

(2005) 05 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No. 16925 of 2001

R.S. Shetty and Co.

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 27-05-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) ILR (Kar) 4362 : (2005) 3 KCCR 229 SN

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : G.A. Srikante Gowda, for the Appellant; Preeti Dayanand, for Dayanand S. Nayak, for R2-4 and B. Veerappa, AGA for R1, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—Petitioner is a Construction Contractor. The second respondent herein, namely, the Executive Engineer, Krishna Bhagya Jala Nigam Limited, Bijapur, had entrusted the civil works contract of construction of Indi Branch Canal, including structures of Chainage 89-90 KM of Upper Krishna Project on tender basis. The necessary agreement in this regard was executed by the second respondent.

2. It appears that, during the earth excavation in relation to the above contract work, the petitioner had found sub soil water and therefore, he could not make any progress in the work that was entrusted to him. It is also stated that, the petitioner had requested the Executive Engineer and other superior authorities for payment of additional charges/expenses for de-watering of the sub soil water. It is further asserted that, the authorities after a detailed inspection of the construction spot, had favourably considered the request made by the petitioner, and had paid the de-watering charges.

3. In this petition filed under Articles 226 and 227 of the Constitution, petitioner calls in question the communications dated 19.4.2000 and 31.5.2000 issued by

the respondents, wherein they have directed the petitioner to remit the de-watering charges with interest which according to them was wrongly paid. Secondly, for a direction to the respondents to refund the amount deducted from the petitioner's running bills and lastly, for a direction to restrain the respondents from deducting any amounts from the petitioner's running bills.

4. A detailed statement of objections is filed by the respondents. In that, they have stated that the Executive Engineer had no authority of law to pay the extra payment towards de-watering charges, since the contract between the parties would not envisage for such payment. Further they have stated that, in an identical circumstance, a Learned Single Judge of this Court in the case of Pampana Gowda v. Managing Director, W.P.No. 25579/1998 dated 9.2.1998 had refused to interfere with a similar demand/communication issued by the respondents and further, had relegated the petitioners therein to approach the Executive Engineer as provided under Clause 29(a) of the conditions of the agreement and if for any reason, petitioner is not satisfied with the findings, conclusion or the order that may be passed by the Executive Engineer, then to approach the Civil Court.

5. Sri Srikante Gowda, Learned Counsel for the petitioner would contend, that, the Executive Engineer, who is a party to the contract could not have issued the impugned demand notices. In support of his case, the Learned Counsel relies upon the observations made by the Apex Court in the case of State Of Karnataka v. Sree Rameshwara rice Mills. (1987) 2 SCC 160.

The other submission of the Learned Counsel is that, the decision rendered by this Court would not assist the respondents. Assuming that it assists them, the said decision does not lay down the correct principal of law and therefore, this Court need not have to follow the decision of this Court and independently examine the facts presented by the petitioner in the present writ petition. In support of that submission, the Learned Counsel has relied upon the observations made by the Apex Court in the Case of (1991) 4 SCC 138 , Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others, , Krishena Kumar and Others Vs. Union of India and others, and also the decision rendered by me in the case of Madhava Hytech Engineers Private Limited v. State Of Karnataka and Ors., W.P. No. 7573/1995 disposed off on 20.7.2000

6. First and foremost, it is now well settled legal principle that the High Court is bound to follow the decision of the same High Court, especially when facts and issues raised are identical. Judicial decorum, and certainty of law requires a Single Judge to follow the decision of another Single Judge and of a Larger Bench and even if, for reasons to be stated, a different view was necessitated, the matter should be placed before the Chief Justice for referring the matter to the Larger Bench. The Supreme Court in Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others, has observed that one must remember that pursuit of law, however, glamorous it is, has its own limitation on

the Bench. In a Multi Judge Court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. Judicial decorum and legal propriety demands that, where a Single Judge or a Division Bench does not agree with the decision of a Bench of Co-ordinate jurisdiction, the matter shall be referred to a Larger Bench. It is subversion of judicial process not to follow this procedure.

7. The decision on which the respondents have placed reliance in support of their stand taken in the statement of objections is identical in all respects with the facts of this petition. In that case, petitioner was a Class I Contractor. He had entered into an agreement dated 16.1.1996 for construction of Narayanapur Left Bank Main Canal from Km 12 to 13, the estimated cost of which is Rs. 164.44 lakhs. According to the petitioner, some time in the month of May 1996, when they had dug the main canal upto the depth of more than six meters between Km 12 to 12.54, there was heavy rain On 12th and 13th April, 1996 and as a consequence, a portion which had been dug was filled with rain water and therefore, it became necessary to de-water the entire area. In the agreement, there was no provision for making any payments for de-watering. On a representation made by the petitioner therein, the Executive Engineer and others, had accepted the claim of the petitioner and had paid the de-watering charges. Subsequently, the respondents proposed to recover the de-watering charges with interest paid to the petitioner. Aggrieved by the said communication, the petitioner was before this Court.

8. The contention of the respondents before the Court was that, since there was no provision for payment of de-watering charges in the agreement and that de-watering is incidental to the main work of excavation and other items of the work mentioned in the agreement at the schedule rates or the rates agreed, the petitioner was not entitled for payment of de-watering charges. Keeping this aspect of the matter in view, the Learned Single Judge of this Court has opined that, there is a dispute as to whether the work of de-watering is included in any one of the quoted items of work for which a rate has been agreed or whether it is a extra item of work which has to be paid separately. The Court has further observed that if, there is a dispute in regard to the payment etc., the petitioner/ contractor requires to make an application/ representation under Clause 29(a) of the condition of the contract dealing with settlement of disputes and if for any reason, that representation is not considered favourably, the petitioner is at liberty to approach the Civil Court.

9. The fact situation in the present case is identical and the legal issues raised are also similar. I do not see any difference between the facts in that case and the facts pleaded in the instant writ petition. However, Sri Srikante Gowda, Learned Counsel for the petitioner would submit that, in the aforesaid decision the Court did not take into consideration the observations made by the Apex Court in the Case of Sree Rameshwara Rice Mills (1987)2 SCC 160. In my

opinion, this submission of the Learned Counsel has no merit whatsoever. Further, as I have already stated, I can differ from the view expressed by the other Single Judge if, the Learned Single Judge has deviated from the statutory provisions or has not followed the decision rendered by the Apex Court which is binding on him. In the facts and circumstances of the case, I do not find any such infirmities or lacuna. Therefore, in my opinion, there is no strong reason for me to differ from the view taken by the other Learned Single Judge of this Court. In that view of the matter, in my opinion, as rightly observed by the Learned Single Judge, if for any reason the petitioner is aggrieved by the communication/demand raised by the respondents by their impugned letters dated 19.4.2000 and 31.5.2000, the petitioner has to file an appropriate representation before the Executive Engineer as provided under Clause 29(a) of the conditions of the contract dealing with settlement of disputes and, if for any reason, the petitioner is not satisfied with any decision that may be rendered by the Executive Engineer, he has every right to approach the Civil Court for redressal of all his grievances. Petitioner while making the representation before the Executive Engineer, he can also bring to the notice of the authority that the dispute raised in his representation requires to be considered by some other authority other than the authority which is a party to the contract. All these options are open to the petitioner. In my view, he can definitely make use of all these options when he desires to file a representation before the competent authority.

10. Insofar as the decision rendered by the Apex Court is concerned, on the topic of per-incuriam, in my opinion, those decisions would not assist the petitioner for the simple reason, that the Court has only said, if a decision is rendered by a Court contrary to the statutory provisions or contrary to the settled legal principles of a superior forum then only a judgment can be called a judgment rendered per-incuriam. Such a situation I do not see in the present case. Therefore, those decisions would not assist the petitioner.

11. Lastly, the Learned Counsel for the petitioner has relied upon a decision rendered by me in the case of M/s Madhava Hytech Engineers Private Limited W.P.No. 7573/1995. The fact situation in the said case was entirely different and therefore, this Court took a particular view and that decision, in my opinion, would not assist the petitioner in the present facts and circumstances of the case.

12. For the reasons stated, petition deserves to be rejected and accordingly, it is rejected. However, liberty is reserved to the petitioner to make a representation under Clause 29(a) of the conditions of the contract dealing with settlement of disputes before the respondents within a month's time from today. If and when such a representation is made, the respondents shall consider the same in accordance with law and if for any reason, petitioner is not satisfied with their decision, he shall approach the Civil Court Ordered accordingly.