

**Court No. - 40**

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**Case :-** WRIT - C No. - 27869 of 2021

**Petitioner :-** Kanika Construction

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Nipun Singh, Jitendra Kumar, Vikas Tripathi, Vivek Chaubey

**Counsel for Respondent :-** C.S.C.

**Hon'ble Manoj Kumar Gupta, J.**

**Hon'ble Dr. Yogendra Kumar Srivastava, J.**

1. Heard Sri Nipun Singh, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
2. The present petition has been filed seeking a direction to the Respondent no.2 for payment of an amount which is stated to be due and admitted.
3. Pleadings in the petition indicate that in pursuance of certain advertisement inviting tenders for running community kitchen at Baijal Bhawan, Meerut and Olivia Hotel, Meerut, the petitioner company submitted its offer. It was duly accepted and in pursuance thereof, it provided the service of community kitchen at above two places during COVID period. By letter dated 4.6.2020, Respondent no.4 directed the petitioner to close the community kitchen w.e.f. 6.6.2020. A three member Committee had duly verified the quality and quantity of food packets supplied by the petitioner in pursuance of the contract. The petitioner has been paid certain sum under the contract, but the entire amount has not been paid on account of paucity of funds.
4. The petitioner has placed on record an order dated 5.3.2021 issued by A.D.M. Finance & Revenue, Meerut in which it is recorded that on basis of recommendation of the Committee and the approval granted by the District Magistrate, Meerut on 4.3.2021, the amount of Rs. 3,68,81,217/- received from the Government shall be disbursed amongst various service providers

on *pro-rata* basis. The order itself records that the remaining amount would be paid after release of more funds from the Government. A chart which is part of the said order reveals that in respect of the petitioner, the remaining sum is Rs. 37,32,072/-. Since, the amount has not been paid to the petitioner despite repeated reminders, the instant petition has been filed for a mandamus to Respondent no. 2 to pay the remaining amount forthwith.

5. On 26.11.2021, a Coordinate Bench passed the following order:-

*“Services of petitioner were requisitioned to meet out the sudden difficulties occurred due to Covid-19 pandemic. Such services were duly provided, and as per Annexure-8 to the writ petition the admitted dues payable to petitioner stands quantified at Rs.37,32,072/-. However, only the part of the amount has been paid on pro-rata basis depending upon the funds available. Remaining amount has been withheld due to non-availability of funds. Grievance of the petitioner is that though sufficient time has elapsed but the admitted dues have not been released, so far.*

*In the facts of the case, it would be appropriate to direct the second respondent to examine the petitioner's grievance and file an affidavit clearly disclosing as to how much time would be required to release the dues to the petitioner, by the next date fixed.*

*Post this matter as fresh, once again, on 15th December, 2021.”*

6. On 15.12.2021, the matter was again adjourned to enable the competent authority to examine the petitioner's grievance and take necessary action.

7. Learned Standing Counsel is in receipt of instructions from the State Respondents in which the same stand has been taken i.e. as soon as the funds are received from the State Government, payment shall be made.

8. The question whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation against the State or its instrumentalities, by a aggrieved party, is no longer *res integra*. The law with regard to the

maintainability of a writ petition in contractual matters is fairly well settled. It has been consistently held that there is no absolute bar to the maintainability of a writ petition in such matters. The discretionary jurisdiction under Article 226 of the Constitution of India may, however, be refused in case of money claims arising out of purely contractual obligations where there are serious disputed questions of fact with regard to the claims sought to be raised.

9. The legal position with regard to entertainability of a writ petition in contractual matters where monetary claims are sought to be raised has been considered in extenso in a recent decision of this court in **M/S Bio Tech Systems vs. State of U.P. and Ors.**<sup>1</sup> and it was held that in a case where the contract entered into between the State and the person aggrieved is of a non-statutory character and the relationship is governed purely in terms of a contract between the parties, in such situations the contractual obligations are matters of private law and a writ would not lie to enforce a civil liability arising purely out of a contract, and the proper remedy in such cases would be to file a civil suit for claiming damages, injunctions or specific performance or such appropriate reliefs in a civil court.

10. While stating the aforementioned broad proposition of law in **M/S Bio Tech Systems** (supra), it was also added that it cannot be held in absolute terms that a writ petition is not maintainable in all contractual matters seeking enforcement of obligations on part of the State or its authorities. The limitation in exercising powers under Article 226 in contractual matters is essentially a self-imposed restriction. A case where the amount is admitted and there is no disputed question of fact requiring adjudication of

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<sup>1</sup> 2020 (11) ADJ 488 (DB)

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detailed evidence and interpretation of the terms of the contract, may be an exception to the aforementioned general principle.

11. In a given set of facts, where the State or its instrumentalities are parties to a contract, they would be under an obligation in law to act fairly, justly and reasonably, which is the requirement under Article 14 of the Constitution of India. In such a situation where the instrumentalities of the State act unfairly, unjustifiably, unreasonably or arbitrarily in discharge of contractual obligations, the same would be held to be violative of the constitutional guarantee embedded in Article 14 and the aggrieved party cannot be precluded from invoking the writ jurisdiction under Article 226 of the Constitution of India nor the court would be denuded of its power of granting proper reliefs.

12. While considering the question with regard to maintainability of a writ petition in such matters, it was held in **ABL International Ltd. And Another vs. Export Credit Guarantee Corporation of India Ltd. And Others**<sup>2</sup> that in appropriate cases, not only a writ petition against a State or instrumentality of State arising out of contractual obligation would be maintainable but the consequential relief of monetary claim would also be entertainable.

13. In the case at hand, it is evident that there is no dispute relating to the amount due and payable to the petitioner. The instructions received by the learned Standing Counsel clearly indicate that the balance amount has not been paid for the reason that necessary funds have not been made available by the State Government so far.

14. Once the petitioner had performed its contractual obligations under the work order and the amount due is admitted, we find no justification on part of the respondents not to make

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<sup>2</sup> (2004) 3 SCC 553

payment. Our attention has been invited towards order passed in Writ-C No. 21018 of 2021 (Saubhagya Industries Ltd. Vs. State of U.P. and 3 others), wherein identical controversy was raised and when this Court directed the concerned respondent therein to file his personal affidavit disclosing the time frame within which payment of due amount would be made, the respondents made the payment and filed an affidavit to the said effect. It is pointed out that the case of the petitioner is on a similar footing inasmuch as approval for making payment was granted in respect of petitioner as also M/s Saubhagya Industries Ltd. (supra) by the same order dated 5.3.2021 issued by A.D.M., Finance and Revenue, Meerut.

15. We are of considered opinion that in the facts and circumstances noted above, there is no justification in not making payment of the amount due and payable to the petitioner.

16. Accordingly, a writ of mandamus is issued directing the respondents to ensure that the amount due and payable to the petitioner is released in its favour within a period of four weeks from the date of receipt of a true attested copy of the instant order by the second respondent.

17. The writ petition stands **allowed** accordingly.

**Order Date :-** 6.1.2022

Kirti

**(Dr. Y.K. Srivastava, J) (Manoj Kumar Gupta, J)**