

ORDER SHEET

WPO/113/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

TERAI TEA COMPANY LTD AND ANR
-VS-
THE STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 04th March, 2021.

Appearance:

Mr. Sagar Bandyopadhyay, Adv.

Mr. Chayan Gupta, Adv.

Mr. Ratul Das, Adv.

Mr. Niladri Banerjee, Adv.

Mr. Soumyajyoti Nandy, Adv.

Mr. Asutosh Singh, Adv.

...for the petitioner

Mr. Debjit Mukherjee, Adv.

Ms. Susmita Chatterjee, Adv.

...for the State

Mr. Biswaroop Bhattacharya, Adv.

Mr. Anil Dhar, Adv.

Mr. Debabrata Das, Adv.

...for the respondent no.4

The Court : The grievance of the petitioners is that, despite having lodged specific complaint regarding non-supply of water to the premises of the petitioners, who are tenants under respondent no.4, the police authorities are not taking any action on such complaint.

Learned counsel, at the outset, submits that a suit was instituted pertaining to disputes between the respondent no.4 and the petitioners, which was subsequently relegated for arbitration.

Learned counsel for the petitioners cites *A.P. Pollution Control Board II -vs- Prof. M. V. Nayudu*, reported at 2001 (2) SCC 62 in support of his

proposition that drinking water is of primary importance in any country and the right of access to drinking water is fundamental to life and there is a duty on the State under Article 21 of the Constitution to provide clean drinking water to its citizens.

It is argued that, irrespective of the pending dispute between the private parties, the water supply to the petitioners' premises, which is included within the fold of the fundamental rights of the petitioners, cannot be withheld on any pretext.

Learned counsel for the private respondent argues that the writ petition ought to be dismissed for suppression of material facts. It is submitted that a notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued by the petitioners themselves through their solicitor. That apart, the respondent no.4 has already nominated an arbitrator and sent such proposal to the petitioners, to which the petitioners have not yet responded. It is further submitted that the total dues of respondent no.4 from the petitioners amount to Rs.84,32,139/- in respect of KMC property tax and other charges. As such, the matter ought to be heard by the arbitrator, as and when appointed in the matter.

Learned counsel appearing for the State respondent files a police report which indicates that the police have already commenced enquiry on the complaint lodged by the petitioners. However, it is submitted that the matter is sub-judice and that the Kolkata Municipal Corporation has issued a notice under Section 411(2) of the KMC Act, 1980 to respondent no.4, declaring the building as dangerous on September 7, 2011.

It appears from the relevant clauses in the Consolidated Charges Agreement between the parties, in particular Clause V, that "Consolidated

Charges” means the charges on account of maintenance, security and other service charges payable by the tenant to the society for proper use and enjoyment of the said premises as more fully stated in the agreement. Clause 2 of the agreement enumerates that the tenant shall be entitled to use and obtain water from the overhead tank as well as the underground reservoir in common with the other tenants and lawful residents of the said Building depending on the availability of water.

Since a prima facie reading of the two clauses in conjunction indicates that the supply of water is also an essential service, which is contemplated within the scope of being covered by consolidated charges in the agreement and since the tenants are also liable to pay consolidated charges as per clause 4 of the agreement in question, the dispute squarely falls within the domain of the arbitrator who may be appointed in the matter.

That apart, it is an admitted position, even as per the complaint lodged by the petitioners, that the petitioners were compelled to stop payment of rent and consolidated charges since March 2017, on the allegation that the landlord failed to keep the building habitable. Whatever might be the merits of the rival contentions of the petitioners and the private respondent regarding their respective liabilities inter se, unless such question is decided by a competent forum, it would be premature to direct the private respondent no.4 to restore water supply to the petitioners. Although the petitioners rely on the duty to the police to implement Section 430 of the Indian Penal Code, which envisages that a diminution of supply of water for food or drink for human is an offence, in the present case, the rights of the petitioners to get essential services is circumscribed by the

terms and conditions of the agreement between the private parties. The ratio laid down in *A. P. Pollution (Supra)* cannot be relevant for the present purpose, since the same dealt with the duty of the State to provide drinking water to citizens of India. In the present case, however, the alleged disruption of supply is at the behest of respondent no.4 and any mutual rights between the private parties, as indicated earlier, has to be decided at least prima facie prior to passing a direction on the police to ensure that the private respondent no.4 provides water supply to the petitioners.

Since it is the admitted position that the matter has been relegated to arbitration, this Court desists from passing any such direction on the police authorities.

As regards the question of suppression of material facts, I do not find that there has been any such material suppression, since it is sufficiently indicated in the writ petition that there was an order of a co-ordinate Bench relegating the matter to arbitration and since the dispute between the parties regarding providing essential service and keeping the building habitable as well as regarding the dues on consolidated charges has been disclosed, it cannot be said that the petitioners are guilty of suppression to such an extent that the writ petition ought to be dismissed on such score alone.

However, on merits, the petitioners have to take recourse to appropriate provisions of the Arbitration and Conciliation Act, 1996 in view of the pending reference and the writ Court is not the appropriate authority to grant such direction as prayed for.

Accordingly, WPO 113 of 2021 is dismissed, with liberty to the petitioners to approach either the arbitrator or a competent Court, for

appropriate remedy regarding alleged disconnection of water supply, under the provision of Arbitration and Conciliation Act, 1996.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

The report filed by the State respondent be kept on record.

(SABYASACHI BHATTACHARYYA, J.)