
(2006) 04 OHC CK 0026
In the Orissa High Court
Case No : O.J.C. No. 6332 of 2001

Hotel Deepti

APPELLANT

Vs

Rourkela Steel Plant and Others

RESPONDENT

Date of Decision : 24-04-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2006) 1 OLR 772

Hon'ble Judges : L. Mohapatra, J;Indrajit Mahanty, J

Bench : Division Bench

Advocate : M. Kanungo, L. Kanungo, C. Pradhan, Y.S.P. Babu, B. Kanungo and S. Satpathy, for the Appellant; N.K. Sahoo, D.R. Swain, B. Swani, S. Kar and A. Mishra for O.Ps. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—This writ application has been filed for a direction to the opposite parties to grant permission to the petitioner for mortgaging the properties mentioned in the petition to the flanks or other financial institutions for availing various loan facilities.

2. The case of the petitioner is that the petitioner's hotel was initially started by some entrepreneurs and the hotel was run in the name and style of "Hotel Konarak". In the year 1988, M/s. Patel and partners purchased the said hotel from the owners thereon and started running the same in the name and style of "Hotel Deepti". A lease deed was executed on 7th August, 1998 under a tripartite lease agreement between the State of Orissa, Steel Authority of India Ltd. and the petitioner and. under the said lease deed, the schedule lands which are sought to be mortgaged were given on lease to the petitioner. Clause 16 of the lease deed provides that without prior permission of the opposite party No. 1, the petitioner cannot assign, transfer, mortgage, sublet or otherwise deal with the properties. The petitioner being in great necessity of working capital for construction of the required building as per approved plan approached various

banks and other financial institutions to obtain loan and also term loans for construction of infrastructures of the said hotel. The financial institutions insist upon mortgage of the property as collateral security for advancement of the loan. The petitioner therefore applied to the opposite parties in the prescribed form for grant of permission to mortgage the properties for securing Term Loan and cash credit facility. The matter was kept pending for long time in spite of the reminders sent on behalf of the petitioner and no action having been taken by the opposite parties on the application for grant of permission, the writ application was filed in the year 2001. At the time of hearing of the writ application, the learned Counsel for the petitioner informed this Court that during pendency of the writ application also no decision has been taken.

3. A counter affidavit has been filed by the opposite parties 1 and 2. In the said counter affidavit, execution of the lease deed in favour of the petitioner in respect of the schedule land is not in dispute. However, it is stated in the counter affidavit that grant of permission or refusal of the same is" the discretion of the said opposite parties and the same cannot be questioned in a Court of law. The learned Counsel appearing for the opposite parties 1 and 2 in course of hearing also questioned the maintainability of the writ application on the ground that the dispute relates to a contractual obligation arising out of lease agreement and, therefore cannot be agitated in a writ application.

4. Before going into the merits of the case, we would like to answer the second objection raised by the learned Counsel appearing for the opposite parties with regard to maintainability of the writ application. Shri Sahoo, the learned Counsel appearing for the opposite parties 1 and 2 submitted that Clause 16 of the lease agreement specifically provides that the schedule land in respect of which lease has been granted cannot be used. for any purpose other than that for which it has been devised and the same cannot be assigned, transferred, mortgaged, sublet or otherwise dealt with without prior consent in writing of the second party of the agreement i.e. opposite party No. 1 and any such assignment, transfer, mortgage, subletting without prior permission will be void. Referring to the said Clause, it was argued by the learned Counsel for the opposite parties 1 and 2 that under the said Clause of the agreement the discretion lies with the opposite party No. 1 to either refuse or grant permission and, therefore, the present dispute arising out of the said Clause of the agreement cannot be entertained in a writ application. Shri Sahoo the learned Counsel appearing for the opposite parties further contended that the High Court under Article 226 of the Constitution of India has wide power to pass appropriate order and issue proper direction as necessary in the facts and circumstances of a case in the interest of justice, but cannot ignore the scope of the writ application and nature of dispute involved in it and enter into the field pertaining to contractual obligation between the parties and issue directions annulling the existing contract and/or introducing any new contract in its place. In support of such contention the learned Counsel for the opposite parties relied upon a decision of the Apex Court in the case of Orissa State Financial Corporation Vs. Narsingh Ch. Nayak and Others, . Shri

Sahoo also contended that while granting or refusing permission, it is not necessary for the opposite party No. 1 to assign any reason as the land belongs to the opposite party No. 1 being a lessee under the State Government and, therefore, interpretation/ implementation of a clause in a contract cannot be the subject matter of a writ application. In this connection, the learned Counsel also relied upon another decision of the Apex Court in the case of State Bank of India and Another Vs. Mula Sahakari Sakhar Karkhana Ltd., The learned Counsel also relied on a decision of the Apex Court in the case of Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, to say that the writ application is not maintainable to enforce a contractual obligation in a case of dispute arising out of a contract.

5. Shri Kanungo, the learned Counsel appearing for the petitioner, on the other hand, submitted that the question as to whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party is no more *res Integra* and is settled by a large number of judicial pronouncements of the Supreme Court. However, on a given set of facts, if the State acts in an arbitrary manner even in the matter of contract, an aggrieved party can approach the Court by way of writ under Article 226 of the Constitution and the Court depending upon the facts of the case and can grant relief. In support of such contention, the learned Counsel for the petitioner relied upon a decision of the Apex Court in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, . The learned Counsel also referred to another decision of the Apex Court in the case of Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, in support of his contention.

6. There is no dispute that the schedule property was given on lease to the petitioner under a tripartite lease agreement between the State of Orissa, Steel Authority of India and the petitioner. There is no dispute that Clause 16 of the lease agreement provides that without prior permission of the opposite party No. 1; the petitioner cannot mortgage the same for any purpose. There is also no dispute that in terms of the said clause, the petitioner had submitted an application for grant of permission. Attention of the Court was drawn to the order in which the petition was rejected by the opposite party No. 1. The said order is annexed to the counter affidavit filed by the opposite parties as Annexure-A. The application of the petitioner has been rejected with the following observation:

The sub-lessee of Dipti Hotel has requested for mortgaging the premises. The Committee after due deliberation regrets the request.

7. It is very clear from the said observation and order that no reason whatsoever has been assigned while rejecting the petition filed by the petitioner. The learned Counsel for the petitioner questioned the decision solely on the ground that no reason has been assigned while rejecting the petition. Therefore, the dispute does not involve the interpretation of any clause in the lease agreement. There is nothing in Clause 16 of the agreement to show that an application for grant of

permission under the said clause can be rejected without assigning any reason. The provision only prescribes that lease application, if filed, is to be considered by the opposite parties and orders in that regard shall be passed. Therefore, in our view, the question of interpretation of any clause of the agreement does not arise here. The only question that arises for consideration is as to whether the opposite party No. 1 can reject an application without assigning any reason. The learned Counsel for the Opposite parties 1 and 2 in this connection relied upon a decision of the Apex Court in the case of Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, The facts involved in the said case are completely different than the present case and the principle laid down by the Apex Court in the said case with regard to jurisdiction of the Court regarding interpretation and implementation of the clause in a contractual matter has no application to the facts of this case. As observed earlier the question of interpretation of any clause of the agreement does not arise in this case and, therefore, the said decision has no application to the present case.

8. The question that arises for consideration is as to whether reasons are required to be assigned while rejecting an application or not. The learned Counsel appearing for the opposite party No. 1 submitted that the discretion lies with the opposite party No. 1 to either allow or reject the application. The agreement does not provide that while rejecting an application reasons are to be assigned. Since rejection of application is the absolute discretion of the opposite party No. 1, no reasons are required to be assigned. We are unable to agree with such contention of the learned Counsel appearing for the opposite party No. 1 for the simple reason that though the discretion lies with the opposite party No. 1 to either reject or allow the application filed by the petitioner, the said discretion cannot be used arbitrarily and it must be used reasonably and legally. In the case of Sterling Computers Limited v. M & N Publications Limited and Ors. (supra) the Apex Court held that though the public authorities have some discretion in contracts having commercial element, discretion is not absolute and must be governed by some norms and procedures in public interest and for public good. The Court further held that a decision taken by the public authority in commercial/contractual transactions of State or its instrumentality, the decision making process is open to judicial review. Though Court cannot act as an appellate authority but if the process is violative of Article 14 of the Constitution of India, the Court can strike down the decision and action taken pursuant thereto. The applicant has a right to know the reasons for rejection of his application and, therefore, the opposite party No. 1 though has the discretion to reject the application for permission to mortgage the property, must give reasons while rejecting the same. Undisputedly, the opposite party No. 1 while rejecting the application has not assigned any reason whatsoever. Such arbitrary exercise of power cannot be sustained in a Court of law and, therefore, such decision taken by the opposite party No. 1 is quashed. The opposite party No. 1 is directed to reconsider the application of the petitioner, afresh, in accordance with law, within a period of one month from the date of communication of this

judgment.

9. With the aforesaid observation and direction, the writ application is allowed to the above extent.

Indrajit Mahanty, J.

10. I agree.