
(2002) 04 MAD CK 0218

In the Madras High Court

Case No : Writ Petition No. 20272 of 1998 and W.P.M.P. No's. 30707 and 30708 of 1998

S.N. Ramasamy Raju

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 04 MAD CK 0218

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : D. Rajendran, for the Appellant; K. Kumaresh Babu, GA, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner, who claims to be a registered contractor, prays for the issue of a writ of certiorarified mandamus to call for the entire records of the 3rd respondent in connection with the impugned order made in letter No.257/98-A5 dated 11.11.98 and the consequential tender notification No.84/98/R.D.2 dated 20.11.98 of the 2nd respondent published in the Malai Malar dated 25.11.98 insofar as item No.4 is concerned, and quash the said impugned order dated 11.11.98 of the 3rd respondent and the tender notification dated 20.11.98 of the 2nd respondent and consequently, forbear the respondents from in any way interfering with the construction work and completion of the bridge work by the petitioner at Chitoor-Tiruttani Road in the road leading to Peddanagapundi in K.M.6 across Veeramangalam Channel.

2. Heard Mr. D. Rajendran, learned counsel appearing for the writ petitioner and Mr. Kumaresh Babu, learned Government Advocate appearing for the respondents.

3. A perusal of the impugned order dated 11.11.98 would show that a contract

was awarded and agreement was executed on 3.6.98 by the petitioner. The petitioner was granted three months time to complete the work. The petitioner committed default. Though the petitioner has committed default, he was granted extension of time up to 15.12.98. Even within the extended time, the petitioner had not completed the work. On 30.10.98, the petitioner was called upon to complete the work, while granting extension of time. Despite the said notice, the petitioner has neither started the work nor he had shown any progress. As the petitioner had not shown any progress in the work, a notice was issued once again and on 10.11.98, the contract was terminated.

4. A perusal of the impugned proceedings would show that there has been a default on the part of the petitioner in performing the obligations, which he had undertaken in terms of the contract. Even the contents of the affidavit also would disclose default on the part of the petitioner. Having committed default and having failed either to show progress or complete the work, the petitioner cannot complain or seek the relief of certiorari to quash the impugned proceedings. The invocation of writ jurisdiction under Article 226 on the facts of the case is a misconception and such a writ petition cannot be maintained at all.

5. Having committed breach, the petitioner cannot maintain a writ petition at all nor the cancellation of contract consequent to the breach committed by the petitioner could be the subject matter of judicial review. In exercise of writ jurisdiction, this Court will not be justified in examining the details of contractual obligation and breach committed. It is not as if it is a breach of statutory contract. After entering into a contract, the petitioner had committed breach and it is a matter, which is purely contractual, in respect of which interference under Article 226 of The Constitution is not called for. It is well settled that if the matter is governed by the terms of contract, no writ petition is maintainable to examine the termination and more so when the contract is non-statutory.

6. In Food Corporation of India and others Vs. Jagannath Dutta and others, , the Apex Court held thus :-

"5. We are of the view that the High Court was not justified in quashing the impugned notice especially when the terms and conditions of the contract permitted the termination of the agreement by either of the parties. The High Court should not have gone into the question of contractual-obligation in its writ jurisdiction under Article 226 of the Constitution."

7. In State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others, , the Apex Court held that if the matter is governed by a contract, then writ petition is not maintainable and it is not available whether the matter is governed by a non-statutory contract. In this context, the Apex Court held thus :-

"22. We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (*audi alteram partem*) is void. The termination is not a quasi-judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural

justice. It is not also an executive or administrative act to attract the duty to act fairly. It was - as has been repeatedly urged by Shri Ramaswamy - a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract* . Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further."

8. Admittedly the petitioner had committed breach of the contract. Being breach of contractual obligations, the remedy, if any is not by way of judicial review under Article 226 of The Constitution, but by way of other proceedings such as suit or arbitration as provided for under the Contract.

9. In the result, the writ petition is dismissed. Parties shall bear their respective costs. Consequently, connected W.M.P.s are also dismissed.