NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2619 of 2017

Srikant Gopilal Rathi S/o Shri G.M.Rathi, Aged About 52 Years Proprietor Of M/s Microplex India, 36 Mohata Market, Main Road, Wardha District Wardha (M.S.) acting in the Premises through person In Authorization Shri Sanjay P Maheshwari, S/o Shri P.J. Maheshwari, Aged About 53 Years, R/o 121, Shivaji Nagar, Nagpur (M.H.) Civil & Revenue District Nagpur

---- Petitioner

Versus

1. Chhattisgarh Rajya Beej Evam Krishi Vikas Nigam Ltd. Raipur, Through Its Managing Director, Beej Bhawan, Ravi Gram, G.E.Road, Raipur, Chhattisgarh

2. The Managing Director, Chhattisgarh Rajya Beej Evam Krishi Vikas Nigam Ltd., Beej Bhawan, Ravi Gram, G.E.Road, Raipur, Chhattisgarh

---- Respondents

For Petitioner : Shri Vivek Chopra, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

10/10/2017

(1) By the impugned order dated 6.9.2017, rate contract has been cancelled by the respondent No. 1- Chhattisgrh Rajya Beej Evam Krishi Vikas Nigam Ltd., against which instant writ petition has been filed questioning the same.

(2) Learned counsel for the petitioner would submit that the impugned order is bad and unsustainable in law as no opportunity of hearing was afforded to the petitioner while passing the impugned order.

(3) I have heard learned counsel appearing for the petitioner and perused the order impugned with utmost circumspection.

(4) The rate contract was granted to the petitioner on 17.08.2017 and the petitioner was directed to execute the pre-contract integrity pact and also directed to submit declaration in non judicial stamp paper, but it is not clear from the record as to whether the petitioner has complied with the aforesaid directions issued by the respondent No. 1. By the impugned order dated 6.9.2017, the aforesaid rate contract has been cancelledon account of technical reasons.

(5) The legal position in this regard is no longer res-integra. In the matter of **National Highways Authority of India Vs. Ganga Enterprises and another**[1], the Supreme Court has clearly held that in case of claim arising out of breach of contract, the writ petition is not an appropriate remedy for impeaching contractual obligations.

(6) The above-stated decision has been relied upon by the Supreme Court in the matter of **Orissa Agro Industries Corporation Ltd. and others Vs. Bharati Industries and others**[2] and held as under:-

> "11. In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible. (See: General Manager Kisan Sahkari Chini Mills Ltd., Sultanpur U.P. v. Satrughan Nishad and others[3], Rourkela Shramik Sangh v. Steel Authority of India Ltd. and another[4].

1 (2003) 7 SCC 410
2 AIR 2006 SC 198
3 (2003) 8 SCC 639
4 (2003) 4 SCC 317

> 12. In National Highways Authority of India v. Ganga Enterprises and another (supra), it was observed by this Court that the question whether the writ petition was maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the matter. The writ petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for impeaching contractual obligations. (See: Har Shankar and Ors. etc. etc. v. The Deputy Excise and Taxation Commissioner and others[5] and The Divisional Forest Officer v. Bishwanath Tea Co. Ltd.[6])"

(7) Similarly, in the matter of **Gujarat Maritime Board Vs. L & T Infrastructure Development Projects Ltd. and another**[7], the Supreme Court has held that where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract. It was observed as under:-

> "10. 70.6 Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages."

(8) In view of the aforesaid submission, the writ petition involves disputed question of fact arising out of breach of contract and therefore, the writ petition as framed and filed is not maintainable and it is dismissed as not maintainable. However, this will not bar the petitioner to proceed in accordance with law. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

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5 AIR 1975 SC 1121
6 AIR 1981 SC 1398
7 AIR 2016 SC 4502