
(1994) 05 DEL CK 0065

In the Delhi High Court

Case No : Civil Writ Appeal No. 1641 of 1994

Gwalior Ispat Pvt. Ltd.

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 11-05-1994

Acts Referred:

Citation : (1994) 2 AD 739 : AIR 1995 Delhi 199 : (1995) 1 ILR Delhi 473 : (1994) RLR 537

Hon'ble Judges : M. Jagannadha Rao, J;K. Shivshankar Bhat, J

Bench : Division Bench

Advocate : B. Bhattacharya, for the Appellant;

Judgement

K. Shivashankar Bhat, J.

(1) The petitioner seeks a direction to the respondent not to abandon petitioner's project midway, as conveyed in the communication dated 16-10-1993 (Annexure 20). Petitioner also seeks a direction to the respondent to continue to support petitioner's project. According to the petitioner, it applied for a term loan of Rs. 95 lakhs on 18th November, 1988 and on 18th August 1989, respondent Bank sanctioned a loan of Rs. 120 lacs; (the letter Annexure 2, also stated that the detailed terms and conditions applicable to the facility may be obtained from the Nehru Place Branch of the Bank). Petitioner purchased a land in Punjab. A joint term loan agreement was executed by the petitioner and the respondent on 22nd June, 1990 (Annexure 3). Petitioner states that Rs. 25 lacs were disbursed to it towards the loan on 19-8-1990. The loan agreement provides for the waiver of loan disbursements. It seems another Rs. 20 lacs was released to the petitioner by the respondent on 21-12-1990. Thereafter the respondent refrained from releasing further amounts; but on 28-8-1991 the petitioner was informed that further disbursement was permitted.

(2) Above letter permitted further disbursement (Annexure 4) and refers to a few conditions to be satisfied by the petitioner, such as submitting the necessary

papers connected with the insurance cover; expediting the project and adherence to the standard covenants in the terms and conditions of sanction etc. It seems a cheque issued to the Insurance Company by the petitioner was dishonoured by the respondent. There was also delay in the release of further disbursements. On 10-12-1992, request of the petitioner for a bridge loan was refused by the respondent; according to the petitioner this came in the way of the petitioner from obtaining a subsidy of Rs. 30 lacs from the Punjab Government.

(3) We may note here, that the petitioner has not pointed out the terms of the loan agreement under which the bridge loan could have been sought by the petitioner. Thereafter the petitioner approached Can bank Financial Services Ltd. for the bridge loan who wanted a copy of approval note; petitioner sought this from the respondent; but the respondent did not oblige. Petitioner persisted for the bridge loan" from the respondent. But, on 16-10-1993 the respondent wrote (as per Annexure 20) stating that. at no stage sanction/grant of a bridge loan was considered, as the respondent did not give such bridge loans. Thereafter, petitioner sought the disbursement of the loan again and again and requested the respondent to implement the project.

(4) In the writ petition, at para 35, petitioner avers that on 16-10-1993 respondent stated "we are unable to support the project further". In the opening paragraph the the respondent stated that the respondent examined the report of the Consultancy Cell and the entire gamut of the projected operations of petitioner"s unit and other related issues and that on the basis of the findings respondent was unable to support the protect further. The 2nd para refers to the bridge loan sought by the petitioner.

(5) According to the petitioner, respondent being a "Public Sector National Instrument" was obliged to aid the country"s "socio-economic development" and it cannot arbitrarily withdraw support midway, "thereby killing the unit". Withdrawal of the support by the respondent is attacked as arbitrary and whimsical. The learned counsel also argued that the legitimate expectation" of the petitioner was defeated by tile respondent Bank. and that the respondent was bound to disburse the entire loan amount on the basis of the doctrine of promissory, estoppel.

(6) Several decisions were cited, having a bearing on the above propositions advanced by the learned counsel.

(7) Before considering these propositions, the nature of the transaction between the petitioner and the respondent shall have to be identified. The loan agreement between the parties is not a statutory contract. It is a simple banking transaction. Only because one of the parties to the contract is a statutory body, it cannot be said that the contract is a statutory contract.

(8) In the sphere of contract, which is not a statutory contract, relationship between the parties is governed entirely by the terms of the contract. Therefore, it was observed in Nagappa Vs. State of Karnataka and others, :

"IF specific performance of a contract is not enforceable under the provisions of the Specific Relief Act, said disability cannot be overcome by resort to the doctrine of promissory estoppel. Enforceability of a contract depends upon its terms and non-availability of any other remedy; enforcement of an assurance under the doctrine of promissory estoppel is based not on terms of the contract, but the nature of the assurance held out which is acted upon by others to whom assurance is held out and by such action, the assured persons altered their position".

(9) Above principle is an aspect implicit in the following observations of the Supreme Court in *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, : (2)

".....if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters of concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligation or obligations arising out of the Court, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the Corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the Company, like any other shareholder."

(10) In *Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others*, increasing the price of houses by the Bareilly Development Authority was challenged by the allottees. The power of revising the price was reserved by the B.D.A. before inviting the applications for allotment of the houses; Therefore, court held that it was part of the contract under which houses were allotted to the allottees and received by them. At page 1082 the Court held :

"THUS the factual position in this case clearly and unambiguously reveals that the respondents after voluntarily accepting the conditions imposed by the Bda have entered into the realm of concluded contract pure and Simple with the Bda and hence the respondents can only claim the right conferred upon them by the said contract and are bound by the terms of the contract unless some statute steps in and confers some special statutory obligations on the part of the Bda in the contractual field."

Again at page 1033 :

"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."

(11) After referring to the above decisions, the Karnataka decision proceeded to say, at page 94;

"THUS it is clear that where the relationship between the State and the petitioners is founded on a non-statutory contract and the terms of the said contract is sought to be enforced, jurisdiction under Article 226 cannot be invoked. The exercise of the contractual power has to be tested, if at all, by invoking the ordinary jurisdiction of the Courts. There is no scope to invoke the doctrine of promissory estoppel or of legitimate expectation, dehors the terms of the contract. If the terms of such a contract are not specifically enforceable (as in the case of building contracts), it is not possible to apply Article 14 of the Constitution so as to in effect, compel specific performance of the terms of contract. While reading the terms of the contracts and their scope, the scheme under which contracts are awarded may be relevant, but the scheme itself would be read as forming a part of the contract; Therefore, at the most, a change in the scheme by the Government shall have to be considered as an unilateral change of the terms of the contract. Whether it is permissible or not cannot be examined to enable the beneficiaries of the contracts to have the contracts specifically enforced by resort to the writ jurisdiction".

We agree with the above observations.

(12) In Food Corporation of India and others Vs. Jagannath Dutta and others, , the Supreme Court once again pointed out at para 5, that "we are of the view that the High Court was not justified in quashing the impugned notice especially when the terms and conditions of the contract permitted the termination of the agreement by either of the parties. The High Court should not have gone into the question of contractual obligation in its writ jurisdiction under Article 226 of the Constitution.

(13) The doctrine of legitimate expectation and its limited scope has been pointed out by the Supreme Court in Union of India and others Vs. Hindustan Development Corpn. and others, . It is unnecessary to repeat the observations here, as we find the same referred in detail in the above said Karnataka decision.

(14) In the same decision, the Supreme Court pointed out that the decision in Kumari Shrilekha Vidyarthi's case was based on the fact that the petitioner was holding a public office and the action terminating the holding of the public office was under consideration. The Supreme Court, in this connection held :-

"WE are, therefore ,of the opinion that in case of contracts freely entered into

with the State, like the present ones, there is no room for invoking the doctrine of fairness and reasonableness against one party to the contract (State), for the purpose of altering or adding to the terms and conditions of the contract, merely because it happens to be the State. In such cases, the mutual rights and liabilities of the parties are governed by the terms of the contracts (which may be statutory in some cases) and the laws relating to contracts."

(15) The learned counsel for the petitioner relied on *Gujarat State Financial Corporation Vs. M/s. Lotus Hotels Pvt. Ltd.* : Air 1983 Sc 818. In the said case, writ jurisdiction was involved to enforce a provision to advance a loan. The court upheld the issuance of the writ because, the court held that there was a statutory duty to perform the terms of the contract to advance the loan. Such a duty is not forthcoming in the instant case before us.

(16) In *Assistant Excise Commissioner and Others Vs. Issac Peter and Others*, the Supreme Court had an occasion to consider the doctrine relied upon by the learned counsel for the petitioner. The earlier decision of the Supreme Court in *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, as well as the decision rendered in *Mahabir Auto Stores and Others Vs Indian Oil Corporation and others*; Jt 1990 (1) Sc 363 were referred and distinguished at paras 26 & 27. The exercise of the contractual power by the State in an alleged arbitrary way was the subject matter before the Supreme Court, arising under the Kerala Abkari Act, 1902. At page 156 the Supreme Court dealt with the principle thus -

"IN short, the duty of act fairly is sought to be imported into the contract to modify and alter its terms and to create an obligation upon the State which is not there in the contract. We must confess. We are not aware of any such doctrine of fairness or reasonableness. Nor could the learned counsel bring to our notice any decision laying down such a proposition. Doctrine of fairness or the duty to act fairly and reasonably is a doctrine developed in the administrative law filed to ensure the Rule of Law and to prevent failure of justice where the action is administrative in nature. Just as principles of natural justice ensure fair decision where the function is quasi judicial, the doctrine of fairness is evolved to amend, alter or vary the express terms of the contract between the parties. This is so, even if the contract is governed by statutory provisions, i.e. where it is a statutory contract or rather more so....."

(17) Petitioner does not dispute the existence of a term in the contract empowering the respondent to terminate the agreement of loan. Unilateral exercise of contractual power is challenged on the grounds available in the sphere of administrative law. The suspected unreasonableness of the action of the respondent its alleged unfairness, the defeat of the petitioner's legitimate expectation and the duty of the respondent to abide by the terms of the loan agreement to support the petitioner's project based on the doctrine of promissory estoppel, are all foreign to test the exercise of the contractual power by the respondent under the writ jurisdiction. The writ jurisdiction cannot be

extended to consider these arguments. The writ petition is accordingly rejected.