

(2009) 02 CHH CK 0013
In the Chhattisgarh High Court

Sudha Agrawal

APPELLANT

Vs

State of Chhattisgarh and Another

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32
Contract Act, 1872 — Section 5

Citation : (2009) 2 CGLJ 64 : (2009) 2 MPHT 97

Hon'ble Judges : Dharendra Mishra, J;D.R. Deshmukh, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Dhirendra Mishra, J.—With the consent of the parties, the matter is heard finally.

2. The petitioner is proprietor of M/s. Ayurvedic Health House, a small scale industry, engaged in manufacturing Ayurvedic, Siddha and Unani Drugs. The respondents vide their notice of Annexure P-6, dated 5-2-2008, invited rates for the drugs from the manufacturers. The rates were to be submitted in the "Rates Contract Form" (Annexure P-7). The petitioner's offer for some medicines was confirmed by respondent No. 2 vide Annexure P-8, dated 26-5-2008. The rates contract executed with the successful bidder is valid upto 31st March, 2009. Respondent No. 2, vide his order dated 3-6-2008, issued orders for supply of medicines as detailed in Paragraph 8.4 of the petition. The supplies were to be made within a period of 45 days. The petitioner, after manufacturing entire bulk of medicines, dispatched the ordered drugs to the respondents, however, the supplied drugs were not accepted by the respondents and the same were returned vide memo of Annexure P-10, dated 9-7-2008, informing the petitioner that the order dated 30th June, 2008 and 4th July, 2008, have already been cancelled vide order dated 1st July, 2008.

3. Learned Counsel for the petitioner submits that the orders of Annexure P-1, dated 30th June, 2008 and Annexure P-2, dated 4th July, 2008, have been passed without assigning any reason, in the most arbitrary and high handed

manner. Before issuing the aforesaid order, the petitioner was not served any show-cause notice and the entire decision making process for cancelling the work order is vitiated on account of gross procedural irregularity and impropriety. After entering into the rate contract agreement and receiving work order, the petitioner manufactured the ordered drugs by incurring huge investments. The rate contract are governed by statutory guidelines contained in C.G. Store Purchase Rules, 2002. The impugned order is arbitrary and a colourable exercise of power. Reliance is placed in the matters of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, and National Highways Authority of India v. Ganga Enterprises and Anr. (2008) 7 SCC 410.

4. On the other hand, Shri Sumesh Bajaj, learned Government Advocate, appearing for the respondents, contended that after entering into the rate contract for 4 categories of medicines, it was realized that all these medicines could not be purchased and, therefore, it would not be appropriate to approve rates of all these medicines. Accordingly, a committee was constituted for preparation of model indent for inviting rates of most useful medicines. The above exercise was undertaken in the interest of Government exchequer. Cancellation of the earlier rate contract was done in the interest of State Exchequer. In the Notice Inviting Rates itself, it was clearly mentioned that the Director of Veterinary Services shall have exclusive power to stay or reject the rate contract without assigning any reason for the same. It was further argued that the rate contract with all the manufacturers including that of the petitioner, for purchase of medicines, have been cancelled without any discrimination. The Director, Veterinary Services is fully empowered under the conditions of Notice Inviting Rates for the supply of Ayurvedic Medicines to cancel the rate contract. The contention of the petitioner that the consignment sent by him was refused by the respondents has been denied. It was further argued that the dispatch of consignment by the petitioner and the refusal to accept the same by the respondents is a disputed question of fact and the same cannot be decided in a writ petition. Referring to Clause 7 of the Rate Contract Form (Annexure P-7), it was argued that in the event of dispute, the decision of the Director, Veterinary Services is final. Thus, there is an arbitration clause in the Rate Contracts Form and the respondents without applying for arbitration, have approached this Court and in these circumstances, the petition is also liable for dismissal for availability of the alternative remedy. Reliance is placed in the matters at Food Corporation of India and others Vs. Jagannath Dutta and others, ; Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, and State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., .

5. We have heard learned Counsel for the parties.

6. It is not in dispute that the petitioner submitted his offer in response to Notice Inviting Rates (Annexure P-6). His offer was finally accepted for categories of

medicines described in the letter of acceptance of Annexure P-8, dated 26-5-2008. It has also not been disputed that the petitioner issued supply orders for 4 categories of medicines vide purchase/supply order of Annexure P-9, dated 3-6-2008 and final bills submitted by the petitioner were returned and he was informed on 9-7-2008 (Annexure P-10) that the medicines to be supplied by the petitioner would not be accepted as the tender has already been cancelled vide orders dated 1-7-2008 and 4-7-2008.

7. The only question for consideration in this petition is whether in the facts and circumstances of the present case, the instant petition, which relates to cancellation of rate contract, is maintainable ?

8. Shri Manindra Shrivastava, learned Sr. Advocate, appearing for the petitioner, did not dispute that as per the conditions of the notice inviting rates in the Rate Contract Form, the Director of Veterinary Services was competent to cancel the rate contract without assigning any reason, however he argued that it is well settled that every action of the State or its instrumentality in exercise of its executive power must be informed by reasons. Where orders are arbitrary, irrational and without any reason, then even in the contract matters, Article 14 is attracted and such action can be struck down in appropriate cases. The reasons assigned by the respondents in its return is not reflected from the document of Annexure R-I, which only refers to the constitution of technical committee for purchases of medicines, implements, equipments, chemicals, vaccines, etc. in accordance with C.G. Store Purchase Rules. On the other hand, Shri Sumesh Bajaj, learned Govt. Advocate, contended that the Director, Veterinary Services was well within his power to cancel the rate contract at any stage without assigning any reason. The powers have been exercised on the basis of recommendations of the Committee. Apart from the petitioner's rates contract, the department has also cancelled the rate contract with other manufacturers/suppliers without any discrimination. The grievances that the petitioner, after receiving the order of supply, manufactured the drugs and dispatched it to the respondents and the same was not accepted by the respondents, is a disputed question of fact.

9. The scope of interference in writ petition under Article 226 of the Constitution has been dealt with in various judgments cited by the parties.

10. In the matter of Mahabir Auto Stores (supra), the petitioner was lubricant distributor of the respondent-Indian Oil Corporation. He was recognized as authorized dealer, distributor and agent of the Corporation. However, the Corporation stopped supply of lubricants to the petitioners and when his representations were also not considered, the petition was filed. The Hon'ble Supreme Court while dealing with maintainability of the above petition, held that in appropriate cases, action of the State or its instrumentalities, uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review

strikes such an action down. Every action of the State execution authority must be subject to rule of law and must be informed by reason. So, whatever be the activity or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Government action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable.

11. In the matter of Kumari Shrilekha Vidyarthi v. State of U.P. and Ors. (supra) also, the Hon''ble Supreme Court, referring Vade''s Administrative Law, 6th Ed., observed that the whole conception of unfettered discretion is inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good. In the later part of this judgment, it has been further observed that for the same reasons, there should, in principle, be no such thing as un-reviewable administrative discretion, which should be just as much a contradiction in terms as unfettered discretion. The question which has to be asked is that is the scope of judicial review, and in a few special cases, the scope for the review of discretionary decisions may be minimal. It remains axiomatic that all discretion is capable of abuse, and that legal limits to every power are to be found somewhere.

12. In the matter of National Highways Authority of India v. Ganga Enterprises and Anr. (supra), the respondents participated in a tender process and submitted his bid. Along with his bid, he also furnished a bank guarantee in the sum of Rs. 50 lacs as bid security. The bank guarantee furnished was "on-demand bank guarantee", which specifically provided that the bank guarantee could be enforced on demand, if the bidder withdraws his bid during the period of bid validity. On opening of the tender, the respondent was the highest bidder. The respondents withdrew his bid during validity of the offer. In these circumstances, the petitioner encashed the bank guarantee for Rs. 50 lacs. The respondents filed writ petition in the High Court for refund of the bank guarantee amount. The High Court raised two questions viz.: (a) whether the forfeiture of security deposit was without authority of law and without any binding contract between the parties and also contract to Section 5 of the Contract Act; and (b) whether the writ petition was maintainable in a claim arising out of a breach of contract. The High Court without considering the question (b), allowed the writ petition by holding that the offer was withdrawn before it was accepted. Thus no completed contract had come into existence and it is always open to the parties to withdraw its offer before its acceptance. Allowing the appeal of the petitioner-authority, the Hon''ble Supreme Court observed that the High Court ought to have first answered the question (b), i.e., whether the writ petition was maintainable in a claim arising out of a breach of contract as it would go to the root of the matter. It has been further observed that it is settled law that a dispute relating to contract cannot be agitated under Article 226 of the Constitution. Principles of law laid down in the matters of Kerala SEB v. Kurien E. Kalathil (supra), State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., , Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, , have also been referred

with approval.

13. However, in the matter of ABL International Ltd. and Anr. (supra), while dealing with maintainability of a petition for enforcement of contractual obligation of State or its instrumentalities under Article 226 of the Constitution of India, it has been held that on a given set of facts if the State acts in arbitrary manner even in a matter of contract, an aggrieved party can approach the Court in a writ under Article 226 of the Constitution and the Court depending on facts of the said case is empowered to grant the relief. When an instrumentality of the State acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual, constitutional or statutory obligations, it really acts contrary to the constitutional guarantee found in Article 14 of the Constitution. Therefore, once the State or an instrumentality of the State is a party, it has an obligation in law to act fairly, justly and reasonably to a contract which is the requirement of Article 14 of the Constitution.

14. In the matter of Food Corporation of India (supra), while considering the scope of interference with contractual obligations under Article 226 of the Constitution, it has been held in Paragraph 5 of the judgment that:

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. Even otherwise, the High Court misread the documents on the record and grossly erred in reaching the conclusion that no policy decision was taken by the FCI to terminate the storage agencies in the State of West Bengal. We may refer to some of the documents on the record.

15. In the matter of Kerala State Electricity Board and Anr. v. Kurien E. Kalathil and Ors. (supra), it has been held that a contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. The dispute arising out of the terms of such contracts or alleged breaches has to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not of itself affect the principles to be applied. Statutory bodies like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law.

16. In the matter of State of Bihar and Ors. v. Jain Plastics and Chemicals Ltd. (supra), in Para 3, it has been held thus:

"Settled law.- Writ is not the remedy for enforcing contractual obligations. It is to be reiterated that the writ petition under Article 226 is not the proper proceeding for adjudicating such disputes. Under the law, it was open to the respondent to approach the Court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy

is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the Court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.

17. From the principles of law laid down in the aforesaid judgment, it may be said that normally writ is not the remedy for enforcing contractual obligations and petition under Article 226 of the Constitution is not the proper proceeding for adjudicating such disputes. When equally efficacious remedy is available, he should pursue that remedy. However, while entertaining the objection as to maintainability of the writ petition under Article 226 of the Constitution of India, the fact to be borne in mind is that whether the State or its instrumentality acts in arbitrary manner. When the State or its instrumentality acts contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual obligation, then Article 14 of the Constitution comes into play and the High Court having regard to the facts of the case has a discretion to entertain or not to entertain a writ petition.

18. If we scrutinize the facts of the present case in the light of the law laid down by the Hon'ble Supreme Court, we find that the department of Agriculture, Animal Husbandry of the State of Chhattisgarh through its Director, Veterinary Services invited rates for veterinary drugs from manufacturers. Rate offered by the petitioner was approved for certain drugs and the petitioner filled in the Rate Contract Form. The offer was valid for a period upto 31st March, 2009. The Director issued supply orders for medicines, however, the supplies made by the petitioner were not accepted by the respondents on the pretext that the rate contract was subsequently cancelled. It is also not in dispute that the conditions mentioned in the Rate Contract Form empower the Director to cancel the contract without assigning any reason. It is not the grievance of the petitioner that the contract has been cancelled with any malafide intention in a discriminatory manner, on the contrary, the stand of the respondents State is that the decision to cancel the rate contract with all the manufacturers was taken on the basis of the report of the Technical Committee in the interest of the State Exchequer and rate contracts with all the manufacturers have been cancelled.

19. In view of the aforesaid facts and taking into consideration that the terms and conditions of the contract authorized the Director to terminate the contract without assigning any reason and there is no allegation of malafide in cancelling the rate contract, we are of the opinion that the action of the respondents in cancelling the rate contract in the facts and circumstances of the case cannot be termed as arbitrary or a colourable exercise of power by the State.

20. So far as the allegations regarding not accepting the supplied medicines even after issuance of order of supply for the said medicines, is concerned, this disputed fact cannot be gone into in a writ petition under Article 226 of the Constitution of India as the same involves disputed question of fact and decision

of which requires recording of evidence. Even otherwise, the petitioner in the instant petition has not sought any relief in this regard.

21. Consequently, the petition fails and the same is dismissed.