

CHIEF GENERAL MANAGER, TELECOM AND ORS.

v.

V.N. ENTERPRISES

AUGUST 17, 1995

[MADAN MOHAN PUNCHHI AND SUJATA V. MANOHAR, JJ.]

*Constitution of India 1950*

*Articles 12, 226—Statutory authority—Contract for supply of articles to—Outstanding bills—Writ petition by supplier claiming clearance of—Held, regarding disputed claims, claimant has to move the civil court by way of a regular suit.*

The respondent filed a writ petition before the High Court alleging that it had supplied certain goods to the appellants at the rate quoted by it and the appellants, though partly cleared the bills, wrongly withheld a sum of Rs. 66,09,669.36. It prayed for a direction so as to recover the amount. The appellants, on the other hand, besides raising an objection that a civil suit was the appropriate remedy, contended that they had been put to a loss of Rs. 43, 16, 400 due to high quotations by the respondents, and, therefore, they had a right to withhold that amount. The High Court overruled the objection of the appellants and allowed the writ petition. Aggrieved, the appellants filed that appeal by special leave.

Disposing of the appeal and modifying the order of the High Court, this Court

**HELD :** 1.1. On the parties' own showing a sum of about Rs. 23 lacs being not disputed to be due to the respondent towards its claim, the appellants shall pay without prejudice a sum of Rs. 23 lacs to the respondent towards part clearance of the outstanding bills and sequally the orders of the High Court shall be meant to confine to the payment of Rs. 23 lacs. [797-A-B]

1.2. Regarding the balance claim of the respondent, since it is disputed, it would have to move the civil court claiming it in a regular suit. Necessarily accounting will be resorted to in the suit and sums of money already paid to the respondent inclusive of the sum of Rs. 23 lacs as

**A** ordered to be paid herein would have to reckoned in finalising the accounts. [797-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7409 of 1995.

**B** From the Judgment and Order dated 14.11.94 of the Orissa High Court in O.J.C. No. 5565 of 1994.

N.N. Goswami, Ms. Indira Sawhney and Ms. Anil Katiyar for the Appellants.

**C** Soli J. Sorabjee, Vipin Nair, Manjit Sidhu and Rajiv Dutta for the Respondents.

The following Order of the Court was delivered :

Leave granted.

**D** The respondent herein on supply of goods to the appellants raised bills which are partly cleared. Since the balance was substantial and the appellants a statutory authority and its representatives, the respondent moved the High Court of Orissa in a writ petition for a direction so as to recover the balance outstanding. The High Court on entertainment of the

**E** Writ Petition came to grips of the matter inclusive of the objection by the appellants that a civil suit was the appropriate remedy. Overruling the objection, the High Court was moved by the fact that the writ petitioner before it, i.e., the respondent herein, had undeniably supplied the goods at the rate quoted by it and that the appellants had after taking delivery

**F** utilised the said goods, which factum was not disputed. It took the view that when the facts were admitted, there was no justifiable reason on the part of the appellants not to pay amount due to the respondent when it had supplied the goods to the appellants. It is, in these circumstances, that the High Court ordered payment of the quoted price of goods supplied,

**G** allowing the writ petition. That view of the High Court has been put to challenge here.

We do not wish either to comment on the step taken or the view arrived at by the High Court in these proceedings since we find that before the High Court the appellants in their counter had pleaded that since they

**H** had been put to a loss of Rs. 43,16,400 due to high quotations they had a

right to withhold that amount for being paid-over to the respondent. On the other hand, in the pleadings of the respondent herein, before the High Court, as also here, claim is laid that a sum of Rs. 66,09,669.36 was outstanding and had been wrongly withheld. Interwining these two claims, it would become apparent that a sum of about Rs. 23 lacs on the parties' own showing is not disputed to be due to the respondent towards its claims. For this reason, we explain away the orders of the High Court by ordering that the appellants shall pay without prejudice a sum of Rs. 23 lacs to the respondent towards part clearance of the outstanding bills and sequally the orders of the High Court shall be meant to confine to the payment of Rs. 23 lacs, which is more or less not disputed, as payable. Regarding the balance claim of respondent, since it is disputed, it would have to move the civil court claiming it in a regular suit. Necessarily accounting will be resorted to in that suit and the sums of moneys already paid to the respondent inclusive of the sum of Rs. 23 lacs, as ordered to be paid today, would have to be reckoned in finalising the accounts. We, thus, modify- ingly clarify the High Court's orders confining it to ordering the above payment of Rs. 23 lacs leaving all questions open inclusive of the claim to interest on all payments made delayed to be settled before the Civil court. The appeal would stand disposed of accordingly. No costs.

R.P.

Appeal disposed of.