

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.41450 of 2016

Date : 01.12.2016

Between :

M/s Kiran Services, D.No.H.5/1213,
Arts College road, Proddatur Town,
Y.S.R. District, rep.by its Authorized
Signatory, J.Balanarayan Reddy,
s/o. late Jaranga Reddy.

.... Petitioner

And

The State of Andhra Pradesh, rep.by its
Principal Secretary, Finance (HR-I-Plg & Policy)
Department, Secretariat Buildings, Secretariat,
Hyderabad and others.

.... Respondents

The Court made the following:



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ORDER:

Heard Sri V.R.Reddy Kovvuri, learned counsel for petitioner, learned Government Pleader for Finance for respondents 1 to 3 and learned Government Pleader for Municipal Administration for 4th respondent.

2. Petitioner is a Society registered under the provisions of Societies Registration Act, 2001. Petitioner is primarily involved in outsourcing contracts, where under provides employment to its members. Such contracts are executed in Government Institutions, Public Sector Undertakings etc. The Society entered into Memorandum of Understanding (MOU) with the District Town & Country Planning Officer on 15.02.2014 for supply of manpower on outsourcing basis for a period of one year. The contract envisages supply of four Assistant Surveyors and one CAD Operator. According to the petitioner, this MoU is in force and valid till 15.02.2017. By impugned letter dated 13.10.2016, the District Town and Country Planning Officer (4th respondent) informed the petitioner society that there is a drastic reduction of work of survey and, therefore, the 4th respondent does not require the services of three Assistant Surveyors and require the services of only one Survey Assistant and one CAD Operator w.e.f. 01.10.2016. This writ petition is filed challenging the said decision of the 4th respondent.

3. Learned counsel for petitioner contended that outsourcing contract entered into on 15.02.2014 is in force and, therefore,

before completion of the contract period, a party to the contract cannot alter the terms of contract and, therefore, the impugned action is *ex facie* illegal. Having entered into contract for supply of four Assistant Surveyors, it is not permissible for the 4th respondent to reduce the requirement to only one during the subsistence of the contract. As per the orders of the Government, which govern the outsourcing contracts issued in G.O.Ms.No.94 General Administration (Ser.A) Department, dated 28.03.2003 and G.O.Ms.No.151 Finance (HR.I – Plg & Policy) Department, dated 08.08.2016, ordinarily the contract should be for a period of one year and renewable, but should not exceed three years at a time. In terms of these orders, when renewal is granted, in the mid course of contract period, 4th respondent cannot resort to reduce the requirement. On account of such reduction, grave prejudice is caused to the petitioner society. Petitioner is compelled to pay salary and other allowances to the three Assistant Surveyors engaged by him during the remainder of the contract period.

4. As noticed above, the averments in the affidavit filed in support of the writ petition and the contentions of the learned counsel for petitioner would show that the impugned action of the 4th respondent amounts to violation of terms of contract and a party to the contract cannot unilaterally take a decision affecting the other party. In the instant case, the party, who violated the terms of the contract being the Officer representing the State, such action of the Officer amounts to arbitrary exercise of power and authority, thereby offending Article 14 of the Constitution of India and thus, such action is amenable to judicial review of the writ Court.

5. It is not in dispute that supply of four Assistant Surveyors and one CAD Operator by the petitioner to the 4th respondent is governed by the contract entered between the petitioner and the 4th respondent. Thus, the relationship between the petitioner and the 4th respondent is regulated by the terms of contract. By assailing the decision of the 4th respondent contained in his letter dated 13.10.2016, petitioner is seeking enforcement of the terms of contract in this writ petition.

6. It is settled principle of law that the writ Court cannot interfere in enforcement of terms of contract and ordinarily the writ jurisdiction is not available in such matters. By long line of precedents, the scope of judicial review in contract matters is well settled.

7. In **Sri Ram Builders v. State of Madhya Pradesh and others**¹, Supreme Court was considering the scope of interference of the writ Court in contractual matters. In the said case, the main plank of attack was that there was a breach of contract relating to grant of lease by Madhya Pradesh Road Transport Corporation. By referring to the principle laid down by the Supreme Court in **Tata Cellular v. Union of India**², Supreme Court observed as under:

“58. In the ultimate analysis, the whole controversy boils down to a breach of contract by M.P. RTC entered into with the appellant. The scope of judicial review is very limited in contractual matters even where one of the contracting parties is the State or an instrumentality of the State. The parameters within which power of judicial review can be exercised, has been authoritatively laid down by this Court in a number of cases.

¹ (2014) 14 SCC 102

² (1994) 6 SCC 651

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60. In our opinion, the case put forward by the appellant would not be covered by the aforesaid ratio of law laid down by this Court. The High Court, in our opinion, has rightly observed that the appellant can seek the appropriate relief by way of a civil suit. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not normally grant the relief of specific performance of a contract. This view is supported by *Ramchandra Murarilal Bhattad v. State of Maharashtra* [(2007) 2 SCC 588] . This Court relying upon the earlier decision in *Noble Resources Ltd. v. State of Orissa* [(2006) 10 SCC 236] held as under: (*Ramchandra Murarilal Bhattad case* [(2007) 2 SCC 588] , SCC p. 607, paras 50-51)

“50. ... this Court would not enforce specific performance of contract where damages would be adequate remedy. It was also held that conduct of the parties would also play an important role.

51. The expansive role of courts in exercising its power of judicial review is not in dispute. But as indicated hereinbefore, each case must be decided on its own facts.”

8. In **Radhakrishna Agarwal Vs. State of Bihar**³. Supreme Court held as under:

“12. The Patna High Court had, very rightly, divided the types of cases in which breaches of alleged obligation by the State or its agents can be setup into three types. These were stated as follows:

“(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.”

³ (1977) 3 SCC 457

15. It then, very rightly, held that the cases now before us should be placed in the third category where questions of pure alleged breaches of contract are involved. It held, upon the strength of *Umakant Saran v. State of Bihar* [(1973) 1 SCC 485 : (1972) 2 LLJ 580] and *Lekhraj Satramdas v. Deputy Custodian-cum-Managing Officer* [AIR 1966 SC 334 : (1966) 1 SCR 120] and *B.K. Sinha v. State of Bihar* [AIR 1974 Pat 230 : 1973 BLJR 657] that no writ or order can issue under Article 226 of the Constitution in such cases “to compel the authorities to remedy a breach of contract pure and simple”.

17. Learned Counsel contends that in the cases before us breaches of public duty are involved. The submission made before us is that, whenever a State or its agents or officers deal with the citizen, either when making a transaction or, after making it, acting in exercise of powers under the terms of a contract between the parties, there is a dealing between the State and the citizen which involves performance of “certain legal and public duties”. If we were to accept this very wide proposition every case of a breach of contract by the State or its agents or its officers would call for interference under Article 226 of the Constitution. We do not consider this to be a sound proposition at all.

18. Learned Counsel for the appellants cited certain authorities in an attempt to support his submission that the State and its officers are clothed with special Constitutional obligations, including those under Article 14 of the Constitution, in all their dealings with the public even when a contract is there to regulate such dealings. The authorities cited were: *D.F. South Kheri v. Ram Sanehi Singh* where all that was decided, relying upon *K.N. Guruswamy v. State of Mysore*, was that, where the source of a right was contractual but the action complained of was the purported exercise of a statutory power, relief could be claimed under Article 226; and, *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal* [AIR 1962 SC 1044 : 1962 Supp 3 SCR 1 : (1963) 1 SCJ 106] where the real question considered was whether the petitioner had a *locus standi* to question the validity of an enactment; *Basheshwar Nath v. CIT* [1959 Suppl 1 SCR 528, 551 : AIR 1959 SC 149 : (1959) 35 ITR 190] , which has nothing to do with any breach of contract but only lays down that “Article 14 protects us from both legislative and administrative tyranny of discrimination”; *State of M.P. v. Thakur Bharat Singh* [(1967) 2 SCR 454 : AIR 1967 SC 1170 : (1968) 1 SCJ 173] which lays that even executive action must not be exercised arbitrarily but must have the authority of law to support it; *S.S. Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi* [(1967) 3 SCR 525 : AIR 1967 SC 1836 : (1968) 1 SCJ 178] , which repeats requirements of action which satisfy Articles 14 and 21 of the Constitution where compliance with these provisions is obligatory.

19. We do not think that any of these cases could assist the appellants or is at all relevant. None of these cases lays down that, when the State or its officers purport to operate within the contractual field and the only grievance of the citizen could be that the contract between the parties is broken by the action complained of, the appropriate remedy is by way of a petition under Article 226 of the Constitution and not an ordinary suit. There is a formidable array of authority against any such a proposition. In *Lekhraj Satramdas Lalvani v. N.M. Shah, Deputy Custodian-cum-Managing Officer, Bombay* this Court said (at p. 337):

“In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution.”

In *Banchhanidhi Rath v. State of Orissa* [AIR 1972 SC 843 : (1972) 4 SCC 781] this Court declared (at p. 845) (SCC p. 783, para 8):

“If a right is claimed in terms of a contract such a right cannot be enforced in a writ petition.”

In *Har Shankar v. Deputy Excise & Taxation Commissioner* [(1975) 3 SCR 254, 265 : (1975) 1 SCC 737] a Constitution Bench of this Court observed (at p. 265) (SCC p. 747, para 21):

“The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations.”

9. Yet again in **Life Insurance Corporation of India v. Escorts Limited and others**⁴ delineated scope of judicial review in contract matters. Supreme Court held as under:

“101. It was, however, urged by the learned counsel for the company that the Life Insurance Corporation was an instrumentality of the State and was, therefore, debarred by Article 14 from acting arbitrarily. It was, therefore, under an obligation to state to the court its reasons for the resolution once a rule nisi was issued to it. If it failed to disclose its reasons to the court, the court would presume that it had no valid reasons to give and its action was, therefore, arbitrary.

While we do not for a moment doubt that every action of the State or an instrumentality of the State must be informed by reason and that, in appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution, we do not construe Article 14 as a

⁴ AIR 1986 SC 1370

charter for judicial review of State actions and to call upon the State to account for its actions in its manifold activities by stating reasons for such actions.

102. For example, if the action of the State is political or sovereign in character, the court will keep away from it. The court will not debate academic matters or concern itself with the intricacies of trade and commerce. ***If the action of the State is related to contractual obligations or obligations arising out of the tort, the court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. ”***
(emphasis supplied)

10. *Prima facie*, the action of the 4th respondent to inform the petitioner that 4th respondent require the service of only one Assistant Surveyor instead of four is traceable to paragraph-2 of the MOU. In terms of this clause, the agency is required to supply manpower as per the requirement of 4th respondent. It can thus be inferred that, it is permissible for the 4th respondent to increase or decrease the number of Assistant Surveyors required to serve the 4th respondent. Therefore, it cannot be said that 4th respondent has acted in arbitrary and discriminatory manner offending the mandate of Article 14 of the Constitution of India blatantly violating the terms of contract even assuming that this Court can go into the scope of the terms of contract.

11. As laid down by the Hon'ble Supreme Court in the precedent decisions referred to above, this Court in exercise of power of judicial review under Article 226 of the Constitution of India cannot venture into resolution of disputes arising out of contract between two contracting parties even if one of the parties is State

represented by its Officer or its instrumentality. Ordinarily, a party to the contract can seek enforcement of the terms of contract only by availing common law remedy. Thus, writ petition is not maintainable and is liable to be dismissed.

12. Accordingly, writ petition is dismissed, leaving it open to the petitioner to work out the remedies as available in law. There is no expression of opinion on merits of the contentions urged by the learned counsel for petitioner or on the scope of various terms of contract. Reference to clause-2 of the MOU is only for a limited context to test whether the impugned decision *per se* would amount to arbitrary exercise of power offending Article 14 of the Constitution of India. All the issues are left open to the petitioner to be agitated, if so advised, in appropriate proceedings.

Miscellaneous petitions if any pending shall stand closed.
There shall be no order as to costs.

Date: 01.12.2016
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