(2009) 05 GUJ CK 0055

In the Gujarat High Court

Case No : Letters Patent Appeal No. 309 of 2009 in Special Civil Application No. 128 of 2005 with Civil Application No. 2913 of 2009 in Letters Patent Appeal No. 309 of 2009

Madhya Pradesh State Electricity Board — APPELLANT

Vs

Shree Bharat Co-operative Bank Ltd. and Others — RESPONDENT

Date of Decision : 11-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2)
Contract Act, 1872 — Section 3, 4
Electricity (Supply) Act, 1948 — Section 66

Citation : (2009) 2 GLH 750

Hon'ble Judges : K.S. Radhakrishnan, C.J;Akil Kureshi, J

Bench : Division Bench

Advocate : Mihir Thakor and Lilu K. Bhaya, for the Appellant; K.K. Pandey, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, C.J.—Madhya Pradesh State Electricity Board (for short `MPEB'') has come up with this Letters Patent Appeal aggrieved by the directions of the learned Single Judge directing the Board as well as the State of Madhya Pradesh to jointly and severally to make payment of requisite amount of interest and the principal on the MPEB Bond as per the Scheme within period of three months from receipt of the order and also for consequential relief.

2. Special Civil Application No. 128 of 2005 was preferred by the first respondent-original petitioner-Shree Bharat Co-operative Bank Ltd. seeking directions to the respondent No. 2 to 6, more particularly, Madhya Pradesh Electricity Board and the State of Madhya Pradesh to make payment of interest and principal amount due from 30th June, 2000 till date as per the Schedule and as per the private placement in MPEB Bonds (1)-98 and also to make payment of interest and two installments of principal amount at the rate of 66% due as on 31.12.2004 as promised and guaranteed by the respondent Nos. 2, 4, 5 and 6 to the tune of Rs.

2,00,25,000/- (Rupees Two Crores and Twenty Five Thousand only) and also for other consequential reliefs.

3. Petitioner-Bank has invested Rs. 1.50 crores in the Bonds offered by the Madhya Pradesh Electricity Board guaranteed by the respondent No. 5 and 6 mentioned in Memorandum at Annexure-A under the Resolution dated 29.10.1998. On invitations made by the Board, petitioner bank had applied for 150 Bonds each having value of Rs. 1,00,000/- on 21.11.1998 vide application No. SR 001759 under Option I mentioned in the Memorandum stating coupon rate payable at the rate of 15 % per annum payable semi annually. Copy of the application dated 21.11.1998 for 150 bonds submitted in the office of the respondent No. 4-SBI Capital Markets Ltd. at Ahmedabad is produced at Annexure-C. Petitioner-Bank then tendered Account Payee Demand Draft of Rs. 1.5 crores payable at Ahmedabad. Petitioner-Bank later received a letter dated 23.11.1998 from the respondent No. 4 regarding acceptance of application form No. 1759 along with the amount of Rs. 1.50 crores. Petitioner had also received an allotment letter dated 01.12.1998 from the respondent No. 2 stating that 150 bonds worth Rs. 1.50 crores were allotted in favour of the petitioner. Petitioner-Bank however submits that the respondent Nos. 2 to 6 had not acted as per the promise and guarantee given in the Memorandum and had stopped payment of interest after 30.06.2000. According to the petitioner, amount of interest accrued from 01.07.2000 to 31.12.2004 comes to Rs. 1,01,25,000/- and the principal amount due as on date at the rate of 66 % comes to Rs. 99,00,000/-. Thus, according to the petitioner, total amount as on the date due to the petitioner from the respondent Nos. 2 to 6 comes to Rs. 2,00,25,000/-. Petitioner written several letters to the respondents but the same were not responded nor the respondents paid the said due amount.

4. Learned Counsel Mr. K.K.Pandey appearing for the writ petitioner submitted that on the facts and in the circumstances the learned Single Judge was justified in giving directions to the respondents jointly and severally to make payment as per the terms and conditions of the memorandum as well as the contract executed between the parties. Learned Counsel submitted as per Section 3 read with Section 4 of the Indian Contract Act, the contract would be completed, when the communication of acceptance comes to the knowledge of the party and therefore, contract was concluded in the State of Gujarat. Learned Counsel referred to several decisions in support of his contention. Reference was made to Morgan Stanley Mutual Fund v. Kartick Das (1994) CPJ 7 (SC), Hamza Haji v. State of Kerala 2006 (0) GLHEL SC 37753 and R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Valllabh Glass Works Ltd.,

5. Learned Sr. Counsel Mr. Mihir Thakor appearing with Ms. Lilu Bhaya for the appellant has submitted that the learned Single Judge was not justified in giving directions to the Madhya Pradesh State Electricity Board and the State of Madhya Pradesh to honour the commitments jointly and severally and make payment of requisite amount of interest and the principal of the Bond as per the Scheme.

Learned Counsel also submitted that the learned Single Judge was not justified in entertaining the application due to lack of jurisdiction. If the petitioner was aggrieved by the actions of the MPEB and the State of Madhya Pradesh, the remedy lies in that State and not in the State of Gujarat. Learned Counsel further submitted that similar matters are pending before the Madhya Pradesh High Court and in few Civil Courts in the State of Madhya Pradesh and even before the Apex Court. Learned Counsel also submitted that the material, essential and integral part of cause of action arose in the State of Madhya Pradesh at Jabalpur. Learned Counsel further submitted that the Board is willing to settle the accounts with the petitioner also on certain terms and conditions just like they have settled few other similar claims. Learned Counsel submitted that the Board is willing to pay the balance due amount Rs. 1,32,98,861/- so as to settle the accounts of the petitioner-bank once for all but the offer is not acceptable to the learned Counsel appearing for the petitioner-bank.

6. Detailed counter-affidavit has been filed by the State Bank of India as well as SBI Capital Market Ltd.. It is stated that the State Bank of India as well as SBI Capital Market Ltd. are separate entities and SBI Capital Market Ltd. is incorporated and registered under the provisions of the Companies Act, 1956 and they have not made any promise to the petitioner on re-repayment. Further, it was also stated, petitioner has no cause of action against the SBI, and SBI CML, they are unnecessarily made parties in the proceedings. Counter-affidavit has also been filed by third respondent No. 3-SEBI.

7. The respondent No. 6-the Board has stated that on formation of State of Chhatisgarh, the Government of India passed an order u/s 58 of the Madhya Pradesh Re-organisation Act, 2000 for apportionment of assets and liabilities of MPEB between the Successors Boards for State of Madhya Pradesh and Chhatisgarh. It is further stated that Bonds were issued by the original undivided Madhya Pradesh Electricity Board and undivided Government of Madhya Pradesh provided the Government Guarantee u/s 66 of the Electricity (Supply) Act, 1948. Therefore, liability of the State Government in terms of guarantee is to the extent the liability is allocated to Madhya Pradesh State Electricity Board. Further, it was also stated that the Gujarat High Court has no jurisdiction to entertain the claim raised by the petitioner.

8. We find that Annexure-A is confidential information Memorandum for the private placement of MPEB Bond which shows that government guarantee has been provided by the Government of Madhya Pradesh. Memorandum also shows that head office of Madhya Pradesh Electricity Board is situated at `Shakti Bhawan, Vidyut Nagar, Jabalpur-482 008. Advisor and Co-ordinating Lead Arranger was SBI Capital Markets Limited, 191, Maker Towers, "F" Cuffe Parade, Mumbai. Part-B of Annexure-A refers to allotment to the investors in due course after verification of the application form, the accompanying documents and on realisation of the application money. It is also stated that MPEB reserves the right to accept or reject any application in part or full without assigning any reason

thereof. It is also stated that Letter of Allotment evidencing the title to the Bonds in favour of the allottees would be mailed by Registered Post before the due date for first interest payment, at the sole risk of the applicant to the sole/first applicant. It is also stated that after completion of the necessary formalities, MPEB shall issue the bond certificates against surrender to the duly discharged Letter(s) of Allotment. Further, it is also stated that all cheques/drafts should be marked "Madhya Pradesh Electricity Board Bond(1)-98". Looking to the memorandum and the allotment etc., we are of the view that major portion of cause of action arose in the State of Madhya Pradesh and not in the State of Gujarat. Head office of the Madhya Pradesh Electricity Board is situated at Jabalpur, Madhya Pradesh. The mere fact that SBI Capital Markets has got a branch in the State of Gujarat would not confer jurisdiction on the High Court of Gujarat to entertain the petitioner''s claim against MPEB and the State of Madhya Pradesh under Article 226(2) of the Constitution of India.

9. We may point out that for the purpose of deciding whether facts averred by the petitioner would or would not constitute a part cause of action, one has to consider whether such fact constitutes a part of the cause of action. Even if a small fraction of the cause of action arises within jurisdiction of the Court, the Court may have territorial jurisdiction to entertain the suit/petition but the same by itself may not be considered to be determinative factor compelling the Court to decide the matter on merits. Learned Counsel for the petitioner-Bank on the basis of the various letters received by him contended that a part of the cause of action arose within the State of Gujarat. Petitioner has stated that the petitioner-Bank is situated in the State of Gujarat and that the application submitted by the Bank was accepted by the MPEB through the SBI Capital Markets having its office in Gujarat. Consequently, according to the petitioner, contract between the parties was concluded within the State of Gujarat, therefore, the High Court of the Gujarat has jurisdiction to entertain this claim raised by the petitioner-bank.

10. We find it difficult to accept this contention. The mere fact that the petitioner had submitted an application and paid the money through SBI Capital Markets Ltd., having its office in the State of Gujarat will not confer jurisdiction on Gujarat High Court to entertain the petition raising the claim against the MPEB and State of Madhya Pradesh. Offer was made by the petitioner-bank which was accepted by the MPEB at their Head Office at Jabalpur, State of Madhya Pradesh. The allotment was made by the MPEB from its Head Office situated at Jabalpur. Letter of allotment was issued from Jabalpur by Registered Post to the petitioner. Bond certificates were issued by the Madhya Pradesh Electricity Board from Jabalpur. Contract was, therefore, concluded at Jabalpur and the major portion of the cause of action arose at Jabalpur. The material, essential or integral part of the cause of action arose in the State of Madhya Pradesh and not in State of Gujarat. This legal position is well settled. Reference may be made to the decision of the Apex Court in Navinchandra N. Majithia Vs. State of Maharashtra and Others, , Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, and Alchemist Limited and Another Vs. State Bank of Sikkim and Others, Apex

Court has examined the scope of Clause (2) of Article 226 of the Constitution of India and held that even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court may have jurisdiction in the matter, but the question one has to consider is whether such fact constitutes the material, essential or integral part of the cause of action. In Kusum Ingnots'' case (Supra), Apex Court held that even if a small portion of the cause of action arises within the territorial jurisdiction of the Court, the same by itself be not considered to be determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens. Above mentioned decision has been followed by the Division Bench of High Court of Kerala where one of us (Mr.Justice K.S. Radhakrishnan, CJ) was a member, in the case of Capt. B.S. Prakash v. Food Corporation of India and Ors. ILR 2007 Ker 73.

11. Judgments relied on by the petitioner, therefore, are inapplicable to the facts of this case in view of the above-referred judgments of the Apex Court on the question raised. Principles laid down in the above-mentioned decisions concludes the issue. Since the material essential and integral part of the cause of action arose in the State of Madhya Pradesh, this Court has no jurisdiction to entertain the claim of the petitioner-Bank. Further, several such claims are pending consideration in various Courts in the State of Madhya Pradesh. In fact one of such claims was raised before the High Court of Judicature at Bombay, being Summary Suit No. 3454 of 2006 and connected matters wherein the question of jurisdiction was considered and the Court took the view that it has no jurisdiction to entertain the application. Further, we are of view that it would be advisable that all such similar claims be consolidated and be heard by the Court in the State of Madhya Pradesh to avoid conflicting directions.

12. Under the circumstances, the Letters Patent Appeal deserves to be allowed. We do so. Impugned judgment of the learned Single Judge is set aside, without expressing our opinion as to the merits of the case.

13. Consequently, Civil Application also stands disposed of accordingly.