

(2005) 05 CAL CK 0031

In the Calcutta High Court

Case No : Writ Petition No. 10725 (W) of 1997

Barrackpore Supplier

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 2 CHN 437

Hon'ble Judges : Tapan Kumar Dutt, J

Bench : Single Bench

Advocate : A. Chatterjee and K. Roy, for the Appellant;None, for the Respondent

Judgement

Tapan Kumar Dutt, J.—Heard the submissions made by the learned Advocate for the petitioner. In spite of notices none appeared on behalf of the respondents to oppose the writ petition. The case of the petitioner is that in accordance with the requisition made by the respondent No. 4, the petitioner manufactured and supplied certain furniture to the respondent No. 4 and submitted a final bill dated 20.5.1992 for a sum of Rs. 57,000.00 towards the value of the goods manufactured and supplied by the petitioner to the respondent No. 4. The petitioner made several representations and visits to the office of the respondent Nos. 3 and 4 for payment of the aforesaid bill but the bill remained unpaid. The learned Advocate for the petitioners referred to letter dated 20.11.1995 wherefrom it appears that the respondent No. 4 wrote to the petitioner stating that the respondent authorities were not in a position to release the outstanding payment at that point of time but they are trying their best to arrange the funds and that the petitioner should bear with them for some more time. The petitioner's learned Advocate referred to another letter dated 03.12.1995 wherefrom it appears the respondent No. 4 wrote to the petitioner stating that the respondent authorities have contacted their Accounts Department and have been informed that as per the records of the respondent authorities the total outstanding amount is Rs. 50,023.00 after deduction of Income Tax and

performance guarantee. In the said letter the respondent No. 4 also mentioned that "No Payment Certificate" would be required before the question of further payment can be considered and that the respondent authorities are passing through a very difficult financial condition and regretted their inability to release any payment even if the same is considered to be due to the petitioner. Learned Advocate for the petitioner further submits in spite of demanding justice by a letter dated 12.05.1997, the respondent authorities have not till today released any payment in favour of petitioner.

2. The learned Advocate for the petitioner submitted that in such circumstances the respondent should be directed to make immediate payment of the amount due to the petitioner. It appears that the writ petition was filed in the year 1997. It further appears that the writ petitioner has filed an affidavit-in-reply but there is no affidavit-in-opposition on record. The learned Advocate for the petitioner submitted that a copy of the affidavit-in-opposition was served upon the petitioner, but it appears that the affidavit-in-opposition has not been filed on behalf of the respondents in Court. However, none appeared to oppose the writ petition on behalf of the petitioner in spite of notices.

3. The learned Advocate for the petitioner submitted that the respondent Nos. 2 to 4 have admitted in their letter dated 03.12.1995 that according to the said respondents an amount of Rs. 50,023.00 is payable to the petitioner and none has appeared to oppose the writ petitioner at the time of final hearing and as such, in the interest of justice, this Court should direct respondent Nos. 2 to 4 to release the admitted amount in favour of the petitioner along with interest at a proper rate. It appears from the writ petition that the petitioner has claimed an interest of 18% p.a. on the outstanding dues payable by the respondent Nos. 2 to 4 to the petitioner. The petitioner's learned Advocate cited a decision of the Hon'ble Supreme Court reported in ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, and submitted that in the instant case if the petitioner proceeds on the basis of the said admitted amount then there is no need of any oral evidence in such a case. The learned Advocate for the petitioner also submitted that the respondent No. 2 is an instrumentality or agency of Government and it is expected that the respondent Nos. 2 to 4 should act fairly, justly and reasonably. The learned Advocate for the petitioner referred to paragraphs 51 and 52 of the said reported case. The relevant portions of the said reported case as referred to by the petitioner's learned Advocate is quoted below:

51. ...Therefore, in our opinion, it does not require any external aid, much less any oral evidence to interpret the above clause. Merely because the first respondent wants to dispute this fact, in our opinion, it does not become a disputed fact. If such objection as to disputed questions or interpretations is raised in a writ petition, in our opinion, the Courts can very well go into the same and decide that objection if facts permit the same as in this case. We have already noted the decisions of this Court which in clear terms have laid down that

mere existence of disputed questions of fact ipso facto does not prevent a Writ Court from determining the disputed questions of fact.

52. On the basis of the above conclusion of ours, the question still remains why should we grant the relief sought for by the appellants in a writ petition when a suitable efficacious alternate remedy is available by way of a suit. The answer to this question, in our opinion, lies squarely in the decision of this Court in the case of *Shrilekha Vidyarthi* wherein this Court held: (SCC pp.235-37, paras 20-22 & 24)

The requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if requirements of Article 14 and contractual obligations are alien concepts, which cannot coexist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the preamble. Therefore, total exclusion of Article 14--non-arbitrariness which is basic to rule of law--from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequal.

Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examination the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing, which militates against the concept of requiring the State always to so act, even in contractual matters. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their

rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of their being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Order 14 of non-arbitrariness at the hands of the State in any of its actions.

4. The learned Advocate for the petitioner submitted that even though the petitioner could have filed a suit as an alternative remedy, it would not be proper at this distant point of time to relegate the petitioner to a suit. The petitioner's learned Advocate submitted that the writ petition was filed in the year 1997 and today in the year 2005 the respondents have not even come to oppose the writ petition at the time of final hearing nor did they raise any objection with regard to the maintainability of the writ petition and there is also no affidavit-in-opposition on record and as such in the interest of justice this Court can pass appropriate order directing the respondent Nos. 2 to 4 to make payment of the aforesaid admitted amount along with interest.

5. The learned Advocate for the petitioner draws attention of this Court to paragraph 54 of the said reported case which is quoted below:

Apart from the above reasons given by us to interfere with the judgment of the Appellate Bench of the High Court, we have one other good reason why we should not drive the appellants to a suit. The respondent rejected the claim of the appellants in the year 1994. The respondent challenged the basis of rejection by way of a writ petition in the year 1996. The objection as to the maintainability of the petition was rejected by the High Court by its judgment dated 15.5.1997. We are not at the end of the year 2003. We at this distance of time and stage of litigation do not think it proper to relegate the parties to a suit. To direct the appellants to approach a Civil Court at this stage would be doing injustice to the appellants. In this view of ours, we are supported by a number of decisions of this Court like in *Shambhu Prasad Agarwal v. Bhola Ram Agarwal* wherein this Court though noticed the fact that the appellants had an alternate remedy for issuance of a letter of administration, it refused to dismiss the appeal on the grounds: (SCC p. 715, Para 5).

Since considerable time has elapsed, the interest of justice demands that the proceedings should come to an end as early as possible and that the appeal should not be dismissed merely on highly technical ground."

6. After hearing the learned Advocate for the petitioner and considering the relevant materials on record, this Court finds that there is substance in the submission made on behalf of the petitioner.

7. "Since the respondent Nos. 2 to 4 have admitted that an amount of Rs. 50,023.00 is due and payable to the petitioner after deduction of Income Tax and performance guarantee, it is only fair and proper that the respondent Nos. 2 to 4 should be directed to pay the said amount to the petitioner and the petitioner is also entitled to claim interest owing to the non-payment of the admitted amount, at least from the time the writ petition was filed. This Court is of the view that the respondent Nos. 2 to 4 should also pay an amount on account of interest at the rate of 6% p.a. on the said amount of Rs. 50,023.00 to be calculated from the date of filing of the writ petition till the date of payment by the respondent Nos. 2 to 4.

8. This Court therefore directs the respondent Nos. 2 to 4 make payment to the petitioner, the sum of Rs. 50,023.00 along with interest at the rate of 6% p.a. on the said amount of Rs. 50,023.00 to be calculated with effect from the date of filing of the writ petition till the date of making the payment by the respondent Nos. 2 to 4 to the petitioner. The respondent Nos. 2 to 4 will make such payment, as aforesaid, to the petitioner within 3 months from the date of communication of this order. The petitioner is directed to communicate the gist of the order to the respondents within a week. The writ petition is thus disposed of. There will, however, be no order as to costs.

9. Urgent xerox certified copy of this order, if applied for by the parties, be made available to the parties as expeditiously as possible.