(2014) 09 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application Nos. 12740 to 12749 of 2014 and SCA Nos. 12785 to 12788, 12710 of 2014

Shreyas Corporation APPELLANT

Vs

Metro Link Express for Gandhinagar and Ahmedabad (Mega) Co. Ltd. RESPONDENT

Date of Decision : 15-09-2014

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

Citation : (2015) 3 BC 331

Hon'ble Judges : K.S. Jhaveri, J;Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : Mihir Thakore, Sr. Advocate and Amrita M. Thakore, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

1. These petitions involve common questions of law and facts and are, therefore, decided by this common order. The petitions differ only on the aspects of dates of the impugned orders and the amounts outstanding. For the sake of convenience, Special Civil Application No. 12740 of 2014 is taken as the lead matter. In this petition, the petitioner has prayed for the following reliefs:

"(A) This Hon''ble Court be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction declaring that the action of the respondent of withholding and refusing to make payment of the petitioner''s legitimate dues under the Purchase Orders dated 22.4.2013, 9.5.2013, 16.5.2013, 21.5.2013 and 21.6.2013 (at Annexure E hereto) is arbitrary, unreasonable, unconstitutional, unfair, highhanded, discriminatory, unjustifiable, unjust and illegal.

(B) This Hon''ble Court be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction directing the respondent to forthwith make payment of the amount of Rs. 1,49,59,975.00

which is due in respect of the pending transportation bills and Rs. 6,411.28 which is due in respect of the pending material bills to the petitioner along with interest from 1.8.2013 till realization thereof at such rate as may be deemed appropriate by this Hon''ble Court.

(C) This Hon''ble Court be pleased to issue a writ of or in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the letters dated30.9.2013,3.4.2014,3.5.2014 and 7.5.2014 issued by the respondent at Annexures - N, R, U and W hereto.

(D) to (F)...."

2. The petitioners herein are engaged in the business of trade and supply of minerals and ancillary materials whereas, the respondent is a Company registered and incorporated under the Companies Act, 1956 and was established by the State Government for the purpose of implementing the Metro Rail Project. In April 2013, the respondent issued Public Notices in newspapers inviting suppliers to submit introduction letters showing their interest and capability to deliver necessary materials at different sites/locations on "for site basis". In response to this, the petitioners submitted their introduction letters along with necessary details. After necessary negotiations, the petitioners and the respondent entered into a contract for the supply of different types of materials at different sites and the respondent issued Purchase Orders to the petitioners for the supply of different materials.

3. It is the case of the petitioners that they raised material bills, including corresponding transportation bills in the name of the transporters concerned, which had supplied the consignment to the respondent. However, the respondent made only part payment of the material bills and did not make any payment towards certain transportation bills. Therefore, the present petitions came to be filed.

4. Mr. Mihir Thakore, learned Senior Advocate appearing with Ms. Amrita Thakore for the petitioners submitted that the petitioners had performed their part of the contract by supplying materials as demanded by the respondent. The petitioners, being traders and suppliers of quarry materials, were not required to obtain any environmental clearance, as demanded by the respondents. It is his contention that such demand has been raised only with a view to wriggle out of its obligation to make payment of the legitimate dues of the petitioners under the Purchase Orders.

4.1 Mr. Thakore submitted that the petitioners and other suppliers made numerous representations to the respondent requesting to release the balance amount, which was due and payable by the respondent. However, the respondent refused to make any payments and instead suggested that the petitioners would have to agree to a reduced rate than what had been mentioned in the Purchase Orders.

4.2 It was contended by learned Senior Advocate Mr. Thakore that in respect of certain suppliers who had supplied materials pursuant to similar Purchase Orders, the respondent had made full payment of all the bills at the contractual rates (including all transportation bills) but, the petitioners have not been made the payment without any valid justification. Therefore, the action of the respondents is not only illegal and arbitrary but also discriminatory.

4.3 In support of his submissions, learned Senior Advocate Mr. Thakore placed reliance upon the decision of Apex Court in the case of Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., , more particularly, on the observations made in Paras 9 and 12, which reads as under:

"9. It was next contended that the dispute between the parties is in the realm of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure of the Corporation to carry out its part of the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. 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. It was not disputed and in fairness to Mr. Bhatt, it must be said that he did not dispute that the Corporation which is set up under Section 3 of the State Financial Corporation Act, 1955 is an instrumentality of the State and would be ''other authority'' under Article 12 of the Constitution. 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 Rs. 30 lakh 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.....

12. Viewing the matter from a slightly different angle altogether, it would appear that the appellant is acting in a very unreasonable manner. It is not in dispute that the appellant is an instrumentality of the Government and would be ''other authority'' under Article 12 of the Constitution. If it be so, as held by this Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and

Others, , the rule inhibiting arbitrary action by the Government would equally apply where such corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and its action must be in conformity with some principle which meets the test of reason and relevance."

4.4 Reliance is also placed on another decision of Apex Court in the case of ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, , and more particularly, on the observations made in Paras 27 and 28, which reads as under:

"27. From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition--

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [See Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others,]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."

5. We have heard Mr. Mihir Thakore learned Senior Advocate assisted by Ms. Amrita Thakore at length. As is evident from the reliefs claimed, the grievance raised pertain to part-payment of the contractual dues. The respondent had issued Purchase Orders to the petitioners for the supply of certain materials at the rates and of the quality specified therein. The Purchase Orders contained necessary details regarding the description of material, quality requirements, delivery period, terms of payment, etc. and other general terms and conditions. It also provided in clear terms that the supplier had to comply with all acts, laws or other statutory rules that might become applicable to with regard to the performance of work included and concerning the Purchase Orders.

6. It appears that the respondent had made partial payment of the total bill amount on account of the alleged breach of certain terms and conditions of the Purchase Order. According to the terms and conditions, the supplier was required to comply with the relevant rules governing the performance of work mentioned in the Purchase Orders. Since the work related to supply of quarry materials and relating earth filling items, it was incumbent upon the supplier to get necessary environmental clearance from the authority concerned. It appears from the record that the respondent had also issued Notice to the petitioners asking to comply with the relevant rules regarding environment clearance. However, the petitioners had failed to comply with the same.

7. It is alleged by the petitioner that the respondent had approved certain material bills by unilaterally reducing the quantities of certain materials supplied by the petitioners. However, these issues involve disputed questions of fact. The question whether a writ petition under Article 226 of the Constitution is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party is no more res integra and is settled by a large number of judicial pronouncements of the Hon''ble Apex Court and of this Court. We agree with the proposition of law that on a given set of facts, if the ''State'' acts in an arbitrary manner, even in a matter of contract, an aggrieved party can approach the Court by way of a writ under Article 226 of the Constitution and the Court depending on the facts of the said case, is empowered to grant the relief.

8. There is no allegation that the Purchase Orders in question were issued either by fraud or by misrepresentation. The allegation is that the respondent had made full payment of all the bills at contractual rates, including the transportation bills, of some of the suppliers, who had supplied materials whereas, the petitioners have been meted out discriminatory treatment inasmuch as they were not paid full payment of all their bills. One of the main reasons for denial to make full payment appears to be the failure on the part of the petitioners to comply with the condition of providing necessary environmental clearance certificate in respect of the work concerned, which is evident from the Notice dated 30.9.2013 issued by the respondent and as discussed hereinabove, the other reasons relate to disputed questions of fact, which could be agitated in appropriate proceedings and not in petitions filed under Article 226 of the Constitution.

9. In ABL International''s case (supra), the Apex Court held that in an "appropriate case", a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable. In the aforesaid decision, the Apex Court has underlined the criteria during which the High Court may exercise its writ jurisdiction. It is for the High Court to decide whether a particular case is an "appropriate case" for exercising writ jurisdiction under Article 226 of the Constitution.

10. This Court is mindful of the fact that the plenary right to issue a prerogative writ should not be exercised when other remedies are available, unless such

action is found to be arbitrary and unreasonable, so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons. In this case, we do not find any arbitrariness or unreasonableness in the action of the respondent. In fact, the part-payment of bills appear to be the consequence of the petitioners'' inability to comply with the terms and conditions of the Purchase Order requiring production of the environmental clearance certificate within the stipulated period and also the decision to certify the material bills by reducing the quantity of certain materials for reasons, which, indisputably, relate to disputed question of fact. In view of the above discussion, we find no merits in the present petitions and, accordingly, dismiss them in limine.

