
(2004) 03 MAD CK 0123

In the Madras High Court

Case No : Writ Appeal No. 3599 of 2002 and W.A.M.P. No. 5991 of 2002

Ashok Leyland Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Citation : (2004) 03 MAD CK 0123

Hon'ble Judges : V.S. Sirpurkar, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : T. Dulip Singh, for the Appellant; J. Madanagopal Rao, Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—The appeal has no merits whatsoever. This was a writ petition with a very peculiar prayer. The prayer is as follows:-

For the reasons stated above, it is prayed that this Hon"ble Court may be pleased to issue a writ of certiorarified Mandamus or any other writ,

order or direction calling for the records of the 1st respondent, and quash the impugned letter/order under ref.No.7(7)/84/D(S.1)/CPO(VG)/1427

dated 26.2.1993 and further direct the respondents to release the sum of Rs.1,97,496/- due in respect of the Literature contract that was

unilaterally appropriated by the 2nd respondent vide their letter ref.40011/1/88/SL-VG-1636 nil dated .6.94 to the petitioner

2. By the impugned letter, the respondents herein had referred to the earlier contract in between the appellant and the respondents and alleged that

because of the failure on the part of the appellant/petitioner to supply within time limit, the Government had to pay the enhanced escalation in price.

It was further alleged that due to the delay in supplies, the Government suffered a loss and therefore, the petitioner/appellant had to pay back the

balance of liquidated damages amounting to Rs.20,44,282.77. The appellant was, therefore, requested to send the demand draft.

3. This was challenged before the learned single Judge, who took a view that the writ petition itself was not maintainable as it pertains to the

disputed questions of fact as to whether the first respondent was entitled to recover the liquidated damages. The learned single Judge came to the

conclusion that the matter involved disputed questions of fact regarding the interpretation of the terms of the contract. The learned single Judge also

further noted that there was an arbitration clause involved in the matter, insofar as the old contract between the appellant and the respondent was

concerned. He, therefore, found in the following words

I do not propose to go into the merits of the contentions raised by the petitioner in the context as to whether the respondent was entitled to claim

any liquidated damages or whether they are stopped by contract in fixing the liquidated damages by their letter dated 9.9.1987 viz., the demand of

the liquidated damages of Rs.2,27,142.53.

This was pressed into service because according to the appellant, the whole contract had come to an end and the final payment were also made

and the Government had earlier accepted that the liquidated damages would be restricted only to Rs.2,27,142.53. The learned single Judge further

found that if there was a difference or dispute between the parties even in respect of the liquidated damages, then the parties were required to go

before the Arbitrator as the jurisdiction of the Arbitrator was available to the petitioner/appellant and the arbitration clause was applicable even

after completion of the contract. The learned single Judge found that the Arbitration Clause was widely worded and in the event of any question,

dispute or difference arising under the conditions or any special conditions of the contract or in connection with the contract, the same could be

referred to the Arbitrator. Ultimately, the learned single Judge took a view that the writ petition was not maintainable.

4. The learned counsel firstly contended that here the Government, which was a contracting party, was acting arbitrarily and illegally trying to

impose a monetary liability. In fact, it had earlier accepted that the liquidated

damages were Rs.2,27,142.53 only and on that basis concluded the contract. Whereas now it was claiming the amount almost 10 times the earlier one. Secondly the counsel pointed out that the Government was illegally recovering the said damages from the payments of the entirely different contract. As against this, the respondents' counsel questions the very tenability of the petition on the ground that there were disputed questions of fact involved regarding contractual obligation.

5. To get out of the question of tenability the learned counsel invited our attention to oft quoted decisions of Century Spinning and Manufacturing

Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, and Union of India (UOI) Vs. Raman Iron Foundry, . In our

opinion, both these cases do not apply. The question of contract between the Government and the private parties is now fully settled. Merely

because one of the parties is a Government, the other party cannot rush to the High Court particularly in its jurisdiction under Article 226 of the

Constitution of India and this is all the more so where there are disputed questions of fact, as they are present in the case at hand. We do not,

therefore, think that the law laid down in the above cases would apply to the present matter.

6. Lastly learned counsel relied on the decision reported in STATE OF KARNATAKA Vs. RAMESHWARA RICE MILLS, THIRTHAHALLI

AIR 1987 SC 1359 to suggest that the writ petition was possible in such matters. Our attention was more particularly drawn at paragraphs 8 and

9. We do not think that this case applies. In the above reported decision, the writ petitions were filed on the ground that recoveries were made

under the Revenue Recovery Act, which strictly did not fall within the definition of arrears of Land Revenue. That is not the question involved here.

If at all the appellant feels he may still go under the Arbitration jurisdiction.

7. Insofar as the complaint of the appellant that amounts are being deducted from the consideration of the other contracts also the appellant has a

remedy in civil law by way of a suit for injunction.

8. The writ petition is not maintainable and it was rightly held not to be maintainable by the learned single Judge. We concur with the learned single

Judge. The appeal has no merits and it is dismissed. No costs. Consequently, W.A.M.P is also dismissed.