

(2022) 08 GUJ CK 0048
In the Gujarat High Court

Case No : R/Special Civil Application No. 15076 Of 2022

Saifuddin Usman Aglodiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-08-2022

Acts Referred:

Citation : (2022) 08 GUJ CK 0048

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Minhaj M Shaikh, Hardik Mehta

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. The present writ petition has been filed seeking following prayers:

(A) YOUR LORDSHIPS be pleased to issue appropriate writ, order or direction, to the respondents in terms to clarify the amount which is outstanding as per the contract, and also further direct them to receive the outstanding amount, in breach of principles of natural justice as also contrary to settled legal position and 19(1)(g) of Constitution of India;

(B) YOUR LORDSHIPS be pleased direct the respondent authorities to consider and take decision on the representation of petitioner dated 14.06.2021 at annexure-'H' Colly after affording reasonable opportunity of personal hearing to the petitioner and consider the submission and evidence of the petitioner, then pass a reasoned order, AND; further be pleased to direct respondent authority to maintain status quo as on date, pending admission and final hearing of the present petition, in the interest of justice and equity.

(C) YOUR LORDSHIPS be pleased to stay implementation, execution and operation of impugned decision/communication dated 17.06.2021 as well as notice date 27.07.2021 issued by respondent no.4 and further be pleased to

direct respondent authorities not to take any coercive action in pursuance of the impugned decision/communication dated 17.06.2021 as well as notice 27.07.2021 issued by respondent no.4, pending admission, and disposal of the present petition in the interest of justice and equity.”

2. At the outset, learned AGP Mr.Hardik Mehta for the respondent – State submitted that the petitioner has an alternative remedy of approaching the Tribunal as envisaged under the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992.

3. By way of the present petition, the petitioner has also prayed for staying the implementation, execution and operation of decision/communication dated 17.06.2021 as well as notice dated 27.07.2021 issued by respondent no.4 and further direction is sought not to take any coercive action pursuant to the impugned decision dated 17.06.2021 as well as notice dated 27.07.2021. Learned advocate Mr.Minhaj M. Shaikh for the petitioner has also tendered a notice dated 14.07.2022 asking the receipts with regard to the payment of amount, if any he has made.

4. It is a case of the petitioner that in the year 2017, respondent no.2 issued tender for fisheries work at Kadana Dam, wherein the petitioner participated and was awarded work contract on 01.07.2017 for a period of five years i.e. till 10.06.2022. The amount of work contract was fixed at Rs.36,90,000/-. The petitioner has asserted that the petitioner has paid the amount of contract to the respondents for the year of 2017-18 and 2018-19. Thereafter, the petitioner has preferred number of petitions in terms of tender of the contract, which are mentioned in Paragraph-3.2 of the present petition.

5. Learned advocate Mr.Minhaj M. Shaikh for the petitioner submitted that due to pandemic of Covid-19 in the country, the petitioner could not do fishing activities and hence, he had to suffer huge loss and accordingly, he requested respondent no.4 to provide some protection to the fishers of the petitioner. The State Government had extended the time period for depositing the amount for the work contract upto 31.03.2021. The petitioner had, accordingly, deposited a cheque of Rs.36,90,000/- before respondent No.4 alongwith its forwarding letter. Learned advocate Mr.Shaikh submitted that the petitioner requested respondent no.4 not to deposit the cheque dated 31.03.2021 issued by the petitioner since there was no progress in fishing business. However, he received a communication dated 16.03.2021 to deposit the amount of work contract before 31.03.2021. Learned advocate Mr.Shaikh submitted that the petitioner, accordingly, had also filed a representation before the Hon’ble Minister and the Minister of Fisheries to consider his request. However, the same has not been done and representation dated 14.06.2021 is left unanswered.

6. From the aforesaid facts, it is manifest that there has been dispute with regard to the payment contract and the work undertaken by the petitioner with regard to the fisheries contract. Learned advocate Mr.Shaikh is unable to dispute

that the petitioner has an alternative remedy to approach the Tribunal under the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992.

7. Learned AGP Mr.Mehta further submitted that the petitioner can avail the remedy and also assert his rights with regard to the payment of tender as well as the facts with regard to the non-activity of fishing during covid period.

8. Under the circumstances, this Court cannot, at this stage, opine anything on merits or with regard to the fact that the petitioner was unable to carry out his fishing activities during his period. There appears to be a dispute with regard to the payment of Rs.36,90,000/-. All these facts can be examined by the Tribunal by undertaking necessary fact finding of the exercise and hence, the present writ petition is rejected summarily.