(1997) 08 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3260 of 1997

Pragati Chemical Industries (P) Ltd. APPELLANT

Vs

A.P. Small Scale Industries Development Corporation Ltd. and Another RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 5 ALT 685

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

Advocate : P.V.S.S.S. Rama Rao, for the Appellant; A.T.M. Rangaramanujam, for the Respondent

Final Decision : Allowed

Judgement

T.N.C. Rangarajan, J.—This writ petition seeks a direction to the respondent to release the amount due to the petitioner with interest of 25 per cent per annum.

2. The petitioner-company is a small scale industry engaged in manufacture of fine chemicals and laboratory chemicals. The petitioner-company has been registered with the respondent-Corporation for marketing assistance. According to the scheme, the Corporation has to render the service of marketing the petitioner''s products after charging service charges of 5 per cent and the scheme is intended to assist the small scale units in marketing its products. Accordingly, the petitioner is prohibited from dealing directly with the Central and State Government Departments and orders have to be placed only through the respondent-Corporation. Acting under that scheme, the respondent-Corporation placed an order on 5-7-1996 for supply of laboratory chemicals valued at Rs. 10,20,495.20 to 57 A.P.S.W.R.E.I. schools. The respondent had earlier invited the indents from the schools and collected 90 per cent of the value from the Secretary, A.P.S.W.R.E.I. Society, Hyderabad in the amount of Rs. 9,18,445/- on 20-6-1996. The petitioner having the experience of delayed payments, requested

the respondent-Corporation to sanction an amount of Rs. 3.50 lakhs as advance knowing that 90 per cent of the value was already collected by the Corporation but the Corporation wrote on 8-8-1996 in reply to this request of 11-7-1996 that they will try to release the payment without any delay and advised the petitioner-Company to complete the supplies within the due date. Thereafter, the petitioner made a request to the Corporation, to make the payment directly to Indian Bank, Himayatnagar, which had financed the petitioner-Company and the Respondent-Corporation by letter dated 7-12-1996 assured the Indian Bank that they had no objection for honouring the bills. Yet, when all the materials have been supplied on 5-7-1996 and delivery challans and delivery notes were presented through the Indian Bank on 16-1-1997, the Corporation failed to release the amount. Several reminders proved futile. This is the reason for writ petition, in which it is also claimed that under the provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 the Corporation should also pay compound interest of 25 per cent.

3. An interim direction was given to release the amount whereupon the respondent filed a counter-affidavit and sought for vacation of the direction. In the counter-affidavit, it was admitted that the petitioner had supplied the goods ordered but it was stated that in view of stringent financial circumstances, the Corporation was unable to release the funds and a plea was taken that any dispute should be referred to the Arbitration. The interim direction was vacated on 2-4-1997 and the writ petition itself was posted for final hearing. The respondent has filed an additional counter-affidavit to submit that as soon as it is better financially placed, they will do their best to release the amounts and the remedy by way of writ petition is not maintainable.

4. The learned Counsel for the petitioner submitted that the Corporation itself has been incorporated with the object of developing Small Scale Industries and it is unfortunate that it is exploiting the Small Scale Units by collecting the amount and not paying the same to the petitioner while they were entitled only to 5 per cent of the amount as service charges. He also relied on the decision of the Supreme Court in the case of M/s. Hyderabad Commercials Vs. India Bank and others, and The Commissioner of Provident Fund and Another Vs. Dr. V.S.V. Ramesh, through General Power of Attorney holder - Dr. V.V. Subba Rao and Another, to contend that the conduct of the Corporation is reprehensible and there should be a direction to pay the amount due without any further delay.

5. The learned Counsel for the respondent placed before me the balance sheet and profit and loss account of the company as on 31-3-1996 and submitted that there was cumulative loss of more than Rs. 7.00 crores and the closing balance of rupees in the Bank is only Rs. 58,000/- whereas the financial commitments were more than Rs. 6.00 crores. He submitted that because of this resource crunch that the Government is seriously considering a proposal to wind up the Corporation. He also argued that the writ petition itself is not maintainable for the purpose of enforcing the contract as held by the Supreme Court in M/s.

Shree Baidyanath Ayurved Bhawan Pvt. Ltd. Vs. State of Bihar and others, and this Court in P. Srinivas Rao Vs. The Superintending Engineer and Others, and D.S. Raju v. Government of Andhra Pradesh, 1997 (2) AN.W.R. 220 : 1996 (3) ALD 964. Secondly, he argued that if there is any dispute, it must be referred to an arbitration. Thirdly, he emphasised the fact that the Corporation has no funds to make payment and the respondent will not be able to comply with any direction to pay the amount.

6. This case is an illustration of how a public Corporation mismanages its affairs and exploits the Units which it is intended to develop. The scheme by which the petitioner was prohibited from marketing its products directly and was required to sell the products through the Corporation was intended to benefit the petitioner-Unit so that it will be free of the marketing effort on payment of 5 per cent service charge and all its products will be sold without stagnation. Under the scheme, the Corporation was entitled only to 5 per cent and nothing more. In the guise the marketing the products, the Corporation has already collected 90 per cent of the value of the goods which ought to have been immediately given to the petitioner, at least on the date of supply of the materials. Instead it has forced the petitioner-Unit to obtain funds from a bank paying interest thereon. Not only that, it has also prepared to collect the balance of 10 per cent of the value of the goods from the customers for itself and has taken up technical defences to this writ petition such as, that this writ petition is not maintainable and there should be an arbitration. Both these contentions are inadmissible in the face of the admitted liability to pay the amount which belonged to the petitioner and was wrongly retained by the Corporation. The Supreme Court has condemned this kind of attitude in the case of M/s. Hyderabad Commercials Vs. India Bank and others, . The two decisions relied by the learned Counsel for the respondent to say that the writ petition is not maintainable in respect of the contracts are clearly distinguishable because in those cases there was some dispute as to enforcement of the contract unlike the Indian Bank case (1 supra) where there was no dispute similar to the present case. The question of arbitration also arises only when there is a dispute as to terms of the contract whereas in the present case there is absolutely no dispute and in fact there is a clear admission in both the counter-affidavits that the respondent-Corporation has to pay the value of the goods supplied through it and it was only an agent for selling the goods collecting money and paying it to the petitioner. Having already collected the money, the respondent is accountable for it. The main object of the Corporation was only to develop the Small Scale Units and the conduct of the Corporation is directly opposed to its objectives.

7. We are left with only the ultimate plea of the Corporation that it has no money to pay. This plea is taken after having diverted the money for other purposes. The learned Counsel for the respondent states that they have to pay salary of the staff etc., and even if the company is wound up, there will be a first charge in respect of moneys due to the Government and staff, and therefore, there may not be anything left to pay the petitioner. I am not able to find words to condemn

this contention. Having had experience of delayed payments, the petitioner had asked for a guarantee for payment but was told that unless the supplies are made, the amount cannot be paid, that too, after having already collected 90 per cent of the amount from the customers. If only the respondent had straightaway paid the 90 per cent value as soon as the delivery was made by keeping the amount in escrow, this situation would not have arisen. It appears to me that the situation has been deliberately contrived so that to cheat the petitioner of the amount due to it. I do not know the Public Corporation could be allowed to act in this manner. Since the Corporation is wholly owned by the Government, and according to the Memorandum of objects, the Government has to underwrite the activities of the Corporation, I am of the considered opinion that the Corporation cannot be allowed to state that even if a direction is given it will not be able to comply with it because of lack of funds. Nor is it possible to allow the Corporation to wind up its affairs and pay the money due to the Government and the staff before paying the amount due to the petitioner-unit. In the circumstances, I deem it fit to implead the Government represented by the Secretary, Industry and Commerce and direct the Government to advance to the Corporation sufficient funds to pay to the petitioner the amount due with 25 per cent compound interest as computed in accordance with the provisions of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 before 31-8-1997. Since the Government has already advanced large funds to the Corporation, an advance of further amount required to pay the petitioner cannot be considered to be unreasonable particularly when according to the balance sheet the value of the assets are considerable and the Government will not be left out in recovering the amount if the Corporation is wound up. I consider it necessary to give this direction because the petitioner-unit will be facing extinction only because of the atrocious conduct of the Corporation, which the Government ought to have controlled, as the Corporation is a wholly owned Government Undertaking subject to the control of the Government and existing solely for promoting Small Scale Industries such as the petitioner. Article 72 of the Article of Association of the Company gives Government power to remove directors. This power is coupled with a duty to see that the Board of Directors act properly as otherwise that power would be a naked power and unconstitutional. Hence, the Government ought to have seen that there was no conversion of the moneys collected on behalf of the petitioner as price of goods sold by the company as the petitioner''s agent. This failure casts a liability on the Government to make good the amount due to the petitioner and cannot be avoided by winding up the company. I, therefore, direct the 1st respondent to obtain funds from the Government, which shall not be refused, and pay to the petitioner the amount due with compound interest at 25 per cent on or before 31-8-97.

8. Accordingly, the writ petition is allowed with costs Rs. 1,000/-.

