

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9<sup>TH</sup> DAY OF DECEMBER, 2020

PRESENT

THE HON'BLE MR. ABHAY S.OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO.10392 / 2020 (GM-MMS)

BETWEEN:

M/s. Chaithanya Geo Surveys,  
1<sup>st</sup> Floor, Sri Lakshmi Nivas,  
D.No.98B/37, 3<sup>rd</sup> Cross,  
Shanthi Nagar,  
Hospet – 583 201.  
Represented by its  
Managing Partner,  
Kali Prasad SB,  
S/o late R.H.Bhaskar,  
Aged about 48 years.

...PETITIONER

(By Sri Shashi Kiran Shetty, Sr. Counsel for  
Ms. Anuparna Bordoloi, Adv.)

AND:

1. State of Karnataka,  
Department of Commerce and  
Industries,  
(Mines, SSI & Textiles),  
1<sup>st</sup> Floor, Vikasa Soudha,  
Bengaluru – 560 001,  
Represented by its  
Secretary.

2. The Director,  
Department of Mines & Geology,  
Khanija Bhavan,  
Race Course Road,  
Bengaluru – 560 001.

3. The Deputy Director,  
Department of Mines & Geology,  
Government of Karnataka,  
3<sup>rd</sup> Floor, Parwaz Plaza,  
College Road,  
Hosapete -- 583 104.

...RESPONDENTS

(By Sri I.Tharanath Poojary, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE RESPONDENTS HEREIN TO RELEASE PAYMENT TO THE PETITIONER PURSUANT TO THE INVOICE DATED 29.07.2019 FOR A SUM OF Rs.42,12,600/- INVOICE DATED 28.08.2019 FOR A SUM OF Rs.6,60,800/- AND INVOICE DATED 11.09.2019 ADDRESSED TO R-2 FOR Rs.1,42,190/- ANNEXURES-A, B AND C WITH INTEREST OF 18 PERCENT PER ANNUM FROM THE DATE OF INVOICE TILL THE DATE OF REALIZATION & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30<sup>TH</sup> NOVEMBER 2020, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, S.VISHWAJITH SHETTY J., MADE THE FOLLOWING:

### **ORDER**

1. The petitioner who was entrusted with the DGPS/Drone survey work through work orders issued by the first respondent in respect of 18 'C' Category mines, ML No.2135 & 2366 and ML

No.2396 in Ballari District, has approached this Court in this petition under Article 226 of the Constitution of India, inter alia praying to issue a writ of mandamus directing the respondents to release the payments in respect of the work completed by it pursuant to the work orders issued by respondent No.1.

2. It is the case of the petitioner that pursuant to the work orders issued by respondent No.1, the petitioner has completed the DGPS/Drone survey work to the fullest satisfaction of the respondent No.3 in whose jurisdiction the work was undertaken and thereafter, submitted three separate invoices for payments in respect of the work done by it. The particulars of the invoices raised by the petitioner are as follows:

- (a) Invoice No.CGS/19-20/54 dated 29.07.2019 for a sum of Rs.42,12,600/- towards drone survey of 18 'C' Category mines of Ballari District (Annexure-A & A1);
- (b) Invoice No.CGS/19-20/64 dated 28.08.2019 for a sum of Rs.6,60,800/- towards drone survey of ML No.2365 & 2633 M/s. TML (JSW) of Ballari District (Annexure-B & B1);
- (c) Invoice No.CGS/19-20/73 dated 11.09.2019 for a sum of Rs.1,42,190/- towards DGPS survey of M/s.

NMDC of Donimalai Iron Ore Mine, ML18 'C'  
Category mines of Ballari District (Annexure-A & A1);

3. Considering the said invoices raised by the petitioner, respondent No.3 has forwarded the same to respondent No.2 with a request to take appropriate action for release of payments to the petitioner in respect of the work done by it in the three mining areas.

4. The respondent No.2 considering the invoice raised by the petitioner for a sum of Rs.42,12,600/- towards drone survey of 18 'C' category mines of Ballari District and the letter dated 8<sup>th</sup> August 2019 of respondent No.3 forwarding the aforesaid invoice in respect of 18 'C' Category mines, has passed an office order dated 6<sup>th</sup> September 2019 vide Annexure-G according approval for release of Rs.42,12,600/- including GST to the petitioner. In spite of such a specific order passed by respondent No.2, amount of Rs.42,12,600/- including GST was not released to the petitioner. The invoice dated 28<sup>th</sup> August 2019 raised for a sum of Rs.6,60,800/- towards drone survey of ML No.2365 & 2366 of Ballari District and the invoice dated 11<sup>th</sup> September 2019 raised for a sum of Rs.1,42,190/- towards DGPS survey of ML No.2396

of Ballari District are yet to be considered by the second respondent, inspite of respondent No.3 requesting respondent No.2 to take appropriate action for release of payments covered under the aforesaid two invoices. It is under these circumstances, the petitioner has approached this Court in this petition.

5. Learned Senior Counsel appearing for the petitioner submits that the entire work entrusted to the petitioner has been completed to the fullest satisfaction of respondent No.3 and it is only thereafter, the invoices were raised and submitted by the petitioner in respect of the work completed by it. He submits that the act of the State has to be fair and reasonable and the same is applicable even for contractual obligations. Even in a case of contractual obligation, if the action of the State does not withstand the test of Article 14 of the Constitution, this Court in exercise of its power under Article 226 of the Constitution can issue necessary directions to the State and its instrumentalities to honour their contractual obligations.

6. This Court, on 29<sup>th</sup> September 2020 had issued notice to the respondents and directed the Additional Government

Advocate to file statement of objections. On the next date of hearing, the learned Additional Government Advocate sought time to take instructions regarding implementation of the order dated 6<sup>th</sup> September 2019 vide Annexure-G. However, thereafter, no decision was placed on record by the State Government regarding implementation of the order at Annexure-G. Therefore, the petition was heard for final disposal at the stage of preliminary hearing with the consent of both the parties.

7. It is not in dispute that considering the invoices raised by the petitioner and the communication issued by respondent No.3, respondent No.2 has passed an order on 6<sup>th</sup> September 2019 according approval to release a sum of Rs.42,12,600/- including GST to the petitioner towards work of drone survey done by it in respect of 18 'C' Category mines in Ballari. As long as the said order subsists, the respondents are under an obligation to pay the amount covered under the said order. The State Government has not disputed that the said order dated 6<sup>th</sup> September 2019 is subsisting as on date. Even the other two invoices raised by the petitioner for a sum of Rs.6,60,800/- and Rs.1,42,190/- which has been forwarded by respondent No.3 to respondent No.2 for

taking appropriate action to release payments, are required to be considered by respondent No.2 and the same cannot be kept pending indefinitely.

8. The State, when it enters into a contract, must do so fairly without discrimination, arbitrariness and unreasonableness. Any act of the State should withstand the test of judicial review under Article 14 of the Constitution. This power of review is normally exercised by the constitutional courts to rein any unbridled executive functioning.

9. In a democratic State, rule of law is of paramount importance and the Courts are required to act as guardians of rule of law. Arbitrariness and unfairness in a contract defies the basics of rule of law. The respondent No.1 is the beneficiary of the work done by the petitioner and it is clear from the facts and circumstances of the case that the instrumentalities of respondent No.1 have acted in a arbitrary and unfair manner after the work is completed.

10. The Hon'ble Apex Court in the case of ***ABL International Ltd. and Ors. –vs- Export Credit Guarantee Corporation of India Ltd. and Ors.***<sup>1</sup> has held as under:

*“23. It is clear from the above observations of this Court, once State or an instrumentality of State is a party to the 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. In the very same judgment, the Hon'ble Apex Court considered the question of maintainability of a writ petition against a State for enforcement of right arising out of a contractual obligation. The Hon'ble Apex Court at para-29 of the aforesaid judgment has held as under:

*“29. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition:-*

*(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*

*(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to*

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<sup>1</sup> (2005) 10 SCC 495



*refuse to entertain a writ petition in all cases as a matter of rule.*

*(c) A writ petition involving a consequential relief of monetary claim is also maintainable.”*

12. The Apex Court in the case of **KUMARI SHRILEKHA VIDYARTHI ETC., VS STATE OF U.P. AND OTHERS – AIR 1991 SC 537**, has held that State action in contractual matter can be reviewed under Article 14 of the Constitution. In paragraphs 22, 23, 24, 28 & 29 of the said decision, the Apex Court has held as under:

“22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party, Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases

the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

23. Thus, in a case like the present, if it is shown that the impugned State action is arbitrary and, therefore, violative of Article 14 of the Constitution, there can be no impediment in striking down the impugned act irrespective of the question whether an additional right, contractual or statutory, if any, is also available to the aggrieved persons.

24. The State cannot be attributed the split personality of Dr. Jekyll and Mr. Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring

it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity.

25. xxx

26. xxx

27. xxx

28. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

29. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. ....”

13. If there is a right, there should be a remedy. A writ of mandamus is issued against a person who has a legal duty to perform, but has failed or neglected to do so. In the case on hand, respondent No.2 has passed the order dated 6<sup>th</sup> September 2019 according approval for release of Rs.42,12,600/- in favour of the petitioner and a copy of the said order is forwarded to the competent authority for information and

further action. It is not in dispute that the said order subsists even on this date. In spite of the same, the payment covered under the said order has been not released in favour of the petitioner. This omission on the part of the competent authority who was obliged to comply the order dated 6<sup>th</sup> September 2019 passed by respondent No.2 to release the amount smacks of arbitrariness and unfairness. The act of the Competent Authority of withholding the amount which is admittedly due to the petitioner as per the order dated 6<sup>th</sup> September 2019 is unfair. Similarly, the invoices raised by the petitioner for payment of Rs.6,60,800/- and Rs.1,42,910/- has been forwarded by respondent No.3 to respondent No.2 with a request to take appropriate action for release of the amounts covered under the said invoices. The petitioner, thereafter, has made representations as per Annexures-H & H1 both dated 17<sup>th</sup> April 2020 requesting respondent No.2 to take appropriate action for release of the payments. The respondent No.2 is duty bound to consider the said representations made by the petitioner. Under the circumstances, we are of the considered view that the petitioner

has made out a case for issuing appropriate directions to the concerned respondents/competent authority.

14. If the admitted amount is not paid within the time fixed under this order, it will carry interest at the rate of 6% per annum from the date of this order till the date of payment. Accordingly, we pass the following:

**ORDER**

- (i) The writ petition is allowed in part;
- (ii) A writ of mandamus is issued to the competent authority of respondent No.1 to release the payment covered under the office order dated 6<sup>th</sup> September 2019 vide Annexure-G issued by respondent No.2 in favour of the petitioner in respect of conducting drone survey in 18 'C' Category mines;
- (iii) The respondent No.2 is directed to consider the representations at Annexures-H & H1 dated 17<sup>th</sup> April 2020 submitted by the petitioner in the background of the communications issued by respondent No.3 at Annexures-E & F dated 4<sup>th</sup> September 2019 and 13<sup>th</sup> September 2019, respectively, for release of payments in respect of other two invoices;

- (iv) The aforesaid directions shall be complied within a period of two months from the date of receipt of a copy of this order;
- (v) On the failure to release the amount as mentioned in clause (ii) within the stipulated time, the same shall be paid with interest at the rate of 6% per annum from the date of this order till the date of payment.

Sd/-  
CHIEF JUSTICE

Sd/-  
JUDGE

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