

(2014) 06 SIK CK 0002
In the Sikkim High Court
Case No : WP(C) No. 34 of 2013

Pave Infrastructure Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 23, 28

Citation : AIR 2014 Sikk 18

Hon'ble Judges : Sonam Phintso Wangdi, J

Bench : Single Bench

Advocate : A. Moulik, Senior Advocate, Ms. K.D. Bhutia, Mr . Ranjit Prasad and Mr. Manish Kumar Jain, Advocate for the Appellant; Karma Thinlay Namgyal, Central Government Advocate, Mr. D.K. Siwakoti, Advocate for Respondent No. 1 and Mr. Zangpo Sherpa, Advocate, Mr. Dewen Sharma Luitel, Advocate for Respondents No. 2 to 4, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sonam Phintso Wangdi, J.—The Petitioner No. 1 is a Private Limited Company having its registered office at 2nd Floor, Kapil Centre, Opposite ICICI Bank, Sevoke Road, Siliguri, West Bengal and the Petitioner No. 2 its Director. The Petitioner-Company had been awarded with a contract work for construction of Multi Level Car Parking with allied facilities at Mangan, North Sikkim, under a Contract Agreement dated 23-02-2010 in terms of which the work requiring completion in 24 months, was commenced on 25-01-2010.

2. Without going into the details, it is sufficient to note that the only grievance expressed by the Petitioner-Company in the Writ Petition is that the Respondents No. 2 to 4 had refused to pay escalation costs occurring during and the extended period of the contract which, as per the Petitioner-Company, the Respondent No. 2 was liable to pay under Clause 16.1 of the General Conditions of Contract.

3. Having been refused the payment, this Writ Petition has been preferred seeking for a writ of mandamus directing the Respondent No. 4 to process the price variation bill submitted by the Petitioner-Company and to release payments to the Petitioner-Company with interest against the delay.

4. The Respondents No. 2 to 4 in their counter-affidavit filed jointly, have denied the claim of the Petitioner-Company on the ground that those were being raised on an erroneous interpretation of the various terms and conditions of the Contract including the Letter of Intent (in short the "LoI") which formed part of the Contract Agreement dated 23-02-2010.

5. Without going into the merits of the rival contentions on the interpretation of the various terms and conditions of the Contract Agreement as well as the General Conditions of Contract, it is pertinent to note that on behalf of the Respondents No. 2 to 4, two preliminary objections had been raised which were seriously pressed at the hearing. Considering the fact that those pertain to the very jurisdiction of this Court to entertain the Writ Petition, it was deemed appropriate to take them up at the threshold. The preliminary objections are as follows:-

(i) That in view of Clause 16.1 of the General Conditions of Contract only the Courts in Delhi/New Delhi have the jurisdiction to deal with the matters arising out of the Contract to the exclusion of all other Courts;

and

(ii) That disputes relating to the interpretation of the terms and conditions of Contract cannot be adjudicated in a Writ Petition as the Contract between the parties is a Contract in the realm of private law and not a statutory contract.

The objections are accordingly taken up and dealt with in seriatim in the manner as follows:-

6. That in view of Clause 16.1 of the General Conditions of Contract only the Courts in Delhi/New Delhi have the jurisdiction to deal with the matters arising out of the Contract to the exclusion of all other Courts.

(i) Mr. A. Moulik, Learned Senior Advocate, appearing on behalf of the Petitioners, would submit that the parties by their own will and volition had abandoned the stipulation prescribed in Clause 76.1 of the General Conditions of Contract by executing the agreement at Tripura instead of New Delhi. That the Contract work was executed by the Petitioner-Company at Mangan, North Sikkim, giving rise to accrual of cause of action for claiming the escalation in Sikkim. Mr. Moulik would further submit that by application of Section 20 of the Code of Civil Procedure, 1908 (in short the "CPC"), the cause of action for institution of the present proceedings would arise wholly or in part or where any of the Respondents actually and voluntarily carries on business as prescribed under Clauses (b) and (c) thereof respectively. It is urged that the parties could not confer jurisdiction on the Courts at Delhi/New Delhi by an agreement when

no cause of action had arisen at all at that place. Reliance to this proposition has been placed upon *M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company, and Alchemist Limited and Another Vs. State Bank of Sikkim and Others*, .

(ii) On behalf of the Respondents No. 2 to 4, Mr. Zangpo Sherpa, Learned Advocate, sought to refute the contentions of Mr. Moulik in submitting that when the parties have by agreement conferred jurisdiction upon the Courts at Delhi/New Delhi, such Courts alone shall have jurisdiction to entertain any dispute arising under the Contract in question. It is stated that although the agreement had not been executed at Delhi/New Delhi on non-judicial stamp paper purchased in New Delhi, yet all payments to the Petitioner-Company in respect of the Contract work were being made from New Delhi.

(iii) Under these circumstances, as per Mr. Sherpa, the Courts at Delhi/New Delhi alone would have jurisdiction to deal with disputes arising out of the Contract. *Swastik Gases P. Ltd. Vs. Indian Oil Corporation Ltd.*, was cited by him in support of this contention.

(iv) Upon consideration of the rival contentions, I am inclined to accept the one raised on behalf of the Respondents No. 2 to 4 placed by Mr. Sherpa.

(v) Reliance placed on *Patel Roadways Limited (supra)* by Mr. Moulik appears to be mis-placed as the facts and circumstances in that case and the present one are quite different. In fact, in that case while interpreting Section 20 CPC it was held as follows:-

13. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case.

[underlining mine]

(vi) Clause 76.1 on its bare reading appears to have two parts. The first part being the stipulation as requiring the agreement to be executed at New Delhi and, the second conferring jurisdiction upon the Courts in Delhi/New Delhi to deal with matters arising out of the Contract. Clause 76.1 is reproduced below for convenience:-

76.1 Jurisdiction

The agreement shall be executed at New Delhi on non-judicial stamp paper purchased in Delhi and the courts in Delhi/New Delhi alone will have jurisdiction to deal with matters arising there from, to the exclusion of all other courts.

[underlining mine]

(vii) In *Swastik Gases Private Limited (supra)* it was held as follows:

32. For answer to the above question, we have to see the effect of the

jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties--by having Clause 18 in the agreement--is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim *expressio unius est exclusio alterius* comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another. By making a provision that the agreement is subject to the jurisdiction of the courts at Kolkata, the parties have impliedly excluded the jurisdiction of other courts. Where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts. A clause like this is not hit by Section 23 of the Contract Act at all. Such clause is neither forbidden by law nor it is against the public policy. It does not offend Section 28 of the Contract Act in any manner.

.....

37. In my opinion, the very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like "only", "exclusively", "alone" and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject-matter of the proceedings vested, by agreement, only in the Courts in Kolkata.

[underlining mine]

(viii) For the reasons aforesaid, I hold that it is the Courts in Delhi/New Delhi that has jurisdiction to deal with the disputes arising out of the Contract in question in view of Clause 76.1 of the General Conditions of Contract.

7. That disputes relating to the interpretation of the terms and conditions of Contract cannot be adjudicated in a Writ Petition as the Contract between the parties is a Contract in the realm of private law and not a statutory contract.

(i) Even assuming that this Court did have the territorial jurisdiction to entertain the Writ Petition, it suffers from another serious jurisdictional impediment. There is no dispute of the fact that the Writ Petition involves questions of interpretation of the various clauses of the Contract Agreement.

(ii) In *National Highway Authority of India Vs. Ganga Enterprises and Another*, , it has been held as follows:-

6. It is settled law that disputes relating to contracts

cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases of Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, , State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., and Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, . This is settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr. Dave, however, relied upon the cases of Verigamto Naveen Vs. Government of Andhra Pradesh and Others, and Harminster Singh Arora Vs. Union of India (UOI) and Others, . These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed.

[underlining mine]

(iii) In Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, , this Hon"ble Supreme Court noted as follows:

11. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies.

[underlining mine]

The aforesaid decisions were also relied upon in Pimpri Chinchwad Municipal Corporation and Others Vs. Gayatri Construction Company and Another, .

(iv) Undisputedly, the present Writ Petition involves interpretation of the various clauses of the Contract Agreement dated 23-02-2010, the LoI dated 15-01-2010 and the General Conditions of Contract, more particularly Clause 16.1 General Conditions of the Contract upon which the Petitioner-Company relies; Clause 3.3 of the LoI dated 15-01-2010, Clauses 1.1, 2.1, 2.2, 2.3 and 3.3 of the Contract Agreement dated 23-02-2010 which the Respondents claim to be applicable. In view of the law laid down in the decisions cited above, there can be no doubt that that it is beyond the jurisdiction of this Court in the present proceedings to adjudicate upon such questions.

8. For all these reasons, the Writ Petition stands dismissed on both accounts.

9. No order as to costs.