is inserted during the process of the repairing and what is the cost of that inserted part. Nothing is pointed out to this Court.

5. In view of the aforesaid facts and reasons, this petition is, hereby, dismissed as it involves disputed question of facts.

6. The petition is, hereby, disposed of as dismissed.