

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6813/2022

(THE STRUCTURE, HINDU UNDIVIDED FAMILY, NAGPUR **VERSUS** DIVISIONAL COMMISSIONER,
CHAIRMAN OF VIDARBHA RELIEF COMMITTEE, NAGPUR DIVISION, NAGPUR & ANOTHER)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri R.A. Jain, counsel for the petitioner.

Ms N.P. Mehta, Assistant Government Pleader for the respondents.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

DATE : DECEMBER 05, 2022.

The petitioner is in the business of Event Mangement. A conducting agreement dated 17.03.2018 was executed between the Vidarbha Relief Committee, Nagpur through the Divisional Commissioner, Nagpur Division as Chairman and the petitioner under which the petitioner was permitted to operate the cultural hall that was constructed at the behest of the Vidarbha Relief Committee. The said agreement was for a period of five years from 01.11.2017 to 31.10.2022. Amongst various clauses of the agreement, Clause 8.1 is the *force majeure* clause under which it was agreed that if the petitioner was unable to operate the cultural hall on account of any unforeseen event, it shall within a week thereof notify the same in writing to the Committee after which the Committee could consider extending the period of contract during which it was not operational. According to the petitioner on account of Covid-19 pandemic the cultural hall could not be operated from 16.03.2020 to 28.02.2022. The petitioner therefore on 14.07.2022 and 27.10.2022 made representations and sought invocation of the *force majeure* clause. When the said representations were pending the Vidarbha Relief Committee issued a tender notice inviting bids for letting out the cultural hall from 01.11.2022. According to the petitioner since its representations were not decided and fresh tender notice was issued by the Committee it apprehended legal prejudice to its rights and hence filed this writ petition raising a challenge to the tender notice and has also sought invocation of the *force majeure* clause. As an alternate relief

a prayer has been made to direct the Divisional Commissioner to decide the aforesaid representations.

2. During pendency of the writ petition, the petitioner was informed that on 31.10.2022 the Committee in its meeting decided to waive the rent that was due and payable by the petitioner for the period from March-2020 to February-2022. Similarly the annual increase of 10% in the amount of rent was also waived. On account of the aforesaid, the Committee resolved not to extend the period of the contract for two years as requested by the petitioner. By amending the writ petition, the petitioner has challenged the minutes of the meeting dated 31.10.2022 by which the petitioner's representations have been rejected.

On 02.11.2022 while issuing notice in the writ petition, the tender process undertaken was made subject to the outcome of the writ petition and the petitioner's possession was protected till the returnable date. The pleadings having been completed the writ petition has been taken up for consideration.

3. Shri R.A. Jain, learned counsel for the petitioner submitted that the Committee having been made aware of the fact that the cultural hall could not be operated from 16.03.2020 to 28.02.2022 proceeded not to charge rent from the petitioner for the aforesaid period. It also decided not to seek enhancement in the amount of rent which was 10% per annum. Despite aforesaid, the Committee was not justified in failing to extend the duration of the contract for a period of two years. The Committee was obliged to do so in view of Clause 8 of the agreement dated 17.03.2018. It was urged that on account of the pandemic the cultural hall could not be operated from 16.03.2020 to 28.02.2022. Cognizance of this aspect ought to have been taken by invoking the *force majeure* clause and the necessary extension ought to have been granted. Inviting attention to paragraphs 7 and 14 of the writ petition it was submitted that all bookings made at the cultural hall during that period had been cancelled. Despite such averments the respondents were insisting for an affidavit in that regard being filed by the petitioner. The same was unjustified. It was thus submitted that the Committee was not justified in rejecting the petitioner's

representations and issuing fresh tender notice. The petitioner had infact accepted bookings even after 01.11.2022 and it ought to be permitted to honour its commitments in that regard. It was thus submitted that the respondent no.2 be directed to extend the duration of the contract by a period of two years in the light of the *force majeure* clause.

4. Ms N.P. Mehta, learned Assistant Government Pleader for the respondents opposed aforesaid submissions. She submitted that taking cognizance of the fact that the petitioner could not operate the cultural hall for a considerable period of time during the pandemic the petitioner's request for waiver of the amount of rent was accepted. Similarly, the enhancement to the extent of 10% in the amount of rent was also waived. The petitioner had been called upon to submit an affidavit that it had not undertaken any bookings during the said period but the petitioner failed to respond to that request made by the Committee. It was submitted that on 25.10.2021 itself the Secretary of the Committee had demanded the amount of rent that was due and payable from March-2020 and such notice was duly served upon the petitioner. Despite receiving the same on 26.10.2021 the petitioner did not take any remedial steps. The petitioner had approached this Court only after expiry of the period of the contract was to operate till 31.10.2022. The petitioner was seeking enforcement of contractual obligations and the same was not permissible when there were various disputed aspects involved. Inviting attention to the minutes of the meetings of the Committee it was submitted that the Committee had taken a reasonable stand in the matter by waiving the amount of rent as well as the annual increase of 10% thereupon. Hence there was no case made out to grant any relief to the petitioner in exercise of writ jurisdiction.

5. We have heard the learned counsel for the parties and we have perused various documents placed on record. One of the reliefs sought by the petitioner is for invocation of the *force majeure* clause that is present in the conducting agreement dated 17.03.2018. Under that clause in the event of any unforeseen event interfering with the operation of the contract, it was open for the conductor-petitioner to notify the same to the Committee within a period of one

week therefrom with reasonable evidence thereof. On the Committee being satisfied the period of contract was liable to be extended for the period during which it was not operational. Perusal of Clause 8.1 of the said agreement clearly indicates that it is for the Committee to consider whether the period of contract could be extended for the period during which it was not operational. It is thus clear that the benefit of the aforesaid clause for extending the period of the contract is subject to the satisfaction of the Committee. It is also pertinent to note that as per Clause 7 of the conducting agreement any dispute arising out of the contract is required to be referred to the Divisional Commissioner and the decision of the said authority was treated to be final and binding on the parties.

It can be seen on perusing the conducting agreement as a whole that the petitioner seeks to invoke the writ jurisdiction of this Court for seeking enforcement of its contractual obligations. The question to be considered is whether the petitioner can be permitted to seek such relief by invoking the *force majeure* clause in writ jurisdiction.

6. While it is true that the High Court under Article 226 of the Constitution of India is not precluded from entertaining a claim based on contractual obligations when one of the contracting parties is 'State' within the meaning of Article 12 of the Constitution of India, exercise of discretion for granting such relief is dependent on the facts of the case. A writ of mandamus seeking invocation of the *force majeure* clause would be in the nature of a writ for specific performance of one of the terms of the contract. The Hon'ble Supreme Court in **Civil Appeal No.1538 of 2022** [*Municipal Council Gondia Versus Divi Works & Suppliers, HUF & Others*] decided on 28.02.2022 has in clear terms held that no writ of mandamus can be issued under Article 226 of the Constitution of India which results in granting a writ for specific performance of the contract. Such relief arising from contractual obligations ought to be agitated in the civil Court. We find that in the present case besides the fact that the petitioner seeks writ in the nature of specific performance of the conducting agreement dated 17.03.2018 and especially Clause 8 thereof, there are other

disputed aspects which would be required to be resolved before such relief can be granted. As per Clause 8.1 the conductor-petitioner while invoking the *force majeure* clause is required to notify the Committee in writing within a period of one week alongwith reasonable evidence thereof. This clause is sought to be invoked only on 14.07.2022. It is also seen from the documents on record that the petitioner was called upon to file an affidavit stating therein that it had not operated the cultural hall during the aforesaid period from March-2020 to February-2022. Despite receiving such communication on 02.11.2022 the petitioner has failed to submit its affidavit before the Committee. Even prior thereto in the meeting of the Committee held on 31.10.2022 this query was made to the petitioner but it has not responded to the same. We find that the Committee having called upon the petitioner to furnish reasonable evidence as stipulated in Clause 8.1 it was for the petitioner to satisfy the Committee in that regard. Having failed to do so the Committee cannot be forced to act in accordance with the *force majeure* clause by issuing a writ of mandamus in absence of it recording such satisfaction.

7. From the minutes of the meeting dated 31.10.2022 it is seen that the Committee has been alive to the fact that between March-2020 to February-2022 there were difficulties in operating the cultural hall. It has therefore waived the monthly rent for the aforesaid period as well as the annual enhancement in the amount of rent. It has refused to extend the period of contract since it was not satisfied that the petitioner was entitled to the same. This decision of the Committee can hardly be said to be arbitrary or irrational so as to invoke the writ jurisdiction for considering grant of relief to the petitioner. The petitioner having approached this Court after conclusion of the contractual period is not entitled for discretionary relief in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India. The petitioner is free to invoke civil remedy as available in accordance with law for seeking enforcement of contractual obligations, if any.

8. The writ petition is thus dismissed leaving the parties to bear their own costs. It is clarified that observations made hereinabove are only for the purposes of examining whether writ jurisdiction should be exercised or not. The same are not reflection of our consideration of the matter on merits.

(ANIL L. PANSARE, J.)

(A. S. CHANDURKAR, J.)

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