(2023) 11 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2772 Of 2023, Civil Miscellaneous No. 6591 Of 2023

M/S X Adventure Travels — APPELLANT

Vs

UT Of J&K & Ors — RESPONDENT

Date of Decision : 17-11-2023

Acts Referred:
Constitution Of India, 1950 — Article 12, 14, 16, 226, 299

Citation : (2023) 11 J&K CK 0038

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : F. A Wani, Ilyas Laway

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1) The petitioner has sought a Writ of Certiorari for quashing the cancellation of bookings of the huts at Gulmarg effected by the respondents. A further direction has been sought upon the respondents restraining them from making fresh bookings of the huts.

2) As per case of the petitioner, it is a duly registered Adventure and Sports Tour Operator and that it has obtained the requisite registration from the respondent Department of Tourism, Government of Jammu and Kashmir. It has been submitted that the petitioner booked five bed room huts vide order ID No.183272-183274 dated 04.12.2023 for providing service of adventure and sports facilities to the tourists against the payment of Rs.8,81,280/. On 5th August, 2023, a communication was received by the petitioner from the respondents whereby it was informed that the tariff has been revised @Rs.6480/ extra per day. This was objected to by the petitioner by submitting its response but on 13th October, 2023, the respondents again asked the petitioner to deposit the revised tariff within three days failing which the booking was to be cancelled.

The petitioner is stated to have made a representation to the respondents but on 18th October, 2023, the respondents proceeded to cancel the booking of the petitioner.

3) The petitioner has challenged the action of the respondents on the ground that once booking was made by the petitioner, it was not open to the respondents to revise the tariff and ask for additional charges from it. It has been further contended that on account of action of the respondents, the petitioner has suffered huge losses and that the action of the respondents is violative of Articles 14 and 16 of the Constitution.

4) Reply to the writ petition has been filed by the respondents in which it has been admitted that the petitioner is a registered travel agent with the respondents. It has been further submitted that the respondent J&K Tourism Department Limited is a company incorporated under Companies Act, 2013. It has been submitted that the registered travel agents of the respondent Corporation are permitted to effect bookings of accommodation on the tariff fixed by it and in turn they get a reasonable commission for this service. It has been submitted that the petitioner had booked a hut at Gulmarg from 24.12.2023 to 01.03.2024 under three different IDs for a total amount of Rs.8,81,280/ and for this booking, the petitioner earned a commission of Rs.81,600/. According to the respondents, the petitioner had made bookings in its own name which contravenes Clause (7) of the Cancellation Policy, according to which sub-letting by a person including a registered travel agent is prohibited. It has been submitted that the petitioner has made bookings for the purpose of sub-letting to third parties which has been admitted by it in its communication dated 9th August, 2023. Thus, the booking was liable to be cancelled, which has been done by the respondent Corporation and the booking amount has been refunded to the petitioner.

5) I have heard learned counsel for the parties and perused record of the case.

6) Learned counsel for the respondents has raised a preliminary objection to the maintainability of the writ petition on the ground that the dispute projected by the petitioner in the instant writ petition is purely contractual in nature, as such, remedy for the petitioner was to file a suit against the respondent Corporation and that the writ petition is not maintainable. On the other hand, learned counsel for the petitioner has contended that the action of the respondent Corporation is arbitrary in nature, as such, the instant petition is maintainable.

7) The admitted facts which emerge from the pleadings of the parties are that the petitioner is a travel agent registered with respondent Corporation. It is also admitted that the petitioner had made booking of a hut at Gulmarg by making payment of certain amount. According to the petitioner, the respondents could not have demanded additional amount by way of revised tariff and they could not have cancelled the booking when the petitioner did not deposit the said amount. On the other hand, the respondent Corporation contends that the petitioner has

made bookings in its own name with an intention to sub-let the accommodation to third parties, which is not permissible under Clause (7) relating to Cancellation Policy.

8) From the above it is clear that the dispute between petitioner and the respondents is purely contractual in nature. Even though the respondent Corporation qualifies to be a State within the meaning of Article 12 of the Constitution of India, the question that arises for consideration is as to whether for enforcement of purely contractual obligations, a writ can be issued against an instrumentality of the State. The aforesaid question has been a subject matter of discussion before the Supreme Court in a number of cases. It would be appropriate to notice some of the decisions rendered by the Supreme Court on this issue.

9) In Lekhraj Satramdas vs. Deputy Custodian-cum-Managing Officer, AIR 1966 SC 334, the Supreme Court has observed that until and unless in the breach is involved violation of certain legal and public duties or violation of statutory duties to the remedy of which the petitioner is entitled by issuance of a writ of mandamus, mere breach of contract cannot be remedied by the Court in exercise of its powers under Article 226 of the Constitution. It was further observed that any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution. Similarly, the Supreme Court has, in the case of Banchhanidhi Rath vs. State of Orissa, (1972) 4 SCC 781, held that if a right is claimed in terms of a contract, such a right cannot be enforced in a writ petition.

10) In M/S Radhakrishna Agarwal and others vs. State of Bihar and others, (1977) 3 SCC 457, the Supreme Court, while upholding the judgment of Patna High Court, discussed different types of cases relating to contracts with the State and the exercise of jurisdiction under Article 226 of the Constitution of India. The Supreme Court divided such cases into three categories. In this regard, paras 10 to 15 of the judgment are relevant to the context and the same are reproduced as under:

10. It is thus clear that the Erusian Equipment & Chemicals Ltd. case involved discrimination at the very threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all. At this stage, no doubt, the State acts purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by

contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract.

11. In the cases before us the contracts do not contain any statutory terms or obligations and no statutory power or obligation which could attract the application of Article 14 of the Constitution is involved here. Even in cases where the question is of choice or consideration of competing claims before an entry into the field of contract facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by talking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. Such proceedings are summary proceedings reserved for extraordinary cases where the exceptional and what are described as, perhaps not quite accurately, “prerogative” powers of the Court are invoked. We are certain that the cases before us are not such in which powers under Article 226 of the Constitution could be invoked.

12. The Patna High Court had, very rightly, divided the types of cases in which breaches of alleged obligation by the State or its agents can be setup into three types. These were stated as follows:

“(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.”

13. It rightly held that the cases such as Union of India v. Anglo-Afgan Agencies [AIR 1968 SC 718 : (1968) 2 SCR 366 : (1968) 2 SCJ 889] and Century Spinning & Manufacturing Co. Ltd. v. Ulhas nagar Municipal Council [(1970) 1 SCC 582 : (1970) 3 SCR 854] and Robertson v. Minister of Pensions [(1949) 1 King's Bench 227] , belong to the first category where it could be held that public bodies or the State are as much bound as private individuals are to carry out obligations incurred by them because parties seeking to bind the authorities have altered their position to their disadvantage or have acted to their detriment on the strength of the representations made by these authorities. The High Court thought that in such cases the obligation could sometimes be appropriately

enforced on a writ petition even though the obligation was equitable only. We do not propose to express an opinion here on the question whether such an obligation could be enforced in proceedings under Article 226 of the Constitution now. It is enough to observe that the cases before us do not belong to this category.

14. The Patna High Court also distinguished cases which belong to the second category, such as K.N. Guruswamy v. State of Mysore [(1955) 1 SCR 305 : AIR 1954 SC 592] ; DFO South Kheri v. Ram Sanehi Singh [(1971) 3 SCC 864] and Shri Krishna Gyanoday Sugar Ltd. v. State of Bihar [AIR 1975 Pat 123 : 1975 BLJR 192] , where the breach complained of was of a statutory obligation. It correctly pointed out that the cases before us do not belong to this class either.

15. It then, very rightly, held that the cases now before us should be placed in the third category where questions of pure alleged breaches of contract are involved. It held, upon the strength of Umakant Saran v. State of Bihar [(1973) 1 SCC 485 : (1972) 2 LLJ 580] and Lekhraj Satramdas v. Deputy Custodian-cum-Managing Officer [AIR 1966 SC 334 : (1966) 1 SCR 120] and B.K. Sinha v. State of Bihar [AIR 1974 Pat 230 : 1973 BLJR 657] that no writ or order can issue under Article 226 of the Constitution in such cases "to compel the authorities to remedy a breach of contract pure and simple".

11) From the foregoing analysis of the law on the subject, it is clear that at the time of entering into contract, the State and its instrumentalities are obliged to act fairly and avoid discriminating against any person. If the action of the State at the time of entering into a contract is unreasonable or arbitrary, the same is liable to be struck down being in violation of Article 14 of the Constitution and in these matters the writ petition would lie even where the State or its instrumentalities are entering into a contract with a third party. A writ petition would also lie in a case where the contract entered into between the person aggrieved and the State is in exercise of a statutory power. However, once the State or its agents have entered into a field of ordinary contract, the relations are not to be governed by the constitutional provisions but by the terms of the contract.

12) Adverting to the facts of the instant case, the petitioner entered into a contract with the respondent Corporation by making booking of huts. It is not the case of the petitioner that booking has not been made in its favour by the respondent Corporation by acting unreasonably or arbitrarily. The dispute between the petitioner and the respondent Corporation arose once the petitioner made the bookings and the amount was accepted by the respondent Corporation. The dealings between the petitioner and the respondent Corporation ripened into a concluded contract between the parties. The relations between petitioner and the respondents thereafter were to be governed by the obligations and rights arising out of the contract that was entered into by the petitioner with the respondent Corporation. The rights and obligations of the parties were to be governed by the terms of the contract and not by the constitutional or statutory

provisions.

13) As already stated, while the petitioner claims that the respondent Corporation could not ask for revised/enhanced tariff, on the other hand, the respondent Corporation claims that the petitioner could not make bookings in its own name and sublet the huts to third parties. This dispute between the parties is purely contractual in nature and is to be determined in accordance with the terms and conditions of the contract that may have been arrived at between the parties. Therefore, despite the fact that the respondent Corporation is an instrumentality of the State within the meaning of Article 12 of the Constitution of India, this Court cannot exercise its extraordinary writ jurisdiction to determine the dispute between the parties which is purely contractual in nature.

14) For the foregoing reason, the writ petition is held to be not maintainable and is dismissed as such leaving it open to the petitioner to workout appropriate remedy.

