

(2012) 08 AP CK 0094
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 121 of 2012

NCC-IVRCL-SMC (JV)

APPELLANT

Vs

Andhra Pradesh Industrial Infrastructure Corporation Ltd.

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2012) 6 ALT 263

Hon'ble Judges : Pinaki Chandra Ghose, Acting C.J.; Vilas V. Afzulpurkar, J

Bench : Division Bench

Advocate : S. Niranjan Reddy, for the Appellant; P. Roy Reddy, S.C. for APIIC, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Sri Pinaki Chandra Ghose, Acting Chief Justice

1. This appeal is directed against the order of the learned Single Judge dated 19th December, 2011 passed in Writ Petition No. 31794 of 2010, dismissing the writ petition filed by the writ petitioner-appellant. The appellant was awarded the work of Somasila Drinking Water Supply Scheme by the respondents-Andhra Pradesh Industrial Infrastructure Corporation Ltd. (APIIC). An agreement dated 24.9.2008 was entered into between the appellant and the APIIC. The work was to be completed within a period of 12 months. However, the appellant alleges that the respondents asked it not to proceed with the work during December, 2009. By that time, the appellant claims to have completed more than 34% of the work. The appellant submitted running account bills for the works executed by it, but only two payments were released and no payments were made against running account bill No. II. According to the appellant, these bills were certified by the respondents. On 13.7.2009 and 5.2.2010 also, the appellant claims to have submitted the bills but the same were not even certified and payment released. By its letters dated 21.1.2010, 22.3.2010 and 29.5.2010, the appellant requested the APIIC to grant permission to resume the work and to release the

outstanding payments. Thereafter also, the appellant submitted representations to the APIIC, but even after lapse of 19 months, the APIIC failed to make payments as stipulated in the agreement dated 24.9.2008. Therefore, the writ petition.

2. The Hon'ble Single Judge observed that Clause 61 of the agreement dated 24.9.2008 specifically deals with a situation where the work was suspended by the contractor on his own, and Clause 73 provides for arbitration in case of any dispute or difference between the parties to the contract. It was further noted that there is a serious dispute between the parties with regard to the circumstances under which the work was discontinued, and admittedly, the representation is for release of payments against the bills submitted by the appellant. The Hon'ble Single Judge further observed that the agreement contained various provisions for settlement of disputes and if the appellant is aggrieved, it can avail the said remedies for redressal, and no mandamus can be issued as prayed for.

3. In the appeal, it is contended by the learned Senior Counsel appearing for the appellant that stoppage of work was at the instructions of the officers of the APIIC, and there is no explanation why no arbitration proceedings were initiated by the APIIC if the appellant committed breach of the contract since December, 2009. There was not even a single communication from the APIIC to the appellant that the stoppage of work for over 12 months was by the appellant on its own accord and not on any instructions of the respondents. The appellant made repeated requests to the respondents to grant permission to re-commence the work, however, there was no response, and, therefore, neither the respondents could contend nor the learned Single Judge could conclude that there was any dispute between the parties in respect of stoppage of work.

4. The learned Senior Counsel argued that there is no dispute that at least 31% work has been completed by the appellant and that the bills have been certified and referred to the Head Office for further action. Further, there is no "dispute" which can be referred to arbitration and, therefore, the appellant should not be driven to the alternative remedy of arbitration. The learned Senior Counsel submitted that the APIIC being a statutory Corporation cannot be allowed to act arbitrarily in discharge and performance of its statutory duty when it entered into an agreement making the appellant to act upon it. He has further submitted that the officers of the APIIC cannot arbitrarily ignore their promise and put the appellant in a disadvantageous position. He has relied on the judgments of the Supreme Court in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., , Food Corporation of India and Another Vs. SEIL Ltd. and Others, and Union of India (UOI) and Others Vs. Tania Construction Pvt. Ltd.,

5. On the other hand, the learned Advocate General appearing for the APIIC submitted that the appellant stopped the work in December, 2009 itself on its own accord and there were no instructions from the officers of the APIIC to stop the work. The appellant had not completed more than 31% of the work and the

pending bills could not be cleared for want of funds to be provided by the Government. The appellant is not entitled to any relief and the writ appeal is liable to be dismissed.

6. The learned Advocate General submitted that 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 the rights and obligations of the parties inter se. He submitted that the parties can only claim rights conferred upon them by the contract and are bound by the terms of the contract only unless some special statutory power or obligation is conferred by a statute on the State in the contractual field. In this case, the contract between the parties is a contract in the realm of private law and it is not a statutory contract. It is governed by the provisions of the Contract Act and any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated in a writ petition. This is a matter for arbitration as provided by Clause 73 of the agreement entered into between the parties, or the appellant may have to approach the civil court, and these matters cannot be agitated in a writ petition. In this connection, the learned Advocate General has placed reliance on the judgments of the Supreme Court in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, and *State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd.*,

7. It is trite to say that in exercise of power under Article 226 of the Constitution, the High Court can interfere even in contractual matters to which State or its instrumentality or its agency or any public authority is a party and if the action of the State or its instrumentality/agency is found to be arbitrary or contrary to public interest, then the Court can annul the same, but it is equally well-settled that in such matters the Court will be extremely slow to interfere in such matters. In *State of UP. v. Bridge & Roof Co. (India) Ltd.*, the Supreme Court observed thus:

...The contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be, also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for the civil court, as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and, if so, how much and the further question whether retention or refusal to pay any amount by the Government is justified, or not, are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition, viz., to restrain the Government from deducting a particular amount from the writ petitioner's bill (s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer.

8. In *Radhakrishna Agarwal v. State of Bihar*, the Supreme Court observed that it

was the contract and not the executive power regulated by the Constitution, which governed the relation of the parties on the facts of the case and they involved questions of pure alleged breaches of contract. In such cases, no writ or order could issue under Article 226 of the Constitution to compel the authorities to remedy a breach of contract. In the said judgment, the Supreme Court noted three types of cases in which breaches of alleged obligation by the State or its agents can be set up, and after referring to several judgments on the subject including *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, observed as follows:

...the State Act 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 Art. 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.

9. In the case on hand, apparently, the contract between the parties is one in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act. As held by the Supreme Court in *State of U.P. v. Bridge & Roof Co. (India) Ltd.*, any dispute relating to interpretation of the terms and conditions of such a contract cannot be agitated and could not have been agitated in a writ petition. The prayer in the writ petition is to consider and dispose of the representations made by the appellant to the APIIC, which relate to payment of running account bills for the work executed by the appellant. There is a dispute as to the quantum of work executed by the appellant and stoppage of work by it. While the respondent APIIC contends that the appellant stopped the work on its own accord, the appellant says that the work was stopped on verbal instructions of the officers of APIIC. Further, according to the appellant, it had completed more than 34% of the work, whereas the APIIC contends that the appellant completed about 31% of the work. The payment of running account bills depends on the quantum of work executed by the appellant. There is a serious dispute between the parties as to the stoppage of work and sanction of bills. All these questions cannot be gone into in a proceeding under Article 226 of the Constitution of India. Further, the agreement entered into between the parties provides for settlement of disputes by reference to arbitration (Clause 73 of the agreement). When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The prayer in the

writ petition is misconceived since the appellant was not seeking to enforce any statutory right or seeking to enforce any statutory obligation cast upon the respondents. In our view, the existence of an effective alternative remedy provided in the agreement itself is a good ground for the court to decline to exercise its extraordinary jurisdiction.

10. If a term of a contract is violated, ordinarily the remedy is not a writ petition under Article 226 of the Constitution. Admittedly, the contract entered into between the appellant and the APIIC is in the realm of private law. Disputes arising out of the terms of such contracts have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. Whether any amount is due and if so, how much and refusal of the respondent APIIC to pay it, is justified or not, are not the matters which could be agitated in a writ petition.

11. The judgment of the Supreme Court in *Union of India v. Tania Construction (P) Ltd.* relied on by the learned Senior Counsel appearing for the appellant can be distinguished on facts. In the said case, the offer letter did not cover the extended work on account of alteration of the design and was confined to the work originally contracted for. However, the respondent company was expected to complete the entire work which comprised both the work covered under the initial tender and the extended work covered by the second tender. The respondent company had expressed its unwillingness to take up the extended work and it agreed to complete the balance work of the initial contract at the same rates as quoted earlier despite the fact that a long time had elapsed between the awarding of the contract and the actual execution thereof. By the second tender, the entire design of the rail over-bridge was altered converting the same into a completely new project. In those circumstances, the Supreme Court held that notwithstanding the provisions relating to the arbitration clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the writ petition filed on behalf of the respondent Company.

12. In the present case, the facts are quite different. As stated supra, there is a serious dispute between the parties as to the stoppage of work by the appellant and sanction of bills submitted by it. Therefore, the judgment in *Union of India v. Tania Construction (P) Ltd.* has no application to the facts of this case. The other two judgments relied on by the learned Senior Counsel also are of no help to the appellant.

13. At this stage, a point regarding admission of the amounts has been raised before us by the learned Senior Counsel appearing in support of the writ appeal. It appears to us that there are no documents or material placed before us, which can constitute an admission of amounts on the part of the respondents. Hence, we do not find any merit on such point, which was tried to be urged before us. Accordingly, we do not accept the same. It appears that the amounts have not

been admitted by the respondents, therefore, on the question of admission, if the amount has not yet been admitted that has to be gone into before the appropriate jurisdiction. Further, we have also considered the counter affidavit, which has been filed on behalf of the respondents and we find the statement made in paragraph No. 8 of the said counter affidavit, on which admission cannot be constituted by the respondents. Further, we must know that admission must be unequivocal and has to be specifically stated under the provisions of law. In these circumstances, we do not find that there is any reason to interfere with the order passed by the Hon"ble single Judge. Hence, we only affirm the impugned order. For the above reasons, we do not see any ground to entertain the writ appeal and it is accordingly dismissed.