

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 202/2024

SANJAY PARAB. ... PETITIONER.

Versus

STATE OF GOA THR. CHIEF
SECRETARY AND ORS. ... RESPONDENTS

Ms Apeksha Kalokhe, Advocate for the Petitioner.

Mr D.J. Pangam, Advocate General with Mr Neehal Vernekar, Addl.
Govt. Advocate for Respondents No.1, 2 and 4.

CORAM : M.S. SONAK &
VALMIKI MENEZES, JJ.

DATED : 2nd April 2024.

P.C.:

1. Heard Ms Apeksha Kalokhe for the Petitioner. The learned Advocate General appears along with Mr Neehal Vernekar, learned Addl. Govt. Advocate for Respondents No.1, 2 and 4.

2. The Third Respondent-Panchayat awarded the Petitioner a contract for re-asphalting an existing road. On completion of the work,

it is alleged that the Secretary of the Panchayat paid an amount of ₹72,424/- by a bearer cheque drawn in the name of the Petitioner. This bearer cheque, it is alleged, was handed over to one Kishor Naik. The said Kishor Naik appropriated the amount in the cheque based, allegedly, on some memorandum of understanding with the Petitioner.

3. The Petitioner filed a complaint with the Directorate of Panchayats. The Deputy Director of Panchayats made a report dated 20/02/2018, in which he faulted the Secretary for paying by a bearer cheque and recommended disciplinary proceedings under the CCS Conduct Rules. Based on this report dated 20/02/2018, the Petitioner has instituted this Petition, claiming the amount of ₹72,424/-, with interest at the rate of 18% per annum from the Respondents No.2 and 3, i.e. the Deputy Director of Panchayats and the Panchayat.

4. Significantly, the Petitioner has neither impleaded the Secretary, who made the payment by bearer cheque, nor the said Kishor Naik, who received the payment. Kishor Naik had made a specific plea that he had supplied materials to the Petitioner and that, based on an understanding with the Petitioner, he had to appropriate this amount. In-ground H of the Petition, even the Petitioner refers to the Settlement of Mutual Understanding dated 29/10/2017.

5. At this stage, we are not concerned with the veracity of the claim or defence. Suffice it to state that this is a purely civil dispute for the recovery of money under a non-statutory contract involving,

inter alia, private parties like Kishor Naik. The dispute between Kishor Naik and the Petitioner cannot be adjudicated in the exercise of extraordinary writ jurisdiction under Article 226 of the Constitution. There is no semblance of public element involved in this petition. There are seriously disputed questions of fact involved in the matter.

6. The findings in the Deputy Director's report cannot be equated to the findings that the Civil Court might record or a decree that the Civil Court might make. Besides, the completion certificate for the work allotted to the Petitioner was issued on 20/1/2015. To date, the Petitioner has not instituted any suit for recovery of the amounts allegedly due to him. This Petition was instituted on 7/2/2024.

7. Therefore, after considering the above circumstances cumulatively, we decline to entertain this Petition. However, if the Petitioner has any other remedy available for recovering the amount from the persons from whom such amount is allegedly due, the Petitioner is free to resort to such remedies. We clarify that we have not examined the merits of the matter. Therefore, all parties' contentions are left open for the appropriate authority/forum to decide, in case appropriate proceedings are instituted by the Petitioner.

8. With the above observations, this Petition is disposed of. There shall be no order for costs.

VALMIKI MENEZES, J.

M.S. SONAK, J.

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