

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 13142 of 2023(O&M)
Date of Decision: 07.07.2023

Puneet Kumar

---Petitioner

versus

Union of India and others

---Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Rishab Gupta, Advocate and
 Mr. Abhishek Sanghi, Advocate
 for the petitioner
 Mr. Ankur Sharma, Senior Panel Counsel
 for Union of India
 Mr. Ashish Kapoor, Advocate
 for respondents No. 2 and 4

JAGMOHAN BANSAL, J. (ORAL)

CM No.10685-CWP of 2023

The applicant-petitioner through the instant petition is seeking placing on record application form submitted by the petitioner (Annexure P-17).

Allowed as prayed for.

Annexure P-17 is taken on record. Registry is directed to tag the same at an appropriate place.

CWP No. 13142 of 2023

1. The petitioner through instant petition under Article 226 of Constitution of India is seeking quashing of order dated 15.05.2023 (Annexure P-15) whereby respondent No. 2 has rejected application of the petitioner seeking grant of contract of service provider for providing manpower and services at Company Owned Company Operated outlet (in short “COCO”).

2. The brief facts of the case which are necessary to adjudicate the matter are that the petitioner on 27.06.2022 filed an application, pursuant to an advertisement of respondent No. 2 inviting applications for appointment of service provider for providing manpower and services at COCO. The petitioner vide letter dated 21.09.2022 (Annexure P-5) was informed that he has qualified for the interview. He was asked to be present before respondent No. 2 on 07.10.2022 alongwith all original certificates/documents. The petitioner vide letter dated 18.10.2022 (Annexure P-6) was declared as selected candidate on the basis of application and interview. The petitioner was selected on 18.10.2022, however, Letter of Intent (in short “LOI”) was not issued to him. The respondent revised the result and rejected candidature of the petitioner. The petitioner was initially granted 30 marks qua financial capability whereas in the revised result, he was granted 19.51 marks. The respondent awarded contract to respondent No. 3 on adhoc basis vide letter dated 18.01.2023 (Annexure P-8). The petitioner preferred CWP No. 6813 of 2023 before this Court seeking quashing of order dated 15.02.2023 (Annexure P-10) whereby result declared on 07.10.2022 (Annexure P-7) was revised and issuance of LOI to petitioner was rejected.

 This Court vide order dated 17.04.2023 disposed of aforesaid writ petition with liberty to the petitioner to provide all documents which he thinks fit and proper for being considered for the purpose of taking a fresh decision by respondent-corporation. It was further directed that respondent-corporation shall pass a fresh order which has to be well-reasoned and speaking order. In compliance of order of this Court, the respondent-corporation has passed fresh order dated 15.05.2023 (Annexure P-15) whereby application of the petitioner has been rejected. The marks qua financial capability has

been assessed 9.02, resultantly, total marks of the petitioner has been substantially reduced.

3. Learned counsel for the petitioner inter alia contends that petitioner concededly did not disclose assets of his father, however, respondent vide letter dated 25.08.2022 asked the petitioner to file a number of documents which included documents/affidavit regarding financial capability (liquid assets), current year valuation certificate from chartered accountant etc. This Court while disposing of aforesaid writ petition has granted liberty to the petitioner to provide all documents which he thinks fit and proper for being considered for the purpose of taking a fresh decision by respondent-corporation, thus, respondent was duty bound to consider assets of his family members.

4. Mr. Ashish Kapoor and Mr. Ankur Sharma, learned counsel for respondents submit that brochure issued by respondent-corporation lucidly directed the applicants to disclose their financial capability which was to be considered while awarding marks. Under the heading “Financial Capability”, it was specifically pointed out that valuation certificate of all assets should be of a date which is after the date of advertisement and on or prior to date of application. It was further clarified that evaluation would be done only on the basis of declaration of financial assets in the application form. Even it was also clarified that funds mentioned in the application should be available with the applicant as on the date of application which should be mandatorily filled by the applicants. The petitioner in the application concededly disclosed liquid assets of himself as well his mother. Partial financial details of himself & mother and complete details of father of the petitioner were declared at a later point of time which could not be considered. By mistake, the assets declared at later stage by petitioner were considered while calculating marks. The

petitioner cannot take benefit of any mistake on the part of corporation which is prima facie and apparent on record.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. The dispute lies in the narrow compass. The claim of the petitioner is, though, he has not fully declared assets in the original application dated 27.06.2022 (Annexure P-17), yet, partial assets disclosed on 30.08.2022 and partial after order of this Court should be considered for the determination of his financial capability.

7. The conceded position emerging from the record is that the petitioner pursuant to advertisement inviting appointment of service provider at COCO preferred application on 27.06.2022. The petitioner did not disclose liquid assets of his father in the application though he had disclosed partial liquid assets of his mother besides his own assets. The respondent-corporation vide letter dated 25.08.2022 pointed out various deficiencies which included documents/affidavit regarding financial capability. The petitioner on 30.08.2022 disclosed total liquid assets of himself and his mother to the extent of Rs. 31.20 lakh. At this stage also, assets of father were not disclosed. The assets of father of the petitioner were included after order dated 17.04.2023 passed by this Court in CWP No. 6813 of 2023.

8. The petitioner is seeking writ jurisdiction of this Court in a contractual matter. The contract to be executed was between a public sector undertaking and a private party. The tender as well contract were not a statutory in nature whereas it was purely a commercial matter. It is a settled proposition of law that there is no bar in interfering in commercial contracts by invoking writ jurisdiction under Article 226 of the Constitution of India, however, it is further settled proposition of law that scope of interference is very limited.

9. A three judge Bench of Hon'ble Supreme Court in **Tata Cellular versus Union of India 1994 (6) SCC 651** has adverted with maintainability of writ jurisdiction in contractual matters. Hon'ble court after considering its precedents has culled down its conclusion as follows:

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the construct is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

10. A two judge Bench of Hon'ble Supreme Court in a recent judgment in **M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703** after considering a long list of earlier judgments has concluded:

82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457], may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847].

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.

82.4. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into (see Ramana

Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]). This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] .

82.5. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a writ petition.

82.6. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of

documents only, the Court may relegate the party to the remedy by way of a civil suit.

82.8. *The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a writ petition [see in this regard, the view of this Court even in ABL[ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co. (India) Ltd.[State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22] , by its observations in SCC para 14 in ABL[ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]].*

82.9. *The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.*

82.10. *The reach of Article 14 enables a writ court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.*

82.11. *Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to*

cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the fundamental right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible rule in favour of the Court turning away the petitioner to alternate fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL[ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553], if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL[ABL

International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]. It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

82.12. *In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (see in this regard Shrilekha Vidyarthi v. State of U.P. [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742]). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely mala fide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.*

82.13. *A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the*

Court interfering in the matter, rather than relegating the matter to the alternate forum.

82.14. *Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the writ petition itself.*

82.15. *Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. (See Sudhir Kumar Singh [State of U.P. V. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847]).*

11. A two judge bench of Hon'ble Supreme Court in a recent judgment in **GAIL v. Indian Petrochemicals Corpn. Ltd., (2023) 3 SCC 629** has turned down objection of the party qua maintainability of writ though it was a commercial dispute between the parties. The relevant extracts of the judgment read as:

13. *At the outset, Mr Tushar Mehta, learned Solicitor General, appearing for GAIL, contested the very maintainability of the writ petition filed by IPCL. He contended that the parties had provided for arbitration before the Permanent Machinery of Arbitrators in the Bureau of Public Enterprises under Clause 13.1 of the contract. Further, the matter was stated to be purely contractual in nature, involving the enforceability and validity of the terms of the contract, and no case was made out for violation of fundamental rights. The presence of a public law element was a sine qua non for the exercise of writ jurisdiction, as elucidated in Joshi Technologies International Inc. v. Union*

of India [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728]. The endeavour of IPCL, by invoking such writ jurisdiction, was alleged to be an attempt to bypass the law of limitation, as the contract had been signed way back in 9-11-2001. In any case, the writ petition was also barred by limitation, having been filed on 9-3-2006 i.e. after a period of five years. Reliance was placed on Lipton India Ltd. v. Union of India [Lipton India Ltd. v. Union of India, (1994) 6 SCC 524] to contend that communications between the parties about levy of transportation charges following the signing of the contract could not extend the period of limitation.

21. Although the dispute arises from a commercial contract, we find that the writ petition challenging the clauses was maintainable. It is not disputed that GAIL is a public sector undertaking and thus qualifies under the definition of “State” as per Article 12 of the Constitution. At the time of entering into contract, GAIL was enjoying a monopolistic position with respect to the supply of natural gas in the country. IPCL, having incurred a significant expense in setting up the appropriate infrastructure, had no choice but to enter into agreement with GAIL. Thus, there was a clear public element involved in the dealings between the parties. Further, writ jurisdiction can be exercised when the State, even in its contractual dealings, fails to exercise a degree of fairness or practises any discrimination. We are fortified in our view by this Court's decision in ABL International [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and Joshi Technologies [Joshi Technologies International Inc. v. Union of India, (2015) 7 SCC 728].

22. In the present case, GAIL's action in levying "loss of transportation charges" was ex facie discriminatory, insofar as IPCL was mandated to build its own pipeline in terms of the allocation letter and was not using GAIL's HBJ pipeline at all. Thus, it cannot be said that merely because an alternative remedy was available, the Court should opt out of exercising jurisdiction under Article 226 of the Constitution and relegate the parties to a civil remedy."

12. From the perusal of above quoted judgments, it is quite evident that there is no bar in interfering in commercial contracts where one of the parties is State or its instrumentality. State cannot deflect from scrutiny of its action or inaction under the contract if the complaining party is able to establish the action/inaction is, per se, arbitrary. An action would lie when the State purports to award any largesse and this relates to the stage prior to the contract being entered into.

13, In the case in hand, the brochure categorically jotted down marks for financial capability. Expression "Financial Capability" was duly defined. It was also clarified that financial capability would be considered as on date of application and it must be disclosed in the application. Paras 5.2 and 5.2.1 of the brochure are reproduced as below:-

"5.2 Liquid assets:

The funds can be in the following forms:-

- **Funds in savings accounts, Deposits with any Bank/Registered Companies/Postal Schemes:** *Copy of Pass book/account statement/deposit receipts to be provided. In case of deposits, the applicant has to additionally submit a certificate obtained from the concerned Bank/Registered Company/Post Office indicating the value of the deposit on the date of application. In the absence of such certificate, the deposit amount only shall be considered.*
- **National Savings Certificates:** *Redemption value - Valuation certificates along with*

copy of certificates to be provided. In the absence of such valuation certificate, the deposit value shall be considered.

- **Bonds: Redemption value:** *Valuation Certificates along with copy of bonds to be provided. In the absence of Valuation certificate no marks would be awarded against bonds.*
- **Shares of listed Companies in Demat form:** *Valuation certificates along with copy of Demat statement to be provided. In the absence of Valuation certificate no marks would be awarded against shares.*
- **Mutual Funds:** *Valuation certificates along with copy of mutual fund certificates or Demat statements to be provided. In the absence of Valuation certificate no marks would be awarded against mutual funds.*

Valuation certificates of all assets should be of a date, which is after the date of advertisement and on or prior to the date of application. The valuation certificate is to be obtained either from a Chartered Accountant or Depository Participant, as applicable.

Only 60% of the certified value (for Shares, Mutual funds & Bonds) will be considered for the purpose of evaluation.

Note

*Evaluation would be done **only** on the basis of applicant's declaration of financial capability in the application form.*

The financial capability details given in the application form by the applicant must be supported by copies of relevant documents for evaluation of marks.

If the applicant is not able to produce relevant documents in support of financial capability, he/she shall be disqualified at the time of verification of documents.

Also if the applicant is not able to give the Bank Guarantee within stipulated time, the LOI shall stand automatically withdrawn and a letter to the effect will be sent to the selected applicant.

5.2.1 Other Notes for evaluation under head "financial capability"

- Finance/liquid assets owned by the "family unit" of the applicant can be considered for award of marks subject to the written consent on notarized affidavit on appropriate stamp paper from the family member, along with supporting documents to establish the capability (**Appendix I**). For this purpose, in case of **married person/ applicant** the "family unit" consists of self, spouse and unmarried son(s)/ unmarried daughter(s) and in case of **unmarried person/ applicant** the "family unit" consists of self, father, mother, unmarried brother(s) and unmarried sister(s).*
- Balance in current account will not be considered.*
- Cash, jewelry or any other assets not listed in 5.2 will not be considered for award of marks.*
- The funds mentioned in the application form should be available with the applicant **as on the date of application** which should be mandatorily filled by the applicants."*

13. From the perusal of above quoted paragraphs of the brochure, it is quite evident that an applicant was supposed to declare his liquid assets in the application. Anything which is not declared in the application could not be considered by respondent-corporation. The terms and conditions laid down in the brochure are always binding on both sides. These are treated as sacrosanct. In the brochure, it has been categorically mentioned that applicant is supposed to mention his/her assets in the application. The assets

declared at later point of time could not be considered. If it is permitted to consider assets not disclosed in the application, it would certainly prejudice other applicants as well people who have not applied on account of their financial constraints. The Court cannot ask the respondent-corporation to deviate from terms and conditions.

14. This Court vide order dated 17.04.2023 has not permitted the petitioner to disclose assets which were not disclosed in the application form. This Court has simply permitted the petitioner to bring on record documents for the purpose of taking a fresh decision by the respondent-corporation. The order cannot be read in a way that Court has permitted to file those documents which were neither disclosed in the application nor formed part of the application. The respondent has rightly awarded marks, qua financial capability, on the basis of liquid assets disclosed in the application form. The assets which were not disclosed alongwith affidavit in the application could not be considered by respondent. The court cannot ask to respondent-corporation to act against terms and conditions of brochure. There is no allegation of mala fide or bias on the part of respondent. The respondent has acted in accordance with terms and conditions of brochure and this Court does not find any arbitrariness in the action of respondent, amounting to violation of Article 14 of the Constitution.

15. In view of the above stated facts and findings, this Court does not find merit in the present petition. The petition being devoid of merit deserves to be dismissed and accordingly dismissed.

16. Pending Misc. application(s), if any, stands disposed of.

07.07.2023
paramjit

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes