SUPREME COURT OF INDIA
Bench: Justices B.R. Gavai and Sandeep Mehta
Date of Decision: 9th May 2024

CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 14970-71 OF 2017

MUNICIPAL COMMITTEE KATRA & ORS. …APPELLANT(S)

VERSUS

ASHWANI KUMAR …RESPONDENT(S)

Legislation:
Article 226 of the Constitution of India,

Subject: Appeal against High Court judgment concerning contractual disputes and claims for damages based on the contract awarded for services from Katra to Mata Vaishno Devi shrine.

Headnotes:

Contractual Dispute - Civil appeal challenging the judgment of Jammu and Kashmir High Court regarding enforcement and interpretation of contractual terms related to the tender awarded for transportation services - High Court had entertained a writ petition claiming damages for the loss of revenue due to delayed start of the contract period - Supreme Court holds that disputes purely arising out of contractual obligations should not be entertained under extraordinary writ jurisdiction under Article 226 of the Constitution [Paras 2-22].

Principle of Unjust Enrichment - Respondent sought damages for not being able to operate for full contract period due to delayed contract start, attributed to his non-compliance with contract terms - High Court awarded damages, treating the inability to operate as unjust enrichment to the appellants - Supreme Court finds this approach erroneous, stating the respondent cannot claim damages for a delay caused by his own initial refusal to comply with contract terms [Paras 16, 19-20].

Remedies and Jurisdiction - Supreme Court emphasizes that claims related to contractual damages should be pursued in civil courts or through arbitration if agreed upon, not through writ petitions - Respondent should have been directed to a competent court for resolution of contractual disputes [Para 22].

Legal Maxim Invoked - 'Nullus commodum capere potest de injuria sua propria' (No man can take advantage of his own wrong) applied - Supreme Court holds respondent's actions and subsequent litigation barred him from claiming damages for the alleged losses [Paras 18, 21].

Decision - High Court's judgment in favor of respondent on the claim of damages set aside - Supreme Court quashes the High Court's orders dated 20th February, 2015 and 30th September, 2015 as being without jurisdiction in entertaining a contractual dispute under Article 226 - Appeals allowed [Paras 24-25].

Referred Cases:

- Union of India v. Maj. Gen. Madan Lal Yadav (1996) 4 SCC 127
- Union of India and Ors. v. Puna Hinda (2021) 10 SCC 690

JUDGMENT

Mehta, J.

1. The appellants seek to challenge the common judgment and final order dated 30th September, 2015 passed by learned Division Bench of Jammu and Kashmir High Court in LPAOW No. 20 of 2015 preferred by the appellants for assailing the order dated 20th February, 2015 passed by the learned Single Judge in OWP No. 1199 of 2013; and in LPAOW No. 21 of 2015, filed by the respondent seeking modification of the order dated 20th February, 2015. The learned Division Bench disposed of the LPAOW No. 20 of 2015 preferred by the appellants, whereas the cross-appeal preferred by the respondent being LPAOW No. 21 of 2015 was dismissed.

2. The brief controversy presented for adjudication in these appeals is whether the High Court in exercise of writ jurisdiction, was entitled to entertain

LAWYER
E NEWS

a dispute which was purely civil in nature filed for claiming monetary relief/damages arising from fallout of contractual obligations.

3. Brief facts relevant and essential for disposal of these appeals are that the appellant-Municipal Committee, Katra issued a Notice Inviting Tender(hereinafter being referred to as 'NIT') dated 3rd March, 2010 inviting bids for supply of mules and *mazdoors* essentially involved in transportation of pilgrims from the base camp at Katra to holy shrine of Mata Vaishno Devi, atop the Trikuta hill. Several bids were received in response to the said NIT. The respondent herein was the second highest bidder, who subsequently became the highest bidder, as Shri Pritam Das, the original highest bidder did not come forward to execute the contract. Accordingly, the contract came to be offered to the respondent who accepted the offer so given. The tenure of the contract as per NIT was from 1st April, 2010 till 31st March, 2011. In terms of Clause-8 of the NIT, the successful bidder was required to deposit 40% of the bid amount within 24 hours from the time of acceptance, i.e. on or before 31st March, 2010. It was also enjoined upon the bidder to deposit 5 post dated cheques along with bank guarantee to secure the amount for remaining tenure of the contract period.

4. Clause-8 of NIT would be germane to the controversy and is being reproduced hereinbelow for the sake of ready reference: -

"8. The successful highest bidder, shall have to deposit 40% of the offered amount at the time of provisional acceptance of the offer by the committee immediately but not later than 24 hours from the time of acceptance. Balance contract amount shall have to be deposited in 5 (five) equal installments commencing from 1st May to September 2010, in shape of post dated cheques along with bank guarantee to be deposited within 24 hours from the time of acceptance of offer to secure timely realization the consideration amount. In case of default to deposit 40% of bid offered amount within 24 hours and also fails to fulfill other formalities required as per terms and conditions, the security deposit/earnest money shall be forfeited."

5. The respondent sought relaxation in the Clause-8 of the NIT on the ground that the condition of furnishing bank guarantee for the remainder amount was unjust and arbitrary.

6. Having failed to get a favourable response from the Municipal authorities, the respondent filed a civil suit seeking a declaration that Clause-

8 of the NIT was arbitrary. The suit was accompanied by an application seeking temporary injunction. The Court of learned District Judge, Reasi vide order dated 29th April, 2010, allowed the application and granted temporary injunction directing the appellants herein to issue the order of allotment of contract to the respondent-plaintiff.

7. The defendants i.e. appellants herein challenged the order dated 29th April, 2010 by filing a Civil 1st Miscellaneous Appeal(CIMA) No.312 of 2010 wherein the High Court passed an order dated 7th May, 2010 directing the appellants to issue a work order in favour of the respondent.

8. In view of the order dated 7th May, 2010 passed by the High Court in the above appeal, a formal work order dated 10th May, 2010 was issued by the appellants to the respondent who commenced the work and collected the revenue for the period commencing from 10th May, 2010 till 7th April, 2011(time of one week extended under orders of the High Court). After conclusion of the contract period, the respondent filed a writ petition before the High Court being OWP No. 743 of 2013 contending that his contract was supposed to commence from 1st April, 2010 and was to run for a period of 365 days till 31st March, 2011. However, the said period was truncated because the same could be commenced from 10th May, 2010 only and hence, the respondent suffered a loss of collection of earnings for a period of 33 days. He, therefore, claimed pro-rata amount of Rs. 71,06,276/- being the purported loss suffered on account of the curtailment of the contract period by 33 days. The learned Single Bench of the High Court, vide order dated 3rd July, 2013, disposed of the writ petition, OWP No.743 of 2013 with a direction to the appellants herein to consider the claim of the respondent within six weeks from the date of the order.

9. The claim of the respondent was laid before the Executive Officer, Municipal Committee, Katra who rejected the same vide order dated 12th August, 2013 which was subjected to challenge in OWP No. 1199 of 2013.

10. The learned Single Bench, took up the OWP No.1199 of 2013 and decided the same vide order dated 20th February, 2015. The findings recorded by the learned Single Judge in paragraph Nos. 14 to 16 of the order are relevant for adjudication of the issue at hand and hence, are being reproduced hereinbelow: -

"14. Indisputable position, thus, emerging is that, whereas the petitioner had complied with clause-8 of the auction notice to the extent of offering 40% of the auction amount by way of a cheque, he, however, had failed to comply with rest of the conditions by not issuing

five post dated cheques and bank guarantee to secure the payment of rest of the auction amount and instead questioned the legality of clause-8 by filing suit in the court of learned District Judge, Reasi. It was for this failure on the part of the petitioner that allotment letter enabling him to start performing under the contract from 01.04.2010 was not issued by respondent No.3, which, nonetheless, later came to be issued on 10.05.2010 pursuant to and in compliance with order dated 07.05.2010(supra) passed by this Court. As the contract period had to come to an end with the end of the financial year, that is, on 31.03.2011, the petitioner again approached this Court by way of CMA No. 271/2011 in the above mentioned appeal (CIMA No. 312/2010) and because of the interim direction issued by this Court on 31.03.2011, he continued performing under the contract up to 07.04.2011 when, however, the interim direction ceased to operate due to withdrawal of appeal by the respondents. Fact of the matter, thus, precisely is that as against stipulated contract period of one year from 01.04.2010 to 31.03.2011 the petitioner could perform under the contract and earned revenue from 10.05.2010 to 07.04.2011 and in that petitioner is not wrong in saying that he worked 33 days less than the stipulated contract period of 365 days. He thus sought refund of proportionate auction amount for these 33 days, firstly, by the medium of OWP No. 743/2013 and now by the medium of the petition on hand in which he also questions order dated 12.08.2013 passed by respondent No. 3 in compliance with order dated 03.07.2013 passed by this Court in OWP No. 743/2013. Respondent No.3, by impugned order dated 12.08.2013, rejected petitioner's claim holding it as not maintainable solely for the reason that petitioner himself was at fault for not fulfilling the terms and conditions of the Auction Notice.

15. Point sought to be demonstrated on behalf of the respondents is that petitioner by not issuing post dated cheques and bank guarantee to secure the payment of remaining 60% of the total auction amount was responsible for non-issue of allotment letter and allotment of contract in his favour up to 10.05.2011 and therefore is not entitled to claim recovery of proportionate auction amount.

16. It admits of no doubt that petitioner himself was responsible for delay in allotment of contract in his favour resulting into his inability to

collect the revenue for initial period of 39 days, that is, from 01.04.2010 to 09.05.2010. Respondents cannot be said to have committed any wrong, illegality or breach of contract in not issuing allotment letter and allotting the contract to the petitioner from 01.04.2010 up to 09.05.2010. It was with the intervention and under the interim directions of this Court on 07.05.2010(supra) that the respondent No. 3 allotted the contract in favour of the petitioner on 10.05.2010 and he performed under the same up to 7. 4. 2011. This, however, is one aspect of the matter and the other aspects, which are important nevertheless, are that stipulated period of the contract was twelve months, the, auction amount offered and paid by the petitioner was for the said period of twelve months and the petitioner could not collect the revenue for 32 days out of the said twelve months."

11. The learned Single Judge recorded a categoric finding that it was the respondent herein who failed to comply with the requirements of the Clause-8 of the NIT because the five post-dated cheques and bank guarantee to secure the payment of the rest of the auction amount were not deposited by him leading to nonissuance of the work order. The respondent questioned the legality of the Clause-8 by filing a suit in the Court of learned District Judge, Reasi. The learned Single Judge categorically held that it was the failure of the respondent-bidder, due to which the allotment letter enabling him to start performing under the contract from 1st April, 2010 was not issued, which later came to be issued on 10th May, 2010 in compliance of the order dated 7th May, 2010 passed by the High Court. However, in spite of taking note of this unjustified action of the respondent leading to the nonissuance of the work order, the learned Single Judge went on to hold that the writ petitioner(respondent herein) was not wrong in saying that he had worked 33 days less than the stipulated contract period of 365 days and thus, he was entitled to payment of pro-rata auction amount for these days.

12. The learned Single Judge was persuaded by the equitable concept that a social welfare state where the Government has to play a key role in protecting and promoting the economic interest and social well-being of the citizens, it would not be entitled to or justified in earning undue benefit/profit from the citizens. Observing so, the learned Single Judge took upon himself to quantify the damages suffered by the bidder to be equivalent to net revenue collected by the appellant herein during first 32 days of contract period commencing from 1st April, 2010 after deducting expenses such as salaries

and allied expenses and proceeded to direct the appellants to make payment thereof to the respondent herein.

13. The intra court appeal preferred by the appellants against the said order and the cross-appeal filed by the respondent seeking modification of the order passed by learned Single Bench and a direction upon the appellant to refund the total amount of Rs.71,06,276/- along with interest at 12% per annum without making any deductions, stand rejected by common judgment and final order dated 30th September, 2013. These orders are subjected to challenge at the instance of Municipal Committee, Katra and its officials in these appeals by special leave.

14. Learned counsel Shri Pashupathi Nath Razdan appearing on behalf of the appellants urged that admittedly, the respondent was responsible for non-issuance of the work order because he did not comply with the mandatory requirements contained in Clause-8 of NIT. Despite having participated in the auction proceedings with open eyes, the respondent pursuant to his second highest bid being accepted, challenged the conditions contained in Clause-8 of the NIT, by filing a civil suit. Owing to the reluctance shown by the respondent in accepting the tender conditions, the appellants herein were contemplating to quash the tender and to issue a fresh auction notice, but in compliance of the order dated 7th May, 2010, passed by the High Court, the work order dated 10th May, 2010 was awarded to the respondent. He submitted that there cannot be any dispute that the work under the contract was to run only till 31st March, 2011. The work was commenced by the respondent on 10th May, 2010 and the delay was due to his own conduct. He submitted that the High Court was not justified in entertaining the claim laid by the respondent in the writ petition which primarily was filed seeking award of damages in exercise of the extraordinary writ jurisdiction. It was fervently contended that such a remedy could only have been availed by filing a suit for damages in the civil Court. His fervent contention was that the quantification of the amount, arrived at by the High Court to be awarded to the respondent by way of damages/compensation was not based on any logic or reasoning. He thus, implored the Court to accept the appeals and set aside the impugned judgments.

15. *Per contra*, Mr. Rakesh K. Khanna, learned senior counsel representing the respondent-writ petitioner, vehemently and fervently opposed the submissions advanced by the appellants' counsel. He urged that admittedly, the auction notice was issued for one year, but despite that the respondent was not allowed to work for the entire period of 365 days in terms

of NIT. For the shortfall of 33 days during which the respondent-writ petitioner was not allowed to work, the appellants themselves operated the work and thus, it can be presumed that they must have made profits out of the same. He urged that the respondent-writ petitioner was made to deposit the entire amount under the contract for the full period of 365 days in terms of the NIT. The appellant Municipal Committee operated the work and earned income for this period of 33 days and also charged the respondent writ petitioner for the same period. By failing to pay to the respondent-writ petitioner the earnings for the period of these 33 days, the appellant was unduly enriched which is totally alien to the concept of a 'welfare state' guaranteed under the Constitution of India. He submitted that the High Court has assessed and quantified the damages suffered by the respondent by applying a logical reasoning and granted equitable relief after balancing the equities and hence, this Court should be loath to interfere in the matter.

16. However, Mr. Khanna was not in a position to dispute the fact that the respondent did not challenge the conditions contained in Clause-8 of NIT before participating in the auction proceedings. It was also not disputed that the delay in issuance of the work order was purely attributable to the respondent who avoided complying with the conditions in Clause-8 of the auction notice and dragged the proceedings to litigation.

17. We have considered the submissions advanced at bar and have perused the material available on record and have gone through the impugned judgments.

18. The situation at hand is squarely covered by the latin maxim '*nullus commodum capere potest de injuria sua propria'*, which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of ***Union of India v. Maj. Gen. Madan Lal Yadav*** [1] observing as below: -

"**28.** …In this behalf, the maxim *nullus commodum capere potest de injuria sua propria* — meaning no man can take advantage of his own wrong — squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2). In *Broom's Legal Maxim* (10th Edn.) at p. 191 it is stated:

[1] (1996) 4 SCC 127

"… it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim *frustra legis auxilium invocat quaerit qui in legem committit*. He relies on *Perry* v. *Fitzhowe* [(1846) 8 QB 757 : 15 LJ QB 239] . At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At p. 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed".

19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the nonperformance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make profit out of his own wrong'. The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition.

20. The respondent-writ petitioner participated in the tender process without raising any issue about Clause-8 of the auction notice. The highest bidder Shri. Pritam Das did not come forward to execute the contract thus, the respondent became the highest bidder and was offered the work in question. The respondent accepted the same with open eyes. However, in order to avoid full compliance of Clause-8 of auction notice, the respondent went on to file a civil suit. Having participated in the tender proceedings with open eyes, the respondent challenged the Clause-8 of the auction notice in

the civil Court and thereby, stalled the issuance of the work order. The matter was taken to the High Court and the appellants gave a clear indication before the High Court that they were proposing to hold a fresh auction. However, during pendency of appeal before the High Court, an order dated 7th May, 2010 came to be passed whereby, the appellants were directed to award the work to the respondent being L-2.

21. We feel that once the respondent-writ petitioner had participated in the tender process being fully conscious of the terms and conditions of the auction notice, he was estopped from taking a U-turn so as to question the legality or validity of the terms and conditions of the auction notice. By dragging the matter to litigation, the respondent himself was responsible for the delay occasioned in issuance of the work order which deprived him of the opportunity to work for the entire period of 365 days.

22. Furthermore, the relief which was sought by the respondent in the writ petition was purely by way of damages. By no stretch of imagination, such relief could have been subject matter of extra ordinary writ jurisdiction of the High Court under Article 226 of the Constitution of India. The quantification of the damages would require entering into disputed questions of facts and hence, the High Court ought to have relegated the writ petitioner(respondent herein) to the competent Court for claiming damages, if so advised. 23. Law is well settled that disputes arising out of purely contractual obligations cannot be entertained by the High Court in exercise of the extra ordinary writ jurisdiction. In the case of ***Union of India and Ors. v. Puna Hinda***[2], this Court held as follows: -

"**24.** Therefore, the dispute could not be raised by way of a writ petition on the disputed questions of fact. Though, the jurisdiction of the High Court is wide but in respect of pure contractual matters in the field of private law, having no statutory flavour, are better adjudicated upon by the forum agreed to by the parties. The dispute as to whether the amount is payable or not and/or how much amount is payable are disputed questions of facts. There is no admission on the part of the appellants to infer that the amount stands crystallised. Therefore, in the absence of any acceptance of joint survey report by the competent authority, no right would accrue to the writ petitioner only because measurements cannot be undertaken after passage of time. Maybe, the resurvey cannot take place but the measurement books of the work

[2] (2021) 10 SCC 690

executed from time to time would form a reasonable basis for assessing the amount due and payable to the writ petitioner, but such process could be undertaken only by the agreed forum i.e. arbitration and not by the writ court as it does not have the expertise in respect of measurements or construction of roads."

24. In wake of discussion made herein above, this Court is of the firm view that the impugned judgments dated 20th February, 2015 and 30th September, 2015 are *ex-facie* illegal and without jurisdiction. Hence, the same deserve to be and are hereby quashed and set aside.

25. The appeals stand allowed. No order as to costs.

26. Pending application(s), if any, stand disposed of.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.