

(1997) 06 AP CK 0038
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 482 of 1997

Union of India (UOI) and Others

APPELLANT

Vs

K. Jagan Mohan Rao

RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 4 ALT 172

Hon'ble Judges : P.S. Mishra, C.J.;J. Chelameswar, J

Bench : Division Bench

Advocate : K. Subrahmanya Reddy, for Kommi Reddi Ramuloo, for the Appellant; Venkataramareddy Kanuri, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Mishra, C.J.—The impugned judgment, we are constrained to observe, has been invited by the appellant by its negligence in filing a proper counter affidavit and bringing to the notice of the Court relevant facts. Even without going through any counter affidavit, as stated in the writ petition, which show unambiguously that the petitioner-respondent has raised a money claim on the allegation that there was some variation in the execution of work contract in respect of which, parties had agreed and when demand has been made for payment, the appellants failed to keep the promises. The petitioner-respondent, it is not in dispute, is a contractor, who has executed the work of "conversion of track from MG to BG in between Hubli-Londa section" under an agreement dated 19-7-1995. According to the petitioner-respondent, he has carried out the work as per agreement and additional work which he was asked to do. After correspondence, variation statement has been prepared and the total amount payable to the petitioner-respondent for completing the work under the original agreement is granted at Rs. 60,21,688. According to the petitioner-respondent, the appellants paid Rs. 29,24,033/- minus the security amount of Rs. 2,15,499/- and has not paid the remaining claim of the petitioner-respondent of Rs.

30,97,655/-. According to the petitioner-respondent, there is no dispute that the work has been completed and measured, yet the petitioner-respondent has not been paid the amount remaining due under the original agreement as well as the additional work. The petition, thus, is a claim for the above mentioned amount plus interest and extra cost.

2. Appellants,, after appearance, in the counter affidavit only questioned the territorial jurisdiction of the Court and alleged that the subject of the contract was in respect of conversion which was situated in the State of Karanataka and that admittedly the third respondent in the writ petition (Deputy Chief Engineer (Construction) G.C.IV/UBL, South Central Railway, Secunderabad), who had entered into the agreement with the petitioner-respondent did not reside within the jurisdiction of this Court. Learned single Judge has, however, upon the same recorded as follows:

"As will be seen in the counter affidavit, no dispute about the factual aspect of dispute is raised. It is apparent that the question of territorial jurisdiction is meaningless. The Administrative Office of the respondents - Railways is admittedly situated at Secunderabad. As per Standard General Conditions of Contract, certain definitions have been given wherein the word "Railways" has been defined as the Administrative Officer of the South Central Railways. It is not disputed that Rs. 29,24,033/- was paid to the petitioner at Secunderabad. Therefore, the dispute sought to be raised on the point of territorial jurisdiction is totally devoid of substance as the Head Office of South Central Railways is situated at Secunderabad. This Court thus have jurisdiction of entertaining the writ petition as it is the said Head Office which is bound to pay the amount to the petitioner.

In the circumstances, it is obvious that the respondents cannot escape the payment of undisputed amount of Rs. 30,97,655/- (Thirty lakhs ninety seven thousand six hundred fifty five only) which is still remaining due under the original contract. The respondents may take the dispute regarding the excess claim made by the petitioner, before appropriate authority. However, the respondents are directed to make the payment of undisputed amount of Rs. 30,97,655/- to the petitioner within a period of two weeks from the date of receipt of a copy of this order."

3. The disposal of the petition, which appears to be simple after the issue of territorial jurisdiction is decided, however, without doubt, is in the nature of a money decree. Dispute is referable to the contract for work and the alleged agreement under which some further work the petitioner-respondent has allegedly done. The petitioner-respondent's claim has evidently arisen from the contract and/or the alleged agreement under which he executed further work. In W.A. No. 512 of 1997, Deputy Chief Engineer, Construction, Gauge Conversion South Central Railway and Others Vs. S. Nageswara Rao, judgment dated 10-6-1997, a Bench of this Court has recorded as follows:

"One of the settled principles of law is that any obligations which arise out of a contract are ordinarily not dealt with in a proceeding under Article 226 of the Constitution of India. If there is any arbitration agreement, the claimant is entitled to raise demand for arbitration. If there is no arbitration agreement and there is no such statutory obligation for arbitration, the claimant can always institute a civil suit. It would rather be entertaining money claim on behalf of a person who is basing his claim on such statements and evidence, which he has to show in a proceeding under Article 226 of the Constitution of India and this Court would be most reluctant to entertain such a petition."

4. The above, the Court has stated, in our view correctly as in all such claims arising out of a contract, it is of essence that the Court is satisfied that parties were ad idem and that the claim is proved strictly in accordance with law. If it is a money claim otherwise the basis of the claim has to be established and the matters thus arising either under a contract or otherwise for a money claim are not covered by any public law and/or thus not matters referable to any breach of a public law right. The Court, it is well settled, issues directions in the nature of mandamus only in cases of infringement of public rights and to compel performance of a public duty. Breach in respect of the claims of the petitioner-respondent is not one of such matter.

5. We have noticed in more than one case that cases on behalf of the Railways in particular are not properly attended to. Court is not assisted to the extent it should be in dealing with matters which involve public interest and public money. Many orders which this Court is found to have issued or has been issuing in cases in which Railway is a respondent, are almost invited by the Railway. We make these observations only to emphasise that task of the Court is made difficult by negligence on the part of the Railway and the Court is left to decide all issues of law, particularly exercise of jurisdiction under Article 226 of the Constitution of India totally on its own knowledge and perception.

6. For the reasons aforementioned, the impugned judgment is set aside. The appeal is allowed. The writ petition is dismissed, but without costs.