

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1001 of 2015**

Learn Nature Consultants A Partnership Firm, Through : Its Partner Shri Abhishek Sharma, Office Situated At D-8, Sector- 2, Avanti Vihar, Raipur (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Forest Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Raipur (Chhattisgarh)
2. Director Cum Divisional Forest Officer (DFO), Nandan Van Zoo And Safari, Naya Raipur, Forest Office Campus Rajatalab, Gaurav Path Raipur (Chhattisgarh)
3. Conservator Of Forests/ Chief Conservator Of Forests (Wildlife), Forest Office Campus Rajatalab, Gaurav Path Raipur (Chhattisgarh)
4. Principal Chief Conservator Of Forests (Wildlife), Araya Bhavan Medical College Road, Raipur (Chhattisgarh)
5. K.K. Bisen, Presently Posted As Director Cum Divisional Forest Officer (DFO), Nandan Van Zoo And Safari, Naya Raipur, Forest Office Campus Rajatalab, Gaurav Path Raipur (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Anup Majumdar, Advocate.
For Respondent/State	:	Shri U.N.S. Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Navin Sinha, Chief Justice****07/01/2016**

1. The writ application assails order dated 27.4.2015 passed by Respondent No. 5 cancelling the contract agreement executed between the parties on 27.3.2012. The writ petition also seeks payment of money dues for works done under the same alongwith interest.

2. The Respondents proposed to establish a Jungle Safari over 202.87 hectares of land located over more than one village what is now described as Naya Raipur. Pursuant to publication of the Notice Inviting Tender (hereinafter called 'the NIT') the Petitioner's bid was found to be most suitable and it was appointed as Consultant on 2.3.2012. A formal agreement was executed between the parties on 27.3.2012 and work order was issued. The Petitioner was required to prepare master plan, detailed project report alongwith supervision and development of the Jungle Safari. The Petitioner raised bills on 17.12.2012 which were partially paid. It raised further bills on 22.5.2013 and 29.5.2014 which have not been paid. On 27.3.2012, it was given a notice to show cause why the contract be not terminated. After consideration of the cause shown, the impugned order has been passed.

3. Learned Counsel for the Petitioner submits that the order of cancellation has been issued malafide by Respondent No. 5. The Petitioner has completed his part of the works under the contract and submitted both the master plan and the detailed project report. There was no justification whatsoever for cancelling the entire contract after the same. The cancellation of the contract is but only a ruse evident from the fact that it is only after completion of the works that Respondent No. 5 has sought to raise issues with regard to the eligibility for selection of the Petitioner as Consultant including the competency of the authority to release payments. It was next submitted that the notice for termination has been issued under Clause 6.12 of the contract. Availability of an arbitration clause is inconsequential as Clause 6.16 provides that an appeal may lie but the decision of the Conservator of Forest will be final and binding on both the parties. If the finding of the Conservator of Forest is final and binding, the result of the arbitration is a forgone conclusion. Additionally, if the order of the Conservator of Forest attains finality, obviously it is outside the purview of the arbitration clause. It was lastly submitted that at no point of time before issuance of the show cause notice or cancellation of the contract any notice or show

cause notice was issued to the Petitioner alleging any delay, deficiency or insufficiency in performance or for any other reason under the contract. Respondent No. 5 has wrongly taken work from another agency GEC Structural Consultants and Contractors regarding those assigned to the Petitioner and made payments to it from the funds which ought to have been paid to the Petitioner legitimately for the works completed by him.

4. Learned Counsel for the State submitted that the agreement was signed by the Petitioner on 27.3.2012. Clause 6.12 of the same permits cancellation of the contract after a notice. One of the conditions is failure to adhere to time schedules in which event the consultant was only entitled for payment of works actually completed. Clause 6.14 contains an arbitration clause. Clause 6.16 provides for settlement of disputes and Clause 6.17 provides for jurisdiction at Raipur.

5. The contract of the Petitioner has not been cancelled arbitrarily and abruptly. A show cause notice was issued to the Petitioner on 19.3.2015 by the Director cum Divisional Forest Officer (Jungle Safari) detailed in nature. The Petitioner submitted a detailed reply on 15.4.2015 after which the termination has been ordered. The order of termination is speaking in nature. There has been no infirmity in the decision making process. When the Petitioner did not perform his part of the contract in accordance with the agreement, the Respondents were left with no option but to have it executed departmentally with minor miscellaneous works completed by M/s. GEC Structural Consultants and that too unconnected with those assigned to the Petitioner.

6. Learned Counsel next submitted that if a show cause notice was given mentioning the grounds for cancellation and it was refuted by the Petitioner after considering which termination was ordered, disputed questions of facts arise requiring enquiry and determination. In the nature of the contract, such enquiry is not possible in the writ jurisdiction. The Petitioner having signed the agreement

cannot resile from invocation of the arbitration clause. The Respondents are ready and willing to perform their obligation under the arbitration clause. The provisions for settlement of disputes in Clause 6.16 is different from the arbitration Clause 6.14. Both are mutually exclusive.

7. It was lastly submitted that in a case of the present nature involving disputed questions of facts, no writ petition would lie for a money claim which automatically becomes disputed also. The Respondents have already paid Rs. 66 Lacs to the Petitioner with regard to which there was no dispute.

8. We have considered the submissions on behalf of the parties.

9. The relationship between the parties was contractual in nature. An agreement was signed between them with regard to the works in question. It is not the case of the Petitioner that it had objected to any clause of the agreement before signing. The Petitioner voluntarily consented to the arbitration clause also. We are also satisfied that clause 6.16 dealing with settlement of disputes is completely distinct from the arbitration Clause in 6.14. While settlement of disputes may deal with situations short of termination in case of termination, the arbitration clause alone would operate.

10. The jurisdiction under Article 226 of the Constitution in contractual matters has to be confined to errors in the decision making process. The Writ Court cannot enter into arena of disputed facts to examine contentions and counter-contentions to arrive at its own conclusions whether the cancellation of the contract was justified or unjustified. No enquiry on facts in a contractual matter is permissible in the writ jurisdiction. The scope for judicial scrutiny in contractual matters by exercise of powers in judicial review was considered in (1994) 6 SCC 651 (Tata Cellular v. Union of India) observing as follows:

"77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. Committed a breach of the rules of natural justice,
4. Reached a decision which no reasonable tribunal would have reached or,
5. Abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind* (1991) 1 AC 696, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

11. The consistent judicial view that a writ petition would not lie against a contractual dispute involving disputed questions of facts has been reiterated in (2015) 9 SCC 433 (*State of Kerala v. M.K. Jose*) observing as follows:

"13. A writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disputed questions of fact. The present case clearly indicates that the factual disputes are involved.

14. In *State of Bihar v. Jain Plastics and Chemicals Ltd*, a two-Judge Bench reiterating the exercise of power under Article 226 of the Constitution in respect of enforcement of contractual obligation has stated:

"3. ...It is to be reiterated that writ petition under Article 226 is not the proper proceedings 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.

In the said case, it has been further observed:

"7....It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs."

12. We are conscious of the fact that existence of an arbitration clause does not completely bar a writ petition. But it cannot be invoked as a general proposition and its applicability would depend on the facts and circumstances of each case. In the present case, if the Respondents had not acted in accordance with clause 6.12 of the Contract and the termination was not preceded by a show cause and consideration of the reply, entirely different issues may have arisen for adjudication. Normally speaking, a Writ Court will be loath to interfere with a contractual disputes where an arbitration clause exists voluntarily signed by one of the contracting parties. In (1996) 6 SCC 22 (State of U.P. v. Bridge and Roof Co. (India) Ltd.) it was observed as follows:

"21. 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 questions 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-recognized situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory right of theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 - whether for issuance of mandamus or any other writ, order or direction - was misconceived for the reasons mentioned supra.

13. We have carefully gone through the pleadings in the writ petition. Malafides is more easily alleged than proved. Though, Learned Counsel for the Petitioner sought to persuade us that Respondent No. 5 impleaded by name was acting malafide, we do not find any pleadings with factual details in support of the same. The mere fact that no earlier notices were given to the Petitioner with regard to the contract in question prior to issuance of show cause notice dated 19.3.2015, cannot lead to any conclusive opinion or finding in favour of the Petitioner and does not detract from the authority of the Respondents under the contract to terminate it after giving a show cause notice.

14. The Respondents have filed an additional affidavit committing themselves to the arbitration clause.

15. It is directed that within four weeks of the presentation of a copy of the present order before Respondent No. 2, he shall nominate an Arbitrator under Clause 6.14 and the Arbitrator shall enter into a reference within three weeks of his nomination by issuance of notice to the parties fixing the date for commencement of hearing. Subject to cooperation by the Petitioner, the Arbitrator shall ensure that the proceedings are brought to a conclusion at an early date without granting unnecessary adjournments to either parties.

16. We consider necessary to make this observation as there is always an urgency in resolution of disputes in commercial matters.

17. The claim of the Petitioner for arrears of bills submitted by him, cannot be acceded to in the writ jurisdiction except for what may be called admitted dues as no writ petition would lie for a money claim. Undoubtedly, the Respondents have stated that they have paid the admitted dues of Rs. 66 Lacs. However, nothing prevents them from scrutinizing the records and in the event that they find anything further payable as admissible dues, they would act fairly by making that payment without awaiting the outcome of the arbitration. We would like to add a word of caution here that this observation by us cannot be construed or taken as any opinion that further admitted dues do exist, which is but exclusively for the authorities to decide.

18. The writ petition is disposed in the aforesaid terms.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE