

(2011) 08 DEL CK 0472

In the Delhi High Court

Case No : Writ Petition (C) 5724 of 2011

Hydro Air Tectonics (PCD) Ltd.

APPELLANT

Vs

National Buildings Construction Corporation Ltd. and Another

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 08 DEL CK 0472

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Pawan Bahl, Kamalaksi Singh and Saundarya Singh, for the Appellant; Himanshu Bajaj, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the communication dated 27th July, 2011 of the Respondent No. 1 National Buildings Construction Corporation Ltd. (NBCC), in pursuance to the show cause notice issued to the Petitioner, rescinding the contract given to the Petitioner for construction of Medical College/ Retrofitting work of existing ESIC Hospital at Parel, Mumbai (Maharashtra).

2. There was admitted delay in execution of the work which led to the issuance of the show cause notice. The contention of the counsel for the Petitioner however is that the delay is not attributable to the Petitioner but owing to the impediments in execution of the work, the works being required to be carried out in an existing/operating/running hospital.

3. It has been enquired from the counsel for the Petitioner as to how writ jurisdiction can be invoked in such a purely contractual matter.

4. The counsel for the Petitioner relies upon Kisan Sahkari Chini Mills Ltd. and Others Vs. Vardan Linkers and Others, which also lays down that the writ jurisdiction ought not to be exercised in contractual matters unless there is a public law element; it is contended that the letter dated 27th July, 2011 merely

states that the reply of the Petitioner to the show cause notice had not been found satisfactory and does not give any reasons as to why the same was not found satisfactory; that thus the writ petition would be maintainable. Reliance in this regard is also placed on *Kranti Associates Pvt. Ltd. and Another Vs. Sh. Masood Ahmed Khan and Others*, & *ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others*, where the duty to give reasons has been emphasized. Though the counsel for the Petitioner has also relied upon the order dated 21st May, 2010 of this Court in *W.P.(C) 3447/2010* titled *Vichitra Constructions Pvt. Ltd. v. Delhi Jal Board* but the same is found to be a consent order and thus cannot be cited as a precedent.

5. The duty to give reasons has to be seen in the context. The Supreme Court in *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, held that omission to record reasons is not necessarily illegal or violative of natural justice and depends upon the nature of enquiry and the effect of the decision on the rights of the person and attendant circumstances. As has often been said, the principles of natural justice cannot be applied in a vacuum without reference to the relevant facts and circumstances. In fact doubts have been expressed whether duty to give reasons is a part of the principles of natural justice.

6. The Respondent No. 1 NBCC in the matter of rescinding of the contract was not exercising any judicial or quasi judicial function. A power to deal with a contractual matter and a power of the statutory authority to exercise its statutory power in determining the rights and liabilities of the parties are distinct and different. Whereas reasons are required to be assigned in a case where civil or evil consequences may ensue, the same may not be necessary where it is contractual in nature (see *Ramchandra Murarilal Bhattad and Others Vs. State of Maharashtra and Others*, The Courts in contractual matters have insisted on giving of reasons only where the action impugned is apparently contrary to logic i.e. say where the highest bid is not accepted. This Court in *Integrated Techno Systems Pvt. Ltd. Vs. N.D.M.C. and Others*, held that the Court in judicial review proceedings under Article 226 is more concerned with the process of decision making rather than the merits of the decision; the Court does not don the hat of the decision maker and does not act as a super appellate administrative body to examine the soundness of the action; the duty of the Court is only to see whether the decision was arrived at after following a fair procedure considering the relevant factors and ignoring the irrelevant facts.

7. It is not in dispute that the Respondent No. 1 NBCC was under the contract, for the reason of delay, entitled to rescind the contract. It is not in dispute that the work was not completed within the time stipulated in the agreement for completion of the work. The action of Respondent No. 1 NBCC is thus not apparently illogical. The question which arises is, whether the Respondent No. 1 NBCC was required to deal with each and every contention in the reply of the Petitioner as in a judgment of the Court. I am unable to hold so. The Engineers/

Officers of Respondent No. 1 NBCC who deal with such matters have hands-on experience of the work. Such Engineers/Officers of Respondent No. 1 NBCC are of the view that the delay in execution of the work is attributable to the Petitioner and that the Petitioner would be unable to complete the work within the time extended by the ESIC also. This Court cannot in exercise of powers of judicial review sit in appeal over the opinion so formed by such Engineers/Officers. The principles of natural justice have been complied with by issuance of a show cause notice.

8. The counsel for the Petitioner has with reference to several documents sought to contend that the decision of the Respondent No. 1 NBCC is arbitrary. Attention in this regard is invited to the satisfaction recorded on 10th October, 2010 by the Medical Superintendent of the Hospital of the work being undertaken, to a letter dated 14th January, 2011 of the Respondent No. 1 NBCC to ESIC seeking extension of time for completion of work, quoting the hindrances and to the pert charts also referring to hindrances. However none of the said documents persuade me to interfere with the decision. The Medical Superintendent of the Hospital was not concerned with the reasons for delay and such procured documents have no weightage. Similarly, what was written by the Respondent No. 1 NBCC while seeking extension of time from ESIC cannot be used against the Respondent No. 1 NBCC. The Respondent No. 1 NBCC in writing the said letter was interested in obtaining the extension to avoid claims and damages which may have been made against it. Yet further, the pert charts were relied upon by the Petitioner in its reply to the show cause notice and there is nothing to indicate that the same were not considered. Moreover, this Court is not exercising appellate power.

9. There is another aspect of the matter. Even if it were to be held that the action of the Respondent No. 1 NBCC is erroneous, the contract which has been terminated was not specifically enforceable. If the Petitioner, in an appropriate proceedings, succeeds in establishing that the delay is not attributable to it and the contract has been wrongfully rescinded, it will be entitled to compensation/damages. On the contrary if this Court interferes and which would necessarily entail restraining Respondent No. 1 NBCC from awarding the work to anyone else (and which relief has been sought by the Petitioner), the same would inordinately delay the works aforesaid and which are public works and on account of delay whereof the public at large will suffer. For this reason also, it is not deemed appropriate to entertain this challenge.

10. It is also felt that the adjudication as this Court is called upon to do entails factual controversy, best left for decision in a suit or in arbitration as the case may be.

11. The counsel for the Petitioner has contended that a direction may be given to Respondent No. 1 NBCC to reconsider the matter giving reasons. However, the same would also entail, at least till then, restraining NBCC from awarding the contract to another and which course, for reasons aforesaid is not found

appropriate.

12. The writ petition is therefore not maintainable and is dismissed with liberty to the Petitioner to take appropriate remedies in law. The observations herein shall not come in the way of the Petitioner, in appropriate proceedings establishing its claim for compensation/damages. No order as to costs.

CM No. 11676/2011 (for exemption).

Allowed, subject to just exceptions.