(2008) 08 GAU CK 0088

In the Gauhati High Court

Case No : Writ Petition (C) No''s. 3543, 3544, 3545, 3740, 3741 and 3742 of 2008

Dimasa Associates and Others APPELLANT

Vs

North Cachar Hills Autonomous Council and Others RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:
Constitution of India, 1950 — Article 226
Partnership Act, 1932 — Section 32(3), 59, 63, 72

Citation : (2009) 3 GLT 442

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : N. Dutta, I. Choudhury, R.M. Deka, K. Barthakur and M. Khaund, for the Appellant; A. Choudhury, S.K. Medhi, J. Roy, S.S. Dey and D.P. Borah, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Amidst allegations and counter allegations of misrepresentation and suppression of facts on the part of the parties involved, all the writ petitions raising the same issue on same cause of action have been heard together.

2. While the first three writ petitions, namely WP (C) Nos. 3543, 3544 and 3546 of 2008 were filed and moved on 13.8.2008, the other three writ petitions namely WP (C) Nos. 3740, 3741 and 3742 of 2008 have been filed on 26.8.2008 and have been moved today (27.8.2008). The respective dates of filing of the writ petitions have been indicated as the same has a bearing in view of the submission made by the learned Counsel representing the Respondent council that the writ Petitioners while moving the first three writ petitions withheld their proper identity and relevant facts as was prevalent on that day and thereby not only got the writ petitions entertained, but also obtained interim relief.

3. In all the six writ petitions, three partnership firms are involved two of which are represented by one Sri Ranbir Singh Gandhi and in the remaining one by Sri

Charanjit Singh Gandhi describing each one of them as one of the principal partners apart from other four partners. Sri Charanjit Singh Gandhi is the son of Ranbir Singh Gandhi and both the father and son are partners of all the three Petitioner firms.

4. The challange made in the first three writ petitions is the decision of the Respondent council to terminate the contracts awarded to the Petitioners. Further prayer made is for a direction restraining the council from entering into any fresh contract. Be it stated here that the work involved is extraction, handling and transportation of Bamboo. In the subsequent three writ petitions the challange is the decision and the communication thereof cancelling the contracts, about which the Petitioners allegedly came to know in the proceeding of the first three writ petitions when the council made the same known to them.

5. As in the subsequent three writ petitions filed on 26.8.2008 in the first three writ petitions filed by the same Petitioners on 13.8.2008, it has been stated that they are all duly registered partnership firms. Further statement made in all the six writ petitions is that the individual private Respondent who was initially one of the partners has retired from the partnership firm. Such statements are admittedly contrary to records emphasizing on which the learned Counsel for the council emphatically submitted that the same is by way of deliberate suppression of material facts to mislead the court. However, learned Counsel for the Petitioners has tried to justify the same as a genuine mistake in view of the fact that the applications for registration were pending with the authority.

6. The above aspect of the matter leads to two vital aspects of the matter, very crucial for determination of the rights and contentions raised in the writ petitions and the very basis on which the writ petitions are structured. At the first instance, the first three writ petitions filed on 13.8.2008 although were filed with the statement and identity that the writ Petitioners are duly registered partnership firms, but in fact they were not. Secondly, although it is their stand that the private Respondent in each of the writ petitions has retired from the partnership form as one of the partners, but it is revealed from the documents produced by the learned Counsel as well as from their additional affidavit that not only the firm was registered only on 22.8.2008 i.e. after filing of the first three petitions on 13.8.2008, but such registration is also showing the purported retired partner i.e. the private Respondent as one of the partners of the partnership firm.

7. Further it is also revealed that Shri Charanjit Singh, one of the partners of the Petitioner firms, by his letter dated 12.8.2008 addressed to the Registrar of Firms & Societies while making the request for issuance of the Registration Certificate applied for also did not mention the purported retirement of the Respondent No. 5 in WP (C) No. 3543/2008 as one of the partners of the firm. The partnership deed on the basis of which the firm was registered clearly mentions the Respondent No. 5 as one of the partners and his signatures clearly appear in all the pages of the deed alongwith the other two partners, who claim

to be the sole partners of the firm after purported retirement of the Respondent No. 5 as one of the partners. The registration of the firm has also been done on that basis on 22.8.2008.

8. When the documents pertaining to the above position provided by the learned Counsel for the council were shown to the learned Counsel for the Petitioners, he had no answer to the same except stating that the same will have no bearing on merit of the case of the writ Petitioners.

9. The above aspect of the matter will also have to be considered in the context of filing the Title Suits by the Petitioners about which there is mention in the writ petition. The prayer made in the suits is for a declaration that any act done or any representation made by the Defendants therein, who are the private Respondents in the writ petitions, after 12.10.2007 is a nullity and/or nonest in the eye of law. Further prayer made is for permanent injunction restraining the said private Respondents from doing any act and/or making any representation on behalf of the Petitioner firms. A mandatory injunction has also been prayed for by way of a direction to the said private Respondents to hand over copies of the unauthorized representations and writings executed and/or signed by each one of them in the name of the Petitioner firms after 12.10.2007.

10. In the writ petition although the aforesaid Title Suits have been mentioned indicating the aforesaid prayers and the fact of issuance of notice by the learned Principal Civil Judge, Kamrup, but there is no indication that the prayer for ad-interim injunction has been rejected. The learned Trial Court considering the materials on record has opined in his order dated 12.8.2008 that it would not be justified to pass an ex-parte order of injunction without hearing the other side. This vital aspect of the matter has been withheld and immediately after declination to grant to ad-interim injunction as was prayed for, the Petitioners approached this Court by filing the first three writ petitions on 13.8.2008 and moved the same unlisted and in fact became successful in obtaining an interim order of status-quo.

11. There are other vital aspects of the matter, which will be discussed a little later. As a general rule, suppression of material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. The whole basis of the claim of the Petitioners is on their assertion that the private Respondents, their one time partners have retired from the respective firms. The first three writ petitions were filed with the specific statement that the firms are registered one, which in fact were not. To that extent there was misrepresentation. The firms were registered only on 22.8.2008. Thus, at the time of filing the subsequent three writ petitions (26.8.2008), filed by the same very Petitioners, the firms were registered and accordingly, it was stated to be so. However, in all the six writ petitions the emphatic stand of the Petitioners is that the private Respondent in each one of the writ petitions has retired from the partnership firm, which stand will have to be tested in the touchstone of real

position which has emerged from the fact of registration of the firms on 22.8.2008 depicting each one of the private Respondent as one of the partners. The firms have been registered on that basis. The Petitioners never informed the Registrar about the purported retirement of the each one of the private Respondents.

12. Above being the position their stand that the private Respondents are no longer partners of the respective firms falls through. It has rightly been contended by the learned Counsel for the Respondent council that, having regard to the facts and circumstances and the sequence of events, even the deeds of the retirement annexed to the writ petitions are doubtful. This aspect of the matter will also have to be considered taking into account the fact that the Petitioner firms represented by each one of the private Respondents have also filed Civil Suits claiming similar relief as in the writ petitions. As per the affidavit-in-opposition filed by the council the said suits have been filed challenging the order of cancellation of the contracts and the suits have been admitted on 13.8.2008. by way of issuance of notice. Notice has also been issued on the injunction petitions.

13. Although, it was argued on behalf of the Petitioners that the aforesaid civil suits filed at Haflong by the retired partners of the Petitioner firms are the products of manipulation on the part of the Respondent council and are of no consequence in view of their retirement from the respective firms, such an agreement is totally misplaced and appears to have been made being caught in the whirlpool. When the registration of the Petitioner firms on 22.8.2008 on the basis of the deed of partnership executed on 16.01.2007 and the applications submitted in February, 2007 before the Registrar incorporates each one of the private Respondents as one of the partners, such an argument can only be for arguments sake without any substance.

14. Above being the position, the Petitioners have no right to move the Writ Court for enforcement of their fundamental right on the basis of the writ petitions containing misleading and inaccurate statements. A calculated and designed suppression of material facts in order to secure admission and interim relief; which if disclosed, would have disentitled the Petitioners to extraordinary remedy, or in any case would have materially affected the merits on both the interim and ultimate relief claimed and consequently would deprive the Petitioners from considering their case on merits. The Petitioners are not entitled to any relief, they having not made full and true disclosure of the facts. They in order to put forward their case of a violation of the principles of natural justice and have chosen to suppress their representation and adverse consequence thereon. On this score alone, all the writ petitions are liable to be dismissed.

15. Let us now examine the other aspects of the matter. The Respondent council entered into agreements with the respective Petitioner firms, which the Petitioners have described in the writ petition as the agreement with the then unregistered firms which were represented at that point of time by the respective

private Respondent. As per the agreements, the respective firms were engaged and appointed as the sole and exclusive handling and transportation contractors for the purpose of bamboo operation in the stipulated area falling under the council. The agreements were executed on 3.10.2005, 3.11.2005 and 3.10.2005 respectively.

16. After the aforesaid agreements, three separate deeds of partnership were executed on 13.10.2006 among said Sri Ranbir Singh Gandhi, Charanjit Singh Gandhi and the respective private Respondent agreeing to business of extracting/ filling various pieces of bamboo in the specified areas under the council for which the agreements were arrived at by and between the council and the respective private Respondent. Thus, although, in the agreements by and between the council and the respective private Respondent, said Sri Ranbir Singh Gandhi and Charanjit Singh Gandhi were not party, but by virtue of these agreements, they became partners of the respective private Respondent retaining the name of the firm.

17. After the aforesaid developments, further agreements were executed on 19.10.2006 between the respective firm and the Respondent council appointing the respective firm as the contractor to fell/extract, bundle, stack, transport and supply/deliver various pieces of bamboo to Hindustan Paper Corporation Limited (HPCL) on behalf of the NC Hills Autonomous Council from various speficied felling series on payment of royalty as provided for in the agreement. It will be pertinent to mention here that the respective agreement was signed by the respective private Respondent and not by the Gandhis.

18. In the meantime, supplementary deeds of partnership dated 1.2.2007 in respect of each of the firms was executed inducting three more members of the Gandhi family as the partners of the respective firm followed by purported retirement of each one of the private Respondents from the partnership firms by executing individual deed of retirement on the same date i.e. 11.10.2007. Although, the Petitioners have stated that such retirement from the partnership firm by each one of the private Respondents was intimated to the Respondent council, but the Respondents have denied the same in their counter affidavit.

19. It is the case of the Petitioners that they have come to know on 10.8.2008 that in the recent past each one of the private Respondents purportedly acting as the representative of the Petitioner firms has put signature on certain documents detrimental to the interest of the Petitioners firm. A statement has been made that such action on the part of the private Respondents is because of undue pressure from certain corners and for extraneous consideration. According to the Petitioners, the private Respondents could not have done so each one of them having retired from the partnership firms. It was under such circumstances the Petitioners filed the aforementioned Title Suits.

20. It has been stated in the writ petitions that the Respondent council has been making frantic negotiation with the HPCL for making fresh arrangement relating

to the works involved. It is the case of the Petitioners that such negotiations are being carried out to the exclusion of the respective Petitioner firms. On further enquiry, the Petitioners have come to know that the erstwhile partner of the respective Petitioner firms, i.e. the private Respondent has put some signatures on some blank papers making use of which the Respondent council has formed the opinion that the Petitioner firms are unable to fulfill the obligations as per the terms and conditions of the agreement and consequently decided to terminate the contracts. According to them there is false and misrepresentation on the part of the respective private Respondent.

21. It is in the aforesaid background of the case, the Petitioners being apprehensive of termination of their contract, filed the first three writ petitions with the prayer for issuance of mandamus directing the Respondents not to terminate the contract purportedly awarded to them by the aforementioned agreements dated 19.10.2006. Prayer has also been made to set aside and quash the termination of contract. Significantly, the first prayer made in the writ petition, which is--

as to why a declaration should not issue to the effect that any prejudicial action against the Petitioner taken by the Respondent No. 1 and 3 pursuant to any unauthorized act(s) done or representation(s) made by the Respondent No. 4 is a nullity in the eye of law....,

is also the prayer made in the afore-mentioned Title Suits filed by the respective Petitioner firms. As noted above, the writ petitions were filed on 13.8.2008 after filing and moving the Title Suits alongwith the injunction petitions on 12.8.2008, in which the paryer for adinterim injunction in terms of the above prayer was declined, which fact has been withheld in the writ petitions.

22. In the subsequent three writ petitions filed on 26.8.2008, by which time the firms were registered with the Registrar of Firms & Societies, the challenge made is the decision of the Respondent council taken on 2.8.2008 followed by the letter dated 5.8.2008 (Annexure-I and J). Annexure-I is the minutes of the meeting of the Executive Committee of the council held on 2.8.2008, in which the inability expressed by the respective Petitioner firms to supply bamboos was discussed. While highlighting the immense importance of supply of bamboos from the council to HPCL, as the major source of revenue, it was also discussed that the inability expressed by the respective Petitioner firm has led to the verge of closure of the Cachar Paper Mills (CPM). The meeting also discussed the letter submitted by the respective firms by which demand was made to enhance the rates of bamboo. It also discussed the stand of the respective firms that in case of imposition of penalty for short supply of bamboos as per the terms of the agreement, they would not pay the same as the same would cause great hardship to them.

23. Discussing the above aspects of the matter, the council decided in its meeting to cancel the agreements with the Petitioner firms and allowed the HPCL to

extract and supply bamboos to their mills from the particular area in modification of the earlier agreement with them. In the meeting the application received from the Respondent No. 6 agreeing to do the job was also discussed. The decision to engage the party on fulfillment of terms and conditions was taken in the interest to make a parental supply of bamboo to HPCL. By Annexure-J communication dated 5.8.2008, the Petitioner firms were intimated about the aforesaid meeting held on 2.8.2008 and the minutes thereof. By the communication, cancellation of the agreement with the Petitioner firms was conveyed. According to the Petitioners, they were not aware of the same at the time of filing the first three writ petitions.

24. Annexure-M/N series are the communications, by which the Petitioners firm intimated the Respondent council that it was impossible to supply bamboo at the prevailing rates. It was also agreed in the letter that there was shortage of supply of bamboo and that the same was likely to be even more shorter. One of the reasons assigned for such short supply was steep rise in operational cost.

25. According to the Petitioners the entire action on the part of the Respondent council to strike deal with third party to the deprivation of the Petitioners is most illegal and arbitrary. It is their stand that their erstwhile partner is in league with the Respondent council and he has been acting in the matter hand in gloves with the Respondent council. Their further stand is that the very grounds on which the agreements with them have been cancelled are the consideration to strike a deal with the third party.

26. While Mr. N. Dutta, learned Sr. Counsel, assisted by Mr. I. Choudhury, representing the Petitioners upon a reference to the materials on record has tried to project the case of the Petitioners to be one of victimization of the Petitioners by the Respondent council by taking recourse to dubious means, Mr. A. Choudhury alongwith Mr. S.K. Medhi appearing for the Respondent council pointing out to the above materials facts submits that there being misrepresentation and suppression of material fact, the Petitioners are not entitled to any relief. On merit, he submits that there being alternative remedy by way of taking recourse to the arbitration clause in the agreement, the writ petition is not maintainable. According to him, even otherwise also having regard to the facts and circumstances involved, there is no merit in the writ petitions.

27. Mr. Choudhury has placed reliance on the decisions of the Apex Court reported in State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others, Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, National Highway Authority of India Vs. Ganga Enterprises and Another, S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, Prestige Lights Ltd. Vs. State Bank of India, Prestige Lights Ltd. v. State Bank of India and (1917) 1 KB 486 The King v. The General Commissioners.

28. All the aforesaid decisions are on the argument relating to maintainability of the writ petitions on grounds of suppression of material fact, alternative remedy available and the aggrieved part being not entitled to remedy under Article 226 of the Constitution of India for breach of contract, even if any.

29. Mr. S.S. Dey, learned Counsel representing the Respondent No. 6 in the later three writ petitions, who is the purported beneficiary of the impugned decisions has submitted that having regard to the facts and circumstances involved in the case about which discussions have been made above, the Petitioners are not entitled to any relief and their writ petitions are liable to be dismissed. It will be pertinent to mention here that the as per the submissions made by the learned Counsel for the Respondent council, the arrangement made with the Respondent No. 6 is only temporary and with a view to meet the emergent situation.

30. As regards the retirement of the erstwhile partner i.e. the private Respondent in each one of the writ petitions from the partnership firm, the position has been discussed above. In addition, such purported retirement will also have to be tested in the touchstone of the provisions of the Indian Partnership Act, 1932. Section 32(3) dealing with retirement of a partner provides that notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement.

31. Section 63 of the Act dealing with recording of changes in and dissolution of a firm provides that when a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution or the agent of any such partner or person specifically authorized in his behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall made a record of the notice in the entry relating to the firm in the Registrar of Firms, and shall filed the notice alongwith the statement relating to the firm and filed u/s 59.

32. Section 72 of the Act provides the mode of giving public notice, which is to be given, where it relates to retirement or expulsion of a partner from a registered firm, by notice to the Registrar of Firm u/s 63, and by publication in the official gazette and in atleast one vernacular newspaper circulating in the district where the firm to which it relate has its place or principal place of business, and in any case, by publication in the official gazette and in atleast one vernacular newspaper circulating in the district where the firm to which it relate has its place or principal place of business.

33. While Mr. Choudhury, learned Counsel representing the Respondent council upon a reference to Clause 12 of the deed of partnership dated 13.10.2006 submits that in terms of the said clause, each one of the private Respondents continues to remain as partner for the specified period as stipulated in Clause 3.2

of the agreement and cannot retire earlier till all benefits of the council agreement and related value benefits are realized by the firm and the accounts thereof settled among the partners inter-se, Mr. Dutta, learned Counsel for the Petitioners upon a reference to Clause 17 relating modification of terms and conditions submits that any of the terms and conditions can be altered, modified, varied, added and/or cancelled at any time with the mutual consent of all the partners expressed in writing.

34. Clause 10.6 of the agreement provides that the rights and duties of the partners interse and in respect of the partnership business shall be governed as per the provisions of the Indian Partnership Act, 1932. If that be so, and even otherwise also, the provisions of the Act govern the parties. Sections 32(3), 63 and 72, which have been mentioned above will thus apply and govern the case of the partners. Thus, there being no statutory compliance relating to the retirement etc., mere execution of a deed of retirement about which also doubt has been expressed, shall be of no consequence. Further, while Clause 12 of the partnership agreement is a substantive clause, Clause 17 is not so and speaks of only alteration of terms and conditions of the agreement and not the partner itself. However, this aspect of the matter need not detain us in view of the fact that all the firms have been registered on 22.8.2008 with the Registrar of Firms and Societies with the respective private Respondent as one of the partners. Thus, there is no question of their retirement from the partnership firms.

35. It is in the above context, the suits filed by the said private Respondents in the competent Court of jurisdiction at Haflong claiming similar relief as in the writ petitions will have to be considered. If the Petitioner firms have already instituted the suits making a challenge to the decision canceling the agreement, the same very firms cannot invoke the writ jurisdiction of this Court so as to proceed simultaneously. Even if there is any dispute between the Petitioner firms and the private Respondents, same cannot be resolved exercising the power of judicial review under Article 226 of the Constitution of India.

36. If the Petitioner firms represented before the Respondent council expressing their inability to execute the works and demanded enhancement of the rate in violation of the terms of the agreements, the Respondent council was within its competence and jurisdiction to cancel the agreements. Further, in case of any dispute, the agreement itself provides resolution of the same by a member arbitrator, agreed to by both the parties and be appointed by the council. Clause 26 of the Annexure-A agreement dated 3.10.2005 provides for the same. Likewise, in case of any internal dispute also among the partners there is provision for resolution of the same (Clause 14), in the partnership agreement dated 13.10.2006.

37. Learned Counsel for the parties, more particularly, Mr. Choudhury, learned Counsel for the Respondent council has referred to the documents annexed to the writ petition so as to contend that some of them are not genuine documents but forged one. Such disputed questions of fact need not be gone into this

proceeding.

38. For all the aforesaid reasons, all the writ petitions merit dismissal, which I accordingly do.

39. Writ petitions are dismissed with cost of Rs. 5,000/- against each of the Petitioners to be deposited by them with the Registry of this Court forthwith failing which the Registry shall realize the same from the Petitioners in accordance with rules.

