
(2012) 03 SHI CK 0042
In the High Court Of Himachal Pradesh
Case No : CWP No. 1221 of 2009

Shri Ashwani Goswami

APPELLANT

Vs

Himachal Pradesh State Electricity Board

RESPONDENT

Date of Decision : 03-03-2012

Acts Referred:

Citation : (2012) 03 SHI CK 0042

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Karol, Judge

1. Petitioner has prayed for the following reliefs: 1. That a writ in the nature of Certiorari may kindly issued for quashing the action of the respondents whereby the amount of Rs. 4,06,165/- has been wrongly and illegally withheld from the part payment released in favour of the petitioner from one contract for the alleged breach of another contract.

2. That a writ in the nature of Mandamus may kindly issued directing the respondents to release the payment of Rs. 4,06,165/- with interest @ 9%.

3. That a writ in the nature of Prohibition may kindly be issued restraining the respondents from withholding the payment in future from this contract on account of the alleged breach of condition of another contract qua which the dispute is pending before the Civil Judge (Senior Division), Jogindernagar, District Mandi, H.P.

It is not in dispute that petitioner stands awarded more than one contract by the respondents for execution of their work. According to the petitioner, a sum of Rs. 4,06,165/- has been illegally deducted from the payments due to him in relation to another contract which stands completed by him. 2. Record reveals that there is an Arbitration clause governing the contractual obligations interse between the

parties. It is also seen that Clause-3(V) of the contract categorically empowers the respondents to deduct the amounts. It states that any amount may be deducted "from any money due to him by Nigam under this contract or on any other account whatsoever". Thus, in my considered view respondents were well within their right to deduct the amount from any of the contracts for which work stands executed by the contractor.

3. Learned Counsel for the petitioner has invited my attention to the decision rendered by a Single Judge of High Court of Gujarat, reported in Jivanlal Joitaram Patel Vs. National Highways Authority of India and Others, . The decision, in my considered view, is not applicable to the instant facts. Unlike the contractual obligations stipulated in Jivanlal Joitaram Patel's case (supra), in the instant case respondents are well within their right to deduct the amounts from the contractor.

4. Consequently, present petition being devoid of any merit is dismissed. However, liberty is granted to the petitioner to take recourse to such remedies as are available to him, in accordance with law, including the agreement in question entered into between the parties. It is clarified that I have only gone into the question of authority and competence of the respondents to deduct the amount and not adjudicated the petition on merits with regard to the exact amount due and payable by the petitioner to the respondents.

With the aforesaid observations, petition is dismissed. Pending application (s), if any, also stand disposed of.