
(2009) 06 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 31302 of 2008

DSIPL-CEPL-Joint Venture

APPELLANT

Vs

Belgaum Urban Development Authority and Others

RESPONDENT

Date of Decision : 29-06-2009

Acts Referred:

Karnataka Urban Development Authorities Act, 1987 — Section 10 (2), 15, 15 (1), 15 (2)

Citation : (2011) 2 KCCR 976

Hon'ble Judges : Ashok B. Hinchigeri, J

Bench : Single Bench

Advocate : Madhusudan R. Naik, for the Appellant; M.A. Haliyal, for Respondent 1 and R.K. Hatti, High Court Government Pleader for Respondents-2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Ashok B. Hinchigeri, J.—The Petitioner has raised the challenge to the first Respondent's order, dated 07.07.08 (Annexure-S) cancelling the contract awarded to the Petitioner for constructing the ring road around Belgaum.

2. The brief facts of the case are that the first Respondent issued the notification calling for the bids for the construction of the ring road around Belgaum City. The Respondents on finding the Petitioner's bid to be acceptable, entered into the concession agreement and subsequently issued the work order for the construction of the ring road. As insisted for, the Petitioner also furnished the "contract / performance guarantee". When things stood thus, the State Government declined to grant sanction for the construction of the ring road. This resulted in the first Respondent resolving to return the original performance guarantee by sending the communication, dated 25.02.08. The Petitioner requested the first Respondent to reconsider the matter. The first Respondent, vide impugned order dated 07.07.08, informed the Petitioner that it is mandatory to obtain the sanction under the provisions of the Karnataka Urban Development

Authorities Act, 1987. The communication further states that the Petitioner is supposed to know the provisions of law before entering into any contract either with the private individual, Government Authorities or semi Government Authorities. It proceeds to state that in the absence of sanction from the Government of Karnataka, the agreement entered into between the Petitioner and the first Respondent is null and void in the eye of law. The original performers" guarantee resubmitted by the Petitioner came to be returned with the said letter.

3. Sri M.R. Naik, the learned Senior Counsel appearing for Sri Anil Kumar, the learned Counsel for the Petitioner submits that the unilateral cancellation of the contract is Impermissible. He also takes exception to the language used in the impugned order, which states that the Petitioner is supposed to know the provisions of law before entering into any contract either with the private individual or Government Authorities or semi-Government a authorities.

4. The learned Senior Counsel also brings to my notice, the letter dated 04.03.2005 issued by the Respondent No. 3 to the Respondent No. 1, wherein it is stated that the Respondent No. 1 may take up the construction of ring road, if it has the requisite funds for the acquisition of the lands. In view of the issuance of this letter, neither the Respondent No. 1 nor the Respondent No. 3 can claim that the Government has not given the prior approval to the project of constructing the ring road.

5. Sri M.A. Haliyal, the learned Counsel for the Respondent No. 1 submits that taking the prior approval of the Government is a pre requirement as per the provisions contained in Section 15 of the Karnataka Urban Development Authorities Act, 1987 (for short, "the said Act"). The said provisions are extracted hereinbelow:

15. Power of Authority to undertake works and incur expenditure for development etc.--(1) The authority may,

(a) draw up detailed schemes (hereinafter referred to as "development scheme") for the development of the urban area; and

(b) with the previous approval of the Government, undertake from time to time any works for the development of the urban area and incur expenditure therefore and also for the framing and execution of development schemes.

(2) The authority may also from time to time make and take up any new or additional development schemes.--

(i) on its own initiative, if satisfied of the sufficiency of its resources; or

(ii) on the recommendations of the local authority, if the local authority places at the disposal of the Authority, the necessary funds for framing and carrying out any scheme; or

(iii) otherwise.

6. Sri Haliyal further submits that u/s 10(2) of the said Act, if the value of the proposed work exceeds Rs. 25,00,000/-, the prior permission of the Government is a mandatory requirement. While advancing this contention, he has brought to my notice, the provisions contained in Section 10(2) of the said Act which are extracted hereinbelow:

10. Powers of different Authorities.--(1) xxx

(2) The authority may sanction any estimate, call for tenders or enter into any contract or agreement, the value of which does not exceed rupees twenty-five lakhs.

7. Sri R.K. Hatti, the learned Government Pleader for Respondents No. 2 and 3 submits that if the first Respondent can implement the project of ring road construction on its own and with its own funds, the Government has no objection to its going ahead with the project. However, if the first Respondent is not in a position to implement the project on its own and that it requires financial assistance from the Government, then the prior approval of the Government becomes necessary.

8. The submission of the learned Counsel have received my anxious consideration. The provisions contained in Sections 10(2) and 15(1) and 15(2) of the said Act which are extracted hereinabove, do not indicate that the taking of the prior approval of the Government is a mandatory requirement. The word "may" used in Sections 15(1) and 15(2) and 10(2) of the said Act cannot be construed as the word "shall". At the most, taking the prior approval of the Government is only a directory requirement. "May" cannot be construed to be "must", if it leads to unjust results. The word "may" connotes an enabling or permissive power or duty. Therefore, the cancellation of the agreement on the ground that the Respondent No. I had not obtained the prior approval of the Government is not sustainable at all.

9. The impugned order is thoughtless, to say the least. It gives unwanted and unwarranted advice and opinion to the Petitioner in the following words:

Your company is supposed to know the provisions of law before entering into any contract either with the private individual, Government Authorities or semi Government Authorities.

10. By the same logic, the Respondent No. I is also supposed to know the provisions of law before entering into a contract with the Petitioner. Everyone is subject to the law as fully and completely as any other and the State and its instrumentalities are no exception. The first Respondent Authority stands on the same footing as a private individual as far as the obligation of law is concerned.

11. Nothing is forthcoming in the statement of objections filed on behalf of Respondent No. I as to what action has been taken against the officials responsible for and instrumental in the signing of the agreement between the Petitioner and the Respondent No. I. Presumably no action is initiated against any

of the officials, because the entering into the agreement with the Petitioner was not improper. That apart, the Petitioner being a third party cannot be invariably expected to know what has transpired between the Respondent No. 1 and Respondent No. 3. Whether the Respondent No. 1 has taken the prior approval of the Respondent No. 3 or whether the Respondent No. 1 can enter into an agreement with the Petitioner without the prior approval of the Government is something that pertains to the indoor management of the first Respondent.

12. It is not the case of the Respondents that anything is wanting on the part of the Petitioner or it has violated the terms of agreement. The State and its instrumentality cannot retract from its promise or assurance, unless the assurance is against any law, public policy or public good or against the equity itself. In this regard, it is profitable to refer to some of the decisions of the Apex Court.

13. The issue is no more *res integra*. The Hon'ble Supreme Court in its decision in the case of *Sunil Pannalal Bantia and Ors. v. City and Industrial Corporation of Maharashtra Ltd., (CIDCO for short) and Anr.* AIR 2007 SCW 2117 has held that if the allottees of the sites have acted on the assurances held out by the CIDCO, which caused the allottees to alter their position to their prejudice, it is not open to CIDCO to take an unilateral decision to cancel the allotments on the ground that it (CIDCO) had acted without jurisdiction and/or in excess of jurisdiction and violation of its rules and regulations.

14. The Hon'ble Supreme Court in the case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, has held that the doctrine of promissory estoppel, which has been variously called "requisite estoppel", "quasi estoppel", "new estoppel" is a principle evolved to satisfy the equity. The Petitioner has acted upon the first Respondent's promise, which, has manifested itself in the signing of the concession agreement and further in the issuance of the work-order. It is inequitable to allow the promisor to go back upon his promise or to act differently from his promise. This is all the more so, which the promisee has altered his position in reliance on the promise.

15. Further the Hon'ble Supreme Court in the case of *MRF Ltd., Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others*, has reiterated that the principle underlying the legitimate expectation is based on Article 14 and the rule of fairness. It is observed in the case of *Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others*, that where a person's legitimate expectation was not fulfilled by taking a particular decision, then the decision-maker should justify the denial of such expectation by showing some overriding public interest.

16. Nonarbitrariness, fairness in action and due consideration of the legitimate expectation of affected party are essential requirements for a valid state action. In a case of this nature, legitimate expectation of a citizen may not by itself be a distinct enforceable right but every legitimate expectation is a relevant factor requiring due consideration of a fair decision making process. In taking this view,

I am fortified by the decision of the Hon''ble Supreme Court in the case of Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, .

17. The order dated 04.03.05 issued by the Respondent No. 3 to the Respondent No. 1 has also permitted the Respondent No. 1 to take up the ring road project, if it has the requisite means. Pursuant to the said order, the Respondent No. 1 has issued the notification inviting the bids for taking up the work in question. When the Respondent No. 1 has chosen to do so, it cannot but be presumed it has the necessary means to take up. the project in question.

18. Thus, viewed from any angle, the impugned order is absolutely unsustainable. It is liable to be quashed and accordingly it is quashed. The Respondent No. 1 is directed to permit the Petitioner to resume the work from the stage at which it was interrupted by the issuance of the impugned order. Needless to observe if the Petitioner fails to comply with the terms of the agreement, it is always open to the Respondent No. 1 to terminate the agency in accordance with law.

19. The petition is allowed in the above time. No order as to costs.