

**HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU**

WP(C) 888/2020
CM 2137/2020

Reserved on: 17.03.2020
Pronounced on: 20.03.2020

M/S Simnani Constructions and others

...Petitioner

Through:- Ms. Monika Kohli Advocate

v/s

Union of India and others

... Respondent(s)

Through:- Mr. Vipin Gandotra Advocate

Coram : HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1 The petitioners are proprietorship concerns dealing in the business of construction of roads and buildings. They have joined hands to file this petition seeking a direction to respondent Nos. 3 to 8 to release the payments on account of admitted claims as also work done un-booked quantities. Further direction is sought to prohibit respondent Nos. 3 to 8 from leaving the station/project till the payments of the petitioners are made. Interest on the claims has also been sought by the petitioners from respondent Nos. 3 to 8.

2 Admittedly, the claims, that are projected by the petitioners as admitted claims of money payable by respondent Nos. 3 to 8, have arisen out of contractual transactions entered into between the petitioners on one part and respondent Nos. 3 to 8 on the other part. Hindustan Construction Co. Ltd as also Ashapura Road Lines are private entities and not the instrumentalities of the State.

3 Looking to the nature of dispute raised, which purely falls in commercial realm, no writ would ordinarily be maintainable to enforce a purely private contractual obligation. It is not the case of the petitioners that the contracts entered into between them and respondent Nos. 3 to 8 are statutory contracts, nor it is the case of the petitioners that respondent Nos. 3 to 8 are the instrumentalities of the State and, therefore, amenable to writ jurisdiction of this Court.

4 From the narration of facts given in the writ petition, it clearly comes to fore that respondent No.1 has awarded the contract of construction of National Highway i.e. N.H. from Ramban to Banihal in favour of respondent No.3, who, in turn, has awarded different sub-contracts to the petitioners on the terms and conditions mutually agreed and reduced in the form of formal agreement.

5 It is the grievance of the petitioners that despite the fact that they have been executing the works faithfully and strictly as per the terms and conditions of the agreement, respondent Nos. 3 to 8 have not been releasing them the monthly payments as stipulated in their contract agreement. The provocation to file the instant writ petition appears to be the termination of contracts of the petitioners without first securing the liability which respondent No.3 owes towards the petitioners.

6 Putting it in a nutshell, it can be said that the petitioners have raised several disputed questions of fact with regard to the execution of subject works and there are clear allegations of breach of contracts on the part of respondent Nos. 3 to 8. The instant writ petition, in short, appears to be a cloak for a civil suit for recovery or an alternative to the resolution of

disputes arising out of the contract as per the mechanism provided in the contract.

7 Having heard learned counsel for the parties and perused the record, I am of the view that this petition is not maintainable for more than one reasons.

(i). That the dispute raised in this petition arises out of a contract entered into between the petitioners and respondent Nos. 3 to 8 and, therefore, falls in the realm of private law;

(ii). That the dispute involves complicated disputed questions of fact and alleged breach of terms and conditions of the contract which cannot be gone into by the Writ Court in its extraordinary writ jurisdiction under Article 226 of the Constitution;

(iii) That the dispute relates to interpretation of terms and conditions of a private contract and, the breach thereof and, as such, cannot be agitated in a petition under Article 226 of the Constitution. It is a matter for adjudication in a civil Court or in arbitration, if it is so provided in the contract; and

(iv) That respondent No.3 is a private entity not performing any public function and, therefore, is not amenable to the writ jurisdiction of this Court being neither a State nor its instrumentality or any person enjoined to perform public duties.

8 I have considered the submissions made by learned counsel for the petitioners carefully and find the same completely devoid of merit.

9 It is trite that, if an action of the State or its instrumentalities is violative of equality clause contained in Article 14 of the Constitution, writ petition would be maintainable even in the contractual field, but a distinction ought to be made between a matter which is at the threshold of a contract

and a breach of contract. In the case of former, the Court's scrutiny would be more intrusive, whereas in the later case, the Court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be in violation of Article 14 of the Constitution. (See: **ABL International Ltd. & Anr vs Export Credit Guarantee, 2004 (3) SCC 553** and **Radhakrishna Agarwal & Ors vs State Of Bihar & Ors, 1977 SCC (3) 457.**

10 While the jurisdiction of this Court vested under Article 226 of the Constitution may, under certain circumstances, be available even in the contractual matters, yet it is equally true that where serious disputed questions of fact are raised requiring appreciation of evidence, it may not be appropriate for the Constitutional Court to decide such disputes.

11 At this stage, it would be apt to reproduce what was held by Hon'ble Supreme Court in paragraph Nos. 10 and 11 of the judgment rendered in the case of **Kerala State Electricity Board vs Kurien E. Kalathil, (2000) 6 SCC 293** hereunder:

“10. We find that there is a merit in the first contention of Mr. Rawal. Learned Counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract? If a term of a contract is violated, ordinarily the remedy is not the writ petition under [Article 226](#). We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has

been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the [Contract Act](#), that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not of itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the [Contract Act](#). Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under [Article 226](#) of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have been relegated to other remedies”.

12 The enforcement of terms and conditions of the contract and compensation for breach of contractual obligations, or the matters which fall purely in the realm of disputed questions of fact, cannot be made subject matter of adjudication in a writ petition. The plea of the petitioners that since the construction works undertaken by them as sub-contractors of respondent No.3 have public element and, therefore, the writ would be available against respondent No.3 being any other person performing the public duties, is an argument without any substance. The petitioners are admittedly the contractors engaged in the construction of roads and buildings which job they are performing by entering into contracts with public and private bodies. Simply because the petitioners are working as sub-contractors of respondent No.3, who is executing the work of construction of National Highway of respondent No.1, will not make a private construction company, an instrumentality of the State or for that matter, a person performing the public duties.

13 In view of the settled legal position and having regard to the nature of controversy sought to be projected by the petitioners in this writ petition, this Court is of the considered view that writ is not a remedy available to the petitioners to settle their contractual disputes with respondent Nos. 3 to 8. In view thereof, this writ petition is dismissed as not maintainable.

(SANJEEV KUMAR)
JUDGE

Jammu
20.03.2020
Sanjeev

Whether the order is speaking: Yes
Whether the order is reportable: Yes