

Devi Constructions Vs. the Superintending Engineer and anr.

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Court : Andhra Pradesh

Decided On : Jan-04-2002

Reported in : AIR2002AP200

Judge : P.S. Narayana, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Petn. No. 4491 of 2001

Appellant : Devi Constructions

Respondent : The Superintending Engineer and anr.

Advocate for Def. : G.P. for Irrigation and CAD

Advocate for Pet/Ap. : P.R. Prasad, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

P.S. Narayana, J.

1. Heard Sri P.R. Prasad, learned counsel for the writ petitioner and the learned Assistant Government Pleader for Irrigation.

2. The petitioner filed the present writ petition for a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the respondents in trying to recover the amounts alleged to be the value of the work incompleated in respect of work allotted by proceedings No. DB/D8/798 M dated 17-5-1999 out of the bills payable from the other contracts as totally arbitrary, illegal and without jurisdiction and violation of principles of natural justice and consequently declare the determination of the contract without providing suitable conditions to perform the work as illegal and without jurisdiction and for other appropriate reliefs.

3. The facts in brief are as follows :

It is submitted that the 1st respondent had called for tenders vide notification No. 10-99/2000 dated 15-4-1999 for restoration of DM Left Flood (DLF) Bank to standards from 23.80 to 29.00 KM and the petitioner-firm also submitted its tender and being the lowest bidder, the respondents have awarded six contracts to the petitioner-firm and one of the contracts is in relation to restoration of Divi Left Flood (DLF) Bank to standards from 23.80 to 29.00 KM. After executing the necessary agreements, the work was entrusted by the 1st respondent on 17-5-1999 and out of six reaches, the petitioner firm had completed successfully five reaches to the satisfaction of the respondents. But, however, the embankment with respect to the contract pertaining to 23.80 KM to 29.00 KM could not be completed due to improper weather conditions and for non-availability of suitable soil within the radius of 8 KMs. It is further submitted that pursuant to handing over of possession of the site, the petitioner-firm had deployed the machinery such as tippers and tractors and the preliminary work such as clearing of jungles, establishing bench marks etc. were completed. But, however, further work could not be taken up as the soil in surrounding area is covered with many number of prawn tanks which are existing on both sides of the bank, within the radius of 2 Kms. and the petitioner tried to carry the earth beyond 8 Kms. where the earth is suitable for embankment.

But due to excessive moisture content in the fields, the earth could not be conveyed by the tippers and tractors and further, the entire reach is washed out

due to tidal action and it is not at all possible to form the bank by dumping the earth in river water. Hence, further work could not be taken up and the petitioner-firm has represented the said factual position to the respondents. After inspection of the site by the authorities, the 2nd respondent had addressed a letter to the Nodal Officer, Koduru Mandal (Collector) that work at 18th reach could not be completed due to non-availability of dry soil and in the said letter, it was also brought to the notice of the Collector that the soil available at Vullipadu and Venu-gopalapuram Villages is not suitable due to moisture conditions and therefore, the 2nd respondent had requested the Collector to issue necessary instructions to the prawn tanks to stop the work. Thus, the report of the officers also clearly reveals that there is no suitable soil available nearby site up to 8 Kms. radius. It was stated that as per the notification and agreement, the contractors were permitted to lift the soil in a radius of 2 Kms. from the site and the writ petitioner tried to get the soil conveyed up to 8 Kms. Due to moisture content and prawn tanks, the work could not be taken up and absolutely there was no fault on the part of the writ petitioner. But on the other hand, the respondents have not taken appropriate steps to close the banks to enable the petitioner to complete its part of work. Thus, the stand taken by the writ petitioner is to the effect that because the respondents have not taken suitable steps to provide suitable conditions to carry out the work, there was failure on their part and it was also stated that the petitioner-firm had completed the work with respect to the other contracts and final bills were also submitted. On the basis of internal communications sent by the 2nd respondent, the authorities are taking steps to recover the value of the amounts payable from the bills payable for other contracts and the said action is totally arbitrary and illegal. It was also stated that the respondents have no authority to recover the amount except in case of breach of contract and even otherwise, if there is any breach of contract. the respondents have to notify the default, if any and after giving an opportunity only shall recover the amounts, if any. Hence, the present writ petition was filed.

4. When the writ petition came up for admission, a preliminary objection was raised by the learned Assistant Government Pleader for irrigation relating to the maintainability of the writ petition.

5. Sri P. R. Prasad, learned counsel for the writ petitioner has strenuously contended that this is not a case of breach of contract and hence, the question of Invoking P.S. 71 of the Andhra Pradesh Standard Specifications will not arise. Learned counsel had drawn my attention to condition Nos. 59.1.59.3 and 60 relating to the conditions of the contract. Learned counsel also had further submitted that apart from all this, even the principles of natural Justice have been violated since the particulars and details of the amount sought to be recovered also have not been informed or intimated by issuing any notice in this regard. Learned counsel had taken me through the representation dated 31-5-2000 and 13-6-2000 and also Lr. No. DB/D1/936M dated 22-7-2000 issued by the Executive Engineer, Irrigation Department and Lr. No. DB/D1/ 979M dated 31-7-2000 and also the other conditions. Learned counsel also had drawn by attention to Lr. No. 128 M dated 15-6-2000 correspondence from the Deputy Executive Engineer to the Nodal Officer. The learned counsel had submitted that though the dispute may fall within the realm of contract, since the writ petitioner was not put on any notice at all about the proposed recovery of amount and also inasmuch as there is no breach of contract as such. In the peculiar facts and circumstances of the case, the conditions referred to by the respondents cannot be invoked in the present case and hence, the writ petition is maintainable under Article 226 of the [Constitution of India](#).

6. Learned Assistant Government Pleader for Irrigation had drawn my attention to the correspondence and had pointed out that in the proceedings in Lr. No. DB/D1/936M dated 22-7-2000 it was specifically stated to treat the same as a final notice on receipt of the same and in the subsequent proceeding also the issuance of final notice was referred to and it was specified that the contract for the above work resting in Circle agt. No. 55SE/99-2000 is hereby determined under the agreement conditions 59 and 60 associated with relevant clause under contract data. Apart from this, learned Assistant Government Pleader also had drawn my attention to P.S. 71 of the Andhra Pradesh Standard Specifications dealing with recovery of money from contractors in certain cases under the said specifications and had contended that in the facts and circumstances of the case, the respondents are Justified in making such deductions from the bills relating to the same contractor from the other contract works. Learned Assistant Government

Pleader further submitted that these are all factual aspects, But, however, the main contention which was seriously urged by the learned Assistant Government Pleader is that the remedy under Article 226 of the [Constitution of India](#) is a misconceived remedy since it is a matter falling under the private law domain relating to the contractual obligations. Learned Assistant Government Pleader also had placed strong reliance on the decision reported in State of U.P. v. Bridge & Roof Co. (India) Ltd. : AIR 1996 SC3515 and also the decision reported in Executive Engineer, I.C. v. C. Raghava Reddy : 1993(2)ALT80 .

7. Heard both the learned counsel and perused the material available on record. The factual matrix of the case has been narrated above and the same need not be repeated again. No doubt, several contentions have been advanced by both the counsel relating to the merits and demerits of the matter which need not be gone into since an objection as to the maintainability of the writ petition is raised by the learned Assistant Government Pleader for Irrigation even at the threshold. It is not in dispute between the parties that the matter relates to enforcement of contractual obligations. In Bridge and Roof Company's case : AIR 1996 SC3515 (supra), it was held by the Apex Court thus :

'Firestly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract. It is governed by the provisions of the Contract Act or, may be. also by certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a Contract cannot be agitated, and could not have been agitated, in a writ petition. That is a matter either for arbitration as provided by the contract or for Civil Court as the case may be. Whether any amount is due to the respondent from the appellant-Government under the contract and. If so, how much and the further question whether retention or refusal to pay any amount by the Government is Justified, or not. are all matters which cannot be agitated in or adjudicated upon in a writ petition. The prayer in the writ petition viz., to restrain the Government from deducting particular amount from the writ petitioner's bill(s) was not a prayer which could be granted by the High Court under Article 226. Indeed, the High Court has not granted the said prayer'.

8. In C. Raghava Reddy's case : 1993(2)ALT80 (supra), the Division Bench had observed that 'a writ of mandamus does not issue for enforcement of a private right, nor is it available for obtaining Interim reliefs till cross-claims between parties are determined in arbitration. It is axiomatic that relations between parties in a concluded contract are governed by the terms thereof, and rights and obligations of parties inter se have to be decided elsewhere. Such concluded contractual relations are no longer governed by constitutional provisions. In cases where the contract is non-statutory, the relations are purely contractual and the rights are governed only by the terms of the contract. No writ or order can issue to compel the authorities to remedy a breach of the contract; nor can a mandamus issue for enforcement of contractual rights.'

9. Apart from all this, it is also needless to mention that a writ of Mandamus is a discretionary remedy and when the party is having an alternative remedy, there is no question of Invoking extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

10. Viewed from any angle, I am of the considered opinion that the writ petition is a misconceived remedy and the same being devoid of merits. The writ petition is dismissed at the stage of admission. But, however, in the peculiar facts and circumstances of the case, no order as to costs.

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