

Constitutional Writ

Present:

The Hon'ble Mr. Justice Jayanta Kumar Biswas

Judgment on 02.09.2010

W.P. No.18291 (W) of 2010

Babulal Agarwal & Anr.

v.

The Durgapur Projects Ltd. & Ors.

Point:

Scope of Writ-Whether writ can be entertained for restoration of water supply during pendency of arbitral of proceeding.- Constitution of India Art 226

Facts:

In a civil suit it has declared that the petitioners are bona fide consumers of Durgapur Projects Limited and restrained the defendants from raising subsequent bills on the basis of the revised rates of monthly water charge and also from taking any penal action including disconnection of supply till appointment of arbitrator and reference of the disputes between the parties to arbitral tribunal. The disputes and differences between the parties have been referred to the arbitral tribunal in terms of provisions of the Arbitration and Conciliation Act, 1996, and that seeking certain interim relief the petitioners have filed application under s.9 of the Act. Petitioner prayed for direction upon the respondents for restoration of water connection.

Held:

The petitioners' remedy, if any, against the alleged disconnection of supply of water was before the arbitral tribunal. They were free to apply under s. 9,

and then, if aggrieved, to appeal to the appropriate forum under s. 37 of the Act. They are not entitled to any relief from the Writ Court. Para 5

Mr. S.K.Halder, advocate, for the petitioners. Mr. S.S. Koley, advocate, for the respondents.

The Court: The petitioners in this art. 226 petition dated August 26, 2010 are seeking the following principal reliefs:

“(a) A Writ of and/or in the nature of Mandamus commanding the respondents to do their public duty in accordance with law and directing the respondents to restore the water connection of the petitioners premises being connection Nos. WF-8302 and WF-8278 immediately;

(b) A Writ of and/or in the nature of Mandamus Commanding the respondents to do their public duty in accordance with law and to for bear from giving any effect or any further effect to the bill date 21.08.2010 issued by the Assistant Manager (F & A) Revenue Section respondent No.4 herein and/or to rescind/revoke/cancel/withdraw the same.”

2. Counsel for the petitioners submits that in view of the judgment of the Civil Judge (Junior Division), Durgapur dated November 17, 2008 in Title Suit No. 34 (218) of 2006 (2002), the petitioners are entitled to a mandamus commanding the respondents to reconnect supply of water to them.

3. The Civil Court has declared that the plaintiffs in the suit are bona fide consumers of Durgapur Projects Limited, the first defendant in the suit, and restrained the defendants in the suit from raising subsequent bills on the basis of the revised rates of monthly water charge and also from taking any penal action including disconnection of supply till appointment of arbitrator and reference of the disputes between the parties to arbitral tribunal.

4. The admitted position is that the disputes and differences between the parties have already been referred to the arbitral tribunal in terms of provisions of the Arbitration and Conciliation Act, 1996, and that seeking certain interim relief the petitioners have already filed application under s.9 of the Act. During pendency of the proceedings before the arbitral tribunal and their s. 9 application for interim relief the petitioners have brought this art. 226 petition.

5. I do not find any reason to entertain the petition. The petitioners' remedy, if any, against the alleged disconnection of supply of water was before the arbitral tribunal. They were free to apply under s. 9, and then, if aggrieved, to appeal to the appropriate forum under s. 37 of the Act. They are not entitled to any relief from the Writ Court.

6. For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)

