

(2006) 08 DEL CK 0154

In the Delhi High Court

Case No : Writ Petition (C) No. 12943 of 2006

Everest Enterprises

APPELLANT

Vs

Steel Authority of India Ltd.

RESPONDENT

Date of Decision : 30-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226
Specific Relief Act, 1963 — Section 14, 14(1), 41

Citation : (2006) 08 DEL CK 0154

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Amit S. Chadha and Anshu Mahajan, for the Appellant; Sharat Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has sought quashing of termination of contract by letter dated 7th August, 2006 and for handing over the peaceful and vacant possession of the contract site for permitting the petitioner to execute the work under the contract dated 29th July, 2006 and a restraint against respondents from awarding/permitting any other person or organization from working at the site under the contract which was awarded to the petitioner. The petitioner has also prayed for a declaratory decree that the agreement dated 29th July, 2006 is subsisting, valid and binding on the respondents.

2. The petitioner contended that respondent gets its office maintenance and cleaning work done from the private firms and persons by placing orders on them and for that purpose floats tenders. It was contended that respondent is guilty of committing breach of contract and playing fraud since inception, as initially a tender which was issued earlier, the bid of the petitioner was not opened and on account of intervention by the concerned authorities, the said earlier tender was recalled. "Subsequently", again the tender was floated and the petitioner was awarded the tender and letter of intent was issued to the

petitioner on 17th June, 2005. The bank guarantee which was submitted by the petitioner required some modification which was done by the petitioner, however, there seem to be dispute about the bank guarantee which was sent by the petitioner after modification. As according to the petitioner the bank guarantee which was sent was not accepted by the respondent. Ultimately the petitioner received a letter from the respondent on 28th July, 2006 and an agreement was executed on 29th July, 2006.

3. At the time of signing of the agreement, there was hooliganism by old employees which was communicated by the petitioner to the DGM of the respondent. The petitioner, it seems, also issued appointment letters to some of the existing workers to avoid disputes. The appointment letter issued by the petitioner to some of the workers were received however some other workers refused to accept the appointment letters.

4. On account of disturbances caused by some of the workers, the petitioner filed a complaint of man-handling and threat of life to the his employees working in the office of the respondent with the SHO, Police Station, Parliament Street, New Delhi. On account of disturbances, the work could not be commenced entailing filing of a suit for permanent injunction and mandatory injunction by the petitioner against the respondent and against Delhi Multi- Story Employees" Congress seeking decree of permanent injunction. The petitioner also sought restraint against the defendants in that suit from preventing the plaintiff and his employees from entering the property and an injunction against the respondent from allowing other workers to enter into office and from availing the maintenance service from other defendants and a decree of mandatory injunction to direct the respondent to issue gate passes to the employees of the plaintiff.

5. On account of these problems regarding the contract for everyday cleaning of the offices of the respondent because of which the petitioner could not commence the work of cleaning as per the contract agreement dated 29th July, 2006, by letter dated 7th August, 2006 the respondent terminated the contract with immediate effect and forfeited the security deposit and encased the bank guarantee submitted by the petitioner. The respondent has also claimed damages with interest @ 17% per annum. In these circumstances, the petitioner has filed the above petition seeking the prayers as detailed hereinbefore.

6. The petitioner has relied on Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, Ashish Gupta v. IBP Co. Ltd. and Anr; Vinay Construction Co. and Others Vs. Municipal Corporation of Delhi and Another, ; Allied Motors Ltd. Vs. Bharat Petroleum Corporation Ltd., SPS Engineering Ltd. Vs. Indian Oil Corporation Ltd., , Bharat Filling Station and Another Vs. Indian Oil Corporation Ltd., , Ajay Jadeja Vs. Union of India and Others, , Ajay Jadeja v. Union of India and Ors. to contend that the writ petition is maintainable and this Court must exercise its discretion under Article 226 of the Constitution of India.

7. I have heard the learned Senior counsel for the petitioner at length. He insists that this Court must exercise jurisdiction under Article 226 of the Constitution relying on various decision cited by him.

8. The cases relied on by the petitioner are clearly distinguishable and does not lay down that in every case jurisdiction must be exercised even if it is in domain on contractual matters. To exercise the discretion to interfere under Article 226 of the Constitution of India even in contractual matter is with the Court, however, the petitioner can not insist that the Court must exercise its discretion under Article 226 of the Constitution of India.

9. The decisions relied on by the petitioner are distinguishable and on the basis of same, the petitioner can not insist that the Court must exercise its discretion. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.* AIR 2004 SC 778 had observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr.... To decide Therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive.

With these proposition lets consider the precedents relied on by the petitioner and whether these precedents mandate this Court to exercise its jurisdiction under Article 226 of the Constitution of India in the contractual matter of the

petitioner under which he entered into a cleaning and office maintenance agreement of the respondent's offices and could not carry out cleaning and maintenance work for various reasons entailing cancellation of his contract.

10. In Harbanslal Sahnia (supra) relied on by the petitioner, the dealer of petroleum products had approached the court in a petition under Article 226 of Constitution of India against the order of termination of his dealership. The cancellation of the dealership was based on failure of dealer sample. The plea of non-cooperation and discourteous behavior of the dealer had also been alleged in a general way without specifying what was non-cooperation and what was discourteous shown to the officers of the Corporation. These grounds formed the subject matter of an earlier show cause notice which was not pressed and it was held that the order of termination was not founded on these ground except that the dealer sample had failed. There was an arbitration agreement also between the dealer and Indian Oil Corporation and in these circumstances, it was held that the rule of exclusion of writ jurisdiction will not be applicable according to the discretion of the Court where the petitioner seeks enforcement of fundamental right or where there is violation of principle of natural justice or where the orders or proceedings are wholly without jurisdiction. In the said case, since the issue involved enforcement of the fundamental rights of the petitioner and there was a violation of principle of natural justice the court had exercised its discretion under Article 226 and the Court held that since the dealership which was bread and butter of the dealer was sought to be terminated for irrelevant and non-existing causes, as a discretion, High Court ought to have exercised its jurisdiction under Article 226 of the Constitution of India. The Apex Court however, did not held that in every case where there is an arbitration agreement and agreement has allegedly been terminated without giving notice the discretion must be exercised by exercising jurisdiction under Article 226 of the Constitution of India.

11. In Ashish Gupta (supra), the petitioner had not claimed damages or adjudication of contractual disputes between the parties. In contradistinction to the relief prayed by the petitioner for restoration of possession and a declaratory writ or any other appropriate writ, order or direction that the agreement dated 29th July, 2006 is subsisting, valid and binding on the respondent and that the agreement is still subsisting and no other person should execute any work of cleaning in the office of the respondent in the case relied on by the petitioner the disputes involved the implicate termination of dealership. While deciding the case Ashish Gupta (supra) the learned single Judge had noticed Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others, holding that validity of award ought to be decided on the principles of private law and the law of contracts and not on the touchstone of Constitutional limitations of a State or its instrumentality. The said case was distinguished on the ground by the learned single judge as petitioner had not claimed in Ashish Gupta (supra) damages or an adjudication of the contractual disputes between the parties. The relevant observation of the learned single judge is as under.

9. In my view it would not be proper to lose sight of the main grievance in the petition. It is that the principles of natural justice have deliberately been ignored; that no Show Cause Notice was issued to the petitioner and he was not granted an opportunity of remonstrating against the intended decision of terminating his Dealership. The petitioner does not claim damages or an adjudication of the contractual disputes between the parties. In my view that is the distinguishing feature between the facts of the present case and the observations of the Supreme Court in Amritsar Gas Service where the Court had before it proceedings initiated through a suit and an Award passed thereafter.

Therefore the case of Ashish Gupta (*supra*) relied by the petitioner is apparently distinguishable as he is claiming a declaratory decree, recovery of possession of the premises to execute his contract and a prohibitory injunction that the respondent should not award the work to any other person or company. In this case the single Judge had also held that the question whether the contract can be specifically enforced or not must be left to the arbitrator to adjudicate upon and decide.

12. The matter pertaining to Vinay Construction Company (*supra*) was regarding black-listing six concerns and desisting them from the list of contractors whereas in Allied Motors (*supra*), the petition was filed against the letter seeking cancellation of license for running petroleum pump and for direction to handover possession of the petrol pump and had sought that the Oil company must not violate and act contrary to the guidelines framed to facilitate uniform practice and in absence of a show cause notice canceling the petroleum pump and recovering the possession from the petitioner was quashed. The case of the petitioner is not of discrimination in applying the guidelines. The petitioner had entered into a contract for cleaning and maintenance of the offices of the respondent and could not carry out the work of cleaning and maintenance which is so essential in everyday life because of various reasons entailing in cancellation of the agreement. The petitioner, however, wants to enforce an agreement which is not enforceable under the provisions of Specific Relief Act on the ground that the termination is not valid. The petitioner also wants a prohibitory injunction and a declaratory decree.

13. Even if the agreement of the petitioner was not determinable before the expiry of its term and could not be terminated without notice of month, perusal of Sections 14 and 41 of Specific Relief Act reflect that a contract cannot be specifically enforced which in its nature is determinable and injunctions are not to be granted on breach of contract, nonperformance of which could not be specifically enforced and/or when a party has an equally efficacious remedy available to him under civil law. u/s 14(1)(a) of the Specific Relief Act, the specific performance of an agreement can not be granted, breach of which can be compensated by money. The petitioner has impugned the action of the respondents in terminating the contract by communication dated 7th August, 2006 before the expiry of the term of the contract. Perusal of the

agreement between the parties, it is apparent that the agreement was determinable and has been determined by the respondent. Even if the inference is that the agreement between the parties was not terminated validly and could not be terminated, then the petitioner shall only be entitled for damages and the petitioner will not be entitled for specific performance of this agreement. Section 14(1)(c) of the Specific Relief Act also prohibits specific performance of an agreement which by its nature is determinable. Even injunction can not be granted u/s 41 of the Specific Relief Act to prevent the breach of contract performance of which cannot be specifically enforced especially in the case of the petitioner who had not even been handed over the site for cleaning and maintenance as the petitioner is claiming possession of the premises to execute his contract for cleaning and maintenance.

14. The petitioner has contended that a notice has not been given before terminating the agreement for cleaning the offices of the respondent entered between petitioner and respondent. While considering whether principle of natural justice has been violated or not, it has also to be considered whether the observance of principle of natural justice can be dispensed with in general public interest. Whether the immediate action had to be taken keeping in view of serious consequences following non execution of contract by the petitioner. What also has to be considered is, whether the observance of principle of natural justice will be so time consuming that it may defeat the very purpose for which the immediate action is required in a given case. Whether the principle of natural justice can be dispensed with in certain immediate situations" The apex Court in R.S. Dass Ors. Vs. Union of India (UOI) and Others, had held that the Court would not compel observance of rules with natural justice in the following cases:

- i. where giving of notice would obstruct taking of prompt action and the matter is urgent and requires prompt action. Inaction or delay would paralyze the administrative process/machinery.
- ii. where on indisputable or admitted facts, only one conclusion was possible and it would be futile to issue a writ or compel observance of principles of natural justice.
- iii. where observance of principles of natural justice is excluded by express provisions of statute or by implication.

The offices of the respondent require everyday cleaning and maintenance. For various reasons the petitioner could not carry on the work for cleaning and maintenance of the offices despite the suit for injunction filed by the petitioner against the respondent and other persons. Whether the termination of contract was on account of lapses and breaches on the part of the petitioner or respondent would require detailed trial and adjudication of respective pleas after evidence which may be led by the parties. Merely on the basis of pleadings it may not be possible to ascertain who had breached the agreement.

15. As far as other judgments relied on by the petitioner are concerned, in Allied

Motors Limited (supra) in view of peculiar circumstances, the order of termination of the dealership was not sustained and was quashed. In SPS Engineering Ltd. (supra) the petitioner was black-listed for three years without providing any opportunity of hearing to the petitioner whereas in Bharat Filling Station and Anr. (supra), it was held that for termination of the dealership principle of natural justice were required to be followed and consequently the order terminating the dealership was not sustained.

16. It is also no more rest integra that a writ of mandamus to enforce contractual liability can be issued when the action is without jurisdiction or in excess of jurisdiction or when the action is without complying with the principle of natural justice or when the action infringes Article 14 or Article 21 of the constitution of India or when the action is so unreasonable (Wednesbury principle) that it shocks the conscience of the Court and is manifestly wrong or perverse on the fact of the record.

17. Considering the contract between the petitioner and the respondent it cannot be inferred that it was a statutory contract. The apex Court in Kerala State Electricity and Anr. v. Kurian K. Kalathi and Ors. had held that interpretation and implementation of a clause in the contract can not be the subject matter of a writ petition and if a term of the contract is violated ordinarily, the remedy is not the writ petition under Article 226 of the Constitution of India. The observance of the apex Court are as under:

10. We find that there is a merit in the first contention of Mr Raval. learned Counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an

exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.

18. Similarly, in *Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others*,¹ it was held that when a State or other authority within the meaning of Article 12 enters into ordinary contract with private persons, parties are governed by the terms of the contract and aggrieved party is not entitled to seek redress under Article 226 for breach of contract. The relevant observation of the Apex Court is as under:

21. This finding, in our view, is not correct in the light of the facts and circumstances of this case because in *Ramana Dayaram Shetty case*¹ there was no concluded contract as in this case. Even conceding that the BDA has the trappings of a State or would be comprehended in "other authority" for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly installments to be paid, the "authority" or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. In this sphere, they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e. BDA in this case) in the said contractual field.

22. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple " *Radhakrishna Agarwal v. State of Bihar*², *Premji Bhai Parmar v. Delhi Development Authority*³ and *DFO v. Biswanath Tea Company Ltd.*

23. In view of the authoritative judicial pronouncements of this Court in the series of cases dealing with the scope of interference of a High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India in cases of non-statutory concluded contracts like the one in hand, we are constrained to hold that the High Court in the present case has gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the

appellants herein in increasing the cost of the houses/flats and the rate of monthly installments and giving directions in the writ petitions as prayed for.

19. The petitioner is not only seeking annulling the termination of the contract but is also seeking that the possession of the site be handed over to the petitioner in view of the agreement which has already been terminated and is also seeking a prohibitory restraint against the respondent from handing over the site to anyone and a declaration that the agreement dated 29th July, 2006 is subsisting, valid and binding on the respondents. In *Orissa State Financial Corporation Vs. Narsingh Ch. Nayak and Others*, , the apex Court had held that the High Court under Article 226 of the Constitution cannot ignore the scope of a writ petition on the basis of contractual obligation between the parties and issue such directions annulling the existing contract and introducing a fresh contract in place.

20. Dealing with the bids which are voluntarily given in auction with full knowledge of the terms and conditions attaching to the auction, it was held that the debtors cannot be permitted to wriggle out of the contractual obligations arising out of acceptance of the bid. "In those circumstances, the Supreme Court had held that the writ jurisdiction cannot be invoked to avoid contractual obligation or to enforce contractual obligation in *State Bank of Haryana and Ors. v. Jage Ram and Ors.* (1980) 2 SCC 599 . A Division Bench of this Court in *Niranjan Lal Dalmia Vs. Union of India and Others*, had held that there is a clear distinction between a statutory obligation and a contractual obligation of the Government to pay money to a person. Statute imposes public duties while the duty imposed by a contract is owed by the Government not to the public but to the petitioner individually. Contravention of statutory duty makes action of the Government illegal. The breach of contract is not illegal in the same sense. Direct contravention of statute is illegal but the breach of a contract may be wrongful and it is not a contravention of any statute directly and, Therefore, the duty imposed by statute is different from a duty imposed by contract. Therefore, the breach of the first duty amounts to illegality while the breach of the second type of duty amount only to a breach of contract.

21. The contract entered between the petitioner and the respondent is for everyday cleaning and maintenance of the offices of the respondent and for various reason, the contract has not been executed. In such an emergent situation, the termination of contract by the respondent cannot be termed without jurisdiction or in excess of jurisdiction or infringing or vocative of Articles 14 or 21 of the Constitution or such termination which is so unreasonable that it shocks the conscience of the Court and is manifestly wrong or perverse.

22. Consequently, considering the facts and circumstances, I decline to exercise discretion to exercise jurisdiction under Article 226 of Constitution of India against the termination of the contract of cleaning and maintenance of the offices of the respondent by letter dated 7th August, 2006 and decline to consider the claim of the petitioner for prohibitory injunction and for a declaration. The writ

petition is Therefore, dismissed in liming. The petitioner, however, shall be entitled to seek such other civil remedies which may be available to the petitioner in the facts and circumstances.