

WPO/260/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

JAISHREE STEELS PVT. LTD. AND ANR.

-Versus-

WEST BENGAL STATE ELECTRICITY
DISTRIBUTION COMPANY LTD. AND ORS.

Appearance:

Mr. S. K. Kapoor, Sr. Adv.
Mr. S.N. Mookherji, Sr. Adv.
Mr. Jishnu Chowdhury, Adv.
Mr. Ratnesh Kumar Rai, Adv.
Mr. Ankan Rai, Adv.
...for the petitioner.

Mr. Srijan Nayek, Adv.
Mr. Sujit Sankar Koley, Adv.
...for WBSEDCL.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 9th August, 2021.

The Court : The matter is taken up for further hearing pursuant to this Court's order dated 4th August, 2021. On that day, detailed arguments of the parties were recorded and this Court expressed views that the Central Grievance Redressal Officer (CGRO) shall receive pleadings from the petitioner as well as WBSEDCL and dispose of the issue raised in the writ application within a period of one month.

At the request of Mr. S.K. Kapoor, learned Senior Counsel, this Court had adjourned the matter today to enable the petitioner to cite judgments on the question of alternative remedy and disputed question of fact. Opening his submission today, Mr. Kapoor relied upon the chart set out by WBSEDCL at page 7 of their affidavit. Mr. Kapoor tried to demonstrate before this Court that even a plain reading of column D and column H would indicate that his client had, at all times, made payment of monthly bills albeit with some delay.

He, therefore, submits that there are no disputed questions of fact and this Court can entertain the writ application and test propriety of the entire claims of the respondent against the petitioner.

Reference is also made to Section 56 of the Electricity Act, 2003 and it is submitted that no notice of disconnection, as stipulated thereunder, has been issued by the WBSEDCL.

Reliance is placed on the decision of the Supreme Court in the case of **ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors.**, reported in (2004)3 SCC 553 particularly paragraphs 16, 19, 27 and 51 thereof.

Counsel for the petitioner would argue that since there are admitted facts and no disputed questions, this Court should not hesitate to exercise the power under Article 226 of the

Constitution to decide the issue between the petitioner and the respondent.

Having carefully considered the submissions of Mr. Kapoor, this Court notes that the table, set out in paragraph 7, may be simple for a chartered accountant or a person regularly dealing with the bills, payments and late payment thereof. A writ Court does not even have the expertise to see though any improper demand of WBSEDCL or any lawful claim of the petitioner. The parties are at each other's throats on the figures, numbers and facts. There are therefore absolutely no admitted facts herein.

Indeed, in ABL International (*supra*) the Supreme Court by referring to the earlier decision of 1969, ***Gunwant Kaur vs. Municipal Committee, Bhatinda*** reported in (1969)3 SCC 769 had held that the writ Court has the jurisdiction to entertain some disputed questions of fact. The Supreme Court went on to hold that under Article 226, a writ Court can also conduct trial on evidence to prove certain facts. It must be noticed that *Gunwant Kaur* decision was rendered in the year 1969 when the volume of writ applications before a High Court was not even a patch on the number of proceedings being filed for the past 10-15 years.

The ABL International decision(*supra*), however, needs to be noticed in the context of facts.. It may be seen that the only issue that came for consideration before the Supreme Court was whether a change of payment terms from currency to barter, could

have discharged an insurer from liability. The volume and amount payable was also not in dispute. It is essentially in that context and since a very short question of law was involved that the Supreme Court held that even in that area of private contract, the writ Court's jurisdiction is not ousted and relief was granted to the appellant therein.

The decision of the ABL International (*supra*) was considered and put in perspective by the Hon'ble Supreme Court in Joshi Technologies International INC vs. UOI and Ors. reported in (2015) 7 SCC 728 at paragraph 70. Addressing the dicta in ABL International, the law on the subject was summarized as follows:

"70. Further, the legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to contracts entered into by the State/public authority with private parties, can be summarised as under:

70.1. At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

70.2. State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practise some discriminations.

70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence 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 Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.

70.4. Writ jurisdiction of the High Court under Article 226 of the Constitution was not intended to facilitate avoidance of obligation voluntarily incurred.

70.5. Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the licence if he finds it profitable to do so: and he can challenge the conditions under which he agreed to take the licence, if he finds it commercially inexpedient to conduct his business.

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.

70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.

70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature

of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

This Court has no hesitation to say that the mathematical questions would arise in calculating and arriving at any conclusion as to whether there has been any payment of any monthly bill between December 2020 and June 2021 within the time stipulated. It is also to be decided as to whether late payment charges have been included in the claim of the WBSEDCL either for the period from January, 2021 till June, 2021 or for the earlier period during which electricity was being supplied by the erstwhile Durgapur Projects Limited (DPL). These are figures and facts that need detailed proof and expertise to deal with. They would also involving accounting practice interest calculations of

late payment dues etc. The CGRO under the Act of 2003 is fully and completely equipped and qualified to undertake the exercise.

For the reasons stated, this Court would reiterate its order dated 4th August, 2021 and direct the CGRO of WBSEDCL to forthwith enter upon the dispute and after giving due hearing to both sides and after receiving pleadings and documents, decide whether WBSEDCL was justified in making any claim against the petitioner or to the extent of about Rs.10 crores and odd and also consequently as to whether disconnection was justified or not.

In so far as the argument of Mr. Kapoor that there is no disconnection notice, and reference to an e-mail dated 8th July, 2021 is made, this Court notices that WBSEDCL had, inter alia, on 16th March, 2021, 18th February, 2021 and 19th April, 2021 notified the petitioners of possible disconnection in the event of any non-payment of dues. There is, therefore, prima facie evidence before this Court that there has been some notice prior to disconnection on 8th July, 2021.

Hence, the prayer of immediate reconnection, as made by counsel for the petitioner, cannot be accepted.

With the aforesaid direction, WPO/260/2021 is disposed of without any order as to costs.

(RAJASEKHAR MANTHA, J.)