

RAJASTHAN HIGH COURT

Master Constructions.

Vs.

Secretary, PHED

C.W.P. No. 1258 of 2002

(Shiv Kumar Sharma, J.)

27.02.2002

ORDER

Shiv Kumar Sharma, J.

1. Can second writ petition be entertained on the subject matter respecting which the first writ petition of the same person was dismissed?

This question emerges for consideration in the instant matter under the circumstances set out below.

2. First writ petition bearing No. 5633/2001 was submitted by the petitioner with the following prayer-

(i) to issue any order or direction of writ of any nature directing non- petitioner No. 1 Financial Committee not to approve the grant of contract in pursuance of NIT No. 14/2000-2001 work of 900 mm PSC Pipe Line Stretch between Sahawa to Bhaleri under package CBPL-1 and 15/2000-2001 in relation to the work of 900 mm PSC Pipe Line Stretch between Bhaleri and Churu under package CBPL-2 of Churu-Bissau Water Supply Project dated 22-7-2000.

(ii) to issue any order or direction of writ of any nature declaring the tender submitted by Bhuratham and Co. and other tenderer who has not deposited 2% earnest money along with the tender form in response to the tender notice Nos. 14 and 15 dated 22-7-2000 as invalid.

(iii) to issue any order or direction or writ of any nature directing the non-petitioner to consider the tender of the petitioner for grant of contract in response to the tender notices Nos. 14 and 15 dated 22-7-2000.

3. Single Bench of this Court vide order dated December 4, 2001 dismissed the writ

petition indicating thus-

"Be that as it may, mere filing up the tender form and complying with all requisite formalities does not by itself give any legal right in favour of the petitioner to claim acceptance of his tender form. In my view, apart from what has been stated herein- above this writ petition is premature and not maintainable as the Finance Committee has not yet finally adjudicated upon the matter..... Prima facie, I find no merit in this petition and the same is deserve to be dismissed at the admission stage itself."

4. Assailing the aforequoted order of the single Bench, the petitioner preferred Civil Special Appeal (Writ) No. 6/2002 before the Division Bench. Dismissing the Special Appeal the Division Bench in its order dated February 21, 2002 observed thus -

"On 10-1-2002 the appellate Bench while admitting the appeal, had issued notice in the appeal returnable on 5-2-2002. Further an order was passed for maintaining status quo as on that date with regard to the subject matter of the dispute. The respondents have filed an application under Article 226 (3) of the Constitution of India for vacation of the interim order wherein it is stated that after dismissal of the writ petition the work was awarded to M/s. Bhooratnam and Company on 4th of January, 2002 followed by execution of an agreement in favor of the said Bhooratnam and Company. Photo copy of the agreement executed between the parties has been placed before us during the course of hearing while the original agreement is stated to be available with the counsel for perusal of the Court.

In matters relating to award of contracts involving public works, it is settled law that the Court has to be very careful in entertaining petitions and granting stay orders. It has been held by the Supreme Court on several occasions that any stay order granted in such matters leads to delay in execution of the work indefinitely besides escalation in costs. In the case before us the learned counsel for the appellant argued that by award of the work in favour of the other party i.e. M/s. Bhooratnam and Company the respondents have caused a loss of at least Rs. six crores to the public exchequer.

We would like to observe that assuming what the learned counsel for appellant is urging is correct, still staying the public work involved in the present case, in our view, would cause greater harm to public interest besides leading to escalation of costs, impact of which may be much more to Rs. six crores. The work has already been awarded to another party and but for the status quo order

granted by this Court on 10th of January, 2002 the work would have been commenced. We are, therefore, of the firm view that the Court need not interfere in a public work of this type on such allegations as are being made in the petition. There is yet another reason which persuades us not to entertain this appeal. The appellant will be free to seek its remedy in civil Courts if it feels that some of its contractual rights have been adversely affected. At best it can be said to be a case of breach of contractual obligations for which, if case is made out, the civil Court will be able to provide the remedy. For all these reasons this appeal is dismissed. The interim order granted on 10th of January, 2002 is hereby vacated. Parties are left to bear their own costs."

5. During the pendency of the Special Appeal the petitioner on February 14, 2002 instituted second writ petition bearing No. 1258/2002 praying as under-

(i) to direct the respondents to produce the work order awarding the contract in favour of respondents Nos. 3 and 4 in pursuance of aforesaid NIT and the contract agreement in their favor and to quash and set aside the same.

(ii) to consider the petitioner technically eligible and consider the tender of the petitioner for the price bid.

6. A preliminary objection in regard to maintainability of the writ petition has been raised on behalf of the respondents. It is contended that the petitioner cannot be permitted to play second inning of the litigation after became unsuccessful in the first inning. The second writ petition of the petitioner is barred by the principle of res judicata.

7. Refuting the arguments advanced in regard to maintainability of the writ petition it is urged by the learned counsel for the petitioner that the first writ petition was dismissed by the learned single Judge treating it as premature and not maintainable on the ground that the Finance Committee had not finally adjudicated upon the matter. Therefore after the matter was finally adjudicated by the Finance Committee, the second writ petition was filed by the petitioner that is maintainable as the petitioner cannot be rendered remediless. Reliance is placed on *N. Annappa v. State of Karnataka*,¹

8. Although in addition to the preliminary objection lengthy arguments on merits of the matter have also been advanced but at the outset I propose to address myself on the arguments raised in regard to maintainability of second writ petition.

9. Their Lordships of the Supreme Court propounded a 'Salutory Rule of Judicial

Practice and Procedure' in *State of U.P. v. Labh Chand*, ² thus (Para 20)

"When a Judge of single Judge Bench of a High Court is required to entertain a second writ petition of a person on a matter, he cannot, as a matter of course, entertain such petition, if an earlier writ petition of the same person on the same matter had been dismissed already by another single Judge Bench or a Division Bench of the same High Court, even if such dismissal was on the ground of laches or on the ground of non-availing of alternative remedy. Second writ petition cannot be so entertained not because the learned single Judge has no jurisdiction to entertain the same, but because entertaining of such a second writ petition would render the order of the same Court dismissing the earlier writ petition redundant and nugatory, although not reviewed by it in exercise of the recognized power. Besides, if a learned single Judge could entertain a second writ petition of a person respecting a matter on which his first writ petition was dismissed *in limine* by another learned single Judge or a Division Bench of the same Court, it would encourage an unsuccessful writ petitioner to go on filing writ petition after writ petition in the same matter in the same High Court, and have it brought up for consideration before one Judge after another. Such a thing, if is allowed to happen, it could result in giving full scope and encouragement to an unscrupulous litigant to abuse the process of the High Court exercising its writ jurisdiction under Article 226 of the Constitution in that any order of any Bench of such Court refusing to entertain a writ petition could be ignored by him with impunity and relief sought in the same matter by filing a fresh writ petition. This would only lead to introduction of disorder, confusion and chaos relating to exercise of writ jurisdiction by Judges of the High Court for there could be no finality for an order of the Court refusing to entertain a writ petition. It is why, the rule of judicial practice and procedure that a second writ petition shall not be entertained by the High Court on the subject matter respecting which the first writ petition of the same person was dismissed by the same Court even if the order of such dismissal was in limine, be it on the ground of laches or on the ground of non-exhaustion of alternate remedy, has come to be accepted and followed as salutary rule in exercise of writ jurisdiction of Courts."

(Emphasis supplied)

10. Coming to the facts of the instant matter it may be noticed that the single Bench of this Court in the order dated December 4, 2001 considered the merits of the case and

did not find any merit in it. Treating the writ petition as premature and not maintainable, was an additional ground of dismissal. However, the Division Bench took notice of all subsequent events. The fact that work was awarded to M/s. Bhooratnam and Company on January 4, 2002 also came to the notice of the Division Bench but relief was not granted to the petitioner and it was observed that the petitioner is free to seek its remedy in civil Court if it feels that some of the contractual rights have been adversely affected. In my considered opinion the order of the Division Bench is final and the second writ petition on the subject matter respecting which the first writ petition was dismissed, cannot be entertained. Ratio of *N. Annapa v. State of Karnataka* (supra) is not applicable to the facts of the instant case. In that case the first application was not rejected on merits but it was rejected with the following observations -

"For want of any material, it is not possible for us to consider the application before us. Hence we dismiss this application keeping open all the contentions raised." Their Lordships of the Supreme Court in view of the aforesaid observations indicated in Para 4 thus -

"From the aforesaid observation, it is clear that the Tribunal did not dismiss the application of the appellant on merits, moreso, kept all the contentions raised in the application to be agitated subsequently. In view of the said fact it was not correct on the part of the Tribunal and the High Court to have rejected the second application on the ground that the second application was barred by the principles of *res judicata*."

11. The rule of *res judicata* prohibits an inquiry *in limine* and ousts the jurisdiction of the Court to hear the case. The theory of *res judicata* is to presume conclusively the truth for the former decision. The principle of *res judicata* is not a technical principle, but a fundamental doctrine aimed at putting an end to litigation and this doctrine would apply equally in all Courts, irrespective of the form the proceedings have taken, provided it was on the same cause. General principles of *res judicata* will include constructive *res judicata*. Same relief cannot be repaginated in subsequent petition as it is barred by general principles underlying doctrine of *res judicata*. Even an erroneous decision by competent Court having jurisdiction will as much *res judicata* as correct decision. Decision will not cease to be *res judicata* merely because it is not based on correct law.

12. In the case on hand as the first writ petition and the special appeal of the petitioner were dismissed on merits, the petitioner is not entitled to reagitate the matter on the

ground that when first writ petition was filed the work order was not awarded. The division Bench while dismissing the special appeal considered all subsequent events including awarding of work order to another contractor. Therefore the instant writ petition is hit by the principles of *res judicata* and the petitioner now cannot be permitted to play second inning of litigation.

13. For the reasons aforementioned the writ petition stands dismissed with costs.

Order accordingly.

Cases Referred.

1. (1999) 5 SCC 188
2. (1993) 2 SCC 495