

(2014) 02 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition No. 201115/2014 (GM-RES)

T.N. Paramesh

APPELLANT

Vs

Krishna Bhagya Jala Nigam Ltd. and Cauvery Niravani Nigam
Ltd.

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) 02 KAR CK 0063

Hon'ble Judges : Mohan M. Shantana Goudar, J

Bench : Single Bench

Advocate : Sachin M. Mahajan, Advocate for the Appellant; Krupasagar Patil, Advocate for R1 and R2 and Sri V.Y. Kumar, Advocate for Sri Gourish Kashampur, Advocate for R3, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mohan M. Shantana Goudar, J.—Petitioner has sought for quashing the Endorsement/letter dated 2.1.2014 issued by the 2nd respondent vide Annexure-H under which the 2nd respondent has intimated the petitioner that the 3rd respondent has claimed against the petitioner the amount of Rs. 353.00 lakhs and that such amount should be with held from out of the amount to be paid to the petitioner by the 1st respondent - Corporation.

2. The records reveal that the petitioner is entrusted with the contract of providing sprinkler irrigation to the SC/ST beneficiaries in respect of Sy. No. 531 of Nidagundi village, Basavana Bagewadi taluk and Sy. Nos. 203, 211 and 214 of Muddapur village, Basavana Bagewadi taluk. The work orders were issued as per Annexures-A and B to the petitioner. Two separate agreements were entered into between the parties as per Annexures C and D. The petitioner said to have discharged the work entrusted to him of the 1st respondent company by providing sprinkler irrigation system to the aforementioned survey number. Consequently, the 1st respondent owes certain amounts to the petitioner in the form of periodical payments in terms of the contract between the parties. Since

such amounts were not paid by the 1st respondent to the petitioner, the petitioner made representation for the same. However the petitioner is served with Annexure-H dated 2.1.2014 stating that an amount of Rs. 353.00 lakhs will have to be recovered from the petitioner since the petitioner is due a sum of Rs. 353.00 lakhs to the 3rd respondent. Undisputedly the petitioner was having contract with the 3rd respondent whereunder certain works were entrusted to the petitioner at K.R. Sagar Dam. According to the 3rd respondent, the petitioner is due a sum of Rs. 353.00 lakhs to the 3rd respondent under the said contract. Hence the 3rd respondent has laid claim against the petitioner in respect of such amounts, by intimating the 1st respondent to withhold payment towards recovery of Rs. 353.00 lakhs from the petitioner.

3. Learned advocate for the petitioner submits that the petitioner is not due to the 1st respondent; the petitioner has discharged all the works entrusted to him to the satisfaction of the 1st respondent and therefore the 1st respondent is duty bound to pay entire dues to the petitioner as agreed by it. He further submits that it is not open for the 1st respondent to stop payments being made to the petitioner in respect of the amount involved in the contract entered into between the petitioner and the 1st respondent. The third respondent has no locus standi to claim its dues from the petitioner from out of the amount to which he is entitled to from the 1st respondent; the litigation is pending between the petitioner and the 3rd respondent before the Civil Court in respect of the very money and in the said suit, the petitioner has disputed the claim of the 3rd respondent.

Sri Krupasagar Patil, learned advocate for Respondent No. 1 drawing the attention of the Court to the terms of the contract submits that the money due to the 3rd respondent is also entitled to be recovered from out of the money to be paid to the petitioner by Respondent No. 1.

4. In this connection, it is relevant to note Clause 36 of the contract entered into between the petitioner and the 1st respondent, which reads thus:

Clause 36: Set off against any claim of Nigam/Government under other contracts:

Any sum of money due and payable to the contractor (Including the security deposit returnable to him) under this contract may be appropriated by the Nigam and set off against any claim of Nigam/Government in respect of a payment of a sum of money arising out of or under any other contract made by the contractor with the Nigam/Government.

From the aforementioned clause, it is clear that any sum of money due and payable to the petitioner may be appropriated by the 1st respondent and set off against any claim of the 3rd respondent in respect of payment of sum of money arising out of or under any other contract made by the petitioner with the 3rd respondent. The aforementioned clause answers all the questions raised by the petitioner. Since the 3rd respondent has made claim against the petitioner and informed the same to the 1st respondent that the petitioner is due a sum of Rs.

353.00 lakhs, the amount of Rs. 353.00 lakhs cannot be disbursed by the 1st respondent in favour of the petitioner. The payment of such money will have to be held up by the 1st respondent as per the terms of the contract.

Further merely because the suit is pending between the petitioner and the 3rd respondent, the 1st respondent cannot be permitted to release the amount in favour of the petitioner despite the claim of the 3rd respondent. The petitioner as well as the 1st respondent are bound by the terms of the contract. In view of the terms of the contract, no disbursement of money due to the 3rd respondent can be made in favour of the petitioner by the 1st respondent.

In view of the above, the relief as sought for by the petitioner cannot be granted. Petition fails and the same stands dismissed.