

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Order Reserved on 15.10.2019****Order Delivered on 26.11.2019****Writ Petition (C) No.1958 of 2019**

Karan Raj Duseja, S/o Shri Lekhraj Duseja, aged about 34 years, Proprietor, Balaji Sales, Shop No.86, Dumartarai Market, Raipur Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh (Through Secretary, Department of Health & Family Welfare), Mantralaya, Mahanadi Bhavan, Atal Nagar, Raipur, Chhattisgarh.
2. DKS Post Graduate Institute & Research Center (Through its Medical Superintendent) DKS Bhawan, Shastri Chowk, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Kishore Bhaduri and Shri Pankaj Singh, Advocates
For Respondents/State	: Shri Vikram Sharma, Deputy Government Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V Order**Per Parth Prateem Sahu, Judge**

1. Challenge in this writ petition is to the letter dated 16.04.2019 issued by Respondent No.2 intimating the cancellation of the agreement executed between the parties.
2. Facts of the case, in nutshell are that, the Respondents issued an invitation for submission of 'Expression of Interest'

('EOI' *for short*) for operation, maintenance and management of Conferences cum Seminar Halls, Doctor Lounge, Movie Theater and various Shops situated at D.K.S. Post Graduate Institute and Research Centre, Raipur, Chhattisgarh. The last date of submission of EOI was 08.09.2018 and opening date of EOI was 23.08.2018. In pursuance to the said advertisement of EOI, Petitioner submitted his EOI, in which, he became successful. The Petitioner and Respondents entered into contract agreement on the conditions as prescribed in the EOI document itself. Subsequently, on 16.04.2019, Respondent No.2 issued a 'Letter of Intimation' mentioning therein that as per decision taken by the Managing Committee dated 04.02.2019, his agreement will stand cancelled after a period of one month automatically.

3. The aforementioned act of Respondent No.2 made the Petitioner to approach this Court by filing this petition with following relief(s) :

“10.1 This Hon'ble Court may kindly be pleased to quash the order dated 16.04.2019 issued by the Respondent No.2 against the Petitioner; and

10.2 This Hon'ble Court may kindly be pleased to direct the Respondents to return the bank guarantee amounting to five lakhs and also, reimburse the investment made by the Petitioner to the tune of Rs.44,36,643/-, along with the interest; and

10.3 This Hon'ble Court may kindly be

pleased to direct the Respondents to adequately compensate the Petitioner for their act of illegal with-holding the due/bank guarantee payable to the Petitioner; and/or

10.4 This Hon'ble Court may also, be pleased to pass any other order in favor of the Petitioner as it may deems fit and proper under the facts and circumstances of the case with cost.”

4. Learned counsel for the Petitioner submitted that the period of contract is for three years, but suddenly, the contract agreement has been cancelled within eight months only. He further submitted that during this period, the Petitioner has complied with all the conditions of the contract and also made huge investment for renovating the premises to the tune of Rs.44,36,643/-. He further submitted that Respondents have cancelled the agreement without any rhyme or reason therefore, the order/letter dated 16.04.2019 issued by Respondent No.2 be quashed; bank guarantee amounting to Rs.5 Lacs be returned; an amount to the tune of Rs.44,36,643/- along with interest be returned, and also to pay adequate amount of compensation. He also submitted that action on the part of Respondent No.2 is violative to Articles 14 and 19(1)(g) of the Constitution of India. He lastly submitted that termination of contract has been done without issuing any show cause notice.

5. Per contra, learned counsel for the State/Respondents submitted that Petitioner has violated the conditions of contract as rent of shops for the month from October 2018 to May 2019 has not been paid though there was a clause in the condition as mentioned in the EOI that the rent is to be paid in advance before the 5th day of every month. He further submitted that the submission made by learned counsel for the Petitioner that the Petitioner has made huge investment for construction/renovation of shops is baseless; firstly, as per the conditions, Petitioner is required to take prior permission of the authorities for raising any construction or making any alteration in the shops or its surroundings as provided in sub-Clause 14 of Clause VIII of the agreement entered into between the parties. In fact, the Petitioner has not made any expenditure for construction/renovation, because Petitioner has not submitted any document to satisfy sub-Clause 14 of Clause VIII so as to prove that prior permission has been taken from the competent authority. He also submitted that contract agreement itself provides that the agreement can be cancelled after giving one month's written notice and contract agreement has been cancelled by serving one month's written notice vide Annexure P/1, therefore, there is no illegality or arbitrariness on the part of the Respondents in cancelling the contract. He lastly submitted that writ petition itself is not maintainable in view of disputed facts involved in it, which could not be decided without evidence.

6. We have heard learned counsel appearing for the parties and perused the documents annexed along with the writ petition.

7. So far as first ground raised by learned counsel for the Petitioner that though the contract period is of three years, but suddenly without any rhyme or reason, contract agreement has been cancelled vide Annexure P/1 is concerned, the conditions of the contract in sub-Clause 15 of Clause VIII provide that contract agreement can be cancelled after giving one month's notice. In the case at hand, Respondent No.2 vide Annexure P/1, cancelled the agreement by giving one month's written notice, therefore, the said submission of the Petitioner is not sustainable. The document Annexure P/1 in specific terms bears that there will be automatic termination after one month from the date of issuance of notice.

8. So far as other ground is concerned that the Petitioner has made huge investment for renovation/construction of shops etc., he had not filed any document that he has obtained prior permission as prescribed in sub-Clause 14 of Clause VIII of terms and conditions of the contract, therefore, we do not find any material to accept the submission made by learned counsel for the Petitioner.

9. The other material available on record is the notice of non-payment of rent from October 2018 till May 2019, which shows that the Petitioner has not complied with the conditions

of the contract. The dispute is a contractual dispute and in the terms and conditions of the contract itself, method for redressing the dispute is provided.

10. The Petitioner is claiming an amount of Rs.5 Lacs towards bank guarantee and an amount to the tune of Rs.44,36,643/- towards investment made by him, whereas Respondents are alleging that there was a breach of contract.

11. The grounds raised by the Petitioner as also the pleadings made by the Respondents, it is evident that the issue involves the disputed facts, which can only be gone into by leading evidence by the respective parties and the same could not be decided in a writ jurisdiction.

12. The Hon'ble Supreme Court in the matter of **State of Bihar and Others v. Jain Plastics and Chemicals Ltd.**¹ held that :

“4. Despite the settled law, the respondent filed CWJC No.3968 of 1997 before the High Court of Patna challenging the decision taken by the appellants to deduct a sum of Rs.15.24 lacs for the loss suffered, from the bills of the respondent-Company while making the full and final payment. That writ petition was allowed despite the objection raised by the appellants that the respondent committed breach of contract and the Court should not exercise its writ jurisdiction in such

¹ (2002) 1 SCC 216

cases. L.P.A. No.945 of 2000 was also dismissed by the High Court by its judgment and order dated 11.1.2001. Hence this appeal.

7. In our view, it is apparent that the order passed by the High Court is on the face of it illegal and erroneous. 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.”

13. Again, the Hon'ble Supreme Court in the matter of **Pimpri Chinchwad Municipal Corporation and Others v. Gayatri Construction Company and Another**² held that :

11. In matters relating to maintainability of writ petitions in contractual matters there are a catena of decisions dealing with the issue.

² (2008) 8 SCC 172

12. In *National Highways Authority of India v. Ganga Enterprises*, [(2003) 7 SCC 410], it was inter alia held as follows: (SCC p.415, para 6)

"6. The respondent then filed a writ petition in the High Court for refund of the amount. On the pleadings before it, the High Court raised two questions viz.: (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act; and (b) whether the writ petition is maintainable in a claim arising out of a breach of contract. Question (b) should have been first answered as it would go to the root of the matter. The High Court instead considered Question (a) and then chose not to answer Question (b). In our view, the answer to Question (b) is clear. It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in *Kerala SEB v. Kurien E. Kalathil*, [(2000) 6 SCC 293], *State of U.P. v. Bridge & Roof Co. (India) Ltd.*, [(1996) 6 SCC 22] and *Bareilly Development Authority v. Ajai Pal Singh*, [(1989) 2 SCC 116]. This is settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr Dave,

however, relied upon *Vetigamto Naveen v. Govt. of A.P.*, [(2001) 8 SCC 344] and *Harminder Singh Arora v. Union of India*, (1986) 3 SCC 247]. These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed."

13. In *Kerala SEB v. Kurien E. Kalathil*, [(2000) 6 SCC 293], this Court dealt with the question of maintainability of petition under Article 226 of the Constitution and the desirability of exhaustion of remedies and availability of alternative remedies, as also difference between statutory contracts and non-statutory contracts. In paras 10 and 11 of the judgment it was noted as follows: (SCC pp.298-99)

"10. We find that there is a merit in the first contention of Mr Raval. Learned counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract. If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the

contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such

activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."

14. For the foregoing reasons and the law laid down by the Hon'ble Supreme Court as aforesaid, we are not inclined to entertain this writ petition, which is liable to be and is hereby dismissed. However, the Petitioner will be at liberty to take recourse to any other proceedings available to him under the law.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge