
(2011) 04 JH CK 0145

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3334 of 2009

Paras Nath Pandey

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

Citation : (2011) 04 JH CK 0145

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Mr. Mahesh Tiwari, learned Counsel appearing for the Petitioner, submitted that the Respondents be directed to pay the security amount after deducting Rs. 45,759/- against the agreement No. F2-34/2004-05 as the works was completed successfully in the year 2004-05. He further submitted that the earnest money should also be returned.

2. On the other hand, Mr. Saurav Arun, learned Counsel appearing for the State, submitted as follows. The Petitioner has not completed the work as per the agreement. From the order dated 23.9.2008 in W.P.(C) No. 4693 of 2008, (Annexure-1) itself it will appear that Petitioner himself said that he is not in a position to execute the work. The Petitioner got excess payment. A cheque of Rs. 4,80,000/- was issued to him against running on account bill by mistake, without deducting taxes, etc. Petitioner moved this Court by filing writ petition being W.P. (C) No. 6386 of 2006 saying that the cheque was returned by the Bank due to mistake in advice number. Accordingly, the writ petition was disposed of on 13.11.2006 (Annexure-A) directing the concerned Respondents to look into the matter and if the Petitioner's contention was found correct, a fresh cheque was to be issued. The matter was inquired into and it was found that the Petitioner was entitled to get Rs. 2,79,844/- after deducting sales tax, income tax, security, royalty, etc. Accordingly, a fresh cheque for this amount was issued which was received by the Petitioner without any objection. But even then, he filed a

contempt case being Cont. Case (Civil) No. 703 of 2006 alleging non-compliance of the said order dated 13.11.2006 (Annexure-A). The contempt case was disposed of on 11.07.2007 (Annexure-B) directing the Respondents to comply with the order passed in the writ petition by issuing a cheque of Rs. 4,80,000/- to the Petitioner and in case it was found that any excess amount was paid to him, Respondents could recover it by initiating separate proceedings. Thus, Petitioner got excess amount, by misleading this Court. The gross value of the work was Rs. 14,83,955/- against which, Petitioner did work only to the extent of Rs. 10,49,714/-, but he received total payment of Rs. 15,29,714/-. Thus, he submitted that no order should be passed under writ jurisdiction for return of the amounts as claimed.

3. Prima facie, it appears that Petitioner did not complete the work and got excess payment, by misleading this Court. The statements made to this effect in paragraphs 14,15,16,19 and 23 have not been denied or disputed by the Petitioner in the rejoinder.

Mr. Tiwari heavily relied on the office order dated 02.02.2009 (Annexure-4), but it has to be read along with the documents referred therein and other materials available on the record. In any event, the dispute between the parties arises out of a non-statutory contract. There is serious dispute between them with regard to completion of work and the amount receivable / payable by the Petitioner. According to the Petitioner, he has completed the work and is entitled to get refund whereas according to the Respondents, he has not completed the work and received excess payment which are recoverable from him. Such disputes cannot be decided under writ jurisdiction.

4. In the circumstances, I find no merit in this writ petition, which is accordingly dismissed. However, no costs.