

(2012) 01 CAL CK 0037

Calcutta High Court

Case No: Writ Petition No. 671 (W) of 2012

M/s. Dubey Project

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Jan. 18, 2012

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2012) 2 CALLT 243

Hon'ble Judges: Jayanta Kumar Biswas, J

Bench: Single Bench

Advocate: Ashok Banerjee, Mr. Sourav Banerjee, Mr. B. Chakraborty and Mr. Arindam Sen, for the Appellant; Dhruba Mukherjee, for BSNL, for the Respondent

Final Decision: Dismissed

Judgement

Jayanta Kumar Biswas, J.

The petitioner in this WP under Art. 226 dated December 7, 2011 is seeking the following principal relief:

b) A Writ in the nature of Mandamus do issue commanding the particularly respondent No. 3 to forthwith release the fund to the respondent No. 5 as per Memo No. A-66/FUND & DRAWAL/2010-11 dated 08.03.2011 for payment of the petitioner:

The petitioner participated in a tender process initiated by Bharat Sanchar Nigam Limited (in Short BSNL) for supply of electrical and electronic telecom gadgets. As the successful bidder he got the work. He raised bills from time to time. Though certain bills were paid, nine bills remained unpaid.

2. Relying on the decisions in Zonal Manager, Central Bank of India Vs. Devi Ispat Ltd. and Others, and Central Coalfields Limited Vs. Ajay Transport Company and Others, Mr. Banerjee appearing for the petitioner, has strenuously argued that since

the distinction between the public law, and the private law has now disappeared, the petitioner is entitled to a mandamus directing BSNL to pay his admitted bills.

3. Disputing the proposition and relying on a Single Bench decision of this Court in Haldiram Ltd. Vs. The State of West Bengal and Others, Mr. Mukherjee appearing for BSNL. besides questioning the maintainability of the WP, has submitted as follows. Costly materials were procured without any apparent justification, administrative approval, sanction of expenditure, etc. The Chief General Manager, West Bengal Telecom Circle, BSNL has already ordered a vigilance inquiry that is in progress. BSNL has reasons to dispute the petitioner's claims.

4. There is no reason to say that BSNL has withheld payment of any admitted dues. What the petitioner is seeking is enforcement of a pure private law money claim.

5. The agreement dated November 17, 2009 between the parties does not involve any public law element. It is wrong to say that the distinction between the public law and the private law has disappeared. The position was examined by this Court in Haldiram where it was held that for seeking the public law remedy under Art. 226 there must be an element of public law involved in the action or decision under challenge.

6. I am unable to see how the Supreme Court decision cited to me can lead to a contrary conclusion. I am unable to accept the view taken by the Division Bench of the Jharkhand High Court. In my opinion, the petitioner's remedy, if any, was before the Civil Court or the Forum, if any, mentioned in the agreement between the parties. The claims are not to be adjudicated, and determined by the High Court under Art. 226. For these reasons, the WP is dismissed. No costs. Certified xerox.

Jayanta Kumar Biswas, J.