
(1951) 11 RAJ CK 0005

In the Rajasthan High Court

Case No : Civil Miscellaneous (Writ) Application No. 12 of 1951

Budh Mal

APPELLANT

Vs

Gulab Singh and Others

RESPONDENT

Date of Decision : 19-11-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226

Citation : AIR 1952 Raj 151 : (1952) RLW 66

Hon'ble Judges : Wanchoo, C.J.;Bapna, J

Bench : Division Bench

Advocate : B.B. Desai, for the Appellant; Mansha Ram, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.—This is an application by Budhmal Radhakishan Parmar under Article 226 of the Constitution of India for issue of a writ order or direction against the State of Rajasthan, and the Commissioner, Civil Supplies Jaipur, and the Deputy Commissioner, Civil supplies, Jodhpur, prohibiting them from proceeding with certain contracts with respect to grain.

2. The facts alleged by the applicant are that tenders were called for a contract of handling work in connection with the Grain Stores of Jodhpur Division for the year 1951. In that connection, the applicant made a tender, and complied with the necessary directions in that behalf. All the tenders received were opened, and the applicant was verbally informed that he would be appointed contractor for the said work for the year 1951. Thereafter, the deposits of the other tenderers were returned, while the deposit of the applicant was retained. Later, however, the Civil Supplies Commissioner and Deputy Commissioner cancelled the contract in favour of the applicant, and called for fresh tenders. In the meantime, the work was carried on by the old contractor, who was given extensions from time to time. It was contended that it was the duty of the officer concerned in their public character to perform specifically the contract with the

petitioner, and to refrain from committing a breach thereof, and the petitioner was, therefore, entitled to a writ ordering the officers concerned and the State of Rajasthan for specific performance of the contract.

3. The application has been opposed on behalf of the State of Rajasthan and the officers concerned. The fact alleged by the applicant, namely, that he had been granted the contract, has not been admitted. It has also been urged that in any case, the applicant is not entitled to any writ at all, as there was no duty laid on the State or the officers to perform specifically the alleged contract.

4. We do not think it necessary for the purposes of this case to decide the question whether the contract for the work was in fact granted to the applicant. That is a matter which may have to be decided if and when the applicant decides to bring a suit for damages for breach of contract against the State, and we would not like to prejudice the decision of that issue by any remarks on that point at this stage. For the purposes of the present application, we shall assume that the contract was concluded between the State and the applicant, and that later the State went back on that contract, and decided to call for fresh tenders. The question that arises then is whether the applicant is entitled to any relief under Article 226 of the Constitution of India in these assumed circumstances. We are of opinion that this Court should not exercise its extraordinary Jurisdiction under Article 226 off the Constitution in a case like tile present, where, even if there has been a breach of the contract, a specific, adequate and convenient remedy is available by a suit for damages for breach of contract. In this connection we may refer to the case of P.K. Banerjee Vs. L.J. Simonds and Another, There also an application for a writ was made u/s 45 of the Specific Relief Act in a case based on contract. It was held that as there was other specific and adequate remedy available by way of suit, no relief could be granted u/s 45 of the Specific Relief Act.

5. Learned counsel for the applicant wants to distinguish this case on the ground that Section 45 of the Specific Relief Act in so many words provides in Clause (g) that the High Court will not make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown, He urges that there is no such prohibition under Article 226 of the Constitution, We may, however, point out that this was an additional ground on which the learned Judges of the Calcutta High Court dismissed that application. Further, though it is true that Article 226 of the Constitution of India is very general in terms, and gives very wide powers to this Court, it would not use those extraordinary powers in cases arising out of contractual relationship, where there is specific remedy available otherwise, and where the harm done can be compensated for by a suit for damages for breach of contract.

6. Learned counsel also urges that before bringing a suit, the applicant would have had to give notice u/s 80 of the Code of Civil Procedure, and thus would not have been able to get an injunction in time. But where, as in this case, the damages done to him can be compensated for by a decree for damages, the fact

that he could not file the suit for two months does not mean that there was not an adequate remedy available to him.

7. We are, therefore, of opinion that there is no cause for the issue of a writ in this case. The application is hereby dismissed with costs to the State. We fix Rs. 80/- as the fees of the learned Government Advocate.