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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 20th OF SEPTEMBER, 2022

WRIT PETITION No. 21169 of 2022

BETWEEN:-

M/S KESHAV KANSHKAR A CLASS ELECTRICAL CONTRACTOR THROUGH ITS PROPRIETOR KESHAV KANSHKAR S/O LATE SHRI GOVIND PRASAD KANSHKAR AGED ABOUT 59 YEARS WORKING AS PROPRIETOR NEAR SNYAL SCHOOL DEVDARA MANDLA DISTRICT MANDLA M.P. (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SOURABH SUNDER, ADVOCATE)

AND

1. THE PRINCIPAL SECRETARY DEPARTMENT OF ENERGY MANTRALAYA VALLABH BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)
2. MADHYA PRADESH POORVA KSHETRA VIDYUT VITRAN CO. LTD., THROUGH THE MANAGING DIRECTOR SHAKTI BAHAWAN RAMPUR JABALPUR (MADHYA PRADESH)
3. THE SUPERINTENDING ENGINEER, MADHYA PRADESH POORVA KSHETRA VIDYUT VITRAN CO. LTD. DISTRICT MANDLA M.P. (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI PIYUSH BHATNAGAR, PANEL LAWYER FOR
RESPONDENT NO.1)

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This petition coming on for admission this day, the court passed the following:

ORDER

Petitioner an Electrical Contractor has filed this writ petition under Article 226 of the Constitution of India claiming issuance of writ in the nature of

mandamus directing the respondents especially respondent No.3 to release the payment of the petitioner for the work carried out by the petitioner under 'Sobhagya Yojna Scheme' under which he had carried out work of supply of material, survey, installation, testing and commissioning of 11 KV line, 11/4 KV distribution transformers and LT line for un-electrified household in terms of the NIT dated 23.10.2018.

It is submitted that as per Clause 6 of the NIT defect liability period was 12 months from the date of taking over/completion of facilities or any part thereof in case of 11 KV line and LT line and 24 months for distribution transformers but instead of making payment respondents have issued recovery notice dated 13.12.2021 beyond the period of defect liability.

Learned counsel for the petitioner has taken this Court through order dated 22.12.2021 passed in W.P. No.28386/2021 (Annexure P-4) in which as an interim measure, the effect and operation of the order dated 13.12.2021 (Annexure P-1) was stayed.

It is also submitted that under similar facts and circumstances a Coordinate Bench has issued notices in W.P. No.20515/2022 and W.P. No.20024/2022. Placing reliance on the order of Hon'ble Division Bench in W.A. No.880/2022 where Hon'ble Division Bench has held that on the ground of parity, the appellant too would be entitled to a similar interim relief. When it is noted even by the learned Singh Judge that there have been four cases in which interim relief has been granted, necessarily the appellant would also be entitled to the same. To deny him the interim relief only because of the fact that the matter requires to be heard finally in our *prima facie* view may not be appropriate.

Placing reliance on this judgment it is submitted that since Coordinate

Bench has issued notices in two cases petitioner is entitled to issuance of notice in the present case as a matter of right.

'Precedent', refers to a court decision that is considered as authority for deciding subsequent cases involving identical or similar facts, or similar issues. 'Precedent', is incorporated into the doctrine of 'stare decisis', and requires courts to apply the law in the same manner to cases with the same facts.

'Judicial precedent', is the source of law where past decisions create law for Judges to refer back to for guidance in future cases. Meaning of doctrine of "stare decisis" to "stand by decided matters".

Thus, I am not in a position to agree that merely issuance of a notice by a Coordinate Bench, under which provision of law, can be considered to be a binding precedent as it does not lay down any proposition of law to be followed in future.

Question of judicial discipline will arise when a decision is rendered by a forum of superior or concurrent jurisdiction while adjudicating the rights of the parties to a lis embodying a declaration of law. I do not see any declaration of law in the discretion of a Coordinate Bench to issue notice in the matter.

As far as order dated 22.02.2021 is concerned. A perusal of the present writ petition reveals that under Point No.8, dealing with interim relief, if prayed for, petitioner has mentioned nil. Thus it is evident that when petitioner himself is not praying interim relief in the present petition he is not entitled to seek any parity with the orders of Coordinate Bench passed in W.P. No.28386/2021.

Issue involved is that whether in a contractual manner there exists an agreement which has not been brought on record by the petitioner and admittedly there is a pleading that there are disputes between the petitioner and

the respondents in regard to payment of dues, inasmuch as, respondents have issued a recovery notice against the petitioner, whether writ can be issued in a matter involving disputed questions of fact.

Aforesaid question has been answered by the Hon'ble Supreme Court in **Noble Resources Ltd. Vs. State of Orissa and Another, (2006) 10 SCC 236**, wherein Hon'ble Supreme Court has held that a petition involving disputed questions of fact would not ordinarily lie and in that view of the matter the High Court rightly refused to exercise its extra ordinary jurisdiction. It is further observed that a decision is taken for business purposes, the Courts should not readily infer arbitrariness on the part of the State. It is further held that if an action on the part of the State is violative the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution.

In **M/s Radhakrishna Agarwal Vs. State of Bihar, (1977) 3 SCC 457**, it is held that in case of enforcement of contractual rights and liabilities the normal remedy of filing a civil suit is available to the aggrieved party and, therefore, the High Court will not exercise its prerogative writ jurisdiction to enforce such contractual obligation. In **M/s Radhakrishna Agarwal (supra)** it is further held that a question of the distinction between an administrative and quasi-judicial decision can only arise in the exercise of powers under statutory provisions. Rules of natural justice are attached to the performance of certain functions regulated by statutes or rules made thereunder involving decisions

affecting rights of parties. When a contract is sought to be terminated by the Officers of the State, purporting to act under the terms of an agreement between parties, such action is not taken in purported exercise of a statutory power at all. The limitations imposed by rules of natural justice cannot operate upon powers which are governed by the terms of an agreement exclusively.

Thus in view of settled legal position, I am of the view that the petitioner is not even entitled to admission of this petition as issuance of notice being not a binding precedent applicable to invoke doctrine of 'stare decisis', and the order passed by the Hon'ble Division Bench being in different arena, no indulgence is required as petitioner has an alternative remedy of approaching the civil court if there is no arbitration clause in the agreement and if there is an arbitration clause then he has a duty to approach the arbitrator in terms of the arbitration clause in the agreement.

Accordingly, this petition fails and is hereby **dismissed**.

(VIVEK AGARWAL)
JUDGE

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