
(1979) 09 GUJ CK 0016
In the Gujarat High Court

Cartybon Private Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 27-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 226

Citation : (1979) 2 GLR 420

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Judgement

A.N. Surati, J.—The respondents by the impugned notice dated April, 30, 1976 called upon the petitioner Company to pay to them a sum of Rs. 87, 235/- on account of arrears of land revenue as per details given in the notice Annexure "A" within a period of fifteen days from the date of the service of the said notice to the petitioner Company, otherwise the respondents threatened compulsory proceedings against the petitioner Company for the recovery of the same. The petitioners were aggrieved by the said impugned notice and have filed the present petition in this Court.

2. In order to appreciate the grievance of the petitioner Company, a few relevant facts may be stated.

3. The petitioner Company is registered under the Indian Companies Act and is engaged in the business of manufacturing carbon papers, typewriter ribbons, stamp-pads, etc. and has got its factory in Goa. The petitioner Company is having its branch office in Ahmedabad.

4. On May 28, 1973, the petitioner received a tender Inquiry No. Sp./J/STY-SCH-III/73-74 from the Industries Commissioner and Central Stores and Purchasing Officer, Ahmedabad, for supply of 7300 dozen self-inking violet stamp pad of 11 cms. x 6.5 cms. tested as per I.S.I. No. 4747/1968 specification. In reply to the aforesaid trade inquiry, the petitioner had offered to supply the stamp pad at the rate of Rs. 16/- per dozen. The petitioner, while replying to the inquiry, made it

clear that the offer would remain open till 29th August, 1973, and that the stamp pads manufactured by the petitioner Company did not bear I.S.I. mark.

5. The Assistant Director of Industries, Ahmedabad by his letter No. SP/J/STY-SCH-III/73-74/10127 dated August 30, 1973 informed the petitioner Company that the offer of the petitioner was under consideration and asked the petitioner company to confirm that the stamp pads to be supplied were according to I.S.I. 4747/1968 specification. The petitioner company was also asked to extend the validity of the offer till October 15, 1978.

6. By a letter dated September 17, 1974, the petitioner Company informed the Assistant Director of Industries, Ahmedabad that the stamp pads manufactured by the petitioners were in accordance with I.S.I. specification but the stamp pads were not tested and/or certified by the I.S.I. Under the circumstances the petitioner company expressed its inability to extend the validity of the offer till October 15, 1973. The petitioner extended the validity of the offer till September 30, 1973.

7. By a letter dated October 19, 1973 the Joint Director of Industries (SP) Ahmedabad, forwarded "Acceptance of Tender" containing the terms and conditions of the contract to supply the aforesaid stamp pads. The petitioner Company was also asked to deposit Rs. 5,840/- by way of security deposit for due performance of the contract.

8. The petitioner Company by its letter dated December 6, 1973 requested the Government to cancel the offer and pointed out that acceptance of tender letter was received after the expiry of the validity of the offer made by the petitioner. The petitioner Company further pointed out that the goods manufactured by the petitioner were not bearing I.S.I. mark, and hence, the petitioner company did not deposit Rs. 5,840/- as and by way of security deposit. Suffice it to state, that on the aforesaid facts, it was the specific and the definite case of the petitioner company that there was no complete or concluded contract between the parties. It is also averred by the petitioner that no concluded and binding contract ever came into existence between the petitioner company on one side and the respondent State on the otherside. It is further averred in the petition that no contract was signed or executed by and between the parties.

9. By a letter dated May 1, 1974, the Assistant Director of Industries (Tex) Ahmedabad intimated to the petitioner Company that though the acceptance letter was received by the petitioner on October 22, 1973, the petitioner had not objected to the proposed contract, and hence, the petitioner company was bound by the terms and conditions of the contract.

10. The petitioner company replied the aforesaid letter and intimated to the respondent that the petitioner was not bound to supply any goods. By a letter dated June 6, 1974, the first respondent called upon the petitioner company to supply goods within 15 days and threatened to make risk purchase in case the goods were not supplied.

11. By a letter dated August 27, 1974, the first respondent informed the petitioner that the risk purchase inquiry was being made and by a subsequent letter dated December 30, 1974 the first respondent informed the petitioner that goods were being purchased from M/s. Geeta Sales Corporation, Ahmedabad for Rs. 2,04,035/- as per Clause 23 of the acceptance of tender. The petitioner company by its letter dated February 24, 1975 denied its liability in regard to the aforesaid alleged transaction which took place between the State and the petitioner Company.

12. Under the circumstances aforesaid, the first respondent by the impugned notice being Annexure "K" to the main petitioner called upon the petitioner to remit the amount of Rs. 87,235/-, and threatened the petitioner that if the amount was not paid, the same would be recovered as per Clause 23 of the Acceptance of Tender.

13. It is under these circumstances that the petitioner Company had filed the present petition under Article 226 of the Constitution of India and has prayed that it should be declared that the Government of Gujarat had no authority of law to recover the amount of Rs. 87,235/- or any amount as there was no valid concluded between the parties.

14. The petition was resisted by the Assistant Director of Industries on behalf of the respondent State. It may be significantly noticed that it was the pointed case of the respondent State that there was a complete and a concluded contract between the respondent State on one side and the petitioner Company on the other, on September 25, 1973 as stated in para 4 of the affidavit-in-reply. It is regrettable that though the State placed reliance in this behalf on the letter addressed by respondent No. 1, the State did not produce the copy of the letter with the affidavit-in-reply. It is regrettable that respondent No. 1 should have advised by the legal advisers of the State to produce the copy of the said letter along with the affidavit-in-reply.

15. As my pointed attention was not drawn to the other contents of the affidavit-in-reply in course of the hearing of this petition, and hence, it is not necessary for me to refer to the rest of the contentions raised in the affidavit-in-reply.

At the time of the hearing of the petition, Mr. Patel, the learned Assistant Government Pleader with his usual tenacity tried to make out a preliminary objection without any basis or any requisite material in the affidavit-in-reply. Mr. Patel strongly urged before me, that the petition suffers from the vice of suppression of material facts before this Court. When such an argument was advanced by Mr. Patel, the learned Assistant Government Pleader, I requested him to show to me from the affidavit-in-reply the relevant material and to satisfy me that such a contention was ever raised on behalf of the State, but the affidavit-in-reply was conspicuously silent on the said point. Under the circumstances, it was not possible for Mr. Patel to pursue the said point any further.

In view of the categorical averment made in the petition and the reply affidavit, one fact clearly emerges, and on that point, there cannot be any dispute. The petitioner Company has come out with a case that there was no complete or concluded contract between the parties, and if there is no complete or concluded contract between the parties, according to the petitioner, it was not open to the State to resort to any coercive machinery by serving the impugned notice on the petitioner-Company and by calling upon them to pay the amount of Rs. 87, 235/-.

16. But Mr. Nanavati also urged before me, that assuming for a moment that even if the Court is inclined to accept the case put up by the State that there was complete and concluded contract, even then, for a breach of the contract of the present type, the State should have filed a suit in the Civil Court for recovery of the amount of Rs. 87, 235/-. He urged that in the present case obviously in view of what has been stated above, there are disputed questions of fact. He also urged before me, that even assuming that there was any breach of the so called contract, even then, the petitioner Company was denied any opportunity to prove that there was no contract at all between the parties and that when the State assessed the damages to the tune of Rs. 87, 235/- the said decision of the State is arbitrary, capricious, and mala fide as the petitioner company was not given any opportunity even to say a word about the quantum of damage that the State might have suffered. Under the circumstances, Mr. Nanavati submitted that this Court must quash the impugned notice being Annexure "K" to the main petition.

17. In support of the same Mr. Nanavati referred to an unreported decision of this Court in Special Civil Application Nos. 266 of 1970, 788 of 1969 and 1374 of 1969 decided on 7th and 9th December 1970 (Coram: J.B. Mehta and D.A. Desai JJ). There cannot be any quarrel on the elementary propositions involved in the case, and hence, I do not think it necessary to refer in detail the contents of the aforesaid judgment. If there is any dispute, in regard to any contract, and if any claim is based in pursuance to the breach of such a contract, the obvious forum will be the forum of Civil Court. In the present case, in view of the facts and circumstances of the case, the impugned action on the part of the State is manifestly capricious and bad in law, and hence, I set aside and quash the impugned notice.

As a result of the aforesaid discussion, the petition succeeds, and the rule is made absolute, but having regard to the facts of the case, there will be no order as to costs.