

HIGH COURT OF ANDHRA PRADESH

**BENCH : HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF
JUSTICE , HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO**

Date of Decision: 10th May 2024

Case No.: WRIT APPEAL No. 72 of 2024

**APPELLANT: Real Time Governance Society, Government of Andhra
Pradesh, Secretariat, Velagapudi, Amaravati, Guntur District, 522503,
Rep by its Chief Executive Officer.Appellant**

VERSUS

**RESPONDENTS: Code Tree Software Solutions Pvt. Ltd and others.
.....Respondents**

Legislation:

Article 226 of the Constitution of India

Arbitration and Conciliation Act, 1996

Sections 1.11, 1.19, and 1.34 of the Agreement dated 01.04.2018

Subject: Appeal against the judgment directing the appellant to release the payment of Rs. 1,40,42,000/- to the respondent, Code Tree Software Solutions Pvt. Ltd., along with interest, amid allegations of data breach and invocation of arbitration clause.

Headnotes:

Contractual Disputes – Withholding of Payment – Dispute arose over withholding of Rs. 1,40,42,000/- payment due to allegations of data breach by the respondent – Appellant cited contractual provisions permitting withholding payment for default – Held, withholding payment pending investigation justified under terms of agreement [Paras 1-7, 10-11].

Writ Jurisdiction – Exercise in Contractual Matters – High Court emphasized limited scope of writ jurisdiction in contractual disputes – Held, writ jurisdiction

not appropriate where arbitration clause exists and parties have alternate remedy – Reference to Apex Court rulings on writ jurisdiction in contractual disputes [Paras 8-9].

Arbitration Clause – Dispute Resolution – Agreement contained arbitration clause for dispute resolution – High Court directed parties to resolve dispute through arbitration, setting aside writ court's order for immediate payment – Emphasized need for arbitration as per contract terms [Para 11].

Decision: Writ Appeal allowed – Impugned judgment set aside – Parties directed to resolve dispute through arbitration as per agreement terms – No costs [Para 12].

Referred Cases:

- Srinivasulu Reddy & Co. v. State of A.P., 2024 SCC OnLine AP 867
- MP Power Management Co. Ltd v. Skypower Southeast Solar India (P) Limited
- Shrilekha Vidyarthi v. State of U.P.

Representing Advocates:

Mr. P. Shreyas Reddy for the appellant

Mr. L. J. Veera Reddy for respondent No. 1

Government Pleader for GAD for respondent No. 2

Government Pleader for Finance for respondent No. 3

DATE : 10.05.2024

PER DHIRAJ SINGH THAKUR, CJ:

The present writ appeal has been preferred against the judgment and order, dated 06.11.2023 passed in W.P. No.20439 of 2023. 72 of 2024

By virtue of the judgment and order impugned, the writ petition filed by respondent No.1 herein was allowed and directions were issued to release

an amount of Rs.1,40,42,000/- to the petitioner along with interest at the rate of 6% per annum.

2. Briefly stated, the material facts are:

The petitioner, Code Tree Software Solutions Private Limited, entered into an agreement with the appellant i.e., the Real Time Governance Society (RTGS), which is a government controlled society for providing manpower to design, develop, implement and maintain various initiatives of RTGS for a period of two years. The case of the petitioner was that the petitioner completed the works as per the contract and since the petitioner worked to the satisfaction of the RTGS, three months extension was given up to 30.06.2020.

3. The case of the petitioner was that although payments were released for certain periods, yet an amount of Rs.1,40,42,000/- was not paid for the period September 2020 to January 2021 and that the amount withheld was without any reasonable cause or justification.

4. The case of the respondent - RTGS, on the other hand, was that the amount was withheld on account of the fact that the petitioner, being the exclusive contractor for RTGS and rendering IT and software services, was being investigated for the leak of data for the relevant period as per the investigation conducted by the legislative committee into the citizen data leak, which is stated to have occurred in the early 2019.

5. The stand taken was that as per the hearings conducted by the legislative committee and the preliminary reports issued in September 2022, it was indicated that an investigation by the police may be required to get additional details pertaining to the said data leak. The stand of RTGS further is that the amount, which was otherwise payable to the petitioner, was withheld in accordance with the terms and conditions of the agreement, inasmuch as the leakage of data amounts to a default which enables the RTGS to withhold payments. Reference in this regard was made to certain terms and conditions of the agreement dated, 01.04.2018, which are reproduced herein below:

“ 1.11 Code Tree’s Obligations:

....

5. Except as otherwise provided for herein or with the prior written approval of RTGS, the Code Tree and/or Code Tree's team shall not:-

a) Systematically collect and use any RTGS data, Deliverable, Assets or RTGS contents/contents of services and information, including the use of any data mining, or similar data gathering and extraction methods;

b) Market, sell, or make commercial or derivative use of the RTGS data, Deliverable or Assets, RTGS contents/contents of services and information;

c) Publish, publicly perform or display, or distribute to any third party any RTGS data, Deliverables or RTGS contents/contents of Government services and information, including reproduction on any computer network or broadcast or publications media;

d) Use, frame, or utilize framing techniques to enclose any portion of the RTGS data, Deliverables or RTGS contents/contents of services and information (including images, any text or the layout/design, form or content of any page or otherwise)."

6. According to 1.19.1, failure on the part of the Code Tree to perform any of its obligations would constitute an event of default on the part of the Code Tree, and would entail the consequences as contained in

1. 19.2, which is reproduced hereunder:

"1.19.2 Consequences for Events of Default

Where an Event of Default subsists or remains uncured even after expiry 30 days the RTGS shall be entitled to:

i. Impose any such reasonable obligations and conditions and issue any clarifications as may be necessary to, inter alia, ensure smooth continuation of the Services and the project which the Code Tree shall be obliged to comply with. The Code Tree shall in addition take all available steps to minimize loss resulting from such event of default.

2. Suspend all corresponding and relevant payments to the Code Tree under the Agreement (except for milestones which have been successfully achieved) by written notice of suspension to the Code Tree

provided that such notice of suspension shall (a) specify the nature of failure; and

(b) request the Code Tree to remedy such failure within a specified period from the date of receipt of such notice of suspension by the Code Tree.

.....”

7. Learned counsel for the appellant would urge that the issue of data breach was a serious issue, which entailed claims by third parties whose data had been breached, which may involve financial burden on the appellant, and therefore withholding of the amount in question was justified and purely in accordance with the terms and conditions of the agreement. Apart from this, it was stated that having taken a decision to withhold the payment pending the investigation by the police, it was not open to the learned single Judge to order payment to the petitioner, more so in view of the fact that there was an arbitration clause, being clause number 1.34, which envisaged the dispute resolution through the mechanism of arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The factum of the existence of the arbitration clause was not denied by the respondent No.1 herein.

8. The issues that are required to consider at this stage are whether this Court ought to exercise its writ jurisdiction in a concluded contract between the parties and whether the withholding of the payment due to the petitioner was justified in the facts and circumstances of the case.

9. The scope of the exercise of writ jurisdiction under Article 226 of the Constitution of India in contractual matters has recently been considered by this bench in **Srinivasulu Reddy & Co. v. State of A.P.**¹, relying upon the judgment of the Apex Court among others in **MP Power** ———— 2024 SCC OnLine AP 867 **Management Co. Ltd v. Skypower Southeast Solar India (P) Limited**¹, in which the Apex Court, while holding that existence of an arbitration provision could be viewed as a near bar to the entertainment of a writ petition and existence of an alternate remedy must be borne in mind in declining relief in a writ petition in a contractual matter, yet, held that there was no prohibition on the writ Court in deciding even disputed questions of fact, particularly when the dispute pertained only to demystifying of documents. In paragraph 82.12 of the said judgment, the Apex Court held:

¹ (2023) 2 SCC 703

“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.*). 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.”

10. As seen from the preceding paragraphs, it is not denied that a sum of Rs.1,40,42,000/- is due and payable to the petitioner, which has been withheld on account of the alleged data breach attributed to the petitioner. According to the terms and conditions of the agreement, any failure in the discharge of its obligations as per the agreement would constitute a default, which would enable the withholding of the payment to the petitioner in terms of clause 1.19. The action of the appellant in withholding the amount due to the petitioner, therefore, cannot be said to be such as would deserve to be called arbitrary. Ultimately, the issue may have to be considered and established before an appropriate forum, i.e., the arbitral tribunal, whether there was in fact a data breach and whether the same could be attributed to the petitioner. If the appellant fails to prove the same, the amount would be payable, and if not, then perhaps the action of the appellant may be justified.

11. Therefore, in our opinion, this was not a case where a direction should have been issued to the appellant to make the payment, especially in light of the allegations made against the petitioner with regard to data breach and the

relevant provisions of the agreement, which were invoked for purposes of withholding the amount. The 72 of 2024 petitioner ought to have been relegated to the remedy of arbitration in the present case.

12. Be that as it may, we allow the writ appeal and the judgment and order impugned is accordingly set aside. No costs.

Pending miscellaneous applications, if any, shall stand closed.

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