
(1992) 04 PAT CK 0026

In the Patna High Court

Case No : C.W.J.C. Nos. 8091 of 1990 and 3753 of 1991

BASF India Limited

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0026

Judgement

Satyeshwar Roy and S.N. Jha, JJ.—In both the cases the petitioners have asserted that they have supplied pesticides to respondent No. 2 who had placed order of supply as per order of the Cane Commissioner. It has been further asserted that the Cane Commissioner has paid the amount to respondent No. 2 for payment to the petitioners but the payment of the price of pesticides has not been made.

2. It was submitted on behalf of the petitioners that since they have supplied pesticides to respondent No. 2 and as that has been consumed by respondent No. 2, it is bound to pay the price to the petitioners. It has also been urged that in some cases respondent No. 2 has paid the price but so far the petitioners are concerned, they have been discriminated.

3. When we observed that the claim of the petitioners was pure and simple money claim, being the price of pesticides alleged to have been supplied by them to respondent No. 2 under an agreement, it was submitted that in similar facts, this Court in Messrs Dumraon Industries Private Limited and Anr. v. The State of Bihar and Ors. 1991 (1) PLJR 533 : and C.W.J.C. No. 8858 of 1988, disposed of on 23-5-1989, directed the State to pay the price of goods supplied.

4. Learned Counsel appearing on behalf of the respondents submitted that in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , the Supreme Court noticed three types of cases in which breaches of alleged obligation by the State or its agents can be set up as was held by this Court in the writ petition ; and the present cases are of the third type of cases, the writ petitions are not maintainable. It was urged that a Full Bench of this Court in Pancham Singh Vs.

The State of Bihar and Others , had occasion to notice Radhakrishna Agarwal (supra) and other cases of the Supreme Court and it was held that another type of cases where a writ petition would be maintainable is where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual but such contract has been cancelled on a ground de hors any of the terms of the contract and which is per se violative of Article 14 of the Constitution. Relying on these decisions, it was urged on behalf of the respondents that no relief can be granted to the petitioners in these two writ petitions.

5. Radhakrishna Agarwal (supra) filed a writ petition in this Court alleging breach of contract. That was dismissed. Radhakrishna Agarwal moved Supreme Court. Supreme Court held that the High Court has very rightly divided the types of cases in which breaches of alleged obligation by the State or its agents can be of three types which are as follows:

(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution ;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State ; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract and the petitioner complains about breach of such contract by the State.

6. This Court had held that so far the cases coming in types (i) and (ii) were concerned, writ application under Article 226 of the Constitution is maintainable. So far the cases falling under type (iii) was concerned, no application invoking writ jurisdiction is maintainable.

7. Applicability of the law laid down in Radhakrishna Agarwal (supra) and other cases decided by Supreme Court came up before Full Bench of this Court in Pancham Singh (supra). The Full Bench noticed Kumari Shrilekha Vidyarthi etc. etc, v. State of U.P. and Ors. (1990) 3 SCJ 336, and held that apart from the three types of cases which may arise out of contract as noticed by this Court and affirmed by the Supreme Court in Radhakrishna Agarwal (supra), there will be a fourth type of case:

Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual but such contract has been cancelled on a ground de hors any of the terms of the contract, and which is per se violative of Article 14 of the Constitution.

8. From the facts of these two writ petitions, it is clear that these two cases

come in type (iii) as stated in Radhakrishna Agarwal (supra). Unless a petition in a particular case shows from uncontroverted facts that his case falls either in type (i) or (ii) or (iv), no relief can be granted in writ jurisdiction even if there will be no dispute about the amount a person is entitled to recover.

9. From the judgment in Messrs Dumraon Industries (supra), it appears that the learned Single Judge entertained the writ petition on the ground that the maintainability of the writ petition was not challenged at the admission stage and that since the State Government has agreed upon the price, it could not have unilaterally at a latter stage fixed a different and lower price for the goods already supplied. In our opinion, the law laid down therein has no application to the facts of these cases.

10. From the perusal of the order passed in C.W.J.C. No. 8858 of 1988 (supra) it appears that attention of the Bench was not drawn to the judgment of the Supreme Court in Radhakrishna Agarwal (supra) or any other case of the Supreme Court on that point the order passed in C.W.J.C. No. 8858 of 1988 must be confined to the facts of that case. We are of the definite opinion that in all cases where broach of contract is alleged, the matter shall have to be decided keeping in view the law laid down by the Supreme Court.

11. In view of the fact that the cases of the petitioners are of type (iii), no relief can be granted to the petitioners in our writ jurisdiction.

12. Both the writ petitions are dismissed but with costs.