
(2011) 04 AHC CK 0443
In the Allahabad High Court
Case No : C.M.W.P. No. 13584 of 2011

Shiv Narain Sharma

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 5 AWC 4536

Hon'ble Judges : Satya Poot Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Advocate : S.K. Chaturvedi, for the Appellant; Vishnu Pratap and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Satya Poot Mehrotra and Rajesh Chandra, JJ.—We have heard Sri S.K. Chaturvedi, learned counsel for the petitioner, and the learned standing counsel appearing for the respondent Nos. 1 to 6. The petitioner has filed the present writ petition, inter alia, praying for quashing the recovery proceedings initiated against the petitioner for recovery of sum of Rs. 1,59,771 plus other charges. Recovery citation dated, 3.2.2011 (Annexure-10 to the writ petition) has been issued in this regard.

2. It appears that the recovery is sought to be made against the petitioner pursuant to the order dated 10.11.2010 (Annexure-8 to the writ petition) passed by the District Development Officer. Jhansi (respondent No. 5).

3. From the averments made in the writ petition, and the annexures thereto, it transpires that under Swajal Dhara Scheme, an agreement dated 13.2.2006 was entered between the Gram Payjal and Swachchata Samiti (V.W.S.C.) and District Payjal and Swachchata Samiti (D.W.S.C.).

4. The petitioner was treasurer of the Gram Payjal and Swachchata Samiti (V.W.S.C.) while Smt. Lalli was President of the said Samiti.

5. It appears that various amounts were being given by the District Payjal and Swachchata Samiti (D.W.S.C.) to the Gram Payjal and Swachchata Samiti (V.W.S.C.) pursuant to the said agreement.

6. An order dated 10.11.2010 has been passed by the District Development Officer (respondent No. 4) directing for recovery of an amount of 3,19,943.00 from the said Smt. Lalli Devi and the petitioner.

7. It is, inter alia, stated in the said order that various jobs to be done under the agreement were not executed. Hence, the said amount was sought to be recovered from the said Lalli Devi and the petitioner.

8. The case of the petitioner is that the grounds mentioned in the said order dated 10.11.2010 regarding non-execution of various jobs under the agreement were not correct and no opportunity of hearing was given to the petitioner before passing the said order dated 10.11.2010.

9. We have heard Sri S.K. Chaturvedi, learned counsel for the petitioner and the learned standing counsel appearing for the respondent Nos. 1 to 6.

10. Learned standing counsel has raised his preliminary objection that there is arbitration clause, namely Clause 40 in the aforesaid agreement for referring the dispute between the Gram Payjal and Swachchata Samiti (V.W.S.C.) and the District Payjal and Swachchata Samiti (D.W.S.C.) for arbitration to the authorities mentioned in the said clause.

11. Sri S.K. Chaturvedi, learned counsel for the petitioner does not dispute that there is arbitration clause under the agreement but submits that the writ petition may be considered as the order dated 10.11.2010 was passed without giving an opportunity of hearing to the petitioner.

12. Learned standing counsel submits that the petitioner was given repeated opportunity before the order dated 10.11.2010 was passed.

13. We have considered the submissions made by the learned counsel for the parties. It is evident that there is serious factual dispute between the parties and the resolution of such dispute cannot appropriately be done in the writ Jurisdiction under Article 226 of the Constitution of India.

14. As noted above, the petitioner has got an alternative remedy under Clause 40 of the aforesaid agreement. Clause 40 of the aforesaid agreement is reproduced below:

In view of the availability of alternative remedy by making reference under Clause 40 of the aforesaid agreement, and keeping in view the nature of controversy involved in the present writ petition, we are of the opinion that it will be appropriate that the petitioner be relegated to the remedy available under Clause 40 of the aforesaid agreement.

The writ petition is liable to be dismissed on ground of availability of alternative

remedy, and the same is accordingly dismissed on the said ground.