
(2013) 04 KAR CK 0122

In the Karnataka High Court

Case No : Writ Petition Nos. 5589-94/2013 (GM-RES)

Syed Tajuddin and Others

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 04 KAR CK 0122

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Judgement

S. Abdul Nazeer, J.—Though these writ petitions are listed for orders, by consent of learned Counsel for the parties, they are taken up for hearing, heard and disposed of by this order. In these cases, the petitioners have sought for a writ of mandamus directing the respondent to release the monthly payment (bills), which have been withheld by the respondent for the past three months and for certain other reliefs.

2. The respondent has filed its counter denying its liability to pay any amount to the petitioners under the contract. It is further contended that there is an agreement containing an arbitration clause. Therefore, the 1st petitioner has to avail the alternative remedy available to him in law.

3. I have carefully considered the arguments of the learned Counsel for the parties made at the Bar and perused the materials placed on record.

4. Clause 18 of the agreement at Annexure-R1 contains an arbitration clause. This clause provides that if there is any dispute in relation to a contract between the parties, it should be referred to the arbitration. The said clause is as under:

All disputes and differences of whatsoever nature, whether existing or which shall at any time arise between the parties hereto touching or concerning the agreement, contract, supply agreement meaning, operation or effect thereof or to the rights and liabilities of the parties arising out of or in relation thereto

whether during or after completion of the contract or whether before or after determination, foreclosure, termination or breach of the agreement (other than those in respect of which the decision of any person is, by the contract, expressed to be final and binding) shall, after written notice by either party to the agreement to the other and to the Appointing Authority hereinafter mentioned, be referred for adjudication to the Sole Arbitrator to be appointed as hereinafter provided.

5. It is well settled that when an alternative and efficacious remedy is available to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. The extraordinary jurisdiction of the Court is not a panacea for all the maladies, which a litigant may suffer from. The existence of an alternative remedy does not affect the jurisdiction of the Court to issue a writ, but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writ.

6. In *State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd.*, , the Apex Court has held that in cases of disputes relating to terms of private contract, proper course would be to refer the matter for arbitration or institution of civil suit and not a writ petition. It is held as under:

There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration (Clause 67 of the contract). The Arbitrators can decide both questions of fact as well as question of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy in this case provided in the contract itself is a good ground for the Court to decline to exercise its extraordinary jurisdiction under Article 226. The said Article was not meant to supplant the existing remedies at law but only to supplement them in certain well recognised situations.

7. In *ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others*, , it has been held as under:

It is well known that if the parties to a dispute had agreed to settle their dispute by arbitration, and if there is an agreement in that regard, the Courts will not permit recourse to any other remedy without invoking the remedy by way of arbitration unless of course both the parties to the dispute agree an another mode of dispute resolution

(emphasis supplied by me)

8. Therefore, I decline to entertain these writ petitions. They are accordingly dismissed reserving liberty to the petitioners to avail the alternative remedy

available in law. All contentions on merit are kept open. In view of dismissal of the writ petitions as above, LA. No. 1/2013 does not arise for consideration. It is accordingly dismissed. No costs.