

(2003) 07 DEL CK 0133
In the Delhi High Court
Case No : CW No. 4324 of 2001

Blue Chrome Limited

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 172
Limitation Act, 1908 — Article 145
Limitation Act, 1963 — Article 70
Marine Zones of India (Regulations of Fishing by Foreign Vessels) Act, 1981 — Section 25
Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Rules, 1982 — Rule 16, 6, 8, 8(1), 8(2)

Citation : (2004) 1 AD 563 : (2003) 70 DRJ 710

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : C. Mukund and Sudha Sharma, for the Appellant; Tamali Wad and Rajender Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—By this petition, the petitioner has prayed for the issuance of a writ of mandamus, directing the respondent no.1 to return the original fixed deposit receipt bearing no. 051-305316-013 (hereinafter referred to as "the said FDR") for Rs. 6,00,000/- issued by the respondent no.2 Along with a release letter stating therein that they have no lien over the said amount.

2. The facts and circumstances under which the said FDR came to be deposited with the respondent no.1 and how the latter claims to exercise lien over the same are as follows:

2.1 In exercise of the powers conferred by section 25 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 (hereinafter referred to as "the said Act"), the Central Government made the Maritime Zones of India

(Regulation of Fishing by Foreign Vessels) Rules, 1982 (hereinafter referred to as "the said Rules"). Rule 6 of the said Rules provides that every Indian citizen and person who intends to use any foreign vessel for fishing within any maritime zone of India shall make an application to the Central Government for a permit. The terms and conditions to which the permit, if granted, would be subject to are prescribed in Rule 8 of the said Rules. Rule 8(1)(c) stipulates that the charterer shall give an undertaking in the form of bank guarantee, before the commencement of the charter, of an amount to be decided by the Central Government in each case, to the Central Government that he shall purchase the required number of vessels and put them in fishing operation in the Exclusive Economic Zone of India before the end of the period stipulated in Schedule II to the said Rules. Thus, a permit to use foreign fishing vessels is given to an Indian on the condition that he, during the period as stipulated in Schedule II, shall purchase the required number of vessels and put them in fishing operation. The idea being that after sometime the foreign vessels would be replaced by indigenously owned vessels. The undertaking in the form of a bank guarantee was to ensure compliance with this condition.

2.2 Rule 8(2)(iii) further prescribed that the charterer shall be bound by "such additional conditions or restrictions as may be specified in the permit". Another provision of the said Rules needs to be referred to before the facts of this case are set out and examined, and that is Rule 16. Under this Rule, contravention of any of the provisions of the said Rules entails punishment with fine which may extend to Rs. 50,000/- without prejudice to the penalties which may be awarded under the said Act.

2.3 The petitioner intended to use foreign vessels for fishing within maritime zones of India and, accordingly, it made an application to the Central Government for a permit. By a letter of intent dated 11.4.1986 the respondent no.1 conveyed to the petitioner the intention of the Government of India to permit it to charter four vessels (Stern Trawlers) specified therein for a period of three years, renewable on satisfactory performance for another two years. It was clearly indicated in the said letter of intent that the same was subject to the provisions of the said Act and the said Rules and that it was further subject to, inter alia, the following conditions:-

"(i) That you shall give an undertaking to abide by the terms and conditions stipulated at Annexure-I as well as the condition given in this letter of intent."

"(iv) That you shall make an irrevocable arrangement for the purchase of vessels as per schedule given under condition 3 of Annexure-"I".

The following time table should be adhered to for acquisition of first deep sea vessel(s) and putting them in operation:

No. of months from the date of commencement of charter operation.

Obligation of the charterers to specific act in connection with the acquisition/

operation of the vessels.

0 months

Commencement of charter operation.

End of 6 months

The charterer shall communicate complete proposal for acquisition of vessels to the Government furnishing the details of the vessels (Detailed Specifications) to be acquired, offer from the shipyard, draft contract between the company and the shipyard, project report and other relevant details.

6 - 9 months

The charterer shall make irrevocable arrangement for acquisition of stipulated number of vessels by making at least 10% payment to the suppliers.

12 - 18 months

First/first set of vessels are acquired and put into operation after due registration in the India Exclusive Economic Zone (EEZ).

There will be no optional period of three months to opt out of charter operation. Once the company starts operating the chartered vessels the commitment on acquisition of vessels will start from that day."

"2. You shall furnish security deposit of Rs. 3 lakhs per vessel out of which Rs. 1.5 lakhs in the form of bank guarantee and another Rs. 1.5 lakhs in the form of fixed deposit receipt (FDR) from a scheduled Commercial Bank. The F.D.R. will be in the name of Joint Secretary (Fisheries), Ministry of Agriculture (Department of Agriculture & Cooperation), New Delhi. The FDR should be for a period of 36 months from the date of issue. Four separate bank guarantees should be from a scheduled commercial Bank and should be valid for 24/30/39/48 months from the date of issue as the case may be."

2.4 Since the petitioner intended to use four foreign fishing vessels, the petitioner was required to furnish security deposit of Rs. 12 lakhs - Rs.6 lakhs in the form of bank guarantees and Rs. 6 lakhs in the form of an FDR. Accordingly, the petitioner furnished two bank guarantees for Rs. 3 lakhs each being BG.86 NDH 246 and BG.86 NDH 247 both of 21.3.1986. The petitioner also deposited a sum of Rs 6 lakhs in a fixed deposit for 36 months (initially) with the respondent no.2 in the name of the Joint Secretary (Fisheries) as stipulated and obtained the said FDR bearing No. 51-305316-13 dated 24.3.1986 (due on 24.3.1989) in respect thereof. This FDR was handed over to the respondent no.1. The said FDR was renewed subsequently up to 23.3.1993. Thereafter, by an order of this court passed on 17.9.2001 in this very matter, the respondent no.2 was directed to continue renewal of the said FDR. In the reply filed on behalf of the respondent no.2 to the petitioner's application (C.M. 12193/2001) in this matter, it is indicated that the maturity value of the said FDR as on 25.3.2002 would be

Rs.17,01,509.42. Accordingly, as of today the principal plus interest accrued thereon would be much higher (estimated to be in excess of Rs 18 lakhs). Thus, in respect of the initial deposit of Rs. 6 lakhs, the interest element thereon would be in excess of about Rs. 12 lakhs.

2.5 Going back to the two bank guarantees which were furnished to the respondent no.1, I find that on examining the conditions of the bank guarantees there is a clause (as is usual) whereby the respondent no.2's liability is restricted to the extent of the guarantees and is conditional upon a claim in writing being filed with the respondent no.2 on or before the date of expiry of the said guarantees. It would be appropriate at this stage itself to mention that both bank guarantees have lapsed by efflux of time and the respondent no.1 did not file any written claim invoking either of the guarantees.

2.6 After the petitioner furnished the said two bank guarantees and the said FDR to the respondent no.1 and after some correspondence which we need not even allude to, the respondent no.1, following up its letter of intent dated 11.4.1984 issued four permits in respect of the following two pairs of fishing vessels:

1. King Chun No.1
2. King Chun No.2
3. King Horn G No.11
4. King Horn G No.12

The said four permits were sent to the petitioner by the respondent no.1 under cover of letter dated 12.5.1986.

2.7 It may be recalled that these permits to use foreign fishing vessels were subject to the condition that the petitioner, during the period as stipulated in Schedule II of the said Rules, shall purchase the required number of vessels and put them in fishing operation. Since the petitioner commenced operation of the foreign vessels chartered by it on 3.6.1986, it was imperative that the petitioner purchase/acquire its first deep sea fishing vessel within 18 months thereof i.e., by 3.12.1987. This, the petitioner did not do. In fact, contrary to the undertaking given by it, the petitioner did not acquire any fishing vessel at all. The petitioner, however, worked the permits.

2.8 It is the Petitioner's case that it could not acquire the requisite fishing vessels on account of the acts of commission/omission on the part of the respondent no.1. The respondent no.1 controverts this. The respondent no.1 contends that as the petitioner failed to fulfill its obligations under the permits, the Government would have been well within its rights to invoke the security deposit of Rs.12 lakhs furnished by the Petitioner by way of the said FDR and the said two Bank Guarantees in December 1987 itself. The respondent no.1's case is that the petitioner's said FDR thus became liable to forfeiture and the petitioner could have no valid grievance in this regard.

2.9 Anyhow, the respondent no.1 did not invoke the bank guarantees and allowed them to lapse. Nor has the respondent no.1 till date forfeited the amount of the said FDR. Whether it could, even if it tried to - is yet another question. On the petitioner's part, its conduct has been equally lackadaisical. It did not acquire the fishing vessels it was required to for whatever reason. It worked the permits granted for sometime and then shelved the whole idea and blamed it on the respondent no.1. Thereafter, it did not bother to ask for the return of the said FDR for years on end. The petitioner has placed on record and referred to four (4) letters (Annexure P-11 collectively) of the respondent no.1 dated 4.12.1998, 1.2.1999, 19.5.1999 and 12.7.1999 and one of its own dated 4.12.1998 (Annexure P-12). All these five letters relate to the question of some compensation paid by the petitioner to one Mrs. Leela Krishnan Unni in some embezzlement case. There is not a whisper in these letters about the return of the said FDR. Although, the petitioner submits that this correspondence was in response to its request to the respondent no.1 to return the said FDR, I find no evidence of this. The petitioner has not placed on record a single letter written by it to respondent no.1 to return the said FDR.

2.10 In point of fact, the first letter on record which deals with the return/refund of the said FDR is the letter dated 21.9.2000 (Annexure P-9) written by the petitioner to the respondent no.2. By this letter the petitioner called upon the respondent no.2 to refund the amount of Rs. 6 lakhs plus interest accrued thereon till date at the earliest and preferably within seven (7) days of the receipt of the letter. To this, the respondent no.2, replied vide its letter dated 28.9.2000 in the following manner:

"We are unable to execute your payment instructions as the subject call deposit is marked under lien to "Joint Secretary Fisheries Ministry" and we require a release letter from them to remove the lien. We also require the original receipt to make the payment of this deposit."

Faced with this situation, the petitioner sent a notice dated 25.10.2000 (Annexure P-13) through its advocates to the respondent no.1 calling upon the respondent no.1 to return the original FDR bearing no. 051-305316-016 for Rs 6 lakhs Along with a release letter to the effect that the respondent no.1 had no lien over the same within 3 weeks. The respondent no.1 did not reply to this notice nor did it do what the petitioner had called upon it to do. Consequently, this writ petition was filed on 30.5.2001.

3. On the rival contentions of the parties the following questions arise for consideration:-

(1) Is this writ petition barred on the ground of laches?

(2) Is the petitioner seeking the enforcement of purely contractual rights?

(If the answers to the aforesaid two questions are both in the negative)

(3) Is the petitioner entitled to any relief?

The answers are: (1) No; (2) Yes; and (3) No. The reasons are given below.

Questions (1) & (2)

4. The more one examines this case the more intriguing it becomes. There is apathy writ large on the part of both the petitioner and the respondent no.1. However, since the petition has been filed by the petitioner, it is its conduct that must come under the microscope. The said FDR was handed over to the respondent no.1 in 1984. If the respondent no.1's claim is assumed to be correct then the respondent no.1 became entitled to forfeit the security in December 1987. But, it did nothing of this kind. It allowed the bank guarantees to lapse and also did nothing in respect of the said FDR. It merely retained possession of the same (i.e., the said FDR). The principal amount of the fixed deposit Along with interest thereon (which has now grown to over Rs 18 lakhs) remained with the respondent no.2.

4.1 The petitioner too kept mum. There is nothing on record to show that before it wrote the letter dated 21.9.2000 to the respondent no.2 for refund of the amount of the fixed deposit Along with interest thereon, the petitioner had ever written to either of the respondents in connection with the return/refund of the said FDR. The correspondence of 1998 and 1999 referred to above was in respect of something completely un-connected and extraneous. In fact, after it handed over the said FDR to the respondent in 1984, the first time it called upon the respondent no.1 to return the same was through the petitioner's advocates' notice of 25.10.2000. Could this time-gap, by itself, be sufficient to dis-entitle the petitioner to seek the remedy of a writ of mandamus under article 226 of the constitution?

4.2 Normally it would. Remedy under Article 226 is an equitable one. It is well known that delay defeats equity. In this connection it would be appropriate to note the following observation of the Supreme Court in the case of Hameed Joharan (d) and Others Vs. Abdul Salam (d) by L.rs. and Others, :-

"It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times : even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favored rather than claiming disfavor. Law courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim *vigilantibus et non dormientibus jura subvention* (the law assists those who are vigilant and not those who are indolent)."

What, then, is the length of time of such a delay as would defeat equity? To put it differently, what is the period of limitation for an action under article 226 ? It is well settled that there is no period of limitation prescribed in respect of writ petitions under article 226 of the constitution. However, on the ground of laches High Courts have, in several instances, refused to exercise their extraordinary writ jurisdiction. Petitions which are unreasonably delayed are thrown out on

account of laches. What is reasonable and what is unreasonable has to be decided on the facts and circumstances of each case. However, in deciding the period of time which can be construed as being reasonable courts have gone by the periods prescribed for civil suits for similar causes by the statute of limitations i.e., the Limitation Act, 1963. The analogy of limitation for a civil suit is usually employed as a bench-mark for deciding whether a writ petition for a similar cause of action is within time or unreasonably delayed. This would be clear from the following decisions of the Supreme Court. In *Shri Vallabh Glass Works Ltd. and Another Vs. Union of India (UOI) and Others*, , the Supreme Court held as under :-

"While there are different periods of limitation prescribed for the institution of different kinds of suits by the Limitation Act, 1963, there is no such period prescribed by law in respect of petitions filed under Article 226 of the Constitution. Whether relief should be granted to a petitioner under Article 226 of the Constitution where the cause of action had arisen in the remote past is a matter of sound judicial discretion governed by the doctrine of laches. Where a petitioner who could have availed of the alternative remedy by way of suit approaches the High Court under Article 226 of the Constitution, it is appropriate ordinarily to construe any unexplained delay in the filing of the writ petition after the expiry of the period of limitation prescribed for filing a suit as unreasonable. This rule, however, cannot be a rigid formula. There may be cases where even a delay of a shorter period may be considered to be sufficient to refuse relief in a petition under Article 226 of the Constitution. There may also be cases where there may be circumstances which may persuade the court to grant relief in though the petition may have been filed beyond the period of limitation prescribed for a suit. Each case has to be judged on its own facts and circumstances touching the conduct of the parties, the change in situation, the prejudice which is likely to be caused to the opposite party or to the general public etc."

(underlining added)

Then, in *Municipal Corporation of Greater Bombay Vs. Bombay Tyres International Ltd. and Others*, the Supreme Court held that in ascertaining what is the reasonable time for claiming refund under article 226, the courts have often taken note of the period of limitation prescribed under the general Law of Limitation for filing of suits for recovery of amount due to them. And, in *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, the Supreme Court clearly held that:-

"It is now a well-settled principle of law and we need not dilate on this score to the effect that while no period of limitation is fixed but in the normal course of events, the period the party is required for filing a civil proceeding ought to be the guiding factor."

4.3 So, the question boils down to this. What is the period of limitation

prescribed under the general law of limitation for filing of suits for return of the said FDR and declaration claiming release of the respondent no.1's lien thereon? To answer this question one has to examine the nature and content of the prayer of the petitioner.

4.4 What is the petitioner asking for? The petitioner seeks the return from respondent no.1 of the original FDR. It also wants the respondent no.1 to give a letter releasing its lien on the said FDR. Once the FDR is in the possession of the petitioner and it has a release letter from the respondent no.1, the petitioner would present the same to the respondent no.2. Thereupon, the respondent no.2, in terms of its own letter dated 28.9.2000 would make the payment of the principal amount of the said FDR Along with interest accrued thereon to the petitioner. Therefore, it clear that insofar as respondent no.1 is concerned the petitioner is not seeking a claim of money or refund of money. It is merely seeking a return of the said FDR and, of course, the release of the lien thereon.

4.5 Now, the said FDR was handed over to the respondent no.1 by the petitioner as security for performance of its undertaking to acquire fishing vessels in place of the four foreign vessels chartered by it under the permit granted by the respondent no.1. The transaction is, Therefore, in the nature of a "pledge" as defined in section 172 of the Indian Contract Act, 1872. This is so because it amounts to a bailment of the said FDR as security for the due performance of the undertaking by the petitioner. Thus, in respect of the "pledged" FDR, the petitioner is the "pawned" and the respondent no.1, the "pawnee". If a suit were to be instituted, the petitioner would sue for the recovery of the thing or goods pledged. For ascertaining the period of limitation for filing a suit, Article 70 of the Schedule to the Limitation Act, 1963 would be applicable. The said Article 70 reads as under:-

Description of suit

Period of limitation

Time from which period begins to run

70. To recover movable property deposited or pawned from a depositary or pawnee.

Three years.

The date of refusal after demand.

This Article corresponds to Article 145 of the old act (The Limitation Act, 1908). There the period prescribed was thirty years but the limitation would run from the date of deposit or pawn. Under Article 70 (which is the applicable provision) of Schedule to the Limitation Act, 1963 the time from which the limitation periods begins to run is "the date of refusal after demand". So, there must be a demand and a refusal. In the facts of the present case what is the date of refusal after demand? From the facts narrated above, it is clear that both the petitioner

and the respondent no.1 virtually slept over the matter. If the respondent no.1 became entitled to forfeit the amount of the FDR as alleged by it, it did not do so. If the petitioner became entitled to the return of the said FDR as alleged by it, it made no demand. However, through its advocates' notice dated 25.10.2000 it, for the first time, made a demand to the respondent no.1 for return of the "pawned" FDR. The respondent no.1 did not reply to the said notice. However, in the Counter Affidavit filed on its behalf it is stated in several places that it was entitled to forfeit the amount of the said FDR. Prior to the filing of the counter affidavit, there is no direct refusal to return the said FDR. Assuming the counter affidavit to be the refusal after demand, the limitation of three years would begin to run from the date of filing of the same (i.e., 13.9.2001). So, had a civil suit been filed on the date the writ petition was filed, it would have been within time. In fact, the clock actually started to run on 13.9.2001.

4.6 In these circumstances, taking the analogy of limitation for a civil suit for a similar cause of action, it cannot be held that this writ petition would be barred on the ground of laches. On this ground maintainability of the petition would have to be upheld.

4.7 However, this would not be of much help to the petitioner's cause. For the very reasoning which saves the petition on the ground of limitation also sounds its death-knell. It is clear that the rights and liabilities of the parties and in particular the petitioner and the respondent no.1 would have to be determined in the arena of contract and contractual rights and liabilities. If this petition were to be decided on merits, I would be required to examine questions as regards nature of the contract. Whether the respondent no.1 can at all forfeit the sum of the said FDR as it claims it is entitled to do when, in fact, the transaction is in the nature of a pledge? Whether, in the facts of the case, the respondent no.1 can exercise lien as a "bailee" or a "pawnee"? Does the petitioner (who is the pawnor) have a right to the return of the said FDR which was pledged as a security for performance of the undertaking given by it? Was the non-acquisition of the fishing vessels by the petitioner occasioned by acts of commission/omission on the part of respondent no.1? Was there any waiver, acquiescence or abandonment of rights by the parties on account of the many years of silence? And as host of similar questions impinging upon facts and law. These are all in the realm of contract. It is well settled that a writ petition raising purely contractual matters and particularly where disputed questions of facts are involved ought not to be entertained.

Question (3)

5. While the petition cannot be rejected on the ground of delay and laches, it cannot be entertained because it seeks enforcement of purely contractual rights. Thus no relief can be granted to the petitioner under article 226. The appropriate remedy for the petitioner would be to file a civil suit. It is open to the petitioner to claim the relief of return of the said FDR and release of lien of the respondent no.1 thereon. Apart from deciding the preliminary issues on maintainability of

this writ petition and of finding it to be not maintainable as indicated above, I have deliberately not come to any conclusion on the merits of the matter so that dismissal of this writ petition will not come in the way of the petitioner pursuing its remedy of filing a civil suit in the appropriate court.

6. In view of the foregoing discussion, the writ petition is dismissed. Parties are left to bear their own costs.