
(2011) 06 GAU CK 0082
In the Gauhati High Court
Case No : Writ Appeal No. 16 of 2011

Fortuna Agro Plantations Limited	Vs	APPELLANT
The State of Tripura		RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2011) 6 GLR 842

Hon'ble Judges : Madan B. Lokur, C.J.; Arun Chandra Upadhyay, J

Bench : Division Bench

Advocate : D.K. Biswas, for the Appellant; S. Deb and S. Chakraborty, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

A.C. Upadhyay, J.—The aforesaid writ appeals have raised common question of law based on identical facts and have been heard together for disposal by this common judgment.

2. We have heard Mr. D.K. Biswas, learned Counsel for the Appellant, and Mr. S. Deb, learned senior counsel assisted by Mr. S. Chakraborty, learned Additional Government Advocate appearing on behalf of the State-Respondents.

3. The Appellant's Company responded to an Notice Inviting Tender(NIT) floated by the Respondent No. 4, Divisional Forests Officer(DFO), South Tripura, Udaipur, for disposal of round timbers and sawn timbers stipulating various terms on "as is where is" basis at the rate prescribed by rules. The Appellant responded to the NIT quoting rates and terms, on "as is where is" basis, by indicating therein that the rates quoted shall be applied to good timbers, but the partly damaged timbers shall be taken only on reduced negotiable rates, and the fully damaged timbers will not be accepted and further the additional duty to be paid for export, shall be 10% instead of 100% as prescribed.

4. By a letter dated 21.11.2005, the Respondent No. 4, Divisional Forests Officer,

Udaipur Forests Division, accepted the offer and issued work order, and accordingly, the Appellant confirmed the offer, and at the same time, objected to imposing conditions beyond the NIT. The Appellant-tenderer, in terms of the demand made by the Respondents also deposited a sum of Rs. 2.5 lakhs.

5. But the dispute started between the parties with the measurement of the timbers as the Respondents-Department wanted to dispose of the entire lot on "as is where is" basis, while the Appellant wanted to measure the timbers in good condition and segregate the damaged and partly damaged timbers. As a result, the entire process was delayed and the stock of timbers suffered natural decay. The Respondents-Department, accordingly, took the plea of non-cooperation and cancelled the work order, forfeiting the advance already paid. Subsequently, a writ petition was filed on behalf of the Petitioner-Appellant, seeking the following relief(s):

- (a) Quashing the forfeiture of the advance and security,
- (b) Allow the timbers to be lifted by paying the royalty, and
- (c) Restraining the Respondents from disposing the timbers under dispute to any other except the writ Petitioner.

6. In the writ petition, the Petitioner contended before the learned single Judge that as per the agreed terms of the NIT, the Respondents-Department are bound to segregate the good timbers from damaged/partly damaged timbers for delivery, which the Respondent-Department was avoiding by sticking to the condition of the NIT i.e. lifting of the timbers "as is where is" basis.

7. The Respondents-Department contended that the NIT contained the clause, for lifting the timbers on "as is where is" basis, to which the Petitioner had responded by quoting the rate, and, as such, the Respondent-Department could not be subsequently asked to deviate the clause and the tenderer-Appellant was bound to abide by the said clause and take delivery of the entire lot by taking measurement.

8. On careful consideration of the entire gamut of facts, raised by the parties, a learned single Judge observed that both the parties have complained for non-cooperation of the process of measurement and assessment of the value of the timber involved, resulting in delay in completion of the transaction. Thus, learned single Judge, having regard to the progress made by the parties in the transaction and the perishable nature of the goods involved, directed the parties to decide the matter between themselves by sorting out the differences to arrive at a consensus by taking the process to a logical end. Learned single Judge also directed the parties to complete the process as expeditiously as possible.

9. Being aggrieved by the aforesaid order, the writ Petitioner/Appellant is before us by filing the appeals. Upon careful perusal of the entire gamut of facts as discussed above, we find that the dispute between the parties, at this stage of the proceeding, relates to breach of the terms of contract and the resultant

financial loss to the Appellant. The Appellant claim for relief relates to loss suffered due to breach of conditions of contract.

10. The position of law is settled that the State and its authorities including instrumentalities of States have to be just, fair and reasonable in all their activities including those in the field of contracts. The State and its authorities cannot be heard or seen causing displeasure or discomfort in violation of Article 14 of the Constitution of India. Contractual matters are, thus, not beyond the realm of judicial review, but its application may, however, be limited. The courts can very well scrutinise the award of contract by the Government or its agencies in exercise of their power of judicial review to prevent arbitrariness or favouritism.

11. As a matter of fact, where there is a breach of contractual right a writ court under Article 226 of the Constitution of India may not be able to give effective remedies for specific performance of contract, due to inherent procedural limitations. Therefore, ideally proper remedy would be action for damages in an ordinary civil Court. In so far as the contract with the Government is concerned, if there is arbitrariness or executive high handedness, there is scope for interference under Article 226 of the constitution to extend relief, but in the second stage of the contract a party cannot complain for violation of Article 14 of the Constitution of India, for breach of terms of contract. In case of breach of contract, as the Appellant has tried to make out, he can get an effectual adequate remedy by an ordinary action of a civil Court.

12. In the instant case there is no dispute regarding award of contract to the Appellant Petitioner. The Appellant Petitioner has been awarded the contract in terms of the NIT issued by the Respondent. Admittedly the dispute is regarding breach of terms of contract, and appropriate measurement of timbers, in terms of the agreement. Therefore, in such circumstances when disputed question of facts arise for adjudication, it would pause difficult for a writ court to assess the extent of breach of contract vis-a-vis the individual liability, due to its inherent limitations. Hence, taking into consideration the interest of both the parties to the litigation, keeping in view the contract that has been agreed and signed between them, we consider that it would be in fitness of things, to refuse to exercise writ jurisdiction in the instant case, as it does not involve any public interest.

13. For the reasons stated above, we are of the opinion that the impugned judgment and order passed by the learned Single Bench in the writ petition aforementioned do not deserve interference by this Court. Accordingly, both the aforementioned appeals stand dismissed. We, however, leave it upon the Appellant to take recourse to other remedy, if so advised, which is available in the law.

14. However, in the facts and circumstances of the case, there shall be no order as to costs.