
(2014) 02 CAL CK 0091
In the Calcutta High Court
Case No : Writ Petition 012 of 2013

M/s. Kanta International

APPELLANT

Vs

The Andaman and Nicobar Administration and Others

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 02 CAL CK 0091

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : Anjili Nag, for the Appellant; S.K. Mandal and Mr. S.C. Mishra, for the Respondent

Final Decision : Allowed

Judgement

Tarun Kumar Gupta, J.—The admitted position of the case as it is gathered from materials lying in the records as well as from the submissions made by the learned counsels of the parties be summarised as follows:-

On 25th of June, 2010 a tender notice was published by the Directorate of Shipping Services, Andaman & Nicobar Administration whereby quotation was called for from intending supplier for items mentioned in the said tender notice. The petitioner firm participated in the said tender process. The petitioner became successful bidder and a supply order dated October 20th 2010 was issued by the department concerned. The petitioner supplied the items as per terms of the tender which were duly received by the authorities. Said items were accepted by the authorities. The petitioner submitted bill on 25.01.2012 amounting to Rs. 19,11,052/-. In spite of repeated requests said bill was not cleared by the authorities. Hence this application praying for directing authorities to make payment to the petitioner alongwith interest at the rate of 12% per annum with other consequential relief's.

In the affidavit-in-opposition the respondents declined to release such payment

on the following grounds:-

A supply order vide M/PR-Electronic/Open-102/2010-11/144 dated 01.09.2010 amounting to Rs. 37,51,102/- was issued to the petitioner firm for supply of electronic items. The firm supplied items and received payment accordingly. Later on authorities received complaint that the petitioner firm supplied those items at exorbitant rates. In order to verify the correctness of the complaint, the firm was requested to furnish documentary evidence in support of the rate quoted for those items. After much persuasion and after lapse of about six months the firm furnished the relevant particulars. To safeguards the interest of the government the bill of the present case amounting to Rs. 19,11,052/- of the petitioner was withheld in case any recoveries was required to be made from the firm. However, before examination of the reply furnished by the petitioner firm all documents were seized in June 2012 by the Anti Corruption Unit of the Andaman & Nicobar Police and the matter is under investigation by them. The writ application is not maintainable as the petitioner put for money claim which cannot be decided in a writ proceeding. The writ application is also not maintainable on the ground that there was an arbitration clause in the tender document. The writ petition is liable to be dismissed with costs.

2. Mrs. Anjili Nag learned counsel appearing for the petitioner firm submits that the supply of materials worth Rs. 19,11,052/- by the petitioner firm to the respondent authorities in terms of tender in question was not disputed. She further submits that it was also not the case of the respondents authorities that the items were not upto the mark or that the rates claimed were higher than the rates approved by the authorities at the time of accepting the bid of the petitioner firm. She submits that allegation of supply of articles in alleged higher rates in the earlier occasion cannot be a ground for withholding the payment in the present case. She next submits that when there is no dispute regarding factual aspects then inaction on the part of the state authorities for release of payment in connection with a contract can be the subject matter of a writ application. In support of her contention she refers the case law of *Abl International Ltd. & Anr. vs. Export Credit Guarantee in connection with Appeal (Civil) 5409 of 1998*.

3. She next submits that the presence of arbitration clause in the agreement between the parties is no ground to deny remedy in the writ jurisdiction in appropriate case. In support of her contention she refers the case law reported in *Union of India (UOI) and Others Vs. Tania Construction Pvt. Ltd.,*

4. Mr. S.K. Mandal, learned Government Pleader, appearing for the state respondents, on the other hand, submits that the writ petition was not at all maintainable in the facts and circumstances of the present case. According to Mr. Mandal the petitioner had the money claim against respondents and that the petitioner cannot be permitted to file a writ petition without availing other recognised modes of recovery i.e. civil money suit and/or arbitration. He next submits that there was specific arbitration clause in the tender document and

that the petitioner cannot bypass said arbitration clause by filling the present writ application. In this connection he refers to the decision of one of the learned judge of this court in WP. No. 018 of 2012 (Shri. Vayapi Chandra Gupta-Vs-The Lieutenant Governor and others). According to Mr. Mandal it was clearly stated in said judgment dated 14th June, 2012 that ordinarily disputes relating to contracts qua contract would not be entertained in this jurisdiction unless a question of public importance of some significance is involved.

5. There is no dispute that the petitioner firm was permitted to supply specified items at specified rates against the tender in question. There is no complaint from the side of the respondents authorities regarding quality and or quantity of the items as well as rates under which those were supplied. But still the respondent authorities decline to release payment of Rs. 19,11,052 on the ground that on the previous occasion the petitioner supplied some items at exorbitant rates and also obtained the price amounting to Rs. 37,51,102/- and that there were complaint on that score resulting an investigation by Anti Corruption Unit of the Andaman & Nicobar Police.

6. The points of consideration are as follows:-

i) Whether the writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the state or its instrumentality by the aggrieved party.

ii) Whether the writ petition is maintainable when there is alternative remedy by way of arbitration clause in the contract.

iii) Whether the petition is entitle to get any relief in this forum.

7. The first point is no longer res integra and is settled by a large number of judicial pronouncements of the Hon''ble Apex Court as noted in the judgment dated 18.12.2003 of the Hon''ble Apex Court passed in connection with Abl International and Another (supra). In the case of K.N. Guruswamy Vs. The State of Mysore and Others, the Hon''ble Apex Court held that on the given set of facts if state acts in an arbitrary manner even 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 on facts of the said case is empowered to grant the relief. Said judgment was followed in the case of the The D.F.O., South Kheri and Others Vs. Ram Sanehi Singh, In said case the Hon''ble Apex Court held:-

By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy's case (supra), there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with

statutory power.

8. As such it is clear that if respondent authorities being "state" acts in an arbitrary manner even in the matter of contract, an aggrieved party can approach the court by way of writ.

9. In the case of Union of India and others (supra) it was specifically lead down in para 33 that in the question of maintainability of the writ petition on account of the arbitration clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would be maintainable.

10. In an unreported decision of this court passed in WP. No. 018 of 2012 the aforesaid case laws of the Hon"ble Apex Court were not referred. Apart from that the facts of the said case was quite different from the facts of the present case. In that case the payments were denied to the supplier on the ground of sub-standard quality of materials. In that case the petitioner failed to satisfy the authorities that the required standards were maintained in the matter of products supplied. The authority, on the other hand, offered to return the articles so received.

11. But in the case in hand there was no dispute regarding factual aspects of the case. There is no dispute about the quality and quantity of supply as well as the price charged for the same. As such no evidence is required on that score. The respondent authorities being "state" denied the payment only on the ground that in an earlier occasion the petitioner supplied certain goods at an exorbitant rates and that though payments were made at that time, but the matter is under investigation by Anti Corruption Unit of the Andaman & Nicobar Police from June 2012. It was further alleged that the payment in the present case was withheld if any recovery was to be made from the petitioner firm on account of said earlier contract. I fail to understand how this question can be tagged in the case of payment in respect of a subsequent contract particularly when no such right was reserved in the tender document. When the petitioner firm has supplied the required items as per required standard and rate in connection with a subsequent contract, then the act of the state authorities on the matter of withholding the payment on the ground mentioned above is nothing but arbitrary. It is rather an arm-twisting method adopted by the state respondents. It is more so as it has not yet been ascertained whether in case of earlier supply in connection with the earlier contract the rates were exorbitant or not and whether the petitioner firm was a party to the underhand deal for making those supplies. If during investigation it is found that the petitioner was a party to said conspiracy then law will take its own course. But that cannot be a ground to deny the legitimate claim of the petitioner firm in respect of a subsequent contract.

12. Accordingly the writ petition is hereby allowed on contest but without costs.

The respondent authorities are hereby directed to release the payment of the petitioner in connection with the present contract for which bill has already been submitted, as per rule, within four weeks from the date of communication of this order. If the payments are not made within the stipulated time frame as stated above, then the amount will carry interest at the rate of 12% per annum from the date of filling of writ petition i.e. 08.01.2013 till the payment is made. However I make it clear that in no case the payment should be withheld beyond 4 months from this date. Urgent certified photo copy of this order, if applied for be given to the party after compliance of necessary formalities.