
(1996) 11 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 419 of 1996

Shri Kennedy Alemao

APPELLANT

Vs

Executive Engineer and others

RESPONDENT

Date of Decision : 30-11-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Contract Act, 1872 — Section 10

Citation : (1997) 3 ALLMR 422 : (1998) 2 BomCR 320

Hon'ble Judges : T.K. Chandrashekhara Das, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : S.K. Kakodkar, S.A. and R.V. Kamat, for the Appellant; V.B. Nadkarni, A.G. and S. Vahidulla, A.G.A., for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—Rule. The short question involved in this case is whether the refusal by the Government of Goa to extend the period of contract after the expiry of the term of contract is legal. The relevant clause in the Agreement is extracted below :-

"1.(2) The licence hereby granted shall be held and exercised by the licensee for a period of three months from 17-05-96 at 12.00 noon to 17-08-96 at 12,00 noon. This could be extended from time to time for a total period of one year on payment of Prorata bid amount."

2. The short facts for the purpose of deciding the case are that by Tender Notice dated 1st February, 1996, the respondent No. 1 Executive Engineer W.D.XIV (NH), P.W.D., Government of Goa, invited sealed tenders for the right to collect toll fee of Zuari Bridge on N.H. 17 for a period of one year. The petitioner submitted his tender with an offer of Rs. 94,00,555/-. He also deposited earnest money of Rs. 1,00,000/-, as required by the tender conditions. However, the petitioner's tender was accepted only for the period of three months from 17th May, 1996 to 17th August, 1996, at an amount of Rs. 23,50,139/-. Prorata and he was called upon to deposit a security amount of Rs. 7,83,330/-. His offer was

accepted with the above conditions imposed by the letter of respondent No. 1 dated 17th May, 1996. It may be noted that the conditions imposed by this letter of 17th May, 1996, were not in the tender conditions. The tender conditions as we pointed out earlier, spelled that the tender was for one year, but the first respondent seems to have deviated from the tender conditions and wanted to restrict the contract for three months and this fact has been informed to the petitioner by the aforesaid letter of 17th May, 1996. The petitioner however, without any demur accepted these conditions and executed the Agreement with these conditions and we have already extracted the relevant clause in the Agreement executed between the petitioner and the Government of Goa.

3. By letter dated 17th June, 1996, the petitioner wrote to the respondent No. 1 requesting him to extend the period of contract for a full year after the expiry of three months" period. By letter dated 13th August, 1996, however, the first respondent has extended the period of contract for a further period of three months from 17th August, 1996 and called upon the petitioner to deposit another amount of Rs. 22,32,500/-. Accordingly, the contract period was extended upto 17th November, 1996. By letter dated 1st October, 1996, the petitioner again wrote to the first respondent requesting him to extend the period of contract beyond 17th November, 1996. The first respondent did not extend the period of the contract beyond 17th November, 1996. This gave rise to the filing of this writ petition by the petitioner.

The writ petition was moved during the Deepavali Vacation. A Single Judge of this Court (Shri Khandeparkar, J.) had passed an interim Order in terms of prayer (c) in the petition till further orders.

4. It is further alleged by the petitioner that the departmental officers have recommended the extension of the period of licence in favour of the petitioner, but by a mala fide interference by the Chief Minister, Mr. Pratap Singh Raoji Rane, who is the 4th respondent in this writ petition, they refused the extension of the period of licence to the petitioner. It is the case of the petitioner that the brother of the petitioner Mr. Churchill Alemao who is a Member of Parliament contested the elections and another brother of the petitioner Mr. Joaquim Alemao, is a Member of the Legislative Assembly and both the brothers belong to the United Goans Democratic Party, which is hostile to the Congress Party headed by the 4th respondent because the aforesaid brothers of the petitioner came up successfully by defeating the rival Congress Party candidate.

5. The Chief Engineer, Shri A.K. Jahagirdar filed a reply in this writ petition. The sum and substance of the reply of the Government is that it has decided to implement computerised toll fee collection as suggested by M/s. Tata Unisys Ltd., so as to achieve improved customer service, efficient collection of toll, eliminate unnecessary correspondence, etc., etc. He further stated that the Tata Unisys Ltd. has placed their proposal and Government in order to introduce the semi-mechanised system of toll collection want to take up the toll collection presently by the Department and it is in these circumstances the Government refused the

further extension of the period of licence to the petitioner.

6. Before advertng to the arguments on behalf of the petitioner, one more fact has to be stated herein. At our request, the learned Advocate General has made available the file regarding the case. The file discloses that even at the time of acceptance of the offer of the petitioner, the Government had decided to mechanise the toll collection as is done in Calcutta on the Hooghly Bridge and the file further discloses that the officials of the Government have been deputed to Calcutta and the Tata Unisys Ltd. has been asked to work out the process.

7. The Counsel for the petitioner, Mr. Kakodkar, has strenuously argued that the aforementioned clause in the Agreement whereby the contract period was restricted to three months has been introduced by mala fide exercise of power by the 4th respondent. Therefore, that clause has to be ignored by this Court and the petitioner is legally entitled to have the contract period for the full one year as contemplated in the Notice Inviting Tenders. He further contended that the aforesaid Agreement Clause restricting the contract period to three months cannot be enforceable because it has been incorporated when the bargaining power of the petitioner is not equal with that of the Government. He also cited three decisions of the Hon"ble Supreme Court in this respect, being Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, and LIC of India and Another Vs. Consumer Education and Research center and Others, . It is true in those decisions it has been observed that the State cannot be allowed to enforce a contract which has been entered into with a citizen where there does not exist an equal bargaining capacity of the other contracting party. In the case of Central Inland Water Transport Corporation Ltd. (supra), the Supreme Court has held:

"It will apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessman and the contract is a commercial transaction."

In the subsequent decision in LIC of India and Another Vs. Consumer Education and Research center and Others, , this principle has been reiterated by the Supreme Court. In view of this observation of the Supreme Court we cannot accept the contention of the Counsel for the petitioner that because the petitioner had no choice but to accept, or to sign on the dotted line where the Government dictates. First of all, the above principle is not applicable for a commercial transaction like this one. Further, the petitioner is not a helpless signatory to the contract. He knows that the Notice Inviting Tenders for the period the contract was stipulated was for one year. By letter dated 17th May, 1996, the Government has restricted the period of the contract to three months.

At that time the petitioner could have refused to sign the contract and resiled from the offer made by him. The bargaining capacity of contracting parties in a commercial contract cannot be treated as unequal, unless otherwise established by the pleadings that the party's position was very precarious that he had no other choice except to accept the offer. Therefore, we have no hesitation to hold that the Clause extracted above is fully enforceable and not vitiated by any illegality. If that be so, the petitioner is bound by that Clause. Of course, that Clause contains a condition that the further extension of the contract rests with the discretion of the Government.

8. The learned Counsel for the petitioner has argued that the discretion of the State to be exercised even as a contracting party, should be in consonance with the principle of reasonableness and fair-play. He submits that the refusing of extension by exercising discretion vested in the State has been exercised with mala fide and arbitrarily.

9. The learned Advocate General appearing for the State, has submitted that the reason stated for refusal to extend the period of time after 17th November, 1996, cannot be said to be unreasonable and arbitrary. He points out that the allegations of mala fide against the Chief Minister if they apply and the so-called political hostility existed between the Alemao brothers on the one hand and the Chief Minister on the other, then the offer of the petitioner would not have been accepted even at the beginning and even more so, when it was once extended. He further submits that the reason stated for mechanisation of toll collection has been stated even at the time of awarding the contract. Therefore, it cannot be said that the discretion exercised by the Government to refuse the extension of the period of licence to the petitioner is unreasonable and arbitrary. It also cannot be said to be exercised with mala fide. We see considerable force in the arguments of the learned Advocate General. The reason for refusal to extend the period of licence is not discovered or found out during the period of the contract. The idea of mechanization of the toll collection has been there even at the time of awarding the contract. The Government was hopeful to implement within three months or six months for the mechanization of toll collection and it is in this background that the one year period originally contained in the tender condition has been restricted to three months and which condition was accepted by the petitioner without any demur. The condition newly introduced in the contract invests a discretion on the part of the Government for extension of the period of three weeks. The learned Counsel for the petitioner submits that the discretion should be exercised by the State Government on reasonable grounds. In other words, the discretion should be exercised by the State and should not be tainted with arbitrariness or unreasonableness. We have seen already the reason stated by the State Government for refusing the further extension to the petitioner, which is that the Government is thinking or in the contemplation of introducing a mechanized system of toll collection and the steps have already been taken to achieve that object. According to us this reason stated by the Government should not be said to be tainted with arbitrariness. This reason according to our

view is a valid reason and this reason is not something which was fished out during the course of the contract. As pointed out earlier, the file discloses that even at the commencement of the contract the idea of mechanization of collection of toll was in contemplations of the Government. Therefore, we cannot say that the reason for refusal to extend the period of contract by the State Government is vitiated by arbitrariness, of mala fide. Counsel for the petitioner then contended that what is now before the Government is only a proposal for mechanisation. The proposal has not snow balled into concrete steps to introduce the semi automatic computerised toll collection system. It is true that every State action, as we pointed out earlier, should withstand the test of reasonableness even in the realm of a contract. But that does not mean that the Court is bestowed with the power of examining the adequacy or inadequacy of the reason stated for its action. The adequacy of reason is not at all the purview of judicial scrutiny. The Court's power for judicial scrutiny of State action even in the realm of a contract ends with the examination of reason and goes no further. In other words, the Court is concerned only with the propriety of the reason and not the adequacy of the reason. In view of the matter, we do not see any substance in the contention of the Counsel for the petitioner in this regard. The learned Counsel for the petitioner then contended that the petitioner may be permitted to continue the toll collection till the mechanized system that is being introduced by the Government actually starts to function. It is not for this Court to decide on this aspect. It is open to the petitioner to approach the Government and persuade them to take such a stand in this regard. However, it is not anywhere falling under the duties of the Court. As we stated earlier, the reason stated by the State Government is not tainted with arbitrariness or mala fide and this Court cannot interfere in the action of the State Government.

10. In the result, the writ petition is dismissed. Rule discharged. Interim Order passed on 13th November, 1996, is vacated.

11. Petition dismissed.