

(2006) 03 AHC CK 0204

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17190 of 2006

Sant Gadge Seva Niketan, Jitendra Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 2 AWC 1956

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Rakesh Kumar Shukla, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan and Dilip Gupta, JJ.—This writ petition has been filed for disbursing the amount under a non-statutory contract. The Supreme Court has time and again examined this issue and observed that a writ petition does not lie for recovery of an amount under a contract and even though a Statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions but disputes arising out of the terms of such contracts have to be settled by the ordinary principles of law of contract and the fact that one of the parties to the agreement is a statutory or public body does not affect the principles to be applied. It has also been emphasised that such a contract is not a statutory contract and the disputes relating to interpretation of the terms and conditions of such a contract cannot be agitated in a writ petition under Article 226 of the Constitution. Thus, whether any amount is due or not and refusal to pay it is justified or not are not matters which can be agitated and decided in a writ petition.

2. In this connection reference may be made to the decision of the Supreme Court in Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, wherein it was observed:-

We find that there is a merit in the first contention of Mr, Raval. Learned Counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches 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. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. 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.

(emphasis supplied)

3. In *State of Jammu & Kashmir v. Ghulam Mohd. Dar and Anr.* AIR 2004 SC 510 the Supreme Court observed :-

Furthermore, the respondent herein filed the aforementioned "writ petition for enforcing a contract qua contract. Although an objection has been taken as regards the maintainability of the writ petition by the appellant herein, the same unfortunately has not been considered by the High Court. It is well settled that writ of or in the nature of mandamus would not ordinarily issue for enforcing the terms and conditions of a contract qua contract. A writ of mandamus would issue when a question involving public law character arises for consideration.

4. In view of the aforesaid decisions, it is not possible for us to issue the directions as prayed for while exercising powers under Article 226 of the Constitution.

5. Learned Counsel for the petitioners then submitted that this Court may pass an order for deciding the pending representation. It is a settled legal proposition that what cannot be done directly cannot be permitted to be done indirectly. The money in respect of a non-statutory contract cannot be recovered in a writ jurisdiction. It cannot, therefore, be recovered by issuing any direction to the respondents to decide the representation.

6. In this connection reference may also be made to the decision of the Supreme Court in A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, in which strong comments were made against issuance of direction to the authorities to decide the representations as under the garb of deciding the representations, time barred claims were entertained by the authorities. The relevant portion of the judgment is as under.

We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court, to avoid deciding, the issue which requires to be decided, and disposing of the matter with a direction to "consider" the matter afresh. Be that as it may.

There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example, A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider" the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing, grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily wagers seeking regularization/absorption into regular service is a species of cases, where there has been a large scale misuse of the

orders "to consider".

7. A Division Bench of this Court to which one of us (Hon. Dr. B.S. Chauhan, J. was a party) in Writ Petition No. 8642 of 2003 (Rajendra Singh v. State of U.P. and Ors.) decided on 30.7.2003 has also held that without considering the merit of the case, the Court should not issue a direction to decide representation to any of the authorities for the reason that under the garb of getting the representation decided, the party may succeed in getting adjudicated a time barred claim, may be by an authority having no competence or by deciding the representation an order may be reviewed though remedy of review is not provided under the Statute. In the said case, under the garb of getting the representation decided, the party wanted the authority under the U.P. Motor Vehicles Taxation Act, 1997 to review its assessment. This Court while rejecting the writ petition, held as under:-

The review application is not maintainable against the assessment order nor any order of rectification is permissible asking the said authority to decide representation would amount to directing him to review the said order which is not permissible in law. Creation of a jurisdiction in a Court is a Legislative function and it cannot be conferred by any means by the Court. Reviews/Appeal is a creation of Statute and it cannot be created by acquiescence of a party or by the order of the Court vide *The United Commercial Bank Ltd. Vs. Their Workmen, and Kesar Singh and Others Vs. Sadhu*,

8. In view of the above, we are afraid, no direction can be issued to the respondents to decide the representation filed by the petitioners.

9. Thus in view of the above, the writ petition is dismissed. It is made clear that we have not examined the merits of the case. However, if the petitioners are so advised, they may approach the appropriate Forum for the relief claimed in this petition.