

(2002) 01 GUJ CK 0033
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1339 of 1996

State of Gujarat and Others

APPELLANT

Vs

Pravinchandra C. Khatiwala

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 299

Citation : AIR 2002 Guj 374

Hon'ble Judges : Jayant M. Patel, J;B.C. Patel, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; Y.N. Oza, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—The present Letters Patent Appeals are preferred by the State of Gujarat against the judgment dated 22-3-1996, passed by the learned single Judge of this Court in Special Civil Application Nos. 933 and 934 of 1988, whereby the learned single Judge has allowed both the said petitions.

2. Short facts leading to the present appeals are as under.

3. Original petitioners of the above Special Civil Applications (referred to hereinafter as "the petitioners") are the contractors and they were granted Govt. Contract on the terms and conditions as agreed. One of the terms was Clause 20 B. Since we are not concerned with the other terms of the contract, the same are not dealt with here. It is the case of the State Government that since the price quoted of certain items were exceeding the prescribed price, overpayment of total Rs. 55,18,426-89 ps. was made so far as the petitioner of Special Civil Application No. 933/88 is concerned and overpayment of Rs. 30,10,163.23 ps. was made so far as the petitioner of Special Civil Application No. 934/88 is concerned. Since the Government had no amount available for the purpose of set off or appropriation thereof. Clause 20B of the contract which was agreed by the original petitioners was invoked and notices were issued to the original

petitioners calling upon them to make the payment as mentioned in the notice. Against those orders passed by the authorities, the petitioners have preferred the Special Civil Applications referred to hereinabove, challenging the said notices. Contention before the learned single Judge in the aforesaid Special Civil Applications was that these notices are without jurisdiction since there is no adjudication of the issue and it was also contended by the petitioners that the principles of natural justice are not followed. However, the learned single Judge by interpreting the provisions of Clause 20B observed that the same cannot be invoked as the said provisions are attracted where claim has been ascertained under the appropriate provisions of law and the same has become due. Reference was made earlier by the learned single Judge of the decision of the Apex Court in the case of Union of India (UOI) Vs. Raman Iron Foundry, and ultimately, it was observed by the learned single Judge that the impugned notices were without any authority of law and therefore, the notices were quashed. Against the said decision of the learned single Judge, the State of Gujarat has preferred the present Letters Patent Appeals.

4. We have heard the learned Assistant Govt. Pleader Ms. Manisha Lavkumar and Mr. S. A. Desai, learned advocate appearing on behalf of Mr. Y. N. Oza. Clause 20B of the tender conditions reads as under.

"When no such amount (referred to a clause No. 20 of the contract agreement) for the purpose of the recovery from the contractor against any claim of the Government is available such a recovery shall be made from the contractor as arrears of land revenue."

Therefore, it is not in dispute that the original petitioners had entered into such contract and Clause 20B was in existence at the time when the contract came to be given to the original petitioner. Therefore, when it is an admitted position that Clause 20B was there in the terms and conditions of the contract, the contention that for recovery of the claim of the Government, the same cannot be made as arrears of land revenue cannot be accepted because the original petitioners themselves are party to the said contractual agreement and the petitioners cannot be permitted to back out from the said contract which is admittedly entered into by them.

5. It was alternatively submitted on behalf of the original petitioners that even if it is assumed that the Government has power to recover as arrears of land revenue, then such powers can be exercised only when the claim is adjudicated by the competent Court and after such order of the competent Court, the amount can be recovered as the arrears of land revenue. Reliance was also placed upon the judgment of the Apex Court in the case of Union of India (supra) which is also referred by the learned single Judge in his judgment. If we examine the said contention of the original petitioner, the same is of no substance because the Apex Court in the aforesaid case was dealing with the case for claim of damages which resulted on account of breach of contract and therefore, while interpreting Section 73 and 74 of the Indian Contract Act, the Apex Court held that "a claim

of damages for breach of contract is not a claim for a sum presently due and payable and the purchaser is not entitled in exercise of the right conferred upon it under clause 18, to recover the amount claimed by appropriating other sums due to the contractor".

It may be noted that the case before us is not that of recovery of damages from the contractor which has resulted on account of breach of contract. But the claim of the Government against a contractor is that of recovery of excess payment made than what was agreed by the Government. Therefore, the judgment of the Apex Court in our opinion, would not apply to the facts of the present case. In our view, when the matter pertains to excess or surplus payment made by either party, it would not be the case at par with the claim of damages to be recovered on account of breach of contract and therefore, the said contention of original petitioners deserves to be rejected.

6. Lastly Mr. Desai also argued that even if the Government wanted to recover the amount on the basis of excess or surplus payment made to the original petitioners, then also the same amount could not have been recovered without giving any opportunity of hearing to the original petitioners. Mr. Desai submitted that at least the petitioners ought to have been given opportunity to put forward their case to show that the payment made is not an excess payment. However, it appears that the State Government on the basis of the material available with it has arrived at a conclusion that there is case of excess payment and the said payment is required to be recovered as the arrears of land revenue. It is the case of the State Government that umpteen number of times, notices were given to the original petitioners. However, neither the original petitioners have cared to reply to the same nor have they even demanded any opportunity in response to the said notices nor the original petitioners have requested the Government to provide particulars on the basis of which they were called upon to make the payment. We are not examining the large question as to whether before exercise of power or before invoking Clause 20B of the tender condition, it was mandatory for the State Government to give opportunity of hearing or not. Considering the facts and circumstances of the present case, we find that the ends of justice would be met by giving one more opportunity of hearing to the original petitioners to put forward their case before the final decision of recovering amount of excessive payment is taken by the competent authority. However, it is made clear that if the State Government gives any opportunity and if the petitioners choose not to avail of the same, the petitioners will not be able to raise contention that now there is breach of principles of natural justice. Under the circumstances, we find that the learned single Judge has committed an error in allowing the petitions and therefore, the judgment of the learned single Judge is quashed and set aside. So far as the main Special Civil Applications are concerned, we hold that the State Government is entitled to recover the amount as per Clause 20B of the contract agreement as the arrears of land revenue. However, before exercising such powers, the competent authority will afford an opportunity of hearing to the original petitioners and the original petitioners will

be heard and thereafter appropriate orders will be passed by the competent authority for recovery of amount as the arrears of land revenue. Such exercise will be completed within a period of three months from the receipt of the writ of this court. The appeals are therefore allowed to the aforesaid extent. There shall be no orders as to costs. Consequently, Civil Applications stand disposed of.