(1997) 11 GAU CK 0015

In the Gauhati High Court

Case No : Civil Rule No. 404 of 1997

Angpu Khaling — APPELLANT

Vs

State of Manipur and Others — RESPONDENT

Date of Decision : 17-11-1997

Acts Referred:
Constitution of India, 1950 — Article 14, 19, 226

Citation : (1999) 2 GLT 419

Hon'ble Judges : P.K. Ghosh, J

Bench : Single Bench

Advocate : T. Nanda Kumar Singh, for the Appellant; Modhuchandra, for the Respondent

Judgement

P.K. Ghosh, J.—The Petitioner is the sole Proprietor of the firm M/s Angpu Khaling Agencies carrying on business in Imphal, Manipur. Respondent No. 2, Chief Engineer (Urban) P.H.E.D. issued the letter dated 8.2.96 requesting the Petitioner for supply of the materials contained in the said letter at Annexure-A/1 inter alia on the terms and conditions that the supply should be completed within 60(sixty) days from the date of issue of the order and in the event of failure to execute full supply of the materials within the Specified period the supply order will stand cancelled. Payment shall be made after full delivery of the materials and no running account bill will be entertained.

2. As the Manufacturer of Calcutta could not deliver the ordered materials during the stipulated period, the Petitioner submitted a letter to the Respondent No. 2 requesting for extension of time upto 14.5.96 without levy of any penalties and time was extended on behalf of the Respondent No. 2 by the Surveyor of Works of the said Department on 13.5.96 (Annexure-A/2).

3. It is alleged that inspite of supply of the ordered materials to the Respondent No. 3 as per the terms and conditions of the supply order (Annexure-A/1) within the stipulated time, and submission of bill for payment amounting to Rs 1.95,500/-(Rupees one lakh ninety five thousand and five hundred only), the

Respondents have failed to make payment of the same. In this connection the Petitioner has submitted through the Asstt. Engineer, Water Supply Store(Urban) Division-I, PHED and the said Asstt. Engineer duly verified the bill and the materials supplied by the Petitioner (two copies of the bills and the forwarding letter of the Asstt. Engineer dated 20.5.96 marked as Annexure-A/3, A/4 respectively).

4. As the Respondents have failed to make payment, the Petitioner submitted an application dated 24.7.96 to the Joint Secretary, PHED, Govt. of Manipur for payment (Annexure-A/5).

5. It is contended by the Petitioner that the Finance Department released the funds allotted to the PHED monthwise for cheque drawal authority and out of the released amount there is sub-allocated amount to the Divisions of PHED, Manipur by the Respondent No. 1.

6. It alleged that the Respondent No. 2 awarded supply order to the following concerns firms in connection with supply of certain articles and though the above supply orders were awarded subsequently after the supply order awarded to the Petitioner, the Respondents made the payments of the bills of the above supply orders by issuing letters:

1) M/s S.S. Enterprise vide letter dt. 19.6.96

2) M/s K.K. Agency vide letter dt. 31.8.96,

3) M/s S.S. Supply vide letter dt. 21.6.96

(Annexures-A/6,A/7, A/8, A/9 and A/9-A respectively).

7. Further, Respondent No. 2 awarded supply order for supply of portland stag Cement to M/s Kalyanpur Cement Limited Maurya Centre, Fressor Road, Patna on 17.2.97 and another supply order was issued on 26.2.97 for supply of the same article. Respondent No. 1 superseding rights of the Petitioner, paid the bills of the said supply order to M/s Kalanpur Cement Limited(Annexure-A/10-A/11, A/12 and A/12 respectively).

8. Further, Respondent No. 2 awarded supply order to M/s K. Brajagopal Sharma and Bros on 12.11.96 and the Respondent No. 1 made payment of the bill to the said firm on 21.3.97 denying the claim of the Petitioner to received his payment. Again, Respondent No. 2 placed supply orders for supply of G.I. Pipe in the month of February to M/s Jindal for E.E. Store (Rural) Division and E.E. Store (Urban) Division and the Respondent No. 1 made payment of bill for supply of the same to the tune of Rs. 87,74,00/- in respect of E.E. Store (Rural) Division and Rs. 12,00,000/- in respect of E.E. Store (Urban) Division by a letter dated 31.3.97 superseding the rights and claim of the Petitioner to receive his bill(Annexures-A/15 and A/15-A).

9. Having come to know the said payments to different firms the Petitioner approached the Respondents for making payment of the Petitioner''s bill, but the

Petitioner did not receive any response from the Respondents. Hence, this writ petition.

10. Mr. T. Nandakumar Singh, learned Sr. Counsel for the Petitioner has advanced his argument, contending that in the matter of payment of bills the Government cannot act arbitrarily. It has to act one some guiding principles. The action of the government must be based on certain definite guidelines for which the power is being exercised in the public interest. Herein the case at hand Mr. T. Nandakumar Singh has alleged that in the matter of payment of bill the Respondent''s action is illegal amounting to discrimination. There cannot be any discrimination in the matter of payment of the amount of six as the same will be arbitrary and discriminatory and violative of the fundamental right under Article 19 of the Constitution of India. From the Annexures mentioning the names of the different firms in respect of supply, payments were made by the Respondents, it is clear that in the matter of payment of bills, Respondents have not given any priority to the Petitioner who has been deprived of his legitimate claim of payment from the Respondents. Respondents, on the otherhand, made payments in favour of other firms who were given orders subsequent to the order given to the Petitioner by the Respondents. Therefore, the action on the part of the Respondents should not be appreciated by the Court. In support of his proposition of law Mr. T. Nandakumar Singh has placed reliance on the decisions of the case of the State of Assam and Ors., Appellant v. M/s Omega Printers and Publishers Pvt. Ltd. and Anr. Respondents reported in 1995 1 GLT 71, (1995) 1 GLR 161 wherein it has been held by their Lordships that if there is any discrimination in payment of the amount by the Government, that will affect the right of the Petitioner and other similarly situated newspaper and will be arbitrary and discriminatory and even if the fundamental right is hit under Article 19 of the Constitution.

11. Mr. Nandakumar has drawn my attention that the Respondents cannot take plea that payment has not been made for shortage of funds because of the letter addressed by the Respondents on 21.3.97 to the Branch Manager, State Bank of India, Imphal show that the Finance Department released a sum of Rs. 110.09 lakhs for cheque drawal authority vide letter No. 14/8/93-PHE(Pt) dated 23.6.97. It has been requested in the said letter that the cheque issued by the Divisional Officers concerned within the allocated fund may please be honoured. The said letter is kept with the records.

12. Mr. Modhuchandra Singh, learned Addl. Govt. Advocate has contended that no cause of action arose as there is no allegation about the refusal of the payment by the Respondents. Therefore, the writ petition is not tenable. He has also argued that when other remedies are available the writ jurisdiction under Article 226 of the Constitution cannot be invoked by the Hon''ble High Court. In support of his contention Mr. Modhuchandra has placed reliance on the following cases namely; (I) M/s. Saraogi Industrial Corporation and another Vs. Steel Authority of India Limited and others, (2) Radhey Shyam and Another Vs. The State of Rajasthan and Others, (3) Sterling Computers Limited and Others Vs. M

and N Publications Limited and Others, Their Lordships in the above cases have observed that where in view of violation of the conditions of agreement, one of the parties filed a writ petition, the said petition would not be maintainable particularly When alternative remedy for breach of the terms of the agreement by filing a civil suit for specific performance of the agreement was available to the Petitioners. If there is any breach of contractual obligations by either party to the agreement, then the resort to jurisdiction under Article 226 of the Constitution is not intended as an alternative remedy for which relief may be obtained by filing a civil suit for specific performance of agreement or by availing other modes prescribed by the statute Radhey Shyam and Another Vs. The State of Rajasthan and Others,

13. His lordship M/s. Saraogi Industrial Corporation and another Vs. Steel Authority of India Limited and others, that certain allegations were made by the writ Petitioners against the Subhadra Trading Company and MSRTC Ltd, but the Petitioners chose not to proceed against them. The allegation against the two firms were all questions of facts which were denied by them in their respective affidavits. Those questions of disputed facts cannot, therefore, in any event be adjudicated upon in their absence. It has also been held by Their Lordships in Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, that Court cannot take as an Appellate Authority and examine details of the terms and contract. The primary concern of Court is to see whether there is any infirmity in the decision making process.

14. Having carefully studied the aforesaid decisions my considered opinion is that it is true that the Petitioner could have filed a civil suit against the Respondents for nonpayment of the legal dues. The bitter experience of mine as a Judge and also as an Ex-Advocate practising on the civil side is that a civil suit would take several years for disposal and by that time the Petitioner could have suffered further financial losses. There is no bar, in my view, to get redress in writ jurisdiction under Article 226 of the Constitution when there is palpable discrimination by the Respondents in the matter of payment of bills in favour of the firms superseding the claims of the Petitioner. Therefore, in my view, there is strong logic in the contention of Mr. T. Nandakumar Singh that the Respondents by their arbitrary actions and discriminative payments of bills in favour of other firms superseding the claim of the Petitioner, have violated the provisions of Articles 14 and 19 of the Constitution. Moreover, no counter has been filed by the Respondents. In view of catena of decisions rendered by the Apex Court, as Respondents, have not filed any counter, the contention of the Petitioner can be accepted as it is based on documentary evidence. Therefore, the Petitioners succeeds. The Respondents are directed to make payment of the bill of the Petitioner at Annexure-A/3 to the writ petition within a period of three months from the date of communication of this order with statutory interest till payment.

15. With the aforesaid direction, the writ petition is disposed of, however, without costs.

