(1985) 12 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 763 of 1985

Shiva Paper Mills and Another — APPELLANT

Vs

State of H.P. and Another — RESPONDENT

Date of Decision : 03-12-1985

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 226

Citation : (1985) 14 ILR HP 923

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : Chhabil Dass and A.P. Gupta, for the Appellant; P.N. Nag, General, for the Respondent

Judgement

P.D. Desai, C.J.—The first Petitioner (hereinafter referred to as "the Petitioner") is a Public Limited Company incorporated under the Companies Act, 1956. The Petitioner carries on the business of manufacture of paper used in writing and printing. The second Petitioner is the Secretary and Principal Officer of the first Petitioner.

2. On March 4, 1985, a tender notice was published by the Director, Public Relations, Himachal Pradesh, inviting offers for the supply of writing and printing paper. The Petitioner submitted a tender in response to the said notice on April 10, 1985. The tender was accepted and the acceptance was communicated to the Petitioner by a letter dated June 29, 1985, issued under the signature of the Assistant Controller, Printing and Stationery Department, Himachal Pradesh. Pursuant to the acceptance of the tender, the Petitioner deposited a sum of Rs. 6000/- as security deposit.

3. On August 31, 1985, a fresh tender notice was issued-under the signature of the second Respondent (Deputy Controller, Printing and Stationery Department, Himachal Pradesh) inviting offers for the supply of writing and printing paper. The said tender notice was received by the Petitioner on September 16, 1985. By a letter dated September 30, 1985, the second Respondent sent a separate

intimation to the Petitioner informing that the Government had directed the issuance of a fresh tender notice for the paper items which were the subject-matter of the previous tender notice and that the last date for the receipt of tender was September 30, 1985, and advising that a fresh tender, if any, be submitted in response to the new tender notice.

4. The Petitioner has thereupon instituted the present writ petition on September 28, 1985, seeking an appropriate writ or direction quashing the fresh tender notice and ordering the Respondents to abide by the contract concluded as a result of the acceptance of the original tender.

5. The main challenge of the Petitioner is that by acceptance of the original tender a concluded contract had come into existence and that such a contract could not have been cancelled, or rescinded arbitrarily, without assigning reasons or without giving an opportunity of hearing to the Petitioner.

6. The law is well settled that when a contract is entered into with the State, the relations between the parties are governed by the terms and conditions of the contract and not by the provisions of the Constitution unless some statute steps in. Disputes relating to the breach of contract or remedy for the breach of contract cannot be made the subject-matter of writ jurisdiction. No writ can be issued to the State to enforce the contract or to remedy its breach. (See: Radhakrishna Agarwal and Others Vs. State of Bihar and Others,

7. Our attention was invited on behalf of the Petitioner to the decision in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and, more particularly, to paragraph 11 of the said deci sion. We do not think that there is any proposition of law in the said decision which detracts from the law declared in M/s Radhakrishna Agarwal''s case (supra). In fact, in paragraph 12 of the said decision, the legal position which has been succinctly summarised in the following words, reiterates the principles laid down in M/s Radhakrishna Agarwal''s case :

It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other for ms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licenses etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

(Underlining supplied)

The use of the expression "enter" and "award" in its grammatical variations in the passage above-quoted reiterates the principle enunciated in Ramana Dayaram Shetty''s case (supra) to the effect that the fundamental rights are applicable only at the threshold or at the time the State enters into contract and that no question arises of violation of Article 14 or any other constitutional provision when the State or its agents perform any act which leads to the breach or cancellation of the contract unless a statute steps in.

8. The decision in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., upon which reliance was placed on behalf of the Petitioner is clearly distinguishable. In that case, the Respondent-Company, which wanted to set up a Hotel, had sought a loan from the Appellant-Corporation which was a body corporate established under a statute and authorised thereby to carry on and transact the business of granting loans or advances to an industrial concern on the fulfilment of certain terms and conditions. The Appellant-Corporation sanctioned the loan by a letter dated July 24, 1978, on certain terms and conditions. However, the contract was actually entered into subsequently on February 1, 1979. Meanwhile, on the strength and faith of the representation made in the letter dated July 24, 1978, the Respondent-Company had materially altered its position to its detriment by executing various documents, creating an equitable mortgage on the security of the land in favour of the Appellant-Corporation, starting the construction at the site after incurring preliminary expenses, taking out the insurance policies, raising share capital etc. (See also, in this connection, The Gujarat State Financial Corporation, Ahmedabad v. M/s Lotus Hotels Pvt. Ltd., Baroda AIR 1982 Guj 198). The loan, as promised, was, however, not disbursed and, ultimately, the Appellant-Corporation decided on April 20, 1979, not to advance the loan. The Respondent-Company, who thereupon filed a writ petition in the High Court, succeeded in obtaining a writ of mandamus from a learned single Judge direcing the Appellant -Corporation to disburse the promised loan to the Company forthwith in accordance with its letter of offer dated July 24, 1978, followed by the agreement dated February 1, 1979. A Letters Patent Appeal preferred by the Appellant-Corporation was dismissed. On further appeal to the Supreme Court, the submission of the Appellant-Corporation, inter alia, was that the dispute between the parties was in the realm of contract and that even if there was a concluded contract between the parties about the gran and acceptance of loan, the failure of the Appellant-Corporation to carry out its part of the obligation might amount to breach of contract for which a remedy lay elsewhere but a writ of mandamus could not have been issued compelling the Corporation to specifically perform the contract. The submission was rejected in the following words:

...It is too late in the day to contend that the instrumentality of the State which would be ''other authority'' under Article 12 of the Constitution can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. By its letter of offer dated

July 24, 1978 and the subsequent agreement dated February 1, 1979 the Appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of rupees 30 lakhs to the Respondent. Acting on the solemn undertaking, the Respondent proceeded to undertake and execute the project of setting up a 4 Star Hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the Respondent incurred expenses, suffered liabilities to set-up a hotel. Presumably, if the loan was not forthcoming, the Respondent may not have undertaken such a huge project. Acting on the promise of the Appellant evidenced by documents, the Respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play....

Now if Appellant entered into a solemn contract in discharge and performance of its statutory duty and the Respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the Respondent. In such a situation, the Court is not powerless from holding the Appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by ''other authority'' as envisaged by Article 12.

(Underlining supplied)

It is apparent that the writ petition was held maintainable in that case on two grounds. First, the agreement to advance the loan was entered into by the Appellant-Corporation in the exercise of statutory power and in discharge and performance of statutory duty and the Respondent-Company having acted upon the promise contained in such agreement, the statutory Corporation could not be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct to the Respondent-Company and, second, the Respondent-Company had altered the position not only on the basis of the solemn promise evidenced by the contract but also by the letter which had preceded the execution of the formal contract by taking several steps to its detriment on the faith of the representation contained in the letter. In the present case, the contract is not entered into in exercise of any statutory power or in the discharge of any statutory duty but in the exercise of executive power. Besides, there was no promise held but prior to the award of the contract on the strength of which the Petitioner is shown to have altered the position to its detriment. The decision relied upon, therefore, cannot come to the aid of the Petitioner.

9. For the foregoing reasons, in our opinion, there is no case for interference in the writ jurisdiction. The writ petition is, therefore, summarily rejected.

10. The learned Counsel for the Petitioner states that the last date for the receipt

of fresh tender has expired on September 30, 1985, and that in view of the pendency of the writ petition, the Petitioner has desisted from submitting the tender and that, in those circumstances, directions be issued to the Respondents to entertain the tender, if submitted by the Petitioner within a reasonable time thereafter. The request is reasonable and must be accepted. Under the circumstances, the Court consi-ders it essential in the interest of justice to direct that if the Petitioner submits its tender within a period of one week from today, such tender shall be taken into consideration along with other tenders already received. The Court clarifies that if the Respondents so desire, they would be at liberty to extend the date for submission of the tender for all persons or parties and not to confine the benefit only to the Petitioner.

11. Dasti copy on usual terms.