(2000) 04 PAT CK 0023

In the Patna High Court

Case No : C.W.J.C. No. 3968 of 199 (sic) & Civil Writ Jurisdiction Case No. 3968 of 1997

Jain Plastics and Chemicals Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 05-04-2000

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2000) 3 PLJR 191

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Vinod Ksic Kanth, Nilu Agrawal and Anup Kumar Sinha, for the Appellant; K.P. Yadav and Su(sic) Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.K. Katriar, J.—This writ petition has been preferred by the petitioner company to quash the letter dated 10.12.96 (Annexure 11), whereby the option given to the petitioner company to supply the PVC fittings being the adjunct and accessories to the main supplies, has been cancelled by the State of Bihar after terminating the agreement inter-parties (Annexure 3), and the petitioner has been further informed that the Government has decided to purchase the same through the tender and the extra expense to be incurred over the same shall be recovered from the petitioner. The petitioner is a public limited company registered under the Companies Act, having its registered office at Jain Industrial Complex, Jalgaon, Maharashtra. The Bihar Government published a tender which was published in the daily newspaper on 10.6.93 (Annexure 1), for supply of PVC Pipes and fittings. The petitioner submitted its tender, and its tender was accepted for supply of PVC Pipes and fittings for Patna and Hajipur. The contract value for supplies for Patna was Rs. 5,81,92,584.84P., and the contract value for the supplies for Hajipur was Rs. 7,37,27,421.96p. Accordingly, the respondent authorities had issued the supply order dated 19.2.94 (Annexure 2). Portions of paragraph 5 as well as paragraph 6 of the same are relevant in the present context and are set out below for the facility of quick reference:

(5) Delivery...The delivery will commence within 30 days of signing of contract agreement and will be completed within next three months or as early as possible, from the date of signing of the agreement.

(6) Terms of Delivery All items are to be delivered to destination within the time specified in clause 5 above.

Necessary Road permits for delivery to be offered by Road will be provided to the supplier by this office. PVC fittings should also be supplied regularly so that our project works may not suffer.

This was followed by the agreement dated 22.2.94 (Annexure 3), which provided the details about the supply, 21.6.94 being the last date for the supplies. In the estimation of the respondents, the petitioner delayed the supplies and the aforesaid agreement dated 22.2.94 (Annexure 3), was suspended by letter dt. 2.4.94 (Annexure 4), excepting "...the fittings and 200 mm dia PVC Pipes corresponding to already supplied 160 mm dia PVC Pipes should be supplied for the immediate use". It is thus manifest that in spite of suspension of the agreement, the petitioner was required to supply the adjuncts and the fittings for the materials already supplied. Thereafter the parties exchanged correspondence for a fairly long period. The respondents insisted that the petitioner should supply the PVC fittings meant to be used for the main supplies already made, whereas the petitioner insisted that the respondents should provide them with the requisite road permits as per the agreement. Ultimately, the petitioner could not or did not supply the PVC fittings which led to the impugned order dated 10.12.96 (Annexure 11), whereby the respondents have terminated the agreement for supply of PVC Pipes and fittings. The impugned order further states that in view of the fact that the petitioner tailed to supply the PVC fittings, the respondents shall procure the same through the tender and the extra sum which shall be incurred over procuring the same shall be recovered from the petitioner. It appears that the respondents ultimately purchased the same at a higher price than the amount quoted by the petitioner and consequently a sum of Rs. 15.24 lacs has been deducted from the bills of the petitioner. In other words, Rs. 15.24 lacs is the extra sum which the respondents had to spend over the purchase of the PVC fittings. The petitioner has received full payment for the supplies it made to the respondents excepting the said sum of Rs. 15.24 lacs.

2. While assailing the validity of the impugned action, learned counsel for the petitioner submitted that the petitioner made the supplies for Patna except the PVC fittings, but before it could make the supplies for Hazipur the aforesaid order dated 2.4.94 (Annexure 4), was issued by the respondents suspending the agreement in question, but the petitioner was called upon to supply the PVC fittings, namely, the adjunct and the accessories to the goods already supplied. The petitioner was althrough willing to supply the same but could not do so

because of the failure on the part of the respondent authorities to provide the road permits as per the agreement. In that view of the matter, the respondents are not justified in deducting the sum of Rs. 15.24 lacs being the extra amount which they had to spend over purchase of the same.

3. Learned counsel for the respondents has submitted that writ petition for a money claim is not maintainable, and the present writ petition involves tangled questions of facts. He further submitted that the petitioner had been provided with ample number of road permits which the petitioner was unable to utilise and are now trying to pass on the liability to the respondents on an incorrect pretext of non-supply of road permits.

4. Having considered the rival sub-missions, I am of the views that this writ petition has to be allowed. Learned counsel for the petitioner is right in his submission that it was unable to supply the PVC fittings on account of the failure on the part of the respondents to provide the road permits. It has first of all to be borne in mind that the life of each road permits one month from the date of its issuance which is amply borne by the pleadings of the parties. Soon after the aforesaid letter dated 2.4.94 (Annexure 4) was issued the petitioner had sent its letter dated 11.4.94 (Annexure 5), to respondent no. 5 (the Superintending Engineer). which reads as follows:

We are enclosing herewith Original Road Permits bearing serial no. 721 to 750 and 945 to 954 for revalidation of another one month Kindly forward the same to the sales tax authorities for necessary action. These Road Permits shall be used exclusively for the carrying of fittings rod 200 mm dia PVC pipes.

It is thus manifest that the petitioner promptly sent its letter to respondent no. 5 to return the road permits after revalidation. It is further manifest from the pleadings of the parties that inspite of repeated letters from the petitioner, the same were never returned by the respondent authorities to the petitioner after revalidation. By letter dated 19.9.94 (Annexure 5), respondent no. 5 had extended the time to supply the PVC fittings upto 30.9.94 but there is no reference to supply of the road permits. The matter was again examined by the Department in its file maintained in routine course of business and it is manifest from the note dated 28.7.95, recorded by A.K. Srivastava, Additional Secretary in the Department (Annexure 18 at page 168), to the effect that the Department has not provided the road permits after revalidation. Paragraph 3 of his note is set out hereinbelow for the facility of quick reference:

The file was thereafter referred to the Minister who had passed orders for second extension of time to the petitioner to enable them to supply the PVC fittings. It appears from the tenor of the nothings in the file marked Annexure 18 to the writ petition that the Minister by his order dt. 28.8.95 had granted extension of time for supply of the PVC fittings which by necessary implication in the background of the preceding notes is that the road permits had to be provided to the petitioner, otherwise the extension of time becomes meaningless. Even if one were to presume for the sake of argument that valid permits were available with the petitioner on the date of suspension on 2.4.94, the same must have expired on 2.5.94. It appears that the Minister''s order was conveyed to the petitioner by respondent no. 5 by his letter dated 12.9.95 (Annexure 5/1), calling upon the petitioner to supply the PVC fittings by 15.10.95. The letter does not at all speak of the supply of road permits. It is further manifest from the letters dated 20.9.96 (Annexure 15 Series, at page 104), 8.11.96 (Annexure 15 series at page 107), 6.12.96 (Annexure 15 series at page 109), and 17.2.97 (Annexure 15 series at page 114), that the PVC fittings could not be supplied because the respondents have not made available the necessary road permits. The letters further state that they are ready with the materials and are prepared to supply, provided the road permits are given to them as per the agreement. The said letters dated 6.12.96 (Annexure 15 series), and 17.2.97 (Annexure 15 series), give a list of 12-14 letters respectively, sent by the petitioner to the respondents, for supply of the road permits. The respondents in their counter affidavit have stated that the respondents had supplied adequate number of road permits to the petitioner and, therefore, there was no necessity to issue fresh road permits. Paragraph 3 (d) to 3(g) of the petitioner''s rejoinder to the counter affidavit illumine the position wherein the details of unutilised road permits are stated which had expired on 15.4.94, and there is no reference anywhere else in the counter affidavits that road permits were provided ever thereafter. Therefore, in the absence of the road permits the two extensions granted by the respondents become meaningless. The same are set out hereinbelow for the facility of quick reference:

3(d) That the respondent no. 5, admittedly issued 400 nos. of permits to the petitioner on 24.2.94 and 600 nos. of permits on 16.3.1994 and as such they were to expire on 23.3.94 and 15.4.94 respectively.

(e) Admittedly the petitioner could supply PVC Pipes and fittings to the tune of Rs. 5.79 Cores and the respondents admitted by Annexure-9 and 10 of the writ petition they owed the said amount to the petitioner.

(f) Admittedly the petitioner went on asking for road permits by at least 14 letters beginning from 11.4.94 to 21.2.97 but they were never issued to him. For this reference can be made to Annexure 15 series Page 114 of the writ petition.

(g) Admittedly the petitioner returned 375 nos. of Road Permits to the respondent on 25.4.94 wherein the petitioner stated that they had utilized 600 nos. of permits and remaining 375 nos. were being returned and with respect to remaining all those 1000 nos. Road permits stood expired on 15.4.94.

5. It is thus manifest from a review of the materials on record that the petitioner was althrough ready and willing to supply the PVC fittings. When it was called upon by respondent no. 5 by his letter dated 2.4.94 (Annexure 4), to supply the fittings, it was at that point of time in possession of expired road permits and had, therefore, been sent by the petitioner to respondent no. 5 to be returned

after revalidation to enable the former to supply the PVC fittings, vide the petitioner''s letter dated 11.4.94 (Annexure 15). It is equally manifest that the petitioner thereafter addressed a series of letters to respondent no. 5 to supply the road permits after revalidation, but the respondents never addressed themselves to the same. It is manifest that the life of each permit is one month from the date of its issue. The respondents had supplied all the road permits prior to 2.4.94 and, therefore, they were expected to be fully aware of the position that the respondents were required to provide the road permit as per Clause 6 of the supply order (Annexure 2), which they had failed to do. The respondents granted two extensions to the petitioner to supply the PVC fitting without the road permits. In that view of the matter, I have no hesitation in conincluding that the petitioner was unable supply the PVC fittings on account failure or the refusal on the part of the respondents to supply the road permits. The petitioner cannot, therefore, be faulted for non-supply of PVC fittings. In that view of the matter, the respondents cannot realise or deduct the extra money which they had to spend over purchase of the same. The impugned action is therefore, bad in law and it is hereby declared that the respondents are not justified deducting the sum of Rs. 15.24 lacs from the bills of the petitioner.

6. I must also deal with the contention advanced by the learned counsel the respondents that tangled question of facts is not normally adjudicated in writ jurisdiction. I have purposely dealt with this question at this stage because the facts are now quite clear before the Court. There would hardly be a writ petition which does not need resolution of facts. A writ petition can be entertain if the allegedly tangled question of facts can be resolved on the basis of affidavit evidence, and does not need evidence of a civil suit. This court has not in the present case felt any difficulty in deciding the question of facts on the basis of affidavit evidence, and I have not felt the necessity of evidence of a civil suit in deciding the question of facts which is needed for disposal of the present writ petition. The contention is, therefore, rejected. I am in this connection remanded of my own judgment dt. 29.3.2000 CWJC No. 6911 of 1999 (Anil Kumar Singh vs. Union of India), reported 2000(3) PUR 176 paragraph 7 of which is relevant in the present case and is set out hereinbelow:

7. This takes me on the question of relief to be granted to the petitioner. Learned counsel for respondent nos. 3 and 4 as well as 2, 5 and 6 have submitted that the complaint has not been examined by the respondent authorities and, therefore, it would be in the fitness of things to remit the matter to examine the complaint. I do not find it possible to accede to the contention for the reason that on account of inaction and abdication of functions attributable to the official respondents, this court examined materials on record so that the matter is finally concluded. The Supreme Court has held in its judgment reported in Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Others, , that the High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner''s right of relief, questions of facts may fall to be determined. In a petition under Article 226, the High Court has the

jurisdiction to try issues both of fact and law. When the petitioner raises complex questions of facts, which may for their determination require evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in writ petition, the High Court may decline to try a petition. It is equally open to the High Court on consideration of the nature of the controversy, the High Court may in exercise of its discretion go into a disputed question of fact.

7.1. In the instant case, this Court could decide the issue of fact, namely, residence of respondent no. 7, on the basis of the affidavit evidence and the documents produced before it, without the necessity of oral evidence. Furthermore in order to do effective justice in writ jurisdiction and for proper application of law, facts have got to be sorted out. Therefore, there is now no justification in the present case to refer the matter back to the authorities to examine the complaint.

8. Learned Standing Counsel has also submitted that a writ petition for a money claim is not maintainable. The proposition broadly stated may be correct, but the Supreme Court has held in a number of cases that a writ petition is maintainable for admitted dues. The Supreme Court has also held that the pretext of a resistance on the part of the respondent authorities in disputing the petitioner''s claim shall not conclude matters, and the Court in exercise of its writ jurisdiction is entitled to discern whether or not the resistance on the part of the respondents is genuine or is meant merely to defeat the petitioner''s claim. As held hereinabove, this writ petition involves resolution of a very limited question of facts, namely, whether or not the respondents supplied the road permits which this Court has been able to resolve on the basis of the affidavit evidence without any difficulty. Furthermore, there is no question of quantification of the amount nor any question of settlement of bills in the present case. The contention is, therefore, rejected. In the result, this writ petition is allowed, and it is hereby declared that the impugned action of the respondent authorities is bad in law. The respondents are hereby directed to pay to the petitioner a sum of Rs. 15.24 lacs within a period of six months from the date of production of a copy of this order before respondent no. 3 (Secretary, Minor Irrigation Department, Govt. of Bihar, Patna). In case the payment is not made within the stipulated period, then the petitioner shall be entitled to interest at the rate of 6% from the date of expiry of the said period of six months till the date of payment.