

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 18339 of 2015

Date : 14.12.2016

Between :

M/s. Sri Sri Vigneswara Constructions,  
Contractors D No. 25/27 Sanjeevanagar  
Nandyal- 518 501

Petitioner

And

The State of A P  
Rep by its Principal Secretary to Government  
R & B Department, A P Secretariat Hyderabad and others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner entered into contract with respondent authorities dated 5.12.2012 for execution of works of “improvements to Jaderu-Mohanapuram road from KM-10/0 to 15/0 including construction of bridge at KM- 12/4 and 14/6” in East Godavari district. Petitioner was required to complete the work within 15 months. On request made by the petitioner, time for completion of work was further extended by six months. However, petitioner could not complete the work. Petitioner was given further opportunity to resume the work. However, petitioner did not resume the work and work remained incomplete. By order dated 30.9.2014 in exercise of power vested in the competent authority in Clause 61 of APSS, forfeited the EMD and the value of the work done by the petitioner. The said decision of Executive Engineer (R&B), Rajahmundry/4<sup>th</sup> respondent is under challenge in this writ petition.

2. As briefly noted above, the relationship between the petitioner and respondents is governed by contract and terms of contract determine the relationship. One of the terms of the contract clearly stipulate that time is essence of the contract. Thus, it is mandatory for the party to the contract to undertake the work entrusted to him within the time granted. Admittedly, petitioner has not completed the work within the time granted. The APSS clauses are binding on the petitioner. The clauses empower the party to the contract to terminate the contract on violation of the terms of contract. It is not in dispute that the time limit is prescribed for completion of the work and within the time stipulated the work is not completed. Therefore, it cannot be said that the authority acting on behalf of the State has arbitrarily exercised the power vested in it, in terminating the contract. Petitioner may have justification for not

completing the work within the time granted or petitioner may hold the respondent Government as responsible for not honoring the terms of contract by them resulting in delay in completion of the work. But these are all disputed questions, which require consideration. To establish his claim, petitioner has to avail common law remedy.

3. It is also appropriate to notice that para 4 of the agreement prescribes adjudication of the disputes, by way of arbitration, if the value of the amount claimed is less than Rs.50,000/- and if the value of the amount claimed is more than Rs.50,000./-dispute has to be raised before the appropriate Civil Court.

4. In view of the specific terms of contract, petitioner has to avail the remedy as available under common law and cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

5. Scope of jurisdiction of writ Court to entertain the writ petition against enforcement of terms of contract is well settled.

6. In **Sri Ram Builders v. State of Madhya Pradesh and others**<sup>1</sup>, 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**<sup>2</sup>, 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

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<sup>1</sup> (2014) 14 SCC 102

<sup>2</sup> (1994) 6 SCC 651

parameters within which power of judicial review can be exercised, has been authoritatively laid down by this Court in a number of cases.

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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.”

7. In **Radhakrishna Agarwal Vs. State of Bihar**<sup>3</sup>. 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.”

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

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<sup>3</sup> (1977) 3 SCC 457

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; *Basheshar 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.”

8. Yet again in **Life Insurance corporation of India v. Escorts Limited and others**<sup>4</sup> 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 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)

9. In **Natural Resources Allocation, In re, Special Reference No.1 of 2012**<sup>5</sup>, Supreme Court held:

**“188. In the main opinion, it has been concluded that auction is not a constitutional mandate, in the nature of an absolute principle which has to be applied in all situations. And as such, auction cannot be read into Article 14 of the Constitution of India, so as to be applied in all**

<sup>4</sup> AIR 1986 SC 1370

<sup>5</sup> 2012 (10) SCC 1

**situations (refer to paras 108 and 109 of the main opinion, above). Auction is certainly not a constitutional mandate in the manner expressed, but it can surely be applied in some situations to maximise revenue returns, to satisfy legal and constitutional requirements. It is therefore, that I have chosen to express the manner of disposal of natural resources by using the words “maximisation of revenue” in place of the term “auction”, in the foregoing two paragraphs (i.e. paras 186 and 187). But it may be pointed out, the Attorney General for India had acknowledged during the course of hearing, that auction by way of competitive bidding was certainly an indisputable means, by which maximisation of revenue returns is assured (in this behalf other observations recorded by me in para 156 above may also be kept in mind). In the aforesaid view of the matter, all that needs to be stated is, that if the State arrives at the conclusion, in a given situation, that maximum revenue would be earned by auction of the natural resource in question, then that alone would be the process which it would have to adopt, in the situations contemplated in the foregoing two paragraphs.”**

10. As held by the Supreme Court in the above precedent decisions, scope of the jurisdiction of the writ Court is very very limited. The claim of the petitioner is not fitting into the parameters where this Court can entertain the writ petition and grant relief for enforcement of the terms of contract. This writ petition is not maintainable and accordingly dismissed, leaving it open to the petitioner to avail the remedies available to him under the law. It is made clear that all aspects which are raised in this writ petition are left open to be agitated in appropriate proceedings. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE:14.12.2016  
TVK

P NAVEEN RAO,J

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