

(2023) 07 CHH CK 0057

In the Chhattisgarh High Court

Case No : Writ Petition (C) No. 1918 Of 2016

Ashwin Kumar Gurdhanbhai Thakkar

APPELLANT

Vs

Chhattisgarh State Civil Supplies Corporation Limited

RESPONDENT

Date of Decision : 24-07-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2023) 07 CHH CK 0057

Hon'ble Judges : P. Sam Koshy, J

Bench : Single Bench

Advocate : Moxa Thakkar, Parag Kotecha, Vivek Ranjan Tiwari, Atul Kumar Kesharwani

Final Decision : Dismissed

Judgement

1. The instant Writ Petition has been filed by the Petitioner assailing the Order 24.8.2015 (Annexure P-6) passed by the Respondents.
2. Vide the impugned Order, the Respondents had rejected the claim of the Petitioner for grant of Rs.82,79,748/-.
3. Briefly stated, the facts of the case are that the Petitioner is the proprietor of M/s Suraj Iodized Company, situated at Main Bazar, Patdi, District Surendra Nagar (Gujarat). They are manufacturer of salt and for the purpose of marketing, they iodized salt and market the same in the name and style of M/s Suraj Iodized Company.
4. The Respondents had floated Notice Inviting Tenders (NIT) for purchase of iodized salt (ISI Standard). The said NIT was floated on 7.9.2013. The Petitioner participated in the tender proceeding and the offer submitted by the Petitioner was acceptable to the Respondents. Accordingly, work orders were issued for the supply of iodized salt. The agreement between the parties, i.e., the Petitioner and the Respondents, was entered upon on 10.1.2014. In terms of the agreement entered upon, the Petitioner made regular supplies of iodized salt for

a period of around one year.

5. It is the contention of the Petitioner that after the supply of the entire salt in terms of the tender, the Respondents failed to release the payments towards the purchase of salt to the Petitioner. On the contrary, a show-cause notice dated 26.3.2015 (Annexure P-5) was issued by the Respondents alleging violation of Clause 16 and Clause 16(A) of the NIT so far as the quality of salt which was tested by the Respondents. The Petitioner immediately gave a detailed reply denying the contents of the show-cause notice. Finally, vide the impugned Order dated 24.8.2015 (Annexure P-6), the Respondents passed an order denying payment of Rs.82,79,748/- to the Petitioner, which led the Petitioner to file the present Writ Petition.

6. Contention of learned Counsel for Petitioner was that in-fact the entire contents of the show-cause notice that was issued by the Respondents to the Petitioner on 26.3.2015 are not sustainable in the eyes of law. That the testing of the salt supplied by the Petitioner, so far as its quality is concerned, itself has been done at a much belated stage after a substantial long duration of time. That considering the fact that the material supplied by the Petitioner was salt which by efflux of time automatically loses its quality drastically. The Respondents, therefore, should not have refused the claim of the Petitioner on the ground of quality of salt which was tested at a belated stage.

7. Further contention of learned Counsel for Petitioner was that even the samples which were collected were after substantial period of time since the supplies were made. Therefore, the quality of salt after more than two years from the date of supply cannot be a ground for denying the logical claim of the Petitioner. That even the test report given by the Respondents gives rise to various doubts as to whether the samples collected were in-fact that of the Petitioner or of a different firm which had also supplied salt to the Respondents.

8. In support of their contentions, learned Counsel for Petitioner has relied upon the decision of the Hon'ble Supreme Court passed on 17.2.2021 in Civil Appeal No.317/2021 and other connected matters in the case of "Unitech Ltd. Vs. Telangana State Infrastructure Corporation".

9. Per contra, learned Senior Counsel for Respondents, opposing the Writ Petition, contended that the Writ Petition itself at the first instance was not maintainable, as the dispute between the parties is purely a contractual dispute arising out of a commercial transaction. He further contended that apart from the fact that the matter arises out of a commercial transaction, the Writ Petition is also not maintainable as there are certain highly disputed questions of facts, which again cannot be subjected to judicial review invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. According to learned Senior Counsel for Respondents, since the Petitioner had failed to maintain the standards stipulated in the NIT, there has arisen a genuine dispute between the parties and the said dispute can be resolved only after the

recording of evidence both oral and documentary which would be adduced on either side.

10. Further contention of learned Senior Counsel for Respondents was that neither was the contract between the parties a statutory contract nor is it a case where the claim raised by the Petitioner can be brought within the ambit of an undisputed claim. Therefore, the only remedy which lies with the Petitioner is to avail the relief under the ordinary civil law and not under the writ jurisdiction.

11. It was also the contention of learned Senior Counsel for Respondents that since there is a serious dispute in respect of quality/standard of salt supplied by the Petitioner, evidence would have to be led by either side to prove and disprove the report in respect of the quality of salt supplied by the Petitioner at the first instance and the report obtained by the Respondents from the laboratory where the samples were put to test. This again is a disputed area which cannot be ventured into in exercise of its writ jurisdiction by the High Court.

12. Lastly, it was contended by learned Senior Counsel for Respondents that it cannot be said that the Petitioner was not granted an opportunity of hearing before the impugned Order 24.8.2015 was passed. The pleadings to the Writ Petition itself would show that the Petitioner was in-fact issued with a show-cause notice and to which they had responded.

13. Learned Senior Counsel for Respondents has relied upon the judgment rendered by the Hon'ble Supreme Court in the matter of "State of Bihar & Others Vs. Jain Plastics & Chemicals Ltd." reported in (2002) 1 SCC 216.

14. Having heard the contentions put forth on either side and on perusal of record, undisputedly, there was an NIT issued by the Respondents intending to purchase iodized salt. The Petitioner was offered work orders for supply of iodized salt. There was a specific agreement entered into between the Petitioner and the Respondents in respect of supply of iodized salt.

15. A plain reading of the agreement entered into between the parties would clearly give an indication that the nature of contract entered into between the parties was a pure commercial private contract. There was no public law character or an issue arising out of a public law function involved.

16. Another fact which needs to be appreciated is that the Respondents in-fact have raised serious dispute on the claim of the Petitioner. Admittedly, the Respondents have denied the claim of the Petitioner on the ground that the quality of salt supplied by the Petitioner was not up to the standard stipulated and as agreed upon.

17. The Hon'ble Supreme Court in a series of decisions have by now settled the proposition of law that Writ Petition under Article 226 of the Constitution of India will not be entertainable for enforcement of civil law arising out of a breach of contract or a tort to pay an amount of money due to the claimant. There are catena of decisions which lay down that in pure contractual disputes, the

extraordinary remedy of a Writ under Article 227 of the Constitution of India cannot be invoked.

18. The High Court of Allahabad in one of recent decisions in the matter of "M/s Biotech System Vs. State of U.P. & Ors." decided on 19.11.2020, has held that where the contract entered into between the State and the person aggrieved is of a non-statutory character and the relationship is governed purely in terms of a contract between the parties, in such situations the contractual obligations are matters of private law and a writ would not lie to enforce a civil liability arising purely out of a contract. Undoubtedly, the limitation/reservation in exercising or entertaining Petitions under Article 226 in contractual matters is essentially a self-imposed restriction. In a case where the amount is admitted and there is no dispute in between the commercial transaction and the claim raised by the claimant, in the given circumstances there is nothing for adjudication. Under the given circumstances, for releasing of the undisputed amount powers can still be exercised by writ jurisdiction and this could be an exception to the general principle of writ petitions not to be entertained arising out of purely contractual disputes and contractual claims. So is the law that was laid down by the Hon'ble Supreme Court in the landmark case of "ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Ltd., & Ors." reported in (2004) 3 SCC 553.

19. The Respondents, in the instant case, have categorically taken a stand and which also reflects from the show-cause notice which was issued to the Petitioner even before the filing of the Writ Petition that of the salt supplied by the Petitioner not being up to the standard, i.e., of 30 PPM or above. Further, the test report relied upon by the Respondents is from a laboratory of the Government itself. Now, whether the test report is genuine, whether the period on which samples were collected was a belated period and whether under the literatures available the efflux of time can cause degradation to the PPM level of salt, are all matters of evidence and are also disputed questions of fact. These are the issues which would be requiring evidence to lead on either side and which perhaps would be difficult for the Writ Court to entertain and adjudicated upon in exercise of its Writ jurisdiction.

20. A petition under Article 226 of the Constitution of India cannot be made available to seek specific performance of contract or even adjudicate for damages for breach of contract, more particularly when the dispute arises out of an agreement of a contractual nature and that too of a commercial transaction between the two parties. For enforcement of contractual rights and liabilities as has been held repeatedly by the Hon'ble Supreme Court, when there is dispute raised by either of the parties, the normal remedy for the litigants in such cases would be a remedy under civil law and not under writ jurisdiction.

21. In "State of Bihar & Others Vs. Jain Plastics & Chemicals Ltd." [2002 (1) SCC 216], the Hon'ble Supreme Court has held as follows:-

3. Settled law writ is not the remedy for enforcing contractual obligations. It is to

be reiterated that writ petition under Article 226 is not the proper proceeding for adjudicating such disputes. Under the law, it was open to the respondent to approach the Court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the Court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.

7. In our view, it is apparent that the order passed by the High Court is on the face of it illegal and erroneous. It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in an properly instituted civil suit rather than by a Court exercising prerogative of issuing writs.

22. For the aforesaid reasons, this Court does not find any strong case made out by the Petitioner for issuance of Writ of the nature that has been sought for.

23. The Writ Petition, thus, deserves to be and is accordingly dismissed.