(1990) 07 CAL CK 0023

In the Calcutta High Court

Case No : Civil Order No. 7232 (W) of 1989

A.P.S. Associates Ltd. APPELLANT

Vs

Metal Scrap Trade Corporation Ltd. RESPONDENT

Date of Decision : 03-07-1990

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 226, 298, 32

Citation : (1994) 2 ILR (Cal) 241

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : Bhaskar Gupta, for the Appellant;S.P. Majumdar, for the Respondent

Final Decision : Allowed

Judgement

Paritosh K. Mukherjee, J.—This writ petition was moved on behalf of A.P.S. Associates Pvt. Ltd. and Anr. inter alia, praying'' for an issue of a writ in the nature of mandamus directing the Respondents to withdraw, recall and cancel the purported telegrams dated March 23, 1989 and also ?o allow time for making letter of credit arrangement and supply for 2147 tons of the subject material forthwith and also to grant ''No Objection Certificate'' (shortly referred to as ''NOC'') to the Petitioner forthwith for the balance quantity of 3073 tons of the subject material as stated in the writ petition.

2. The short facts stated in the writ petition are as follows:

The Petitioner company carries on business of manufacturing steel/alloy steel, ingots, etc. and its licensed capacity is 7800 metric tonnes per year. A copy of the certificate of assessed capacity has been annexed to the writ petition as Annexure ''A'' at p. 26. The Petitioner company is also registered as a small scale industrial unit with the Directorate of Cottage and Small Scale Industries. Government of Punjab. For the purpose of carrying on the aforesaid business, the Petitioner company requires melting scrap of carbon steel which under the relevant import policy was and still is a canalised item and the Respondent No. 1

is the designed canalising agency in respect of the said item. Pursuant to and in terms of the relevant import policy for the import of canalised items, the Petitioners applied for registration of their demand in respect of 6293 M.T. of melting scrap of carbon steel. The said application was accompanied by the necessary supporting documents. The sponsoring authority of the Petitioner No. 1 was the Government of Punjab District Industries Centre, Ludhiana. A demand draft for a sum of Rs. 1 lakh was enclosed with the application on account of earnest money as required under para. 213 of Chap. IV of the Import Policy from 1988 to 1991. Thereafter, the Petitioners were informed by the Respondent by the letter dated August 12, 1988, that the demand of the Petitioners was registered in respect of a quantity of 6290 M.T. of melting scrap, vide Registration No. FI/II/MS-123/88-89.

3. Thereafter, as required under para. 219 of the relevant import policy for 1988-91, the Petitioners caused to be opened a letter of credit being No. CBN/8/88 dated August 12, 1988, of New Bank of India, Ludhiana, for Rs. 25 lakhs in favour of the Respondent No. 1 in respect of 3 months'' requirement of the Petitioners.

4. The Respondent-Corporation, however, did not supply any material to the Petitioners in spite of the fact that materials were available and that the same were supplied to other actual users. The Petitioners were asked by the Respondent No. 1 to establish a fresh L/C. for Rs. 6.96 lakhs for the supply of 290 M.T. of heavy melting scrap. The Petitioners duly established such L.C. for the aforesaid amount being L.C. No. 1/89 dated January 19, 1989, in favour of the Respondent No. 1 by a letter dated February 17, 1989. Thereafter, the quantity of 780 M.T. of melting scrap was allotted in favour of the Petitioners and it was intimated that the Respondent No. 1 had entered into a Purchase Order dated January 27, 1989, with the suppliers for the said quantity. Thereafter, the Petitioners received a copy of a letter'' dated March 17, 1989, written by the Respondent No. 1 to M/s. Friends and Friends, Gandhaidhan, Mutch, containing delivery instructions authorising the said M/s. Friends and Friends to deliver 290 M.T. of melting scrap to the Petitioners.

5. In the meantime, the Petitioners received a purported telegram from the Respondent No. 1 on March 28, 1989, whereby the Petitioners were asked to establish L.C. for 2147 M.T. of melting scrap by March 23, 1989 (Annex. T to the writ petition) and to give a reply by that date (March 23, 1989) failing which it was purported to be presumed by the Respondent No. 1 that the Petitioners were not interested for the said quantity of melting scrap. It was also contended in the said telegram that about 80,000 tons of heavy melting scrap might be available at Tundla, Bombay and Bhabanagar which was the challenge in the instant petition.

6. At the time of admission of the writ petition. S.C. Sen J. passed directions for affidavit and granted interim order to the effect that the amount which was going to be allotted to the Petitioners in terms of the telegram dated March 23, 1989

(wrongly quoted as March 25, 1989) should not be treated as lapsed till the disposal of the application.

7. Thereafter, the writ petition came up for hearing before me on September 7, 1989, after completion on affidavits which was heard on September 12, 1989 and April 24, 1990.

8. Mr. Bhaskar Gupta, learned Advocate appearing at the final hearing of the writ petition, submits that the purported demand contained in the telegram dated March 23, 1989 (Annex. ''J'' to the writ petition) for making financial arrangements for about Rs. 62 lakhs for 2147 M.T. within hours of the receipt of the telegram is arbitrary and wrongful.

9. According to Mr. Gupta, under the import policy for the period of 1988 to 1992 and in particular under para. 219 of Chap. IV, the canalising agency can be asked for making financial arrangements for only the estimated requirement of the actual users for 3 months at a time. Since the two Letters of Credit were in force and pending in favour of the Respondent No. 1, the Respondent No. 1 had no power, authority or jurisdiction to ask for making any financial arrangements for 2147 M.T. at a time in such a short time. The Petitioners have contained a certificate from the New Bank of India dated May 29, 1981, certifying that the New Bank of India has not received bills under L.C. No. 8/88 dated August 12, 1988, for Rs. 25 lakhs. A copy of the certificate has been annexed to the petition as Annex. ''K''. The Letters of Credit, one for Rs. 25 lakhs and another for Rs. 6 lakhs 93 thousand in favour of the Respondent No. 1 are still subsisting and in force. On earlier occasions, the Respondents have allowed the Petitioners 15 days'' time for opening Letters of Credit for much smaller amounts which will be evident from the letter dated September 1, 1989, of MSTC a copy whereof is annexed to the petition as Annex. ''Y''.

10. Mr. Gupta further submits that under para. 221, Chap. IV, of the relevant Import Policy it is provided that the period of delivery of the quantity registered may extend beyond the licensing year and as such, it is not open to the Respondent to insist on financial arrangement within a particular time, frame and put an onerous condition on the Petitioners like cancellation of the registered demand for making Letter of Credit arrangements within hours on the date of intimation and that too for a sum of Rs. 63 lakhs. Under para. 55 of the Import Policy for the period 1988 to 1991 in the case of items canalised for import, persons who have already registered their demand with the concerned canalising agency will be allowed to cancel their indent with the consent of the agency concerned. It necessarily follows from the provisions that in came the canalising agency wishes to cancel the registration it cannot do so without the consent of the person/company. This element of mutuality must be read into the said para. 55 by way of implication as any other construction would render the said provision unreasonable and arbitrary and hence, violative of Article 14 of the Constitution.

11. According to the Petitioners, even after sending the purported telegram dated March 23, 1989-, the Respondents have delivered diverse quantities of the subject materials to different parties except the Petitioners. As such the allotment has been made arbitrarily and without any basis whatsoever. The Petitioners have opened the terms of credit but have been denied any delivery. The Petitioners came to learn from the Association commonly known as ''All India Induction Furnace Association''. New Delhi, that about 3,40,000 tonnes of the said materials has already been allocated to different actual users after the receipt of the purported telegram.

12. Accordingly, Mr. Gupta submits that necessary orders and/or directions may be passed directing the Respondents to cancel, withdraw and/or recall the purported telegram dated March 23, 1989, to make letter of credit arrangement for supply of 2147 M.T. of the subject materials forthwith and also to grant ''NOC'' to the Petitioners forthwith for the balance quantity of 3073 M.T. of the subject materials and not to insist upon the letter of credit for a sum of Rs. 63 lakhs as claimed in the said telegram.

13. Mr. S.P. Majumdar, learned Advocate for the Respondents appearing at the final hearing of the writ petition, has opposed the writ petition and referred to the affidavit-in-opposition affirmed by Sri Mrinal Kanti Chanda, Manager (Law) of MSTC (the Respondent No. 1), wherein a definite stand has been taken that since the allotment of the material arises out of a contractual obligation, the writ petition is not maintainable to enforce such contractual obligations in view of the decision in the case of Orient Longman Ltd. Vs. Jayati Laila Kabir and Others, wherein it has been held that contractual obligations cannot be enforced in a writ. On this aspect Mr. Majumdar also relied on a decision of the Supreme Court in the case of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, wherein it has been held that Governmental authorities acting in the field of contract are not controlled by Article 14 of the Constitution and a proceeding under Article 226 of the Constitution cannot satisfactorily decide the controversy and a writ docs not lie.

14. Mr. Majumdar has also placed reliance on the decision in the case of Hindustan Petroleum Corporation Ltd. v. Shyam Sundar Ganesiwall 91 C.W.N. 217 wherein the Division Bench consisting of Anil K. Sen and S.K. Mookherjee JJ. having considered this aspect decided that the act following from contract should not be interfered with under the writ jurisdiction.

15. Mr. Majumdar submits that this petition should be dismissed on the preliminary ground as well is on merit.

16. Mr. Majumdar further submits that the complaint raised against MSTC is that MSTC has not discharged its duties and failed to allot the requirements of the Petitioners and has unreasonably asked them to establish L.C. for Rs. 62 lakhs which cannot but be alone breach of contactual obligations.

17. Mr. Majumdar has also submitted that the Petitioners have asked for ''NOC''

for the remaining amount which cannot be given inasmuch as only 45 % of the registered demand could be met out; and such importation is based on foreign exchange liability.

18. According to Mr. Majumdar, in short, no case has been made out in the writ petition and the same should be dismissed with costs.

19. I have carefully gone through the impugned telegram dated March 23, 1939, as set out at p. 62 and also considered the facts stated in paras. 8 and 9 of the affidavit-in-opposition wherein the deponent has fully narrated the facts as follows:

(a) 1 say that the Respondent No. 1 received the Letter of Credit covering Rs. 25 lakhs only on or about 30th September, 1988. The said sum of Rs. 25 lakhs covers the price of only about 810 Metric Tons of Scrap only while the Petitioners are claiming allotment of 6290 M.T. of scrap.

(b) I say that the Respondent No. 1 as canalising agency imports scrap materials and arranges delivery to the actual users through high seas sales basis. While the Corporation places orders through tender the ordered quantities are allocated to various users in accordance with Rules/Guidelines. The primary consideration for making such allotment is that the quantity allotted should be within the demand registered by each actual users and such demands must be backed by the value of such quantity through Letter of Credit opened by such actual users in favour of MSTC. After such contract is concluded between MSTC and foreign seller there would be a time leg of about 45 days and thereafter it usually takes about 4 to 6 weeks for carriage of such goods depending upon the post of shipment.

(c) As such, usually it takes about 3 months and some times more to get the materials imported from the date of placement of order. MSTC allocates such materials on the basis of receipt of Letter of Credit from the actual users on first come first served basis amongst the registered users within their registered quantity.

(d) These are all known to all actual users including the Petitioner No. 1. I further say that after the Petitioner No. 1 opened the L.C. and received by MSTC on 30th September, 1988, no tender was floated till late in December due to non-availability of foreign exchange and no question of allotment to the Petitioner No. 1 had arisen during this period. The Petitioner was allotted 780 tonnes of material against a tender opened on 24.1.1989.

20. I have considered the aforesaid pleadings and submissions made in paras. 8 and 9 of the affidavit-in-opposition, but I must observe that I did not find any reasons for and necessity of issuing such telegram for making convenient for about Rs. 62 lakhs for 2147 M.T. of the subject material on the basis of such arbitrary telegram.

21. In view of the fact that no reasons have been assigned in the said telegram,

hence the acts of the Respondents are nothing but arbitrary as it has been the decision in the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, wherein Sabyasachi Mukharji C.J. of India, observed as follows:

It is well-settled that every action of the State or an instrumentality of the State in exercise or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and Another, : Radhakrishna Agarwal and Others Vs. State of Bihar and Others, It appears to us, at the outset, that in the facts and circumstances of the case, the Respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitutions in entering or not entering in contracts with individual parties. Article 14 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See Radha Krishna Agarwal v. State of Bihar at p. 462 at S.C.C. : at p. 1499-1500 of AIRO (supra), but Article 14 of the Constitution cannot be and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of, this nature certain activities of the Respondent company which the constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution and must be reasonable and can be taken only upon lawful and relevant grounds of public interests. Where there is arbitrainess in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and-must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of Constitution. If a Governmental action, even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa Vs. State of Tamil Nadu and Another, Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and also Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

22. In view of the aforesaid observations of the Supreme Court in the case of Mahabir Auto Stores Supra the instant writ petition is entitled to succeed.

23. The impugned telegram dated March 23, 1989, being Annex. ''J'' to the writ petition is accordingly set aside by issue of a writ in the nature of certiorari.

24. Let a consequential writ in the nature of mandamus be issued directing the Respondents to allow the Petitioners to make proper arrangement for letter of credit and for supply of 2147 M.T. of the subject material forthwith and also to grant ''No Objection Certificate to the Petitioners for the balance quantity of 3073 M.T. of the subject material, stated as aforesaid, in the writ petition.

25. In allowing the writ petition, this Court has also taken note of the interim order passed by S.C. Sen J. dated June 28, 1989, at the time of admission of the writ petition that the amount which was going to be allotted to the Petitioners in terms of the telegram dated March 23, 1989, should not be treated as lapsed.

26. There will be no order as to costs.

27. Stay of operation of this judgment prayed on behalf of the Respondents, is considered and refused in view of the facts stated in this judgment.

28. Parties will be entitled to get xerox copy of this judgment as per present practice of this Court.

