

(2018) 09 CHH CK 0192

Chhattisgarh High Court

Case No: Writ Petition (C) No. 1837 Of 2015

Rajesh Kumar Pathak

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Sept. 12, 2018

Acts Referred:

- Constitution Of India, 1950 - Article 14

Hon'ble Judges: Prashant Kumar Mishra, J

Bench: Single Bench

Advocate: Alok Bakshi, A.S. Kachhawaha

Final Decision: Allowed

Judgement

Prashant Kumar Mishra, J

1. The question arising for determination in this petition as to whether the respondent/State is entitled to recover the amount due under one contract

from the amount payable to the petitioner in some other contract is no longer res integra, as the same has been settled by the Division Bench of this

Court in *Macadam Makers v State of Chhattisgarh & Ors.* 2012 SCC Online Chh 363 : AIR 2012 Chh 123 wherein the following has been held in

para 20 :

20. It is, therefore, apparently clear that though respondents claimed certain amount to be recoverable from the petitioner, alleging that the work of the

petitioner was unsatisfactory and he failed to repair the road within the time stipulated as per letter dated 06.11.2008, the petitioner took recourse to

the provision contained under the arbitration Clause 29 by raising a dispute before the Superintending Engineer. However, without adjudication of the

petitioner's liability towards payment, alleged sum is sought to be recovered against the petitioner, and respondent-Executive Engineer has proceed to

issue impugned letter dated 03.12.2010. This act on the part of the respondent-State authority can only be termed as arbitrary and un-reasonable

violative of Article 14 of the Constitution of India. Moreover, respondents could not bring to the notice of this Court any law operating in the field,

authorising the respondent authority to recover the amount by stretching their hands to the due payment and deposits of the petitioner with other

offices in connection with other works. Even in the agreement, no such terms have been stipulated. Present is not a case where even after

adjudication, petitioner failed to deposit the amount and, therefore, the respondents have proceeded to recover the amount as arrears of land revenue.

2. Similarly, in M/s Shree Construction v State of Chhattisgarh & Ors WPC No.5717 of 2011 (decided on 10-4-2012), the Division Bench of this Court

has again held thus in para 19 :

19. It is apparently clear that though the respondents have claimed certain amount to be recoverable from the petitioner under Agreement No.02/DL

of 2008-09, the petitioner has seriously Â disputed his liability and has already taken recourse to the provision contained under arbitration Clause-29 by

approaching appellate authority, namely Chief Engineer. However, without adjudication of petitioner's liability towards payment, alleged sum is sought

to be recovered against the petitioner, that too, by way of withholding the undisputed amount payable to the petitioner under another Agreement

No.40/DL of 2005-06. Learned counsel for the respondents could not bring to the notice of this Court any law operating in the field, authorizing the

respondents authority to withhold undisputed and admitted amount due and payable to the petitioner under another agreement, because of the dispute

leading to recovery against the petitioner under a distinct and separate agreement. The respondents also could not bring to the notice of this Court, any

term under the agreement No.40/DL of 2005-06 so as to provide that the amount due and payable under the agreement shall be withheld in case there

is some amount found due and payable in connection with any other works contract. Present is not a case where even after adjudication, the petitioner

has failed to deposit the amount and, therefore, the respondents have proceeded to recover the amount as arrears of land revenue. Therefore, the act

on the part of respondents-authority in withholding undisputed and admitted amount payable to the petitioner under Agreement No. 40/DL of 2005-06

can only be termed as arbitrary and unreasonable, violative of Article 14 of the Constitution of India.

3. In the case at hand also, the petitioner was awarded contract for laying of pipelines in different areas vide agreement No.120-DL 2012-13, 73-DL

2013-14 & 187-DL 2012-13. The Department was of the view that a sum of Rs.11,63,487/- has been paid in excess to the petitioner in respect of his

dues under agreement No.120-DL 2012-13, therefore, a part of the same has been recovered from him from agreement No.73-DL 2013-14 and the

remaining part is sought to be recovered by withholding payment due to the petitioner under agreement No.187-DL 2012-13.

4. Since the matter in issue is squarely covered by the orders passed by the Division Bench of this Court in Macadam Makers (supra) & M/s Shree

Construction (supra), the subject recovery or withholding of payment from the petitioner's other contract No.73-DL 2013-14 & 187-DL 2012-13 is not

permissible in law. Accordingly, it is held that for recovery of the excess amount allegedly paid to the petitioner in agreement No.120-DL 2012-13 the

respondents cannot recover the amount from any other contract including contract No.73-DL 2013-14 & 187-DL 2012-13 nor payment due to the

petitioner in these two contracts can be withhold if the petitioner has performed the contract work in the said contracts.

5. Accordingly, the writ petition is allowed. Recovery of amount to the tune of Rs.11,63,487/- from contract No.73-DL 2013-14 & 187-DL 2012-13 is

held to be illegal. However, the respondent Department would be at liberty to workout the remedy for alleged recovery of the amount within the terms

of the agreement No.120-DL 2012-13.

6. No order as to cost(s).