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Court : Guwahati

Decided On : Dec-16-2003

Judge : D. Biswas, J.

Acts : [Constitution of India](#) - Articles 14 and 311

Appeal No. : WP(C) No. 9621 of 2003

Appellant : North Eastern Security Service

Respondent : State of Assam

Advocate for Def. : B.D. Goswami and Borthakur, Advs.

Advocate for Pet/Ap. : H.K. Deka and H. Nath, Advs.

Prior history : D. Biswas, J. 1. The interim direction given by the order dated 28.11.2003 has been challenged by the respondent-authority. 2. I have heard Mr. H.K. Deka, learned counsel for the writ petitioner. Also heard Mr. B. Choudhury, learned State counsel and Mr. B.D. Goswami, learned counsel for private respondent. 3. The interim order dated 28.11.2003 reads as follows :-
..... In view of the extreme urgency indicated by the learned counsel for the petitioner, let the matter be posted

Judgement :

D. Biswas, J.

1. The interim direction given by the order dated 28.11.2003 has been challenged by the respondent-authority.

2. I have heard Mr. H.K. Deka, learned counsel for the writ petitioner. Also heard Mr. B. Choudhury, learned State counsel and Mr. B.D. Goswami, learned counsel for private respondent.

3. The interim order dated 28.11.2003 reads as follows :-.....

In view of the extreme urgency indicated by the learned counsel for the petitioner, let the matter be posted for motion hearing on 2.12.2003. Until the said date, i.e., 2.12.2003, the petitioner be allowed to provide security service in the Gauhati Medical College, Guwahati of the contract granted to him.'

4. The petitioner is a registered private security agency. In pursuance of a tender notice, it had submitted its quotation for rendering security services. Being the lowest, the petitioner firm was appointed to cater security services to the Gauhati Medical College for a period of two months. The tender was floated inviting bids for total security arrangement for the staff and patients covering the estate of the Gauhati Medical College Hospital for the year 2003-04. But the authority engaged the petitioner-agency for a period of two months only with effect from 16.5.2003 purely on temporary and experimental basis. The petitioner accepted the aforesaid engagement on the above terms and conditions without any objection. Therefore, the petitioner now cannot insist that they should be allowed to continue till the period of 1 year as specified in the tender notice is over. Security service depends on personal skill, experience and dedication on the part of the security personnel. The satisfaction of the employer in this score is obviously subjective. Even, specific performance of a contract of this nature by a decree of Civil Court is not permissible as the Court would not be able to enforce it in letter and spirit. Though, the petitioner-agency was allowed to continue for sometime beyond two months, yet such continuance did not vest with it any right to continue. The impugned termination order was issued after two months of service of notices on 17.7.2003, 26.8.2003 and 4.11.2003 in pursuance of the decision taken by the respondent-authority. It is clear from the above notice available in the office file that the College authority was not happy with the performance of the petitioner firm. Even if

we assume that there is breach of contract, remedy would lie in common law for damages and not for specific performance. This Court will obviously not exercise its extraordinary jurisdiction in a matter which is dependent on subjective satisfaction of the authority.

5. Mr. H.K. Deka, learned counsel for the petitioner relied upon the decisions in Jay Bee Energy Services Pvt. Ltd. v. Oil India Ltd. and Ors. 2002 (1) GLT 329 and Executive Committee of U.P. State Warehousing Corporation, Lucknow v. Candra Kiran Tyagi, AIR 1970 SC 1244. The decision in Jay Bee Energy Services (supra) is relatable to decision making process for awarding of a contract. It has no connection with subsequent breach/termination of a contract. The said decision was rendered in a different context. The principles for judicial interference in the matter of rejection of lowest bid were discussed and explained in the aforesaid judgment. In U.P. Warehousing Corporation (supra), the hon'ble Supreme Court was seized with a dispute relatable to violation of Article 311 of the Constitution. In my considered opinion, the said decision and the ratio available therefrom has no relevance to the issue at hand in the instant writ petition.

6. In this connection, the observation of the hon'ble Supreme Court in Radhakrishna Agarwal and Ors. v. State of Bihar and Ors., AIR 1977 SC 1469 may be referred. Para 10 reads as follows :-

'10. It is thus clear that the Erusian Equipment & Chemicals Ltd.'s case (AIR 1955 SC 266) (supra) involved discrimination at the very threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all. At this stage, no doubt, the State Act purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legal valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract

and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract.'

7. The contract at hand is not governed by any statutory provision. The contract awarded was terminated after about six months of unsatisfactory performance. Going by the ratio available in Radhakrishna Agarwal (supra), this Court is unable to sustain the view expressed by Mr. Deka, learned counsel that the petitioner-agency is entitled to continue with the security service to the medical college.

8. Hence, the order dated 28.11.2003 is hereby vacated.

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