(2009) 04 KAR CK 0107

In the Karnataka High Court

Case No : Writ Appeal No''s. 1951 and 2012 of 2007

Mysore Minerals Ltd.	APPELLANT
Vs	
Veerabhadra Vahana Engineers Pvt. Ltd. Veerabhadra Vahana Engineers Pvt. Ltd. Vs Mysore Minerals Ltd.	RESPONDENT

Date of Decision : 24-04-2009

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 226, 227

Citation : (2009) ILR (Kar) 2339 : (2009) 4 KarLJ 711

Hon'ble Judges : P.D. Dinakaran, C.J;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Chandrakanth R. Goulay, in W.A. No. 1951/2007 and Basavaprabhu S. Patil and Associates in Writ Appeal No. 2012/2007, for the Appellant; Basavaprabhu S. Patil Associates in W.A. No. 1951/2007 and Chandrakanth R. Goulay in Writ Appeal No. 2012/2007, for the Respondent

Final Decision : Dismissed

Judgement

1. These two writ appeals arise out of the order passed by the learned Single Judge in W.P. No. 12727/2004 dated 23/6/2007 and 3.8.2007 wherein the learned Single Judge has allowed the writ petition and quashed the communication dated 14.10.2003 and has directed the respondent - M/s. Mysore Minerals Ltd., to supply the balance quantity of Iron Ore Fines at the rate which was prevailing as on the date of filing the writ petition and has further directed the writ petitioner to pay interest on Rs. 40 lakhs at the rate of 6% p.a. from 14.10.2003 till the date of payment and has ordered that revised rate shall not carry any interest.

2.1. The material facts of the case leading upto these appeals with reference to the rank of the parties in the writ petition are as follows:

2.2. W.P. No. 12727/2004 was filed seeking for quashing of the communication dated 14.10.2003 issued by the respondent in the writ petition and for directing the respondent to honour its commitment under the letter of intent-Annexure-D to the writ petition.

3. It is averred in the writ petition that the writ petitioner is a Private Limited Company registered under the Companies Act, 1956. The petitioner, has been registered for the purpose of carrying on business in automobile components and also dealing in minerals. The respondent is a company wholly owned by the Government of Karnataka and hence a ''State'' as defined under Article 12 of the Constitution of India. The petitioner was in need of one million tons of Iron Ore fines and enquired with the respondent regarding availability of Iron Ore Fines of +65% fee grade. The respondent confirmed that such a quality of Iron Ore Fines will be available and the petitioner gave a letter of offer confirming the requirement of the petitioner on 5.8.2003 and in reply to the said letter of offer, respondent issued a letter of intent on 18.8.2C03 as per Annexure-B to the writ petition and respondent assured supply of one lakh MT of +65% Fee grade Iron Ore Fines at Rs. 100/- per dry PDMT including royalty, forest permit charges, cess and applicable taxes, if any excluding loading charges. Regarding terms of payment, the respondent stipulated that 50% of the total value of the allotted quantity should be paid as advance within seven days from the date of letter of intent and balance of 50% to be paid before lifting the second half instalment of the allotted quantity. The duration of supply was 90 days from the date of receiving the delivery order. As per the letter of intent issued by the respondent, petitioner deposited Rs. 40 lakhs being 50% of the total value of the allotted quantity excluding royalty charges on 27.8.2003 as per letter produced at Annexure-G to the writ petition and the said amount of Rs. 40 lakhi has been received by the respondent without any demur and encashed. The respondent issued lifting order for release of Iron Ore Fines equivalent to Rs. 40 lakhs and also called upon the petitioner to pay the balance 50% of the value of the allotted quantity by letter dated 28.8.2003. Based on the letter of intent end the lifting order, the petitioner entered into a contract with their foreign buyer - M/s. Adani Global Pvt. Ltd., Singapore, for supply of one lakh MT +65% Fee Iron Ore Fines as per the contract dated 8.9.2003. On the basis of the lifting order, petitioner approached respondent and started lifting Iron Ore Fines from Subbarayanahalli Iron Ore Mines, Sanclur Taluk, Bellary District and petitioner has so far lifted only 28,688.860 MT of Iron Ore Fines. In the meanwhile, to the great shock and surprise of the petitioner, the respondent issued a letter dated 14.10.2003 unilaterally reducing the quantity of Iron Ore Fines agreed to be supplied by the respondent to the petitioner from one lakh MT to 50,000 MT on the reason that Subbarayanahalli Iron Ore Mines is facing lot of problems from Forest Department, PWD, MOEPCD and in view of the same, the company is not in a position to release the entire quantity of Iron Ore Fines and restricted the Iron Ore Fines to the extent of advance amount received from the petitioner and to cancel the remaining quantity. Immediately, on receipt of the said letter issued by the respondent unilaterally reducing the quantity of the iron ore fines from one lakh MT to 50,000 MT, the petitioner wrote to the respondent requesting the respondent not to reduce the quantity unilaterally and brought to the notice of

the respondent that the petitioner has already entered into a contract with its foreign buyer and that serious hardship would be caused by such reduction. However, the respondent did not respond to the said letter. It is further averred that in view of the promise held out by the respondent, petitioner entered into contract with foreign buyer and in view of the unilateral act or the part of the respondent in reducing the quantity of iron ore fines agreed to be sold, the petitioner has suffered financial loss and Bank had sanctioned financial facility to s sum of Rs. 4.25 crores for a maximum period of 45 days. At the time when the initial purchase order was placed by the petitioner on the respondent for supply of one lakh MT of Iron Ore Fines, there were only ten buyers in favour of whom the respondent had agreed to supply about 10 lakh MT of Iron Ore Fines. In view of the very few number of buyers, there was no restriction whatsoever in the movement of trucks for taking delivery of Iron Ore Fines from Subbarayanshalli Iron Ore Mines and the respondent has started to supply Iron Ore Fines to about 43 other purchasers/contractors at a higher price than what was agreed with the petitioner. In view of the increase in the number of buyers, there was heavy rush. The number of vehicles to take delivery of the material also increased thereby causing rush in the movement of vehicles and because of this, the respondent has now restricted the number of trips per buyer from unlimited to only five trips per day thereby reducing the quantity of delivery of iron ore fines to the petitioner. The respondent ought to have treated the petitioner''s on priority basis and ought to have delivered the iron ore fines as agreed to between the petitioner and the respondent within the time stipulated under the purchase order and the respondent being a wholly owned undertaking of the State Government and having entered into contract with the petitioner for supply of one lakh MT within 90 days from the date of Issue of purchase order and inducing the petitioner to alter its position to the detriment of the petitioner ought to have struck to the contract and ensured that the commitment is honoured and the conduct of the petitioner has made the petitioner change its position by borrowing from Canara Bank to an extent of Rs. 4.25 crores for a period of 45 days and petitioner has suffered heavy financial loss and the respondent has been producing more than 2500 MT Iron Ore Fines per day even as on date of the filing of the writ petition and the supply of Iron Ore Fines to other purchasers at a higher price and therefore, the impugned communication is liable to be quashed as sought for in the writ petition.

4. The respondent filed statement of objections contending that the writ petition is not maintainable as the petitioner complains of breach of contract which has to be worked out in a suit and the same is not amenable to writ jurisdiction of this court under Articles 226 and 227 of the Constitution of India. It is the petitioner who has committed breach of contract and supply of Iron Ore Fines was subject to availability of Iron Ore Fines and due to the problems from Forest Department, PWD, MOEPCD, the respondent could not supply one lakh MT of iron ore fines to the writ petitioner and therefore restricted the supply of iron ore fines in respect of the amount received from the petitioner to the value of Rs. 40 lakhs and

therefore, the impugned order is justified and does not call for interference in the writ petition.

5. Additional statement of objections is filed by the respondent contending that the letter of intent was issued subject to the condition that iron ore fines would be supplied at the rate of Rs. 100/- PDMT stating that on the basis of the request letter made on 5.8.2003 50% of the value was to be paid before lifting the second half installment of the allotted quantity and that the duration for all these transactions was ninety days from the date of receiving receipt of delivery order. Admittedly, petitioner has not paid 100% value of the allotted quantity before 90 days and the petitioner has paid the total amount as indicated by him as per Annexure-C only on 28.8.2003 which is the 50% of the total value. The respondent has supplied 47,797,210 MTS of iron ore fines on different dates and the balance quantity of 202.920 MTS shall be supplied and having regard to the problems faced from forest department, PWD and environmental department, the respondent was not in a position to supply one lakh MT of iron ore fines as per the letter of intent and therefore, the respondent-Company has decided to restrict the quantity offered to be supplied, amount of advance paid by the writ petition and the special action has been taken to other persons also to whom letter of intent has been issued. Additional statement of objections was again filed by the respondent reiterating the averments made in the additional objections statement and producing letter which has been issued in respect of other purchasers restricting the supply of iron ore fines and in the event the petitioner is given relief as sought for in the writ petition, the same would have a serious effect on other persons in respect of whom also the letter of intent has been modified and the respondent-company has released iron ore fines to other purchasers but only in respect of those who have paid the amount and released the quantity of iron ore fines on different dates, therefore, the impugned communication is justified and does not suffer from any error or illegality as to call for interference in the writ petition.

6. Learned Counsel appearing for the petitioner argued reiterating the averments made in the writ petition and learned Counsel appearing for the respondent argued reiterating the averments made in the objections statement and the additional objections statement before the learned Single Judge and the learned Single Judge by order dated 3.8.2007 held that even in respect of contractual matter writ petition can be entertained when facts are not in dispute and further held that the reduction of quantity of iron ore fines agreed to be supplied from 50000 PDMT to 8860 PDMT and enhancement of price from Rs. 175/-PDMT to Rs. 350/-PDMT was not justified and the respondent could not have unilaterally reduced the quantity at the rate which was prevailing as on the date of filing of the writ petition and further held that since the writ petitioner had not paid the balance of Rs. 40 lakhs being the value of 50000 MT in 2003 writ petitioner should pay the said amount with interest at 6% from 14.10.2003 till the date of payment and the differential amount of revised price shall not carry any interest and if there would be any dispute regarding the prevailing price in March, 2004

i.e. the date of filing of the writ petition-the Director of Mines the same shall be placed before the Director of Mines and the Director of Mines shall fix the price taking into account the respondent-company''s rate and the Mines and Minerals Trading Corporation''s rate and accordingly, disposed of the writ petition directing the petitioner to pay the amount within two weeks from the dale of the receipt of the order and/or demand notice and thereafter within one week from the date of receipt of the amounts, the respondent shall issue the lifting order and shall also facilitate the lifting or iron ore by the petitioner. Being aggrieved by the order of the learned Single Judge regarding the direction issued to the respondent, the respondent has preferred WA.No.1951/2007 and the writ petitioner being aggrieved by the direction issued by the learned Single Judge in the impugned order in so far as it relates to the wilt petitioner to deposit the amount of Rs. 40 lakhs with Interest at 6% from 14.10.203 till the date of payment and directing that the price for supply of 50000 PDMT iron ore fines at the rate prevailing on the date of petition-March, 2004, writ petitioner has preferred WA.2012/2007.

7. We have heard the learned Counsel appearing for the appellant-writ petitioner and the learned Counsel appearing for the respondent in the writ petition-M/s. Mysore Minerals Ltd.

8. Learned Counsel appearing for M/s. Mysore Minerals Ltd., submitted that the learned Single Judge was not justified in entertaining the writ petition in exercise of the writ jurisdiction of this court as the matter pertains to post contract period and the fact as to whether there was breach of contract was disputed and the learned Single Judge has failed to note that the writ petitioner himself has committed breach of contract by not making the payment of the value of the iron ore fines which was agreed to be sold as per the letter of intent which was subject to availability of iron ore fines and apart from Rs. 40 lakhs which is the price of 50% of the value, the writ petitioner has not paid any amount and contract period was only 90 days and therefore, the learned Single Judge ought to have dismissed the writ petition and was not justified in allowing the writ petition by giving direction to the respondent in the writ petition to supply 50000 PDMT at the rate prevalent on the date of the writ petition.

9. On the other hand, learned Senior Counsel appearing for the writ petitioner submitted that the learned Single Judge having held that the respondent is liable to supply 50000 PDMT of iron ore fines at the rate was not justified in ordering that the said iron ore fines shall be supplied at the rate prevalent as on the date of the writ petition and ought to have ordered that the rate prevalent on the date of letter of intent-18.8.2003. The learned Senior Counsel further submitted that the learned Single Judge was not justified in imposing interest on Rs. 40 lakhs directed to be deposited by the writ petitioner as 50% of the remaining value of iron ore fines has to be paid before lifting the second installment of allotted quantity and to that extent the order passed by the learned Single Judge is liable to be modified.

10. We have given careful consideration to the contention of the learned Counsel

appearing for the parties and scrutinised the material on record.

11. The law on the point is well settled by the Apex Court in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , wherein the following earlier decisions of the Apex Court are referred to:

(i) K.N. Guruswamy Vs. The State of Mysore and Others, .

(ii) Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, .

(iii) State of M.P. v. Thakur Bharat Singh AIR 1967 SC 1170.

(iv) DFO v. Ram Sanehi Singh (1973)3 SCC 864.

(v) Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, .

(vi) Radhakrishna Agarwal and Others Vs. State of Bihar and Others, .

(vii) Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another, .

(viii) Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., .

(ix) Life Insurance Corporation of India Vs. Escorts Ltd. and Others, .

(x) Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, .

(xi) Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, .

(xii) Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, .

(xiii) LIC of India and Another Vs. Consumer Education and Research center and Others, .

(xiv) C. Ali Vs. State of Kerala, .

(xv) Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, .

(xvi) Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, .

12. In ABL International Ltd. (supra) the following principles have been laid down by the Hon''ble Supreme Court regarding scope of interference in contractual matters in exercise of the writ jurisdiction of this Court:

(i) Judicial review is permissible both at the pre contract stage and post contract stage though the scope of interference varies depending upon the stage of review. The scope of judicial review in post contractual matters is very much narrower.

(ii) In pre contract stage the action of the State of its instrumentality has to satisfy the test of reasonableness as enunciated by the Supreme Court in various decisions interpreting. Article 14 of the Constitution of India. Action should be fair, just, reasonable and devoid of arbitrariness.

(iii) The pre contract stage squarely falls within the realm of public law character and, therefore, the decision must not only be tested by principles of Wednesbury''s principles of reasonableness but must be free from arbitrariness not affected by bias or actuated by mala fides.

(iv) Post contract stage falls within the realm of private law. But nonetheless the requirement of Article 14 and contractual obligations are not alien concepts. They can co-exist.

(v) Every holder of a public office by virtue of which he acts on behalf of a State or public body is ultimately accountable to the people in whom sovereignty vests. Therefore, even in this private law sphere when a public officer exercises power if is in the nature of a public duty and, therefore, as his action is in import of public interest that factor alone is sufficient to import at least the minimum requirements of public law obligations. The requirement of Article 14 being the duty to act fairly, justly and reasonably, such action of a public officer in discharge of public duty should conform to the said requirement of law.

(vi) The order terminating a contract on the ground of breach of terms of the contract is not vitiated for not disclosing the reasons, the application of mind, by way of consideration of the case of the defaulting party. Such an order when challenged in court could be justified by producing the relevant records and showing the application of mind to the said material after following the principles of natural justice which would meet the requirement of law as courts are only concerned with the process of decision making and not the decision itself.

(vii) When some defect is found in the decision making process, the court must exercise its discretionary power under Article 226 with great caution and circumspection and should exercise if only in furtherance of public interest and not merely on the making out a legal point.

(viii) Writ petition against a State and its'' instrumentality, arising out of contractual obligation is maintainable. Even disputed Questions of fact could be gone into, if necessary by recording of evidence. Monetary claims can also be entertained. But the normal rule is not to entertain such claims. But, only in exceptional cases when the circumstances warrant such an interference, the court has the power and could be exercised. In other words, only in rarest of rate cases the exercise of power is justified. It is not want of power or jurisdiction. It is a case of self restraint.

(ix) A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by State or a statutory body.

(x) The interpretation and implementation of a covenant in a contract ordinarily cannot be the subject matter of writ petition, and the same has to be determined according to the principles of the Contract Act.

13. It is clear from the averments made in the writ petition as also the statement of objections and additional statement of objections filed by the respondents that the subject matter of the writ petition is in respect of the contractual matter in respect of letter of intent issued by the respondent in the writ petition for supply of one lakh ton +65% iron ore fines at the rate of Rs. 100/-PDMT. The contents of letter of intent are not in dispute. However, the rival contention of the parties involves interpretation of the conditions of letter of intent-Annexure-B to the writ petition dated 18.8.2003. According to the writ petitioners, there is breach of contract on the part of the respondent and respondent unilaterally reduced the quantity of iron ore fines agreed to be sold when the writ petitioner had changed his position on the basis of the representation made by the respondent for supply of one lakh MT of +65% grade iron ore fines and the quantity agreed to be supplied could not be unilaterally reduced to 50000 MT and therefore, there is dispute about the contents and interpretation of the letter of intent and also about the breach of contract alleged by respective parties.

14. It is clear from the letter of intent that the said letter of intent was valid for ninety days from the date of receipt of delivery order. One lakh MT of +65% grade iron ore fines was agreed to be supplied at the rate of Rs. 100/- PDMT including royalty, forest permit charges, cess and applicable taxes if any excluding loading charges and so far as payment is concerned, 50% of the allotted quantity was liable to be paid as advance within seven days from the date of letter of Intent dated 18.8.2003 and the second 50% of the remaining value should be paid before lifting of second half of installment of the allotted quantity and however, duration was ninety days from the date of receipt of delivery order. Petitioner has made payment of Rs. 40 lakhs on 27.8.2C03 by way of four demand drafts for Rs. 20 lakhs, Rs. 9 lakhs, Rs. 6 lakhs and Rs. 5 lakhs respectively drawn in favour of the respondent issued by different Banks and apart from making the said payment, the petitioner has not made payment of the value of balance 50% of the iron ore fines agreed to be supplied as per the letter of intent.

15. The scrutiny of the material on record would further show that since there was problem in the mining area in Subbarayanahalli Iron Ore Mines by forest department, PWD and environmental authorities, the respondent could not supply 50000 PDMT of +65% grade iron ore fines. However, every effort was made by the respondent to supply Iron ore fines on different dates as referred to in the objections statement referred to above and it is not in dispute that 50000 PDMT of +65% iron ore fines have been supplied and the value of the same comes to Rs. 40 lakhs. The fact that balance of Rs. 40 lakhs value of the remaining 50000 POMT of +65% grade iron ore fines has not been deposited by the writ petitioner cannot be disputed and there is dispute between the petitioner and the respondent on the said question of fact as to whether the said amount was payable within 90 days as the period for which the letter of intent was put in force or at the time of lifting 50000 PDMT of iron ore fines as per the delivery order can be decided only after recording the evidence of the parties and cannot

be gone into in exercise of the writ jurisdiction of this court and having regard to the contentions of the writ petitioner and the respondent, it is clear that the contentions raised by the writ petitioner could not have been entertained in exercise of the writ jurisdiction of this court and the learned Single Judge was not justified in proceeding on the basis that relief could be granted on the basis of the admitted facts merely oh the ground that the respondent is a State Government undertaking.

16. The learned Single Judge failed to note that mere fact that the respondent is a State Government undertaking would not enlarge the jurisdiction of this court in writ jurisdiction specially in respect of contentions regarding disputed questions of fact pertaining to contract after the contract was complete i.e. for the post contract period. The learned Single Judge failed to note the disputed contentions in the present case involved detail investigation of the question of the fact and the same could not have been gone into in exercise of writ jurisdiction of this court and when there is contention regarding disputed questions of fact and interpretation of the Clause in the contract, the parties have to work out their remedy before the competent civil court and cannot be granted relief in exercise of the writ jurisdiction of this court and this court cannot substitute the contract the contract in terms of the contract as ordered by the learned Single Judge.

17. It is clear from the reasoning of the learned Single Judge himself that even as per the finding given by him, the writ petitioner had not deposited Rs. 40 lakhs which was for the value of 50000 PDMT in 2003. However, the learned Single Judge has observed that the said contentions can be compensated by awarding 6% interest from 14.10.2003 till the date of payment. When once the learned Single Judge held that the writ petitioner has not deposited Rs. 40 lakhs being the value for 50000 PDMT in 2003, the learned Single Jude could not have granted any relief to the writ petitioner as on the said finding itself the writ petitioner would not be entitled to any relief as sought for in the writ petition, further, the learned Single Judge having found that the question of supply of iron ore fines at the rate of Rs. 100/- PDMT as per the letter of intent would not arise and could not have ordered that the supply of balance quantity should be made at the rate prevalent on the date of the writ petition. The learned Single Judge ought to have considered as to whether there was breach of contract on the part of the petitioner or the respondent and as to whether the said contentions can be gone into in a writ petition or party should be relegated to competent civil court for working out remedy in respect of contract entered into between the petitioner and the respondent.

18. In any view of the matter, the terms of the contract could not be changed by the learned Single Judge and the said contract could not have been substituted by fresh terms of the contract as done by the learned Single Judge and therefore, the learned Single Judge was not justified in entertaining the writ petition and allowing the writ petition by compelling the respondent to supply

50000 PDMT of iron ore fines as per the letter of intent and permitting the petitioner to deposit the value of the said 50000 PDMT though without considering as to whether having found that there was breach of contract on the part of the writ petitioner and writ petitioner was not entitled to any relief in the writ petition. In any view of the matter, if is clear that the learned Single Judge was not at all justified in going into the disputed questions of fact as per the rival contentions of the petitioner and the respondent and ought to have relegated the parties to civil court to work out their remedy if the party suffered any loss or damage due to breach of contract as alleged by the writ petitioner.

19. In a similar matter, wherein there was a modification of the letter of intent by the respondent herein-M/s. Mysore Minerals Ltd., we have upheld the reasoning of the learned Single Judge that contentions regarding interpretation of contract on disputed questions of fact cannot be gone into in the writ petition and parties are relegated to the suit as per separate judgment in Writ Appeal No. 2755/2005. Accordingly, we hold that the order passed by the learned Single Judge is unsustainable and the same is liable to be set aside and the writ petition is liable to be dismissed respondent and the said proceedings shall be decided independently on the basis of the evidence adduced by the parties and without being influenced by any of the observations made in this order.

20. Accordingly, we pass the following:

ORDER

(i) Writ Appeal No. 1951/2007 is allowed.

(ii) Writ Appeal No.2.012/2007 is dismissed.

(iii) The order dated 3.8.2007 passed by the learned Single Judge writ petition No. 12727/2004 is set aside and writ petition No. 12727/2004 is dismissed, however, it is made clear that the dismissal of writ petition will not preclude the writ petitioner to work out its remedy, in accordance with law in the competent civil court and any observations made in this order pertaining to the contract between the petitioner and the respondent shall not influence the said competent court to decide the relief sought for by the writ petitioner to work out its remedy regarding contract between the petitioner and the respondent and the said proceedings shall be decided independently on the basis of the evidence adduced by the parties and without being influenced by any of the observations made in this order.

