

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1883 of 2018

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Luxmi Construction and Electrical Works Son of Late Girdhari Singh,
Resident of Village-Pahlejpur, P.S.-Goria Kothi, District-Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Special Secretary, Urban Development and Housing Department,
Government of Bihar, Patna.
3. The District Magistrate, Aurangabad.
4. The Nagar Panchayat Nabinagar through its Executive Officer,

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeev Nikesh
For the Respondent/s : Mr.Kinkar Kumar -Sc9

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 06-09-2018

The present writ petition has been filed for directing the respondent authorities to make payment of the admitted amount of contractual bills relating to installation of 45 watt LED lights, water supply and maintenance of Nagar Panchayat buildings, totaling to a sum of Rs. 75. 59 lacs approximately.

2. The brief facts of the case, according to the petitioner, are that in terms of tender notice, the petitioner and others filed a tender for allotment of work and consequently an agreement was entered into and work order was issued in favour of the petitioner vide memo dated 31.03.2015 and 24.04.2015. Thereafter, the petitioner had completed the work, however, he



has not been paid the outstanding dues.

3. Per contra, the learned counsel for the respondents has raised a preliminary objection regarding the maintainability of the present writ petition on the ground that Article 226 of the Constitution of India cannot be invoked for alleged breaches of contract. The learned counsel for the respondents has further submitted that upon enquiry it has been found that the petitioner had engaged in misappropriation of government fund and has prepared false, fabricated and exorbitant bills resulting in huge loss to the State Government. It is further submitted that the present writ petition involves disputed question of facts, which is beyond the purview of the writ Court.

4. I have heard the learned counsel for the parties and perused the materials on record. It is a trite law that a High Court does not entertain a petition under Article 226 of the Constitution of India to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimant and the same is required to be left to the aggrieved party to agitate the said question in a civil suit to be filed for that purpose. Reference in this connection be had to a judgment rendered by a Full Bench of this Court, reported in AIR 1977



Patna 65 [**M/s Radha Krishna Agrawal & Ors. vs. The State of Bihar & Ors.**], paragraphs no. 18 and 19 whereof are reproduced herein below:-

“18. Learned counsel appearing on behalf of the petitioners submitted that, on the facts and in the circumstances of the case, there has been no contravention of the terms of the agreement by the petitioner and as such the order of termination of the lease is void. Now the question is as to whether the allegation regarding the breach of the terms of the agreement, either by the petitioner or by the respondent State can be examined by this Court in exercise of its writ jurisdiction. According to the learned counsel appearing for the petitioners the impugned actions are in exercise of executive powers by the State under Article 298 of the Constitution, which are amenable to the jurisdiction of this court. Whether under the writ jurisdiction such dispute can be agitated and decided has been the subject-matter of controversy. Such disputes can be put under three groups for the purpose of answering the question:

(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases wherein 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 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.

19. So far as the cases under categories (i) and (ii) are concerned, it is almost settled that the person aggrieved can invoke the writ jurisdiction of this Court. In *Union of India v. M/s. Anglo Afghan Agencies*, (AIR 1968 SC 718), *Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council*, (AIR 1971 SC 1021) and *Robertson v. Minister of Pensions*, ((1949) 1 KB 227), it was pointed out that public bodies are as much bound as private individuals to carry out representations of facts and promises made by them relying on which other persons have altered their position to their prejudice and in such cases even if the contract has not been embodied in the form prescribed, it can be enforced by a writ in appropriate cases in equity. Similarly, in *K. N. Guruswamy v. State of Mysore*, (AIR 1954 SC 592), *D. F. O. South Kheri v. Ram Sanhi Singh*, (AIR 1973 SC 205) and *Shree Krishna Gynoday Sugar Ltd. v. State of Bihar*, (AIR 1975 Pat 123), it has been held that, even if the right to relief arose not of an alleged breach of contract, but the action of the authority which was being challenged was of a public authority vested with statutory power, this court, in exercise of its writ jurisdiction, can grant relief to the aggrieved person. On the other hand, in case falling under category (iii), where there is no question of exercise of any statutory power and the rights of the parties flow from mere terms of the contract entered into by the authorities of the State, a party to such agreement should not be allowed to invoke the writ jurisdiction of this Court for the purpose of finding out as to whether there has been a breach of contract on the part of the State or on the part of such person. It is apparent that in such cases there cannot be adjudication without evidence on



the point. There is no question of infraction of any rules or statutes. Courts have always called upon such petitioners to seek their remedy in the Civil Court. In this connection reference can be made to a Bench decision of this Court in B. K. Sinha v. State of Bihar, (AIR 1974 Pat 230), where Untwalia, C. J. (as he then was) after making a reference to the Supreme Court in Umakant Saran v, State of Bihar, (AIR 1973 SC 964); and Lekhraj Sathram Das v. N. M. Shah, (AIR 1966 SC 334) observed;

"Here in the very nature of the contract in question the petitioner had no right to claim its specific performance. The Statute did not impose any legal duty on the authorities concerned that if they thought that the petitioner should not be allowed to complete the work even assuming they thought so wrongly - they could not stop the work..... A writ of mandamus cannot issue to compel the authorities to remedy a breach of contract pure and simple."

In the same case at page 231 it was further observed:-

"I am, therefore, definitely of the view that until and unless in the breach is involved violation of certain legal and public duties or violation of statutory duties to the remedy of which the petitioner is entitled by issuance of a writ of mandamus, mere breach of contract cannot be remedied by this Court in exercise of its powers under Article 226 of the Constitution."

5. The aforesaid judgment rendered by a Full Bench of this Court was upheld by the Hon'ble Apex Court by a judgment reported in AIR 1977 SC 1496 [M/s Radhakrishna



Agrawal & Ors. vs. State of Bihar & Ors.], paragraphs no.11,

19, 21 and 25 whereof are reproduced herein below:-

“11. In the cases before us the contracts do not contain any statutory terms or obligations and no statutory power or obligation which could attract the application of Art. 14 of the Constitution is involved here. Even in cases where the question is of choice or consideration of competing claims before an entry into the field of contract facts have to be investigated and found before the question of a violation of Art. 14 could arise. If those facts are disputed and require assessment of evidence of the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Art. 226 of the Constitution. Such proceedings are summary proceedings reserved for extraordinary cases where the exceptional and what are described as, perhaps not quite accurately, "prerogative" powers of the Court are invoked. We are certain that the cases before us are not such in which powers under Art. 226 of the Constitution could be invoked.

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 remedies by way of a petition under Art. 226 of the Constitution and not an ordinary suit. There is a formidable array of authority against any such a proposition. In *Lekhraj Sathramdas v. M. M. Shah*, (AIR 1966 SC 334) (supra) this Court said (at page 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 Art. 226 of the Constitution." In *Bachhanidhi Rath v. State of Orissa*, (AIR 1972 SC 843 at p. 845) this Court declared (at p. 845) :

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

In *Har Shankar v. Dy. Excise and Taxation Commr.*, (1975) 3 SCR 254 at p. 265 : (AIR 1975 SC 1121 at p. 1126), a Constitution Bench of this Court observed (at p. 265) (of SCR) : (at p. 1126 of AIR) : "The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations."

21. In the cases before us, allegations on which a violation of Art. 14 could be based are neither properly made nor established. Before any adjudication on the question whether Art. 14 of the Constitution could possibly be said to have been violated, as between persons governed by similar contracts they must be properly put in issue and established. Even if the appellants could be said to have raised any aspect of Art. 14 of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been urged before the High Court. And in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed adduction of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its officers, has discriminated between parties identically situated. On the allegations and affidavit



evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us.

25. The limitations imposed by rules of natural justice cannot operate upon powers which are governed by the terms of an agreement exclusively. The only question which normally arises in such cases is whether the action complained of is or is not in consonance with the terms of the agreement. As already pointed out by us, even if by some stretch of imagination some case of unequal or discriminatory treatment by the officers of the State of persons governed by similar contracts is sought to be made out, a satisfactory adjudication upon the unusual facts of such a case would necessitate proper pleadings supported by acceptable evidence. In that case, the interim stay order or injunction could not be justified at all because so long as a Presidential Order, under Article 359 of the Constitution is operative, the enforcement of fundamental rights falling under Art. 14 is suspended. In such cases even if a petition or suit is entertained and kept pending no stay order could be passed because that would amount to indirectly enforcing the fundamental rights conferred by Art. 14 of the Constitution. It is only where a prima facie case for an injunction or stay can be made out, quite apart from a right covered by Art. 14 of the Constitution or by any other fundamental right whose enforcement may have been suspended, that an injunction or stay could be granted at all on suitable terms. As we have already said it was on such an assumption that this Court had, apparently, granted the interim stay which must now be discharged.”



6. Having regard to the facts and circumstances of the present case as also the well settled law laid down by this Court and the Hon'ble Apex Court apart from the fact that the present case involves disputed question of facts and the respondents do not admit their liability arising out of the contract, I find that the present writ petition is not maintainable inasmuch as Article 226 of the Constitution of India cannot be invoked for alleged breaches of contract and the remedy of the petitioner lies else where i.e. approaching an appropriate court of competent civil jurisdiction or taking recourse to the alternative redressal mechanism provided for under the Bihar Public Dispute Arbitration Act, 2008.

7. Consequently, the present writ petition is dismissed, as not maintainable.

(Mohit Kumar Shah, J)

Tiwary/-

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