

GAHC010107702018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./469/2018

JITF WATER INFRASTRUCTURE LTD. AND 3 ORS.
REPRESENTED BY SRI BHUSHAN BHIDE, DEPUTY GENERAL MANAGER,
PROJECTS DEPTT. AND HAVING ITS REGISTERED OFFICE AT A-1, UPSIDC
INDUSTRIAL AREA, NANDGAON ROAD, KOSI KALAN, DIST. MATHURA,
PIN 281401, UTTAR PRADESH.

2: SRI BHUSHAN BHIDE
S/O SHRI SHYAM DATTATRAYA BHIDE
R/O FLAT NO. 8H
E-2 BUILDING
GANDHI BASTI
GUWAHATI
ASSAM.

3: TAPAS KR. SEN
S/O LATE SATYENDRA NATH SEN
R/O H. N. 81
S.C. GOSWAMI ROAD
SUKRESHWAR
PANBAZAR
GUWAHATI
ASSAM.

4: RAKESH KUMAR GROVER
S/O JAGDISH RAJ GROVER
R/O 7091 SECTORB. POCKET 10
VASANT KUNJ
NEW DELH

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR

2:M/S AQUAFIL WINTech JV

HAVING ITS REGISTERED OFFICE AT 202
203
SHYAMLAL COMPLEX
NEAR KAMDHENU COMPLEX
AHMEDABAD 380015
GUJARA

Advocate for the Petitioner : MR. P N GOSWAMI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 14.06.2023

Heard Mr. K.P. Pathak, learned counsel for the petitioners. Also heard Mr. P. Barthakur, learned Additional Public Prosecutor for the State/respondent No.1.

2. The petitioners have filed an application under Section 482 Cr.P.C. read with Article 226 of the Constitution of India for quashing of the FIR dated 20.01.2018 filed by the respondent No. 2 in connection with North Guwahati Police Station Case No. 11/2018.

3. The brief facts of the case is that the Government of Assam through the office of the Guwahati Metropolitan Development Authority(herein short GMDA) floated a tender for engaging contractors for carrying out of the JICA(Japan International Cooperation Agency) assisted by Guwahati Water Supply project for procurement of design, supply, installation and commissioning of intake facilities, transmission mains, water treatment plant and reservoir for the North Zone including 5 years operation and maintenance. On 09.03.2012, GMDA issued a letter of award to JWIL-RANHIL for procurement of aforesaid works for the North Zone. Accordingly, a contract dated 13.03.2012 was signed between

the Government of Assam and JWIL-RANHIL for implementation of the said project. Thereafter, the informant i.e. M/S Aquafil-Wintech JV approached JWIL by expressing their interest in carrying out certain portions of the work and after a series of negotiations, the work under the project was sub-contracted to the informant by JWIL vide contract dated 08.08.2014. The said contract contained a provision for resolution of disputes through arbitration vide clause 20.3(a).

4. It is pertinent to mention that the complainant/informant, vide its letter dated 20.08.2014 also ensured that the project would be executed to the full and complete satisfaction of both GMDA and JWIL. Further in order to facilitate smooth fund flow, two escrow accounts were opened with ICICI Bank(called as Escrow Account-1 and Escrow Account-2).

5. It is further alleged that the informant was never serious about the work allotted to it and the work was progressing at a very slow rate due to multiple faults on the part of the informant, including poor progress of work at site and frequent stoppage of work for several continuous days because of non-deployment of adequate resources. Then, the Government of Assam and GMDA, JWIL issued multiple reminders to the informant requesting to rectify their ways and ensure that the project to be completed in time. After repeated requests by JWIL, informant failed to complete the work within the scheduled time.

6. Since there were no sincere efforts made by informant to meet the requirements of the contract, JWIL vide its letter dated 18.02.2017, withdrew/terminated part of the work allotted to the informant for designing of intake well from the overall scope of work allotted to it. After several intimations and since the entire project was a time-bound one, a decision was taken by JWIL to terminate the entire sub-contract dated 08.08.2014 awarded to the informant and this was duly informed to the informant vide letter dated 08.01.2018.

7. On 20.01.2018, an FIR vide No. 11/2018 was lodged by the informant making false and concocted allegations against the petitioners which at best can be described as a civil dispute arising out of a contract, with an intention to illegally pressurize the petitioners, particularly JWIL into negotiating with the informant. The encashment of the bank guarantee is covered by clause 24.8.5 of the sub-contract dated 08.08.2014. JWIL is entitled to encash the bank guarantee upon termination of the sub-contract. No documents were ever forged by the petitioners as alleged by the informant. Moreover, no funds were ever diverted from the escrow account as alleged by the informant. In fact, the said escrow account is still active and is maintained by JWIL as proved from the certificate dated 20.02.2018 of ICICI bank. Vide letter dated 24.03.2018, the informant communicated to JWIL that it would not proceed with the arbitration on the ground that it was registered as a small-scale enterprise as such it would avail the remedies available to it under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006. An order was passed vide dated 26.03.2018 passed by the learned Sole Arbitrator halted the proceedings to allow time to the parties to decide upon whether to proceed with the arbitration or avail of the remedies available under the Micro, Small and Medium Enterprises Development Act, 2006.

8. Without any prior intimation to the petitioners or to JWIL, one partner of the informant i.e. M/S Aquafil Polymers Co. Pvt. Ltd. approached the Micro and Small Enterprises Facilitation Council, Gandhinagar behind their backs and accordingly, a notice dated 10.04.2018 was issued to JWIL by the Facilitation Council. However, JWIL preferred a detailed reply against the said notice. The nature of dispute is purely civil and it is pending between the informant and JWIL.

9. The learned counsel for the petitioners has submitted that from the materials on record, it is evident that the relationship between the informant

and JWIL, of which the petitioners are mere employees, is entirely of commercial one. The subcontract between JWIL and the informant was terminated on account of the failure of the informant to meet the scheduled timeline of the project as well as pace up with the work as expected from it. Being aggrieved by such termination, the informant has lodged the present FIR for the purpose of harassing the petitioners.

10. It is also the submission of the learned counsel for the petitioners that a perusal of the FIR reveals that no offence has been committed by the petitioners as has been alleged therein and the dispute between the parties are purely of a civil nature. The dispute between the informant and JWIL arises out of the termination of the sub-contract executed between them. And the termination of the contract and all payments and receivable dues to both the parties are the subject matter of the arbitration. It is also submitted that the matter has been already settled between the parties by the arbitrator and the arbitration proceeding pending between the parties has already been disposed of.

11. In support of his submissions learned counsel for the petitioners has placed reliance on the following case laws –

- (i) (2000) 2 SCC 636 (G. Sagar Suri & Anr. vs. State of U.P. & Ors.)
- (ii) (2006) 6 SCC 736 (Indian Oil Corpn. Vs. NEPC India Ltd. & Ors.)
- (iii) (2009) 7 SCC 495 (Devendra & Ors. vs. State of Uttar Pradesh & Anr.)
- (iv) (2011) 7 SCC 59 (Joshep Salvaraj A vs. State of Gujarat & Ors.)
- (v) (2013) 11 SCC 673 (Paramjeet Batra vs. State of Uttarakhand & Ors.)
- (vi) (2019) 9 SCC 148 (Satishchandra Ratanlal Shah vs. State of Gujarat & Anr.)

12. On the other hand, the learned Additional Public Prosecutor for the

State/respondent No. 1 has fairly submitted that the matter in dispute relates to a contractual agreement between the parties and as the informant fails to fulfill the contract in the schedule time line given by the petitioners, the FIR has been lodged. The dispute between the parties does not come under the purview of criminal jurisdiction.

13. I have considered the submissions made by the learned counsel for the parties.

14. The allegations against the petitioners is that the accused No.1 is a company who had induced itself through accused No.2 to 4 as a company doing business in the field and the accused No. 1 was allotted work for design, supply, installation and commissioning of intake facilities, transmission mains and water treatment plant and reservoir for North Zone including 5 years operation and maintenance from the GMDA as per contract agreement made between the parties on 13.03.2012. The accused/petitioners requested them to provide services and goods related to the aforesaid program and an agreement was executed between the complainant and the accused/petitioner No.1 for the above goods and services and account was opened in ICICI bank Ltd. wherein it was stipulated that the fund which the authority is releasing shall be transferred to the said account. Accordingly, the complainant regularly receiving the funds in the said account. It is alleged in the FIR that since the month of October, 2017, the fund was not credited in the said account. On enquiry, it came to know that that the fund was illegally diverted by the accused Nos. 2 to 4 in consonance with the accused No.1. It is also alleged in the FIR that the accused/petitioners have misappropriated the said funds . On receipt of the said FIR, a case was registered vide North Guwahati Police Station Case No. 11/2018 under Section 120(B)/406/420/467/468/471 IPC.

15. In the case of **Sarabjit Kaur vs. State of Punjab & Anr.** reported in

2023 SCC Online SC 210, observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely, on the allegation of failure to keep promise will not be enough to initiate criminal proceedings.”

16. In another case **ARCI vs. Nimra Cerglass Techniques (P) Ltd. & Anr.** reported in **(2016) vol.1 SCC 348**, held that while deliberating upon the difference between mere breach of contract and offence of cheating, the distinction depends upon the intention of the accused at the alleged incident. If dishonest intention on the part of the accused is established at the time of entering into the transaction with the complainant, then criminal liability would be attached.

17. In the case of **Vijay Kumar Ghai & Ors. vs. State of West of Bengal & Ors.** reported in **2022 vol. 7 SCC 124**, it was observed that “this Court in *G Sagar Suri vs State of U.P.* 2000 vol.2 See 636 observed that it is the duty and obligation of the criminal court in exercise a great deal of caution in issuing the process, particularly when matters essentially of civil nature.

This Court has time and again caution about converting pure civil dispute into criminal cases. This Court in *Indian Oil Corporation vs. NEPC India Ltd.* 2006 vol. 6 SCC 736 noticed the pre-warrant impression that civil law remedies are time consuming and do not adequately protect the interest lenders/creditors. The Court further observed that any effort to settle civil disputes and claims which do not involve in criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged.”

18. Having regard to the above well established principles also noting that the present dispute is entirely with respect to contractual liability and more particularly termination of contract and failure on the part of the informant to perform the contractual obligation in time. It cannot be doubted that a civil

nature dispute has been unjustifiably viewed under the colour of criminal liability.

19. In the result, the petition is allowed. Accordingly, North Guwahati Police Station Case No. 11/2018 under Sections 120(B)/406/420/467/468/471 IPC is hereby quashed.

20. Criminal petition is disposed of accordingly.

JUDGE

Comparing Assistant