

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
(Circuit Bench at Port Blair)

BEFORE:

**The Hon'ble Mr. Justice Ravi Krishan Kapur**

**W.P.A. NO.9338 of 2020**

RDS Project Limited & Anr.

-vs-

The Union of India & Ors.

For the petitioners : Mr. Phiroze Edulji  
Mr. R. Bhattacharyya  
Mr. Saryati Datta  
Ms. Rajnandini Das

For the respondents : Mr. Tulsi Lal

Heard on : 07.01.2021, 11.01.2021, 20.01.2021,  
21.01.2021, 28.01.2021

Judgment on : 08.02.2021

**Ravi Krishan Kapur, J.:**

1. This petition has been filed seeking reliefs pertaining to a bank guarantee dated 17 March, 2020. In fact, the primary relief which the petitioner has sought is for restraining the respondent authorities from invoking the concerned bank guarantees.
2. The disputes between the parties arise out of a contract for construction of a New Hangar AF Station at Carnicobar valued at approximately Rs.189 crores. In terms of Clause 43.1 of the special conditions of the tender, the petitioner had received an interest free advance of 10 per cent of the entire contract value towards mobilization advance in two instalments. Thereafter, in terms of the

conditions of tender, the petitioner had furnished two separate bank guarantees on 17 March, 2020 for Rs.97,79,919/- respectively. The petitioner has sought to restrain the respondent authorities from invoking the concerned bank guarantees on the ground of spread of Coronavirus (Covid-19). It is in this background, that the petitioner had filed this petition wherein an order dated 27 November, 2020 was passed whereby the respondent authorities were restrained from invoking the bank guarantees.

3. At the outset, a point had been raised by the petitioner as to my determination in taking up this matter on the ground that I did not have the necessary determination. By an order dated 11 January, 2021, I had decided that I had determination and proceeded to fix the writ petition for "Hearing".
4. Being aggrieved by the order dated 11 January, 2021, the petitioner had preferred an appeal. By an order dated 21 January, 2021 the Hon'ble Division Bench had dismissed the appeal filed by the petitioner. In this context, the relevant observations of the Division Bench are set out hereinbelow:

"We are of the considered view that there is no error of jurisdiction, illegality, impropriety or procedural irregularity in the learned Single Judge further proceeding to consider the matter following the order dated 11.01.2021. ***We caution ourselves to desist, at this stage, from going into further on this aspect since the fruit is not ripe enough for us to peck to decide whether the appellants are trying to wriggle out of the available jurisdiction or unjustly attempting to scout other jurisdictions. We make these observations and leave that issue there.***" (emphasis added)

5. A preliminary point has been taken on behalf of the respondent Union of India, that in view of an arbitration clause specifically provided for in the agreement by and between the parties (i.e. Clause 70 of the General Terms and Conditions of the Contract), the writ petition is not maintainable. In this context, Clause 70 of the General Terms and Conditions provides as follows:

*70. Arbitration:- All disputes, between the parties to the Contract (other than those for which the decision of the C.W.E or any other person is by the Contract expressed to be final and binding) shall, after written notice by either party to the Contract to the other of them, be referred to the sole arbitration of an Engineer officer to be appointed by the authority mentioned in the tender documents.*

*Unless both parties agree in writing such reference shall not take place until after the completion or alleged completion of the Work or termination or determination of the Contract under Condition Nos.55, 56 and 57 hereof.*

*Provided that in the event of abandonment of the Works or cancellation of the Contract under Condition Nos.52, 53 or 54 hereof, such reference shall not take place until alternative arrangements have been finalized by the Government to get the Works completed by or through any other Contractor or Contractors or Agency or Agencies.*

*Provided always that commencement or continuance of any arbitration proceeding hereunder or otherwise shall not in any manner militate against the Government's right of recovery from the contractor as provided in Condition 67 hereof.*

*If the Arbitrator so appointed resigns his appointment or vacates his office or is unable or unwilling to act due to any reason whatsoever, the authority appointing him may appoint a new Arbitrator to act in his place.*

*The Arbitrator shall be deemed to have entered on the reference on the date he issues notice to both the parties, asking them to submit to him their statement of the case and pleadings in defence.*

*The Arbitrator may proceed with the arbitration, exparte, if either party, inspite of a notice from the Arbitrator fails to take part in the proceedings.*

*The Arbitrator may, from time to time with the consent of the parties, enlarge, the time upto but not exceeding one year from the date of his entering on the reference, for making and publishing the award.*

*The Arbitrator shall give his award within a period of six months from the date of his entering on the reference or within the extended time as the case may be on all matters referred to him and shall indicate his findings, alsong with sums awarded, separately on each individual item of dispute.*

*The venue of Arbitration shall be such place or places as may be fixed by the Arbitrator in his sole discretion.*

*The award of the Arbitrator shall be final and binding on both parties to the Contract.*

6. It was contended on behalf of the respondent Union that this petition is not maintainable since the parties had agreed to have their disputes adjudicated by way of an alternative remedy specifically provided for in the contract. On merits, it was also contended on behalf of the respondent Union that, there were no grounds whatsoever justifying any restraint order as sought for by the petitioners and the petition was liable to be dismissed on merits.
7. On behalf of the petitioner it was submitted that the bank guarantees furnished by the petitioner were conditional in nature and since there was no loss nor damage suffered by the Union, the condition for invoking the bank guarantees had not been satisfied. In this connection, reliance was placed on *Hindustan Construction Co. Ltd. vs. State of Bihar & Ors.* (1999) 8 SCC 436 and *Halliburton Offshore Services Inc. vs. Vedanta Limited and Ors.* (2020) 3 ArbLR 113 (Del) to

contend that an order of restraint ought to be passed in the facts and circumstances of the instant case.

8. The questions raised in the petition all pertain to performance of a contract by the parties. Admittedly, there exists an arbitration agreement. The arbitration agreement is of wide amplitude. It is not the contention of the petitioner that the disputes raised in this petition are outside the scope of the arbitration agreement. A writ is not the remedy for enforcing contractual obligations. It is trite law that disputes merely relating to contracts cannot be agitated under Article 226 of the Constitution [*Pimpri Chinchwad Municipal Corporation and Ors. vs. Gayatri Construction Company & Anr. (2008) 8 SCC 172*]. Accordingly, I find that the parties having provided for an alternative and equally efficacious remedy in the contract ought not to be permitted to invoke the extraordinary jurisdiction of the Writ Court under Article 226 of the Constitution [*Empire Jute Company Limited & Ors. vs. Jute Corporation of India Limited & Anr. (2007) 14 SCC 680 and Joshi Technologies International INC vs. Union of India (2015) 7 SCC 728*].
9. It bears reiteration that the disputes raised by the petitioner are contractual disputes in respect of which I am of the view that the Writ Court is not the proper forum. Ordinarily, the High Court ought not to enter into determination of questions which require an elaborate examination of evidence to establish the rights of the parties. Infact, this is a case where a Writ Court should show restraint and direct the

petitioner to pursue its remedy before an efficacious alternative forum and there is no reason to invoke the writ jurisdiction. The power of judicial review vested in the superior Courts undoubtedly has wide amplitude but when there exists an arbitration agreement and a machinery agreed upon by the parties, the Writ Court ordinarily would not exercise its discretionary jurisdiction. I find that there are no exceptional grounds made out by the petitioner as to why the Writ Court ought to interfere in such a matter. I am also unable to find any element of public law in the grievance of the petitioner.

10. In view of the aforesaid and on the ground of maintainability alone the writ petition is dismissed. However, there will be no order as to costs. The interim order dated 27 November, 2020 stands vacated. Accordingly, WPA No.9338 of 2020 stands disposed off.
11. A certified photostat copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Ravi Krishan Kapur, J.)