
(1996) 06 GAU CK 0034
In the Gauhati High Court
Case No : Writ Appeal No. 223 of 1995

Savitri Salt Suppliers

APPELLANT

Vs

State of Tripura and Another

RESPONDENT

Date of Decision : 27-06-1996

Acts Referred:

Constitution of India, 1950 — Article 299, 299

Citation : (1996) 2 GLJ 170 : (1996) 2 GLR 425 : (1996) 3 GLT 689

Hon'ble Judges : D.N.Baruah, J and K.K.Singh, J

Bench : Division Bench

Advocate : B.P.Kataki, S.Murarka , G.N.Sahewalla, B.Goel, A.K.Goswami,
A.Chakraborty, N.M.Lahiri, Advocates appearing for Parties

Judgement

D. N. Baruah, J.—This writ appeal is directed against the judgment and order dated 31.5.95 passed by a learned Single Judge in Civil RuleNo.210 of 1995 dismissing the writ petition.

2. Facts for the purpose of disposal of this writ appeal may be narrated thus : The appellant/writ petitioner is a firm registered under the Indian , Partnership Act. It carries on the business of sale and supply of iodised salt in various places of Assam, Bengal, Gujrat and Tripura since 1988. On 17.10.94 the 2nd respondent on behalf of and in the name of the Government of Tripura issued a notice inviting tender (for short, NIT) for supply of crushed iodised salt. Pursuant to the said NIT the appellant submitted its tender along with other tenderers. On 10.1.95 the appellantpetitioner"s quotation being the lowest was } accepted and the 2nd respondent issued a letter inviting the appellant to supply salt for the tear 1995 and it was asked to execute a deed of agreement by 30th of January, 1995. A draft agreement was also sent. But the appellant sought clarification in respect of clauses 3 (a), 10 and 11 of the said agreement. The 2nd respondent, thereafter, issued Annexure 7 letter dated 15.2.95 (to the writ petition) expressing his inability to consider the same. The appellant, thereafter " wrote back on 28.2.95 requesting the 2nd respondent to reconsider the same and also

to incorporate a clause for early payment in respect of supply and also a clause regarding vis major. On 10.3.95 the appellant received a letter by which it was asked to execute the agreement on the same day itself. 2nd respondent, thereafter, issued letter dated 18.3.95 (Annexure 1 to the writ petition) cancelling the appointment order and also ordering for forfeiture of the earnest money of Rs. 1 lakh on the ground that the appellant did not execute the agreement within the stipulated period. Thereafter, the 2nd respondent accepted the quotation of the next lower tenderer and issued supply order. But as he refused to execute the work, the 2nd respondent proposed to allot the work in favour of National Consumers' Cooperative Federation, New Delhi at the rate of Rs.144/ and Rs. H 61 per quintal for Agartala and Dharmanagar respectively. The appellant submitted its representation dated 22.3.95 requesting the 2nd respondent to reconsider the matter showing its readiness to execute the agreement. But as no action was taken, the appellant filed the writ petition for quashing the aforesaid letter dated 18.3.95. However, the writ petition was dismissed by the learned Single Judge. Hence the present appeal.

3. We have beared Mr. NM Lahiri, learned senior counsel assisted by Mr. GN Sahewalla and Mrs..B. Goel, learned counsel appearing on behalf of the appellant and Mr. A. Chakraborty, learned Advocate General, Tripura, assisted by Mr. BP Katakya, learned Government Advocate, Tripura.

4. The only ground on which the judgment of the learned Single Judge is challenged is that the forfeiture clause is not enforceable and the respondents had no right and authority to insist on the said forfeiture clause in view of the fact that there was no formal contract entered into by and between the appellant writ petitioner and the Government of Tripura. Elaborating the said point Mr. Lahiri submits thatthere was no contract fulfilling the requirement of Article 299 of the Constitution of India. According to Mr. Lahiri, NIT was a request to make offer and pursuant to that the appellantwrit petitioner submitted its tender which was accepted by the Director, Food and Civil Supplies, respondent No.2 and no agreement was entered into.

5. Mr. Chakraborty, on the otherhand, supported the impugned judgment. According to him, notice inviting tender was an offer and submission of the tender was acceptance of the offer and, therefore, the contract was concluded. Tenders were invited through NIT which was published in the name of the Governor and, therefore, according to Mr. Chakraborty, there was compliance of Article 299. He also submits that when the offer was made it was accepted by the Minister, Food and Civil Supplies, Deputy Chief Minister and ultimately by the Chief Minister, requirements of Article 299 were fully complied with.

6. On the rival contentions of the parties it is to be seen whether the provisions of Article 299 of the Constitution had been complied with, if not, whether in the absence of compliance of the provisions of Article 299 the Government can insist on the forfeiture clause.

7. Under Article 299 of the Constitution, all contracts made in the exercise of the executive power of the Union or a State shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as may be directed or authorised. The words "expressed to be made" and the word "executed" appearing in Article 299 indicate that there must be a formal contract executed by a person duly authorised under Article 299. A contract by correspondence or an oral contract is not binding upon the Government and so also in case of other party. It is a settled law that the provisions of Article 299 are mandatory. If any of the provisions of Article 299 is not complied with, the contract is not binding or enforceable by or against the Government.

8. In *KP Chowdhury vs. State of Madhya Pradesh*, reported in AIR 1967 SC 203, a Constitution Bench of the Supreme Court held that in view of Article 299 (1) there could be no implied contract between the Government and another person, the reason being that if such implied contracts between the Government and another person were allowed, they would in effect make Article 299 (1) useless, for then a person who had a contract with Government which was not executed at all in the manner provided in Article 299 (1) could get away by saying that an implied contract might be inferred on the facts and circumstances of a particular case. Further, if the contract between Government and another person was not in full compliance with Article 299 (1), it would be no contract at all and could not be enforced either by the Government or by the other person as a contract.

In another case in *Bareilly Development Authority & another vs. Ajay Pal Singh & others*, reported in AIR 1989 SC 1076, the Apex Court held that rights of parties inter se are governed by terms of contract and not by constitutional provisions.

The decision of the Apex Court in *State of Punjab vs. M/s Otn Prakash Valdev Krishan*, reported in AIR 1988 SC 2149 was placed before the learned Single Judge. The learned Single Judge, however, distinguished the said decision on the fact of this case.

9. We have perused the judgment in *State of Punjab vs. M/s Om Prakash* (supra) and we find that the principles enunciated in the said judgment are squarely applicable in the present case as the facts in the said case are almost similar to that of the present case.

10. In view of the above, we respectfully disagree with the conclusions arrived at by the learned Single Judge. In our opinion, the contract being not binding on the appellant it is not enforceable. Therefore, insistence on forfeiture clause is illegal, without jurisdiction and liable to be quashed which we accordingly do. The appeal is allowed and the judgment and order dated 31.5.95 passed by the learned Single Judge in Civil Rule No.210 of 1995 is set aside. Respondents cannot insist on forfeiture clause.

11. Considering the entire facts and circumstances of the case, however, we make no order as to costs.