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(2021) 12 TEL CK 0026

In the Telangana High Court

Case No : Writ Petition No. 6506 Of 2021

M/S. Raj Kumar Dyeing And Printing Works Pvt. Ltd — APPELLANT

Vs

State Of Telangana — RESPONDENT

Date of Decision : 10-12-2021

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 226

Citation : (2021) 12 TEL CK 0026

Hon'ble Judges : B. Vijaysen Reddy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This writ petition is filed challenging the action of the respondents in not paying the bill amount bearing bill No.RKD/19-20/32 dated 26.11.2019 for Rs.1,52,06,730/- and Bill No.RKD/19-20/32 dated 18.02.2020 for Rs.1,39,49,145/- along with interest at 18% per annum from the date of supply on the outstanding amount as illegal, against the law and unconstitutional.

2. The facts of the case, in brief, are that the petitioner is engaged in the business of manufacturing garments and shoes. It had been supplying clothes, shoes and other accessories for the students and sports persons since several years. Respondent No.3 - the State Project Officer, Samagra Shiksha, Telangana, Hyderabad has placed order for supply of track pants, suits, sports shoes, cotton socks and honey comb t-shirts, short-pants for girls studying VIII and IX in 475 KGBV Schools in the State of Telangana.

(i) The petitioner states that it has submitted quotation for the year 2018-19 and the same was accepted by respondent No.3 vide purchase order in Lr.No.341/TSS/T9/KGBV/2019 dated 12.02.2019. The cost of total items to be supplied was Rs.5,06,10,800/-. In compliance of the said purchase order, the petitioner has supplied material in a phased manner and the entire quantity ordered has been supplied without any blame and completed by 18.02.2020. The petitioner has raised bills during the period of supply i.e., on 25.10.2019 for Rs.1,07,97,570/-, on 11.10.2019 for Rs.44,31,998/-, on 09.12.2019 for Rs.87,55,898/-, and on 26.11.2019 and 18.02.2020 for Rs.1,52,06,730/- and Rs.1,39,49,145/- respectively.

(ii) The petitioner supplied the material to the full satisfaction of the respondents. It was accepted by the respondents without any demur. Having remitted the amount under the afore-referred first three bills, the respondents have not chosen to remit the amounts covered by the bills dated 26.11.2019 and 18.02.2020 for Rs.1,52,06,730/- and Rs.1,39,49,145/-. There is no justifiable reason for non-payment of the above amounts for more than a year. Legal notice dated 02.03.2021 was issued calling upon the respondents to pay the amount due along with interest at 18% per annum.

3. In the counter affidavit filed by respondent Nos.2 and 3, it is stated that the writ petition is not maintainable. The petitioner has entered into a contract bound by contractual obligations. The dispute is purely civil in nature. Similar cases are pending regarding payment in O.S. No.395 of 2013 before the learned X Additional Chief Judge, City Civil Court, Hyderabad and O.S. No.322 of 2017 before the Chief Judge, City Civil Court, Hyderabad. The petitioner is actually seeking recovery of money by invoking the writ jurisdiction. The claim of interest at 18% per annum is untenable. The contract in question is non-statutory and purely contractual and the rights of the parties are governed by the terms of the contract, as such, no writ or order can be issued under Article 226 of the Constitution of India compelling the authorities for breach of contract which is pure and simple and that the right can be claimed only before the civil Court.

4. In the reply affidavit of the petitioner, it is stated that there is no dispute regarding payment of the amount. In ABL International Limited v. Export Credit Guarantee Corporation of India Limited (2004) 3 SCC 553, the Hon'ble Supreme Court has held that the writ is maintainable even in monetary claims. Respondent No.3 is an instrumentality of the State under Article 12 of the Constitution of India. Pendency of civil suits filed by the similarly placed third parties cannot be a ground to deny payment to the petitioner. On technical pleas, the respondents are trying to deny payment.

5. In the additional counter affidavit filed by respondent Nos.2 and 3, it is reiterated that writ remedy is not appropriate remedy. The High Court would not examine the issue unless the petitioner is seeking enforcement of public duty. The petitioner has not successfully completed the contract. The petitioner has not filed delivery challans and receipts showing actual supply of the goods. Hence, there are disputed questions of fact.

6. Heard Mr. P. Gangaiah Naidu, learned senior counsel, appearing for Ms. G. Bhanu Priya, learned counsel for the petitioner, learned Government Pleader for School Education appearing for respondent Nos.1, Mr. G. Bhaskar, learned counsel for respondent Nos.2 and 3, and perused the material on record.

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7. Mr. P. Gangaiah Naidu, learned senior counsel appearing for the petitioner, has submitted that there is no dispute regarding payment of amount under the bills dated 26.11.2019 and 18.02.2020. The stocks supplied by the petitioner were, in fact, utilised by respondent No.3. Nothing is stated in the counter denying payment except raising objection about maintainability of the writ petition.

8. Mr. G. Bhaskar, learned counsel appearing for respondent Nos.2 and 3, submits that the petitioner invoked the writ remedy instead of filing a civil suit for recovery of the amount. The petitioner may be permitted to submit representation to respondent No.3 and the same shall be disposed of.

9. Having considered the rival submissions of the learned senior counsel appearing for the petitioner and the learned counsel for respondent Nos.2 and 3, this Court is of the view that the stand taken by respondent Nos.2 and 3 is unreasonable and unjust. Out of five bills, three bills have been paid by respondent Nos.2 and 3 and two bills remained unpaid.

10. Respondent Nos.2 and 3 have taken inconsistent stands in their counter affidavit and additional counter affidavit. There is no denial of supply of stock in the counter affidavit. Coming to the additional counter affidavit, respondents have made vague averments that the materials as required were not supplied. If such was the case, nothing prevented respondent Nos.2 and 3 to return the stocks or intimate the petitioner that there is deficiency on its part. In the absence of any material to show that stocks have not been received by respondent Nos. 2 and 3 and were not utilised, this Court holds that the stand taken by respondent Nos.2 and 3 is false and only to avoid payment to the petitioner.

11. Not to entertain writ petitions when alternate remedy is available is a self-imposed restriction of the Constitutional Courts. It is not as if the High Court does not have jurisdiction to grant relief to the aggrieved parties even in monetary claims when there is no dispute regarding the payment due. It is wholly unjustifiable on the part of respondent No.3 to take technical objection saying that civil suit for recovery has to be filed. Though it cannot be denied that the relationship between the petitioner and respondent No.3 is contractual in nature, respondent No.3 being the instrumentality of the State is bound to act in a fair, reasonable and transparent manner. Having purchased goods, respondent No.3 has not only utilised such stocks but also paid amount under three bills out of five bills raised by the petitioner, as such, there is no reason whatsoever for respondent No.3 to withhold payment of amount under the remaining two bills. Hence, this Court is of the view that the action of respondent No.3 is uncalled for, arbitrary and unwarranted.

12. In ABL International Limited's case (Supra 1), the Hon'ble Supreme Court has made the following observations in paragraph Nos.28, 52 and 53:

"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in

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mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power (See Whirlpool Corpn. v. Registrar of Trade Marks, Mumbai [1998 (8) SCC 1]). And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.

52. On the basis of the above conclusion of ours, the question still remains why should we grant the reliefs sought for by the appellants in a writ petition when a suitable efficacious alternate remedy is available by way of a suit. The answer to this question, in our opinion, lies squarely in the decision of this Court in the case of Shrilekha Vidyarthi ((1991) 1 SCC 212) wherein this Court held :

The requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirement of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirement of Article 14 and contractual obligations are alien concepts, which cannot coexist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Therefore, total exclusion of Article 14 - non-arbitrariness which is basic to rule of law - from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the

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validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article of non-arbitrariness at the hands of the State in any of its actions.

53. From the above, it is clear that when an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of State and a monopoly body had to be approached by the appellants by compulsion to cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information and after receiving huge sums of money as premium exceeding Rs.16 lakhs. On facts we have found that the terms of the policy do not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court or this Court from granting the relief sought for by the petitioner."

13. In the light of the above observations of the Hon'ble Supreme Court, this Court is of the view that there is no embargo for this Court to entertain the writ petition under Article 226 of the Constitution of India in matters relating to contractual obligations. As pointed out above, there is no dispute at all regarding payment of bills dated 26.11.2019 and 18.02.2020, except for a technical objection raised by respondent No.3 that civil remedy is the appropriate remedy. In the opinion of this Court, respondent No.3 being instrumentality of the State acted in an arbitrary and unfair manner and the same is in violation of Article 14

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of the Constitution of India. The judgment in Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited AIR 2020 SC 2819 relied on by the learned counsel for respondent Nos.2 and 3 is based on a different factual situation and not applicable to the facts of the present case.

14. For the above reasons, the writ petition is allowed. Respondent No.3 is directed to forthwith make payment of the amount covered by the bills dated 26.11.2019 and 18.02.2020 along with interest at the rate of 9% per annum from the date of due date of payment to the petitioner within a period of four (4) days from the date of receipt of a copy of this order. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition stand closed.

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