

(2013) 08 KAR CK 0177
In the Karnataka High Court
Case No : WA No. 4172 of 2013 (GM-TEN)

M/s. Vahini Irrigation Private Limited

APPELLANT

Vs

Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 01-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 08 KAR CK 0177

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Muralidhar H.M., for Sree Ranga Assts, for the Appellant; P.D. Surana, for the Respondent

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—The order of the learned Single Judge dated 04.07.2013 passed in WP No. 26589/2013 is the subject matter of this appeal. Before the learned Single Judge, the petitioner who is the appellant herein had assailed the notice dated 15.06.2013 (Annexure-A) issued by the respondent-Corporation to the appellant. The facts leading to the issuance of the impugned notice can be briefly stated in the following manner;

The appellant herein had entered into an agreement with the respondent-Corporation dated 23.03.2013. The agreement was for utilization of the buses belonging to the Corporation for the transportation of luggage and by way of courier service. The terms and conditions of the agreement dated 23.03.2013 are at Annexure-K. The contract was for a period of five years commencing from 01.04.2013 to 31.03.2018. In terms of the said agreement, the appellant had also provided a bank guarantee for a sum of Rs. 1,56,60,000/-. The contract also envisaged that license fee to an extent of Rs. 52,20,000/- per month had to be paid to the Corporation with 10% annual increase in terms of the schedule mentioned in the contract. Contending that the appellant herein had not deposited the license fee in accordance with the agreement, final notice dated

15.06.2013 was issued to the appellant. The said notice was impugned by the appellant before the learned Single Judge. The learned Single Judge after hearing the matter has opined that the dispute is one which has to be examined by the Civil Court and cannot be considered in a Writ Petition filed under Article 226 of the Constitution of India. Therefore, while reserving liberty to the appellant to avail of any other appropriate remedy, having regard to the dispute relating to contract, the appellant was also granted time to deposit the amounts mentioned in the demand notice within a period of one week from the date of the said order. If the said amount was to be deposited, then the Corporation would not terminate the license. It is not brought to our notice that since the amount had not been deposited, the termination of the contract had also been made by the respondent-Corporation.

2. We have heard learned counsel for the parties and perused the material on record.

3. The main submission of learned counsel for the appellant is that while he would seek his remedies as against the Corporation before the Civil Court but the impugned notice which has been upheld by the learned Single Judge would in a way adversely affect the case of the appellant before the Civil Court. He has therefore contended that he may be permitted to raise all his contentions arising out of the contract entered into with the respondent-Corporation and make necessary prayers for interim as well as final reliefs before the appropriate court. He has also stated that till he seeks such interim relief, the respondent-Corporation may not precipitate the matter.

4. Learned counsel appearing for the Corporation has stated that since the order of the learned Single Judge was not complied with by the appellant, the Corporation had no other alternative but to terminate the contract and that steps would also be initiated for calling tenders to grant a fresh contract to the eligible person.

5. Having taken note of the nature of dispute between the parties which is essentially in the realm of the contract, we are of the view that the learned Single Judge was right in not going into all the contentions raised by the appellant on merits. We find that the termination of the contract which is based on the Final demand notice not being complied with by the appellant and the other contentions which the appellant could raise before the Civil Court would in a way affect the case of the appellant, if the demand notice is upheld by this Court. It is under these circumstances and to the limited extent that we interfere with the order of the learned Single Judge by holding that the order of the learned Single Judge would not come in the way of the appellant raising all such contentions that he would have with regard to the contract in question including Final demand notice dated 15.06.2013 as well as the termination before the appropriate Civil Court.

6. Having regard to the peculiar facts of the present case and also the fact that

the termination of the contract with the appellant has been made after the order of the learned Single Judge, we direct the respondent-Corporation not to take any steps for a period of one month from today with regard to awarding of similar a contract to any other person. We are constrained to make this direction as against the respondent-Corporation having regard to the fact that the Corporation has already invoked the bank guarantee given by the appellant herein. With the aforesaid observations and directions, the appeal is allowed to that extent.

The appellant may be returned the originals and other certified copies of the documents, which are required for pursuing an alternative remedy after copies of the same are replaced in the records.