AD-43
Ct No.09
20.01.2023
TN

WPA No. 615 of 2006

Manob Aditya
Vs.
The CESC Ltd. and others

Mr. Tapan Coomer Dey,
Mr. Subrata Bhattacharjee,
Ms. Shreya Chatterjee
.... for the petitioner

Mr. Subir Sanyal,
Ms. Shivangi Thard
.... for the CESC Limited

The grievance of the petitioner is that the petitioner had initially paid the substantial amount of Rs.12,71,257/- as cost of installing a new 6 KV service for the purpose of taking a high-tension electricity connection from the CESC Limited for developing a hotel. Such payment was made initially but thereafter the petitioner found that it was no longer feasible to carry out the project, for which the petitioner had written to the CESC Limited stating that the petitioner, who was on a hotel project, already dropped the project. Subsequently, vide letter dated August 26, 2005, the petitioner sought for a refund of the amount paid by the petitioner to the CESC Limited for the purpose of installing the 6 KV service.

It is submitted that in view of the petitioner having not taken the electricity connection at any point of time, in view of the project itself having been dropped, the petitioner is entitled to refund of the entire amount. That apart, it is contended that the CESC Limited is doing business with the said high-tension installations and infrastructure by giving electricity supply from the same to several other consumers. It is submitted that in fact, the CESC Limited itself in its supplementary affidavit has admitted that at least ten thousand consumers are catered by the said installation.

Hence, it is argued that the CESC Limited is guilty of unjust enrichment with the money paid by the petitioner since the petitioner never used such electricity at any point of time.

Learned counsel appearing for the CESC Limited, by placing reliance on the documents annexed to the writ petition itself, submits that there are admissions galore on the part of the petitioner in several communications to the effect that the petitioner had only paid his proportionate contribution towards the cost of installation of the 6 KV service.

It is, thus, submitted that the petitioner never paid the entire cost of such installation at any point of time. In any event, it is argued by the CESC Limited that the petitioner for the first time made the claim of refund on August 26, 2005, whereas the project was stopped by the petitioner long prior thereto. Hence, even a money suit, if filed by the petitioner, would be barred by limitation in the event the same was filed at the relevant juncture.

Moreover, learned counsel for the CESC Limited argues that the present writ petition is not maintainable in its present form and in law, since a money suit is the appropriate remedy available to the petitioner. In view of the adjudication sought by the petitioner involving the appreciation of material evidence, which is beyond the domain of the writ court, it is submitted that the writ petition ought to be dismissed on such ground as well.

Heard learned counsel for the parties.

As rightly contended by the CESC Limited, the petitioner has admitted in several communications that the contribution made by the petitioner was a 'proportionate' contribution towards the cost of installation of the high-tension line. In the letter dated July 13, 1999 written by the CESC Limited, it was clearly indicated that the amount claimed from the petitioner to the tune of Rs.12,71,257/- was the proportionate contribution of the petitioner towards such costs. In the communication dated July 28, 1999, the CESC Limited, in fact, acknowledged the receipt of the said amount from the petitioner, also clearly mentioning that the same was the petitioner's proportionate contribution towards the cost of installation.

The receipt annexed at page-17 of the writ petition itself also indicates that the said amount was in lieu of proportionate contribution of the petitioner.

Again, in the communication dated September 08, 1999, the CESC Limited writes to the petitioner to the effect, *inter alia,* that the petitioner had already settled the sum of Rs.12,71,257/- as the petitioner's 'contribution' towards the cost of installing the 6 KV service.

In fact, the petitioner himself, in a communication made on behalf of the Aditya Hotels and Resorts, indicated on July 17, 2001 that the amount as indicated above was paid by way of 'proportionate' contribution towards the cost of installing the 6 KV service.

Hence, it is evident that the entire chain of communications as well as the own admission of the petitioner clearly shows that the petitioner only paid the proportionate contribution allocated to the petitioner and not the entire costs for such installation.

That apart, the CESC Limited has clearly performed its part of the notional agreement with the petitioner by installing all the necessary equipment and apparatus for the purpose of giving the high-tension line to the petitioner. In fact, the CESC Limited had also made the infrastructure connection-ready from its end. However, the petitioner subsequently resiled from its position, although it had initially given out that the CESC Limited is to undertake the project and had paid its proportionate cost, which tantamounts to the petitioner being bound by Estoppel. The CESC Limited, in fact, acted on the premise of the assertion of the petitioner and undertook the entire job, expending substantial resources to suit the need of the petitioner.

Hence, the petitioner cannot subsequently resile from such position and, in the same breath, seek a refund of the amount paid by him.

Moreover, the CESC Limited is justified in objecting to the maintainability of the claim of the petitioner on the ground of limitation, since the last communication made by the petitioner to the effect that the petitioner is not in a position to deposit the security money was on July 17, 2001. Again, the petitioner wrote to the CESC Limited on September 12, 2001 (Annexure P6 at page-22 of the writ petition) to the effect that the petitioner had dropped the project of development of the hotel and the CESC Limited shall not be required to supply the high-tension power to the petitioner. Since the claim for refund was made first in the year 2005, which is beyond the limitation period of three years after September 12, 2001, in any event, the claim would have been time-barred.

Even apart from the same, on the grounds as indicated above, the petitioner is not entitled to get the relief as sought on the grounds of equity and/or on the merits of the documents produced by the petitioner himself.

Inasmuch as the challenge of the petitioner to the improbability of the amount paid by the petitioner being only a proportionate cost, in view of the total cost disclosed by the CESC Limited, is concerned, such a roving enquiry cannot be entered into at this stage, particularly since the petitioner himself never raised such allegation at any material point of time. Even otherwise, the CESC Limited at all points of time had indicated that the installations made by the CESC Limited were initially for catering to the need of the petitioner, on the basis of the petitioner's application and, as such, evidently the installations were suited initially for the purpose of the petitioner. Having relinquished its requirement subsequently, after the CESC Limited completed the entire job of erecting the installations and preparing the necessary infrastructure for giving high tension connection to the petitioner at the instance of the petitioner, it does not lie in the mouth of the petitioner to claim that the petitioner is entitled to refund of the amount paid.

Hence, there is no scope of grant of the relief of refund as prayed for by the petitioner. Since learned counsel for the petitioner has clearly indicated that the CESC Limited has already removed the cubical gear/transformer initially installed within the petitioner's premises, for which the relief (f) as sought in the writ petition is not pressed, no question arises to consider the said relief for adjudication.

I will be failing in my duty if the petitioner's cited judgment is not taken note of. The petitioner cites *Uttar Pradesh Power Transmission Corporation Limited and another vs. CG Power and Industrial Solutions Limited and another,* reported at *(2021) 6 SCC 15*, for the proposition that availability of an alternative remedy is not an absolute bar to the High Court from entertaining a writ petition. Paragraph 67, on which the petitioner primarily relies, indicates that although the availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an 'appropriate' case, the High Court may entertain a writ petition in certain instances as indicated therein. The said instances are: (i) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the *vires* of an Act is under challenge.

The writ jurisdiction under Article 226, being discretionary, it was held by the Supreme Court, the High Courts usually refrain from entertaining a writ petition which involves adjudication of disputed questions of fact which may require analysis of evidence of witnesses. Monetary relief, it was observed by the Supreme Court, can also be granted in a writ petition.

However, such observations and ratio of the Supreme Court are in the particular context as indicated above. The Supreme Court itself took into consideration the extreme cases in which the High Court entertains a writ petition despite availability of an equally efficacious alternative remedy. In the present case, none of the said criteria as indicated by the Supreme Court are satisfied. There is no case of violation of any fundamental or legal or contractual right of the petitioner and/or any failure of principles of natural justice or jurisdictional error made out by the petitioner from any perspective whatsoever.

Hence, there is no scope of interference in the present matter.

In view of the above findings, there is no merit in the writ petition.

Accordingly, WPA No. 615 of 2006 is dismissed on contest without any order as to costs.

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

(Sabyasachi Bhattacharyya, J.)