

Executive Engineer, Spl. Division Vs. Rasa Constructions

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Court : Andhra Pradesh

Decided On : Mar-22-2002

Reported in : 2002(3)ALT576

Judge : S.R. Nayak and ;S.R.K. Prasad, JJ.

Acts : [Indian Tolls Act, 1851](#); Indian Tolls Laws (Andhra Pradesh Extension and Amendment) Act, 1975; [Constitution of India](#) - Article 14 and 226

Appeal No. : Writ Appeal No. 2054 of 1998

Appellant : Executive Engineer, Spl. Division

Respondent : Rasa Constructions

Advocate for Def. : T.A. Goud, Adv.

Advocate for Pet/Ap. : G.P. for Transport (R and B)

Disposition : Petition dismissed

Judgement :

ORDER

S.R. Nayak, J.

1. The main question that arose before the learned single Judge and that arises before us is whether the appellant authorities are entitled to adjust a sum of money

calculated at Rs. 11,87,573.00 p.m. for the period from 1-4-1996 to 22-9-1996 (both days inclusive)

out of the earnest money deposit made by the writ petitioner-respondent herein. This question arises in the following factual background:

The petitioner was the successful bidder for the leasehold right for collecting the toll gate on the high level bridge over Maneru river on Hyderabad-Karimnagar road at 15/6 km. and the period of contract was from 1-7-1995 to 31-3-1996 @ Rs. 7,83,222/-per month. However, the toll station was handed over on 1-8-1995. The petitioner filed a suit - O.S. No. 14 of 1996 and by virtue of a status quo order obtained therein he was permitted to continue to collect toll-gate from 1-4-1996 to 24-6-1996 and the Government had also extended the lease period beyond 31-3-1996 on an enhanced rental value of Rs. 90 lakhs per year. Pursuant to the dismissal of the suit referred to above on 26-6-1996 the toll-gate was taken over by the appellants from 25-6-1996 and thereafter the appellants called for fresh tenders to run the toll-gate. The petitioner questioned the said notification in Writ Petition No. 17953 of 1996 wherein he obtained interim order pursuant to which the toll-gate was handed over to the petitioner on 22-9-1996 on condition of the petitioner paying Rs. 9 lakhs per month from 1-10-1996. However, the Government filed Writ Appeal No. 1835 of 1996 and by an order dated 28-11-1996 a Division Bench of this court dismissed the interim application and the writ petition. The toll-gate was then taken over by the appellant and it is being run departmentally. Thereafter the petitioner made a representation to the authorities to refund the deposit amount of Rs. 9,64,000/- and also to discharge the bank guarantee which he had furnished at the time of taking over the toll-gate pursuant to the directions of this Court. Thereafter when a fresh tender notification was issued stipulating a condition that an earnest money deposit of Rs. 10.50 lakhs had to be made for release of tender schedule, the petitioner requested the authorities to supply tender schedule after adjusting the amounts refundable to him. However, it appears that the authorities have refused to issue tender schedule to the petitioner without furnishing fresh earnest money deposit.

2. Under those circumstances the present writ petition was filed initially seeking Writ of Mandamus declaring the action of the appellant authorities in not discharging the bank guarantee for Rs. 11,87,573.00 p.m. of Indian Bank, Karimnagar furnished by the petitioner and not refunding the deposit of Rs. 9,64,000/- and also for not adjusting the refundable amount towards earnest money deposit of Rs. 10.50 lakhs for submitting the tender pursuant to the notification dated 12-12-1996 as illegal, arbitrary and unreasonable and for consequential directions. However, during the pendency of the writ petition the appellant authorities issued proceedings dated 16-11-1997 directing the writ petitioner to remit the differential amount after adjusting the above amounts. Under those circumstances the petitioner filed interlocutory application for amendment of the prayer in the writ petition seeking Writ of Mandamus declaring the action of the appellants in not discharging the bank guarantee and in not refunding the deposit of Rs. 9,64,000/- and also the order of the Executive Engineer dated 16-11-1997 in directing the petitioner to pay the differential amount as illegal and for consequential direction. The said interlocutory application was ordered by the learned single Judge.

3. The writ petition was opposed by the appellant authorities by contending that the relief sought for by the writ petitioners arises out of a contract and, therefore, the writ petition is not maintainable. It was also contended by the appellant authorities that the petitioner was permitted to run and operate toll-gate between 1-4-1996 and 22-9-1996 by virtue of several orders passed by the courts and ultimately the suit as well as the writ petition were dismissed and, therefore, he is liable to pay toll-gate at Rs. 11,87,573.00 p.m. for the period from 1-4-1996 to 22-9-1996 on par with the bid offered by the highest bidder in the auction conducted on 20-1-1997.

4. The learned Judge, on consideration of the contention of the appellant authorities relating to the maintainability of the writ petition, has opined that the right granted to the petitioner is under the provisions of the [Indian Tolls Act, 1851](#) and the Indian Tolls Laws (A.P. Extension and Amendment) Act, 1975 and, therefore, it cannot be said that there is no element of public law in the contract and, therefore, the writ petition is maintainable. Further, the learned Judge opined

that the claim made by the appellant authorities tantamounts to claiming damages and the relief of damage being a common law remedy the appropriate court is the civil court and the appellant authorities cannot assume the role of an adjudicator and determine the liability of the writ petitioner to pay toll-gate charges at Rs. 11,87,573/- per month. So opining the learned Judge disposed of the writ petition holding that the impugned action of the appellant authorities in adjusting the amount of earnest money deposit and also in not discharging the bank guarantee as illegal, and consequential forfeiting or adjusting the amount as one without authority of law.

5. Hence, this writ appeal.

6. Undoubtedly, as the learned Judge pointed out, the contract awarded to the writ petitioner is under the provisions of the

[Indian Tolls Act, 1851](#) and the Indian Tolls Laws (A.P. Extension and Amendment) Act, 1975. But, at the same time, the court cannot lose sight of the fact that the court is not called upon to review the action of the appellant authorities in awarding the contract or any breach arising thereof at the threshold of the contract. Here is a case where the contract awarded to the petitioner spent itself as on 1-4-1996 and by virtue of the interim orders granted by the civil court and this court in the writ proceedings referred to above the writ petitioner could continue to operate and run toll-gate upto 22-9-1996 on which date the authorities themselves took over management and operation of the toll-gate. The fact is that in the auction conducted on 20-1-1997 the highest bidder quoted Rs. 11,87,573/- per month for the period from 1-4-1996 to 22-9-1996 and now the department wants to adjust the claim at Rs. 11,87,573/- per month for the period from 1-4-1996 to 22-9-1996 out of the monies payable to the writ petitioner towards earnest money deposit and bank guarantee. The suit and the writ petition filed by the writ petitioner were ultimately dismissed by the civil court and this court. In other words, the action taken by the department to call for fresh bids to award contract after 31-3-1997 was ultimately sustained by the courts. In this factual background, in our considered opinion, the appropriate forum to work out the reciprocal rights and obligations arising out of the contract though entered under the provisions of a statute is the jurisdictional

civil court. It is to say this because generally the constitutional courts would not take up adjudication of disputed claims arising out of contracts after termination or determination of the contract. Constitutional courts would normally stop in only at the threshold of entering into contract if the writ applicant make out a case of breach of the postulates of Article 14 of the Constitution and not otherwise. In order to sustain the claim of the department or to grant the relief to the writ petitioner, it becomes necessary to decide what could be the damage incurred by the State authorities in permitting the writ petitioner to manage and run the toll-gate between 1-4-1996 and 22-9-1996, On that question, there is a serious dispute between the parties. Resolution of such disputed facts would require permitting the parties to lead evidence and taking an appropriate decision on the basis of admissible legal evidence. Such an exercise cannot be undertaken in a summary proceeding under Article 226 of the Constitution solely on the basis of affidavits and counter-affidavits.

7. In the result and for the foregoing reasons, we allow this writ appeal and set aside the order of the learned single Judge and dismiss the writ petition reserving liberty to the writ petitioner to pursue legal remedies if he is so advised by invoking the jurisdiction of civil court by way of private law remedy. However, we direct status quo obtaining as on to-day in all respects for a period of one month.

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