

Before Tejinder Singh Dhindsa, J.

SRI KANT SON OF SHRI RATTAN LAL —*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CWP No.17545 of 2017

July 17, 2019

Constitution of India, 1950—Arts. 226 and 227—Money claim—No absolute bar of writ jurisdiction—Petitioner contractor admittedly executed works allotted by Municipal Council, Bhiwani in 2005-06—Payment released in 2015-16—Repeated rounds of litigation— Interest awarded—Statutory authorities not to detain payment.

Held that the petitioner in the capacity of a contractor had executed the works allotted to him by the Municipal Council, Bhiwani in the years 2005-06 and payments in lieu thereof have been released to him only in the years 2015-16. Even such payments were released after repeated rounds of litigation and the petitioner's hands having been forced to file a number of writ petitions and wherein directions had been issued to the respondent-Authorities to examine the claim and to take a decision thereupon. Statutory authorities cannot be permitted to detain the payment for which the petitioner was entitled to upon completion of the work. Even though the relief sought for in the instant writ petition may be seen as a money claim and for which a civil remedy may also be available yet the Apex Court in numerous cases has held that an alternate remedy would not be an absolute bar and in appropriate cases petitions can be entertained under Article 226 of the Constitution of India.

(Para 11)

Mani Ram Verma, Advocate
for the petitioner.

Siddharth Sanwaria, D.A.G., Haryana.
Jagdish Manchanda, Advocate
for respondent No.5.

TEJINDER SINGH DHINDSA, J.

(1) Instant writ petition is directed against the order dated 15.5.2017 passed by the Executive Officer, Municipal Council,

Bhiwani, Annexure P10, declining the prayer of the petitioner for interest on the delayed payments that were made to him in lieu of works executed.

(2) Case of the petitioner is that he is a contractor and in the years 2005-06, a number of development works were executed by him. It has been averred that such works were executed upon work orders having been issued by Municipal Council, Bhiwani following due process. The works in question were carried out on the basis of prescribed rates. After completion of the works, the same had been duly verified and inspected by the concerned officials and were found to be satisfactory and technically sound. An amount of Rs.92 lakhs had become due to the petitioner. The requisite payment was not released. The Municipal Council, Bhiwani on 18.10.2010 even passed a resolution calling upon the Director, Development of Urban Local Bodies, Haryana to sanction a special amount for disbursement of dues to the contractor by citing the adverse financial health of the Council. A sum of Rs.16,28,096/- was paid on 16.4.2015 and thereafter payment of Rs.59,91,428/- was released in March, 2016 and payment of Rs.9,57,536/- was released in April, 2016. Against such backdrop of delayed release of dues in relation to works completed and executed in the years 2005-06 that the claim for interest had been raised and the same has been declined vide impugned order dated 15.5.2017, Annexure P10.

(3) Learned counsel representing respondent No.5 – Municipal Council, Bhiwani sought to justify the denial of interest on the ground that the petitioner had earlier filed Civil Writ Petition 10113 of 2015 raising a demand for release of the payments and which had been disposed of on 20.5.2015 in terms of granting liberty to the petitioner to file a detailed representation before the Deputy Commissioner, Bhiwani, Sub Divisional Officer (Civil), Municipal Committee, Bhiwani and Executive Officer, Municipal Committee, Bhiwani, District Bhiwani within a period of two weeks from the date of passing of the order and directions were issued that in case such representation is made, the same would be decided within a period of two months. It is contended that petitioner thereafter had made a representation dated 25.5.2015, Annexure P5, and in which the claim was only with regard to principal outstanding amount of Rs.92 lakhs and not qua interest. Accordingly, it is urged that the petitioner cannot now agitate the matter with regard to interest on account of the delayed release of dues. That apart, while seeking dismissal of the writ petition, it has been

argued that the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India would not issue directions to enforce a civil liability arising out of breach of contract to pay an amount of money due to the claimant. It is contended that the claim raised in the petition is a pure money claim which ought not to be entertained.

(4) Having heard learned counsel for the parties and having perused the pleadings on record, this Court is of the considered view that the impugned order dated 15.5.2017, Annexure P10, cannot sustain and the petitioner is entitled to grant of interest on the delayed release of payments in lieu of works that were executed by him.

(5) In the written statement that has been filed on behalf of respondent No.5/Executive Officer, Municipal Council, Bhiwani, an attempt has been made to impress upon this Court that there are disputed questions of fact involved. It has been averred that the petitioner has not attached any document with regard to allotment of work as has been alleged. The details of the works allotted have also not been mentioned. It has also been averred that there is no material placed on record to substantiate that the work which is stated to have been done was sanctioned technically and any approval or completion certificate had been issued.

(6) Mr.Jagdish Manchanda, Advocate appearing for respondent No.5, however, candidly admits that the works in question had been executed and completed by the petitioner herein. He has also admitted that the payments in lieu of the works executed could not be made to the petitioner on account of the precarious financial health of the Municipal Council. He further does not dispute that the Municipal Council had called upon the Director, Urban Local Bodies, Haryana for sanction of money so as to make good the payments as the petitioner /contractor had been repeatedly sending representations/notices for release of the amount due. Even the principal amount that was due to the petitioner, having been paid, albeit belatedly, is a matter of record.

(7) The objection and defence sought to be taken up in the written statement with regard to disputed facts does not even find a mention in the impugned order dated 15.5.2017, Annexure P10. This Court would have no hesitation in observing that the written statement has been filed just for the sake of opposing the claim. There are no disputed questions of fact involved in the instant petition.

(8) This Court finds that the action of the respondent-authorities in having released payments of the petitioner in the years 2015-16 in relation to works that were executed and completed in the year 2005-06 is patently unjust and unfair.

(9) In *M/s Burmah Construction Company* versus *The State of Orissa and others*¹ a view was taken that High Courts under Article 226 of the Constitution of India would not enforce a civil liability arising out of a breach of contract as it would amount to be a pure money claim. The Apex Court in *Food Corporation of India and another* versus *M/s Seil Limited and others*² had noticed the judgment rendered in *M/s Burmah Construction Company* (supra) and had observed that Article 14 of the Constitution of India has received a liberal interpretation over the years. In appropriate matters where no disputed question of fact is involved, the High Court may grant such relief to the writ petitioner which he would be entitled to in law as well as in equity.

(10) In *ABL International Limited and another* versus *Export Credit Guarantee Corporation of India Limited and others*³ it was held that once the State or an instrumentality of the State is a party to a contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India.

(11) Adverting to the facts of the present case, the petitioner in the capacity of a contractor had executed the works allotted to him by the Municipal Council, Bhiwani in the years 2005-06 and payments in lieu thereof have been released to him only in the years 2015-16. Even such payments were released after repeated rounds of litigation and the petitioner's hands having been forced to file a number of writ petitions and wherein directions had been issued to the respondent-Authorities to examine the claim and to take a decision thereupon. Statutory authorities cannot be permitted to detain the payment for which the petitioner was entitled to upon completion of the work. Even though the relief sought for in the instant writ petition may be seen as a money claim and for which a civil remedy may also be available yet the Apex Court in numerous cases has held that an alternate remedy would not be an absolute bar and in appropriate cases petitions can be entertained under Article 226 of the Constitution of India. Reference in this regard

¹ AIR 1962 Supreme Court 1320

² (2008) 3 SCC 440

³ (2004)3 SCC 553

may be made to the decision of the Apex Court in *Sanjana M Wig (Ms.) versus Hindustan Petroleum Corporation Ltd*⁴

(12) The basis for denial of interest as put forth in the impugned order i.e. that the petitioner had not claimed interest in the representation dated 25.5.2015, Annexure P5, and consequently, he cannot now agitate such claim is not well-founded. In this regard, it may be noticed that the representation dated 25.5.2015, Annexure P5, had been submitted by the petitioner in terms of liberty granted by the writ Court on 20.5.2015 while disposing of Civil Writ Petition No.10113 of 2015. The respondent-authorities have completely overlooked the fact that the petitioner had got a legal notice dated 2.9.2016, Annexure P6, served upon them and in which a specific claim for award of interest @ 24% per annum on account of delayed release of payment had been raised. Such legal notice having not been responded to, petitioner filed Civil Writ Petition No.23826 of 2016 and which was disposed of vide order dated 18.11.2016 at Annexure P7 calling upon the respondent-authorities to take a decision on the legal notice dated 2.9.2016. Respondent-authorities having sat over the matter, a contempt notice dated 20.3.2017 was served and thereafter COCP No.1101 of 2017 was filed in this Court. It was after issuance of notice in the contempt petition that the impugned order dated 15.5.2017, Annexure P10, came to be passed and resultantly, the contempt petition was disposed of on 19.7.2017 at Annexure P9 but granting liberty to the petitioner that if he was still aggrieved in any manner, he may avail appropriate remedy. It is in terms of such liberty having been granted by the Contempt Court that the instant writ petition had been filed. Claim of the petitioner for interest, as such, could not have been denied on the basis that in the representation dated 25.5.2015, Annexure P5, submitted earlier in point of time, petitioner had not raised the claim qua interest.

(13) For the reasons recorded above, the instant writ petition is allowed. Impugned order dated 15.5.2017 at Annexure P10 is set aside.

(14) The works in question, admittedly, had been executed and completed by the petitioner in the years 2005-06. Payments in lieu thereof have been released in the years 2015-16. There has been a delay of almost ten years in releasing dues to the petitioner.

(15) However, in view of the submission advanced by Mr.Jagdish Manchanda, Advocate that there is an acute fund crunch

⁴ (2005)8 SCC 242

with the Municipal Council, Bhiwani and to balance out equities, the petitioner is held entitled to interest @ 7.5% per annum to be calculated on the principal amount that already had been released and to be calculated over a period of five years. The requisite interest amount be, accordingly, calculated and be paid to the petitioner within a period of two months from the date of receipt of a certified copy of this order.

(16) Writ petition is allowed in the aforesaid terms.

Shubreet Kaur