
(2014) 11 MP CK 0116
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6273/2010

Dalal Security

APPELLANT

Vs

Gail (India) Limited

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 MP CK 0116

Hon'ble Judges : S.K. Gangele, J; Rohit Arya, J

Bench : Division Bench

Advocate : Deepak Awasthi, Advocate for the Appellant; R.D. Jain, Sr. Advocate and S.K. Jain, Advocate for the Respondent

Judgement

1. Heard.

2. This petition has been filed against the letter (Annexure P/1) dated 13/9/2010 terminating the contract of the petitioner.

3. Petitioner was awarded a contract of providing security services which was terminated vide Annexure P/1. There are two clauses for termination of contract as per the terms and conditions of the contract. Copy of the contract has been filed alongwith the petition. Clauses 19 and 20 (a and b) of the same reads as under:-

19. In case any default for more than three days in respect of rendering the desired services, Management shall be at liberty to arrange services from other sources at the risk and cost to of the contractor or terminate the contract and forfeit his security deposit etc. Note- Any deductions made by the contractor from the guards salary will be in as per the existing labour law rules/statutory rules after proper investigation and the report to be submitted of EIC.

20.a) The company for reason whatsoever and of which the company shall be the sole judge may terminate this contract by giving notice of 30 days and the contractor and his staff shall vacate the site/work place on the expiry of such

notice period.

b) In the event of such termination of the contract, the contractor shall be paid for all the work executed up to the period of termination including refund of security deposit, subject to deduction of any dues, penalties, other recoveries etc., within a period of three months at the discretion of Security In Charge.?

4. According to Clause 19, if there was any default for more than 3 days in respect of rendering security services, contract can be terminated and security amount can also be forfeited.

5. Prior to issuing Annexure P/1, petitioner vide letter dated 17/5/2010 was directed by the Management that as a result petitioner had not deployed the total number of security persons as per the contract, an incident of theft had happened. It is mentioned in the letter that as per the terms and conditions of the contract following persons had to be deployed:-

6. However, the petitioner deployed only 10-15 persons and there was a short of manpower in the category of security guard. The same facts have been repeated in subsequent reminder dated 16/6/2010 also.

7. From the aforesaid facts, it appears that petitioner did not deploy the total number of manpower and therefore in accordance with contract clause No. 19 which clearly speaks that if a contractor fails to provide the services then the management can make alternative arrangements or terminate the contract and forfeit his security deposit etc, the contract of petitioner has been terminated. In our opinion, the action taken by the management vide Annexure P/1, falls within the category of clause 19 of the contract. Hence, the forfeiture of security cannot be said to be arbitrary and illegal and beyond the scope of interference in exercise of powers by the Court under Article 226 of the Constitution of India.

8. Hon"ble Supreme Court in Jagdish Mandal Vs. State of Orissa and Others, has held as under in regard to interference of the court in contractual matters : -

?22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers

with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions: (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: ?the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached?;

(ii) Whether public interest is affected. If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.?

9. From the judgment of the Hon''ble Supreme Court, it is clear that if the order is so arbitrary and illegal, the court can interfere in the matter of contract. Hon''ble Supreme Court further in *Michigan Rubber (India) Ltd. Vs. The State of Karnataka and Others*, considered the scope of interference by the court in contractual matters. Hon''ble Supreme in *Kulja Industries Limited Vs. Chief Gen. Manager W.T. Proj. BSNL and Others*, has held that the decision to blacklist a contractor is open to judicial review by the court on touchstone of proportionality and natural justice.

10. In view of the aforesaid facts and circumstances, we do not find any merits in this petition, it is hereby dismissed. However, it is considered apposite to observe here that this Court exercised its power in regard to Article 226 of the Constitution of India but these findings are not binding in any other proceedings.