(2013) 07 KAR CK 0223

In the Karnataka High Court

Case No : Writ Petition No. 26589 of 2013 (GM-TEN)

M/s. Vahini Irrigation Private Ltd. APPELLANT

Vs

Karnataka State Road Transport Corporation RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) 07 KAR CK 0223

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

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

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the impugned notice dated 15.06.2013 as at Annexure-A to the petition. The petitioner has also sought for issue of mandamus to consider the representations of the petitioner at Annexures-R, S, T and W to the petition. The brief facts are that the petitioner and the respondent have entered into an agreement dated 23.03.2013 whereby the petitioner has been permitted to carry out the courier services by carrying it in the bus belonging to the respondent corporation in accordance with the terms and conditions. A bank guarantee has also been furnished by the petitioner and on 25.02.2013. In that circumstance, the amounts which was agreed as payable by the petitioner to the respondent corporation per month is at Rs. 52,20,000/-. The contention of the petitioner herein is that though the agreement had been signed, the petitioner is not in a position to carry on his business for want of co-operation from the respondent and their employees. Hence, insofar as the manner in which the petitioner is to carry on with the work of courier services and recovering the amount, it is contended that the terms which bind the parties has not been followed by the respondent scrupulously Therefore, respondent-corporation is at fault. Insofar as the notice at Annexure-A which has been impugned, it is contended that the respondent was not justified in appropriating the sum of Rs. 52,20,000/- for the month of May 2013, and thereafter demanding another amount of Rs. 52,20,000/- for the month of June 2013. It is the case of the petitioner that the parties were bound by Clause 10 of the terms and conditions wherein the petitioner was required to pay the licence fee as agreed only after 40 days from the date of execution of the agreement. In that view, it is contended that the amount liable to be paid by the petitioner was to be paid only from June 2013 onwards. Hence, it is contended that the demand made vide Annexure A is not justified and the same is liable to be quashed.

2. The respondent-corporation has filed objection statement. It is contended that the date on which the agreement was to be completed has been agreed in the terms and conditions. The agreement was to be entered within 30 days from the date of intimation of the selection. Even as per the admission of the petitioner he has received the letter on 08.02.2013 and the agreement should have been executed within 30 days thereafter and he would have got 10 days subsequent thereto as a trial period. It is therefore, contended that the petitioner himself has committed default in executing the agreement within the time as provided but on request being made by the petitioner to show indulgence in executing the agreement, the request of the petitioner has been accepted and agreement has been entered subsequently. That in itself would not entitle the petitioner to contend that the period of 40 days is to be computed thereafter. In that circumstance, it is contended that the demand in Annexure-A is justified. Insofar as the allegation that the petitioner is unable to carry on business for want of cooperation is controverted by indicating that all cooperation has been extended and it is the petitioner who has defaulted and has also appointed certain sole agents which is contrary to the agreement. Hence, it is contended that the petition is liable to be dismissed.

3. Heard the learned counsel for the parties and perused the writ papers.

4. The contentions have been urged in the same lines as has been contended in the pleadings. Having noticed the averments as well as the contentions of the learned counsel I am of the opinion that insofar as the aspect as to whether the respondents have co-operated and as to whether the petitioner is carrying on his business in accordance with the terms of the agreement after the agreement was entered into are issues which cannot be decided in a writ petition where disputed questions of fact as to whether place has been provided, employees are co-operating are all issues which require necessary evidence to be recorded and thereafter a conclusion is to be reached. Even otherwise, if at all the petitioner is seeking specific performance of the agreement in its letter and spirit, it can only be done in an appropriate proceedings. The only question that arises for consideration in the instant petition is to arrive at a conclusion as to whether the respondent who is a statutory body has made unreasonable and arbitrary demand from the petitioner evidently contrary to the grant vide Annexure-A with the threat of the agreement being terminated, if the demanded amount is not paid.

5. In order to consider this aspect of the matter the position would be clear if the relevant term of the agreement is noticed. The agreement at Clause 10 reads as hereunder:

10. Agreement: The selected licensee shall enter into an agreement within 30 days of receiving selection intimation. Further additional 10 days will be given from the date of signing the agreement to start business. These 40 days are treated as trial period and the licensee need not pay license fee for this period.

6. From the reading of the said term, there could be no doubt that 40 days is to be taken into consideration from the date of receiving the selection intimation and the said 40 days would be considered as a trial period without the licence fee being paid. If this aspect of the matter is kept in view the terms would also indicate that the agreement is to be entered within 30 days from the date of intimation. Admittedly the petitioner has received intimation on 08.02.2013. Hence, the agreement ought to have entered within 30 days from the said date and the petitioner could have had further period of 10 days. The agreement has not been entered into as provided therein. In the mean while, the petitioner and the respondents have exchanged correspondences with regard to the execution of the agreement. It is relevant to take note of the notice dated 11.03.2013 (Annexure-R1) whereby the respondents have intimated the petitioner about the petitioner having managed to evade entering into the contract as provided under the agreement which had caused delay in entering the agreement. In that circumstance, the respondent had sought for the amount to be paid by petitioner and thereafter execute the agreement. Yet another letter dated 19.03.2013 was also issued as a final notice calling upon the petitioner to execute the agreement in the manner and also to pay the amount of Rs. 52,20,000/- and thereafter execute the agreement. The petitioner has furnished the bank guarantee. Pursuant to the said letter, the agreement was entered into by paying the sum of Rs. 52,20,000/- which had been demanded. Therefore, in a circumstance, where the petitioner had accepted the position at a juncture and paid the amount before executing the agreement, the correct position is to be taken into consideration. Even at that stage, it was open for the petitioner to contend with regard to the gestation period of 40 days and agitate if there was no default on their part. Having not done the same, at that juncture and having entered into the agreement, subsequently when the amount of Rs. 52,20,000/- is demanded by adjusting the amount which had already been paid for the earlier period, the petitioner cannot complain at this stage to contend that the demand made is arbitrary or that the said amount is not liable to be paid and the amount paid earlier should have been adjusted from the month of June 2013.

7. In that view of the matter, in the limited scope available to this Court in examining this aspect under Article 226 of the Constitution of India, I am of the opinion that no fault could be found with the notice which has been issued by the respondent which is impugned at Annexure-A. If at all the petitioner has any other remedies with regard to the contractual aspects of the matter it is always

open for the petitioner to approach the appropriate forum. It is further clarified the since the petitioner was before this Court assailing the demand notice and since it has been upheld, it would be open for the petitioner to pay the amount within one week. If the payment is made as demanded, the respondent shall receive the same and shall not terminate the licence for the reason indicated in the notice.

In terms of the above, petition stands disposed of.

