

(2003) 07 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 985 of 2001

Leh Enterprises

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 3 JKJ 891

Hon'ble Judges : B.L. Bhat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.L. Bhat, Judge

1. Through the medium of this writ petition under Article 226 of the Constitution the petitioner has sought Indulgence of this court for issuance of

mandamus commanding the respondents to evaluate, consider and settle down the claim of the petitioner in respect of releasing/paying him an

amount of Rs. 3.63,269/- due to be paid to him; any other relief the court may grant, has also been sought in usual manner.

2. Precisely stating the case of the petitioner is that he is the sole proprietor of the business concern that is to say Leh Enterprises, Leh and has

been carrying business of making supplies to the departments of the Jammu and Kashmir Government under the name and style of business

concern; that pursuant to the supplies orders, the petitioner-firm came to supply goods/accessories of various electric gadgets in the office of

Executive Engineer (respondent-4), which were duly acknowledged by the office of said respondent and after finding the same in order and

according to specification prescribed, the goods were accepted and utilized; that the said supplies was worth to the tune of Rs. 3,63,269, but the

respondents have not paid the said amount to the petitioner till date when all the supplies in question came to be made in the month of October,

1997; that the petitioner approached respondents for the release of amount but till today, the same has not been released.

3. It is pertinent to mention here that this writ petition came to be disposed of by this court on 19-11-2002 with the following orders:

.... This petition is, accordingly disposed of with the direction to the respondents to make payment to the admitted amount. In case it is felt that the

claims of the petitioner are not justified and they are to be rejected then a speaking order would be passed. The requisite order one way or the

other be passed within a period of the three months from the date copy of this order is made available by the petitioner to the respondents and also

to the counsel who put in appearance on their behalf today. In case the payment is released, then State would be at liberty to deduct that much

amount which the petitioner would have paid by way of court fee had the petitioner approached the civil court. Disposed of as such.

4. This order came to be challenged by respondent-4 before the LPA Bench of this court in appeal, which came to be disposed of with the

following orders:

In view of the submissions made by the learned counsel for the writ petitioner (respondents herein), we dispose of the appeal and set aside the

order of the learned Single Judge to hear afresh. The respondents in the writ petition shall file objections within four weeks from today and registry

is directed to list the writ petition before learned Single Judge immediately after four weeks.

The appeal is disposed of in the terms Indicated above.

5. Pursuant to the direction of the learned LPA Bench, the respondent-4 has filed objections wherein he has inter alia assailed the maintainability of

the writ petition on the ground that the petition involves question of facts, which as such cannot be agitated by way of invoking extra ordinary

jurisdiction of the court and that the present writ petition does not involve infringement of any fundamental right of the petitioner. It is further stated

by the respondent-4 that no such record evidencing the supplies made by the

petitioner is available and the record which has been placed by the petitioner on the record of this case, cannot be relied upon for making payment of this items alleged to be supplied by the petitioner and that the documents which has been made available by the petitioner, cannot be relied upon because of the fact that the said documents have not been signed/authenticated by the then Executive Engineer which under procedure is mandatory and cannot be made basis for making payment to the petitioner.

6. Heard learned counsel for the parties.

7. Article 226 confers on high courts very wide powers in the matter of issuing writs with the condition to exercise these powers within the territories subject to their jurisdiction and that the person or the authority to whom the writs are issued must be amenable to its jurisdiction either by residence or location within those territories except where the cause of action arises in whole or in part within the territorial jurisdiction of that High Court. Though the High Courts acting under Article 226 of the constitution of India has unfettered powers for the issuance of writs and directions but these powers are circumscribed to the effect that these powers shall not be exercised arbitrarily and also subject to certain self-imposed limitations which are; that it should not act as court of appeal or revision to correct mere errors of law or of fact; that it is not intended as an alternate remedy for the relief sought by way of suit or other mode prescribed by a statute i.e. where it is open to the aggrieved to move to another tribunal, authority, court, it will not entertain a petition under Article 226 permit machinery created by the statue be bye passed that it will not enter upon determination of question which demand an elaborate examination of evidence to establish the right to enforce for which the writ is claimed and that it will not interfere with determination made by an authority invested with statutory powers particularly when related to the matters of expertise unless there are exceptional circumstance calling for judicial intervention i.e. determination is mala fide or prompted by extraneous consideration or made in contravention of the principles of natural justice and constitutional provision.

8. Having regard to the above discussed law, in the present matter there are disputed facts of supply of goods. Unless the pleadings raised by the

parties are examined by an appropriate forum, appropriate decision cannot be taken and such a course is impossible in writ proceedings, which are

summary in nature *Sumedha Nagpal Vs. State of Delhi and Others*,

9. Viewed thus, the petition in hand is not sustainable and the same is dismissed at the admission stage.