

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 3RD DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.46302 OF 2018(GM-RES)

BETWEEN:

SHRI. M CHIRANJEEVI,

...PETITIONER

(BY SRI.ASHOK B PATIL, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REP BY ITS SECRETARY,
DEPARTMENT OF TOURISM,
#49, 2ND FLOOR,
KHANIJA BHAVAN,
RACE COURSE ROAD,
BENGALURU-560 001.
2. THE KARNATAKA STATE TOURISM
DEVELOPMENT CORPORATION LTD.
GROUND FLOOR,
BMTc YESHWANTHPUR,
TTMC BUS STAND,
YESHWANTHPUR CIRCLE,
BENGALURU-560 022.
REP BY ITS MANAGING DIRECTOR.

3. THE DIRECTOR
DEPARTMENT OF TOURISM
#49, 2ND FLOOR, KHANIJA BHAVAN,
RACE COURSE ROAD,
BANGALORE-560 001.

... RESPONDENTS

(BY SRI. VINOD KUMAR M, AGA FOR R1 & R3;
SRI. GURURAJ JOSHI, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED LETTER DTD 7.9-4.2018 ISSUED BY THE R-2 TO THE PETITIONER [ANNEXURE-AA] AND QUASH THE IMPUGNED LETTER DTD 10.5.2018 ISSUED BY THE R-2 TO THE PETITIONER ANNEXURE-AC AND ETC.,

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner, a registered Class-I Contractor is grieving before the Writ Court against the respondent-Government and its Tourism Development Corporation for not honouring his final bills despite certification of completion of the tender work. Learned counsel appearing for the petitioner vehemently argues that there is absolutely no reason for not honouring the bills and that, in the fitness of things, "he leaves certain things to the wild imagination of the Court".

2. After service of notice, the respondent Government & the director of Tourism Department have entered appearance through the learned AGA. Similarly, the second respondent - Tourism Corporation is represented by its Sr. Panel Counsel. The respondents resist the writ petition contending that: disputed facts are involved and therefore, writ remedy is not suitable; matter is contractual in nature and therefore, petitioner should be relegated to civil remedy; there is an Arbitration Clause and therefore, Writ Court cannot interfere. So contending, they seek dismissal of the writ petition.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

(a) Ordinarily, Writ Courts do not grant indulgence in matters involving contract and non payment of contractors' bills, more particularly when disputed facts

are involved. Yet another reason is, that the aggrieved parties can work out their remedies by an ordinary civil suit or by invoking arbitration clause, if there be one. However, even in plain matters like payment of contractors bills, Courts nowadays have been observing a kind of callousness and '*come what may attitude*' on the part some public functionaries. Their actions are manifestly arbitrary and absolutely unjust, to say the least. This is not a happy thing to happen. In every such case the contention of matter being contractual in nature cannot silence inner voice of the Constitution. Judges, to be judicious ought to keep themselves abreast of what is happening around.

(b) Where the arbitrariness and unjustness in actions of the public functionaries/bodies galore from the record, the contention of 'contract', disputed facts, alternate remedy (like suit or arbitration) cannot be countenanced to deny rightful relief to a scrupulous litigant in constitutional jurisdiction. The deserving litigants cannot be driven away from the portals of court

by quoting some theories of constitutional jurisprudence or of administrative law. The mandate for fairness in the public functions will fail, if the functionaries do not keep in view the angle of justice to the aggrieved. A view to the contra, would defeat the broad delineation of writ remedies constitutionally internalized freeing the system from the shackles of traditional English Law of Writs. It is gainful to recall what **Justice Oliver Wendell Holmes**, a century ago had said in *DAVIS vs. MILLS*, 194 U.S. 451 (1904):

"Constitutions are intended to preserve practical and substantial rights, not to maintain theories ..."

(c) Petitioner having accomplished the work in question, had submitted the remaining bills to the second respondent - Corporation, earlier bills having already been honoured way back in July, 2015, his explanation for arguable delay in the execution of work having been accepted. The building in question after renovation in terms of the tender was handed over on 04.04.2017 vide Annexure-Q to which the signatories are the petitioner,

Assistant Executive Engineer of Department of Tourism & Assistant General Manager of second respondent-Corporation. The inaugural function of the accomplished structure was carried out on 10.04.2017 in the august presence of the District in-charge Minister, the Transport Minister, the Vice-Chairman of the Vidhana Sabha and MPs & MLAs of the area concerned, not even one raising a little finger about the quality of the work.

(d) The Managing Director of the respondent - Corporation vide Letter dated 05.07.2017 specifically stated about the completion of the work and handing of the structure over to the Corporation. He also mentioned about the submission of last bill for a sum of Rs.36,99,259/- and had asked the Architect to authenticate the bill claim. The Architect appointed by the respondent - Corporation vide Certificate dated 21.11.2017 certified the completion of work and recommended as under:

*"Certified that a sum of Rs.34,85,179.00
(Rupees Thirty Four Lakhs Eighty five Thousand*

One hundred and Seventy nine Only) may be paid to them under advice from us”.

(e) The Managing Director of Corporation vide Letter dated 19.12.2017 requested the third respondent - Director of Tourism Development specifically stating that the work has been completed satisfactorily; the structure has been handed to the Corporation already; a sum of Rs.1,46,56,901/- having been remitted to the petitioner, the last bill amount of Rs.34,85,179/- needs to be paid, the said bill having been authenticated by the departmental architect. Therefore, he had sought for release of the said amount to the Corporation so that, the same would be utilized for paying the pending bill. The said Letter reads as under:

“ಸದರಿ ಕಾಮಗಾರಿಯು ಈಗಾಗಲೇ ಪೂರ್ಣಗೊಳಿಸಿ ನಿಗಮಕ್ಕೆ ಹಸ್ತಾಂತರಿಸಲಾಗಿದೆ ಎಂದು ಆರ್.ಸಿ.ಆರ್.ಟಿ.ಆರ್. ರವರ ಪತ್ರದಲ್ಲಿ ತಿಳಿಸಿದ್ದು, ಅದಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಇಲ್ಲಿಯವರೆಗೆ ಪಾವತಿಸಲಾದ ಮೊತ್ತ ರೂ.1,46,5,901/-ಗಳನ್ನು ಗುತ್ತಿಗೆದಾರರಿಗೆ ಪಾವತಿಸಲಾಗಿದ್ದು ಉಳಿಕೆ ಹಣ ರೂ.34,85,179/-ಗಳನ್ನು ಗುತ್ತಿಗೆದಾರರಿಗೆ ಪಾವತಿಸುವಂತೆ ಆರ್.ಸಿ.ಆರ್.ಟಿ.ಆರ್. ರವರು 5ನೇ ಮತ್ತು ಅಂತಿಮ ಬಿಲ್‌ನ್ನು ದೃಢೀಕರಿಸಿ ನಿಗಮಕ್ಕೆ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಸದರಿ ಕಾಮಗಾರಿಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಉಲ್ಲೇಖ (2)ರಂತೆ ನಿಗಮಕ್ಕೆ ಪಾವತಿಸಬೇಕಾದ ಬಾಕಿ ಹಣ ರೂ.47.43 ಲಕ್ಷಗಳನ್ನು ನಿಗಮಕ್ಕೆ ಪಾವತಿಸಲು ಕೋರಲಾಗಿತ್ತು. ಆದರೆ, ಇಲ್ಲಿಯವರೆಗೆ ಬಾಕಿ

ಹಣ ಪಾವತಿ ಮಾಡಿರುವುದಿಲ್ಲ. ಆದುದರಿಂದ, ನಿಗಮಕ್ಕೆ ಪಾವತಿಸಬೇಕಾದ ಬಾಕಿ ಹಣ ಪಾವತಿಸಿದಲ್ಲಿ ಗುತ್ತಿಗೆದಾರರಿಗೆ ಪಾವತಿಸಲಾಗುವುದು. ಆದ್ದರಿಂದ ಬಾಕಿ ಹಣ ಪಾವತಿಸಲು ಈ ಮೂಲಕ ಕೋರಲಾಗಿದೆ.”

(f) Nothing happened either with the Government or Corporation so far as the claim for payment of the bills and therefore, petitioner sent the representation dated 08.02.2018 complaining that despite lapse of ten months from the date the building was inaugurated, not even a leaf is turned. Very strangely, the Managing Director of the Corporation vide Notice dated 09.04.2018 for the first time stated that the work was not satisfactorily accomplished and therefore, the four defects enlisted therein should be addressed immediately. This came to the petitioner as a rude shock and therefore, he got issued a Legal Notice dated 25.04.2018. The Assistant General Manager of the Corporation sent another Notice dated 10.05.2018 enlisting seven defects in the work and warning the petitioner of deducting 10% of the amount if the said defects are not addressed in ten days. There is not even a reference to the Legal Notice of the petitioner.

Everything appears to be murky and shady calculated to trouble the citizen with no justification. Learned counsel for the petitioner is more than justified in contending that the respondents are fabricating one or the other ground to delay, if not deny, payment to his client.

(g) The respondents having already taken possession of the property on 05.04.2017, having certified satisfactory completion of the work, having obtained a certificate to that effect from their designated architect, having gloriously inaugurated the building which has been put to use on day to day basis, now cannot turn around to complain that the work has not been done satisfactorily. What bewilders this Court is, the enormous delay culpably brooked by the respondents in sending negative response to the petitioner. More than one year after the building was handed over, such an apparently unsustainable stand could not have been taken by the respondent – Corporation which is an instrumentality of the 1st Respondent – Government in the light of *R D SHETTY vs. INTERNATIONAL AIRPORT*

AUTHORITY OF INDIA, AIR 1978 SC 1628. It hardly needs to be stated that the 'State' and its instrumentalities should conduct themselves as model litigants than to tread on loose soil of technical objections.

(h) The vehement contention of learned AGA appearing for the Government and the learned Panel Counsel appearing for the Corporation that there is an Arbitration Clause and therefore, petitioner should be relegated to arbitration, cannot be countenanced for obvious reasons: firstly, question of invoking arbitration clause arises when there is a "true dispute" between the parties. There being no contentious issue about the completion of the tender work and there being specific reports about satisfactory completion of the work, petitioner cannot be compelled to go for arbitration on the basis of a "make believe dispute". Secondly, several representations of the petitioner resulted into a fully positive response from the side of respondent - Corporation, its Managing Director specifically asking the Government to release the fund to enable him to honour

the long pending bills of petitioner. Never the Government took the pains even to reply to the Corporation, let alone to the poor petitioner. Thirdly, the so called complaint about unsatisfactory completion of the work is concerned, it is apparently time barred since such complaints were raised for the first time, more than a year having lapsed since the structure was handed over to the Corporation and on being inaugurated, it was put to routine use.

(i) It is a well settled position of law that only a genuine dispute merits reference for arbitration and not '*fictional disputes*' of the kind. This view gains support from a decision of Madhya Pradesh High Court in *INDIAN OIL CORPORATION LIMITED vs. M/s TATPAL PETROLEUM CENTER* in A.A. No.80 of 2021, disposed off on 27.01.2022, wherein it is observed as under:

8. Surprisingly, the expression 'dispute' is not defined in the 1996 Act though the expression find reference in number of provisions contained in the 1996 Act, and the principal object behind the Act is to resolve dispute between rival parties through different modes including arbitration. Since the 1996 Act does not define the expression 'dispute', this Court has to fall upon the dictionary meaning of the

said expression which is as follows: Black's Law Dictionary, 5th edition, page 424 defines 'dis- pute' as under: "to argue about, to contend ... words; an argu- ment; a debate; a quarrel". Cambridge Dictionary defines 'dispute' as under: "a disagreement or argument between two people, groups or countries." Collins' Dictionary defines 'dispute' as under: "A dispute is an argument or disagreement between people or groups."

9. From the aforesaid dictionary meaning of expression 'dispute', it is evident as daylight that for a dispute to arise there should exist an assertion/claim which is refuted by the other side. Thus, dispute is a bilateral contract where atleast two rival parties have disagreement over a particular aspect. A dispute cannot arise A.A. No.80/2021 when only one party asserts and other remains silent. Whether the assertion made by one and the denial made by the other leaves to passing of any particular order by one of the party is not necessary for arising of a dispute. An assertion by one and denial/said assertion by another is enough for germination of the concept of a dispute.."

(j) The last contention of the Panel Counsel for the Corporation that the petition involves disputed questions of fact and therefore, a Writ Court cannot undertake the adjudication, again is difficult to agree with. It is not that every disputed question of fact should deter Writ Court from examining the matter. A dispute which otherwise can be fairly adjudged on the basis of pleadings of the parties accompanied by the

evidentiary material on record, cannot be relegated to adjudication elsewhere, more particularly when the respondents happen to be the governmental bodies answering the definition of 'State' under Article 12. It is not that the so called dispute squarely falls within the realm of private law, either; there is Karnataka Transparency in Public Procurements Act, 1999 and Rules promulgated thereunder. There are sufficient elements of public law. A contract to which State is a party, does not create an island completely immune from judicial review under Article 226 & 227.

(k) This is a fit case for levy of exemplary costs for the ill-treatment meted out to the scrupulous citizen who had done the work for the State entities. A message should loudly go to the quarters that be, that the courts would not tolerate indolence on the part of public bodies when interest of the citizen is put to peril. Both the sides having been heard even on this aspect of the matter, this court is of the considered opinion that the second

respondent-Corporation should be saddled with a cost of Rs.2,00,000/- payable to the petitioner in addition to interest at a reasonable rate for the delay in making payment in terms of undisputed bills, that are already authenticated by the concerned.

In the above circumstances, this Writ Petition succeeds; a Writ of Mandamus issues to the second respondent to pay to the petitioner a sum of Rs.34,85,179/- plus the retention amount, if any, with interest at the rate of 12% per annum along with a cost of Rs.2,00,000/-, and report compliance to the Registrar General of this Court within six weeks. Delay if brooked would attract an additional interest of 1% per *mensem*.

It is open to the second respondent to recover the cost and interest from its erring officials including the Managing Director(s), in accordance with law.

**Sd/-
JUDGE**