(2011) 11 CHH CK 0056

In the Chhattisgarh High Court

Case No : Writ Petition No. 1211 of 2011

Modern Foundry APPELLANT

Vs

State of Chhattisgarh and Others RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2011) 11 CHH CK 0056

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon''ble Shri Satish K. Agnihotri, J.—By this petition, the petitioner seeks a direction to the respondent No.2 Bharat Aluminium Company Limited (for short "the respondent company") to make payment settled by Dave Committee with commercial interest from the date the material was supplied. Further restoration of the petitioner''s industry. It is further sought a relief that the petitioner be granted a sum of Rs.35.00 lacs (approx.) as compensatory costs on the basis of Rs.3.00 lacs per year from the date the industry stopped production and damages from the respondent No.2. It is also prayed that the State may be directed to enquire into the financial irregularities allegedly committed by the respondent No.4.

2. The facts, in brief, as projected by the petitioner, are that at the instance of Shri P.N. Sharma, the then, Manager (Smelter) of BALCO, the respondent No.4 misused his office and caused loss to the petitioner firm to ensure the monopoly of Hindustan Foundry in business with the respondent Company. Further allegation was made that Shri A.K. Roy after his retirement was enjoying the position of In charge officer at BALCO''s plant. The petitioner firm being ancillary of BALCO started the production of similar products those were being produced by M/s Hindustan Foundry. At the instance of Shri P.N. Sharma, the respondent No.4 used to reject the products of the petitioner firm being substandard.

Several allegations are made against Shri P.N. Sharma.

3. It is further stated that the complaints were made with the Central Bureau of Investigation, Central Vigilance Commission and to the State Government, but the said authorities never responded and no action was taken against the respondent No.4. The payment of the petitioner firm was stopped, as a result of which the petitioner''s firm was closed, as the respondent company failed to make payment as per the rate fixed by the price committee of the respondent company. Out of Rs.55,48,117/- only an amount of Rs.35,37,168/- was paid and there are certain other outstanding payments also. According to the petitioner, there was a settlement and the payments are to be paid as per the recommendation of Dave Committee, which has not been done till date. Thus, this petition.

4. On the question of admission, Shri Sinha & Shri Guru, learned counsel appearing for the respondents No.2 & 4, would submit that the instant petition is not maintainable under Article 226 of the Constitution of India, as the petitioner has some personal grudge against the respondent No.4. Secondly, it is a dispute with regard to alleged non-payment of certain amounts. The respondent No.4 is no longer in service. Thus, the petitioner is not entitled to any relief in a petition under Article 226 of the Constitution of India and the petition may be dismissed.

5. Having considered the submissions made by the learned counsel appearing for the parties and having perused the documents, it is evident that this is a purely question of contractual settlement between the respondent No.2 and the petitioner. The petitioner has made several allegations against several persons including the respondent No.4 without impleading them as necessary parties. Thus, no relief can be granted on the basis of mala fide alleged against other persons without impleading them as party respondents. Admittedly, the petitioner is claiming certain outstanding dues and damages, which cannot be granted under the writ jurisdiction.

6. Contention of the learned counsel for the petitioner that the respondent company is a Public Sector Undertaking and dealing with public duties, is without any basis, as the respondent company is a private commercial venture and the petitioner firm is also a private firm, which have certain contractual dealings with each other, which cannot be looked into in a writ petition.

7. The Supreme Court in Godavari Sugar Mills Limited v. State of Maharashtra and Others, relying on other decisions rendered by it earlier, held that "a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. However, it was made clear that "in course of enforcement of statutory functions of the State or its Officers, the writ proceedings may be maintainable." In the case of hand, the respondent No.2 is neither a state or its agency.

8. As an upshot, the writ petition, being bereft of merit, is liable to be and is hereby dismissed. However, the petitioner is at liberty to take recourse to other forum for settlement of commercial dues, as may be provided under the provisions of law, if so advised.

9. There shall be no order as to costs.