
(2005) 12 DEL CK 0085

In the Delhi High Court

Case No : Writ Petition (C) No. 4652 of 2005

Data Access India Ltd.

APPELLANT

Vs

Mahanagar Telephone Nigam Ltd. and Others

RESPONDENT

Date of Decision : 20-12-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Contract Act, 1872 — Section 59, 60, 61

Citation : (2006) 126 DLT 617

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : P.I. Jose, for the Appellant; Narendra Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J.—The prayer in these writ petitions is for the issuance of a writ of mandamus or any other writ, order or direction directing the Respondents to adjust all the payments received by them by way of encased Bank Guarantees submitted by the Petitioners on a First In First Out basis. In CW 4652/2005 the amount in question is Rs. 6,20,00,000/- and in CW 4709/2005 is Rs. 50,09,50,000/-.

2. The facts pertaining to these transactions, briefly stated, are that the parties had entered into Interconnect Agreements in July 2002, in terms of which sundry Bank Guarantees favoring the Respondent were made available by the Petitioner. Towards the end of 2003 the Petitioner encountered financial difficulties. To overcome this, fresh infusion of capital was sought to be located and procured. A Shareholders Agreement was entered into on 26.8.2004 which, according to the contention of the Petitioners, superseded all previous Agreements. The new investors were assured that the total liability would not exceed Rs. 300 crores, and if it exceeded that figure the liability would be borne by Mr. Siddharth Ray, the promoter of the Petitioner Company. The Petitioner states that Mr. Ray has reneged and defaulted on his assurances and liability and has failed to fulfill his

financial obligations and commitments. The Respondents had thereupon initiated steps for recovery of the dues from the Petitioners. Several Bank Guarantees have already been invoked.

3. Two questions have been raised as grounds for challenging the maintainability of these writ petitions. It has been contended that even though the Respondents BSNL as well as MTNL would fall within the term "Authority" as envisaged by Article 12 of the Constitution the subject matter falls within the realm of contract and, Therefore, this Court ought not to exercise writ jurisdiction in such matters. Secondly, It is not in dispute that an Arbitration clause exists between the parties and accordingly the Respondents contend that the Petitioner should seek its relief through that route of adjudication.

4. A similar question had arisen before me in *Steel Authority of India Limited v. Punjab and Sind Bank* 2004 VII AD (DELHI) 245. The prayer in that writ petition was for interdicting the encashment of Bank Guarantees. I had taken into consideration the observations made in *State of U.P. v. Mohammad Nooh* AIR 1958 SC 86, *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, and *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, I had declined to exercise the extraordinary powers vested in this Court under Article 226 of the Constitution, and repeating the reasoning would unduly lengthen this Judgment. It would be advantageous, however, to refer to the opinion in *Haryana Urban Development Authority and Another vs. Anupama Patnaik*, (2000) 10 SCC 649 in which the Apex Court had found it rather strange that a simple claim for money was made in a writ petition and was entertained by the High Court and allowed. There are several disputed questions of fact. Each party is alleging that the other party is guilty of violation of the terms of the allotment. The matter is not covered by any statutory provisions. The writ petition itself was misconceived and ought not to have been entertained. In *National Highway Authority of India Vs. Ganga Enterprises and Another*, it has been held that it is settled law that disputes relating to contracts ought not to be entertained under Article 226 of the Constitution. In *Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others*, the Court had found it inappropriate to exercise writ jurisdiction where the State enters into non-statutory contracts; rights of the parties inter se should then be governed by the terms of contract and not by constitutional provisions. The same view was expressed in *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, ; *Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others*, ; *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, and *Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd.*,

5. The fact that learned counsel for the Petitioners has relied on the discussions contained in *The Central Warehousing Corporation, Berhampur Vs. Govinda Choudhury and Sons*, brings the preliminary objection to the fore. Sections 59 to 61 of the Contract Act had to be construed. It was opined that such an exercise ought not to be conducted in writ proceedings. This decision militates against the

arguments of the Petitioners. For the same reason the ratio in M.C. Chegganmull Sowcar Vs. Desur Manicka Mudaliar, would not come to the assistance of the Petitioners since those questions had come up for debate in ordinary civil proceedings viz. a suit for recovery of money due on promissory note. In DSCO DSCO Cooperative Industrial Society Ltd. Vs. Delhi State Cooperative Bank Ltd. and Others, the facts in issue were not contested. The Learned Single Judge applied the principles of estoppel as well as Section 59 of the Indian Contract Act while passing directions similar to those prayed for in these writ petitions. I have in some cases assumed jurisdiction under Article 226 of the Constitution even in respect of contractual dealings of the State or Authority. However no convoluted and contested questions of fact had arisen in those cases with the result that appropriate orders could easily have been passed, as had been done by my Learned Brother Vijender Jain in DSCO Cooperative case. In writ proceedings it would be wholly inappropriate to consider the implementation of the legal principles of First In First Out basis. This would involve looking into the Books of Accounts, the date on which the liability occurred etc. which are matters that should be left for determination either in a civil suit or in arbitral proceedings.

6. This is not a case which justifies or warrants the exercise of extraordinary jurisdiction under Article 226 of the Constitution.

7. Dismissed.