

(2023) 02 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 2354 Of 2018, IA No. 01 Of 2018, Civil
Miscellaneous No. 5002 Of 2019

Zeenath Aaliya

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 01-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 02 J&K CK 0019

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : G.A. Lone, S. N. Ratanpuri

Final Decision : Disposed Of

Judgement

Iqbal Wani, J

1. In the instant petition filed under Article 226 of the Constitution of India, the petitioner states to be a top grade artist having participated in a number of programmes prepared and telecast at Doordarshan Kendra, Srinagar (for short DDK). The petitioner's work and performance is stated to have always been appreciated for providing services and facilities for production of serial/s mostly produced in regional language on fixed fee approved by the Director General Doordarshan, New Delhi-respondent No. 3 herein.

2. It is being further stated that in the year 2011, the petitioner produced a serial, namely, "Naag-e-Wazun" in regional language at DDK, Srinagar. The petitioner is stated to have been engaged for direction and screenplay of the said serial comprising of thirteen episodes having been approved and engaged as a service provider for production of the said serial by the respondents.

3. It is also being stated that the requisite and approved number of episodes of the serials were successfully prepared by the petitioner for which the petitioner was entitled to a fee of Rs. 8,000/- per episode having been subsequently

revised, which fee the respondents did not pay to the petitioner despite preview of the serial, compelling the petitioner to file OWP No. 333/2018 before this Court and which came to be disposed of on 03.03.2018 while directing the respondents to consider and decide the case of the petitioner for release of the withheld amount as per the revised rates within the parameters and in strict accordance with the rules governing the subject within a period of six weeks.

The aforesaid order is stated to have been rectified subsequently upon an application filed by the petitioner being MP No. 02/2018, as a corollary to which "for the words and figures Rs. 15,000/- and Rs. 8,000/- per episode" "the words and figures 15.00 lacs came to be substituted", requiring the respondents to pay Rs. 15.00 lacs for the work done by the petitioner in the production of the serial in question which the respondents failed to pay compelling the petitioner to file a contempt petition against the respondents resulting into issuance of order dated 08.08.2018 impugned in the instant petition whereunder the claim of the petitioner for payment was held to be untenable on the ground that there was no concluded contract between the parties

4. The impugned order is being assailed by the petitioner inter alia on the grounds that the same suffers from non-application of mind and is contrary to the record as the respondents have had admitted the liability of the petitioner through communication dated 24.07.2013.

5. Objections to the petition have been filed by the respondents wherein it is being averred that the documents provided by the petitioner were insufficient to substantiate her claim, therefore, the same was rejected while it is being admitted that the serial in question pertains to the old liabilities having arisen at DDK Srinagar between the years 2008 and 2013 due to flouting of all existing rules, regulations, norms, manuals and guidelines during that period, at the hands of the then officials of DDK, Srinagar upon misusing their official authority in connivance with local agents, suppliers and artists etc.

6. It is being further stated that there has been no approval on file for any such programmes/serials/projects by the local director/authority and a couple of so called approval sheets are unconvincing and insubstantial and that the proposal was submitted for programme in question and a synopsis was initially submitted by the producer and bio data was also provided and the serial was recommended for thirteen episodes but no contract was signed and matter did not proceed further and final approval of the programme was never granted.

7. It is also being averred in the objections that the producer had submitted certain tapes for preview but contractual formalities were not complete, therefore, the programme was never telecast.

8. It is being further stated five high power inquiry committees came to be constituted for looking into the matter and none of the committees submitted a conclusive report though recorded that the programmes were assigned illegally without following any rules, regulations and guidelines with regard to assigning

in house production of programmes and without any budgetary provision/ approval and also that the said committees never recommended the payments to be made.

9. It is being lastly stated that there are departmental/vigilance/CBI inquiries/ cases initiated against the officials who had awarded such contracts at DDK Srinagar which cases are pending and as such the case of the petitioner for release of payment for the serial in question was rejected.

Heard learned counsel for the parties and perused the record.

10. The fundamental issue joined by the respondents against the claim lodged by the petitioner in the instant petition while rejecting the same is that the contractual formalities in respect of the serial in question were not concluded on account of lack of documentary evidence in support of the genuineness of the claim of the petitioner as also that the contract have had been allotted by the then officials of DDK Srinagar without following rules, regulations and guidelines while misusing their official authority.

11. It is, however, not being denied by the respondents that the serial in question was produced by the petitioner consisting of thirteen episodes and tapes thereof for preview were received by them, but the same was not telecasted. The failure on the part of the respondents not to telecast the episodes cannot be brought in aid by them to deprive the petitioner from the admitted fee in respect of the serial in question admitted to have been produced by the petitioner. The respondents cannot decline the claim of the petitioner qua the admitted amount of liability in respect of the serial in question on the ground that the documents were not provided by the petitioner more so in presence of the information furnished to the petitioner by the respondents themselves under Right to Information Act dated 24.07.2013 wherein it is specifically admitted that an amount of Rs. 10,0630/-is the amount which is due and payable on account of production of Kashmiri Serial "Naag-e-Wazun" as also in view of specific stand by the respondents in their reply affidavit and the additional affidavit that only the payment of fee is denied on the ground of non-completion of formalities required in the execution of the contract.

The respondents besides overlooking the aforesaid facts seemingly have not considered the record copies of the contract register prepared by the officials of the DDK, Srinagar assigned to the petitioner for direction and screenplay of the serial in question. The copies of said documents produced by the petitioner are not being either disputed or denied or even put challenge to by the respondents so much so, the plea of the petitioner that under similar circumstances payments have had been made by the respondents to other artists who have had also provided services in production of one or the other programme for DDK, Srinagar. The respondents though have contended that those persons were placed in different circumstances have, however, not detailed out the said circumstances in the reply or supplementary affidavit filed by them. The

respondents indisputably in the process manifestly have discriminated the petitioner vis-a-vis those persons and have refused payment of fee to the petitioner on the mere ipse dixit reflected in the impugned order which inaction of the respondents patently is unfair, unreasonable and violative of the constitutional mandate of equality and, thus, legally not sustainable.

12. For what has been observed, considered and analyzed hereinabove, the petition merits to be allowed. Accordingly by issuance of writ of certiorari, impugned order dated 08.08.2018 is quashed and by issuance of writ of mandamus, the respondents are commanded to effectively consider and process the case of the petitioner for release and payment of the admitted liability of Rupees 15 lacs with interest @ 6% per annum w.e.f., 2013 i.e the year when the respondents acknowledged the liability of the petitioner till the date the payment is actually made thereof, within a period of eight weeks from the date copy of this order is served upon them.

13. Disposed of accordingly along with connected applications.