



2024/KER/58646

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 5TH DAY OF AUGUST 2024/14TH SRAVANA, 1946

W.A.NO.1262 OF 2023

AGAINST THE JUDGMENT DATED 09.12.2022 IN W.P(C).NO.17515 OF 2022
OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS 1 TO 4:

- 1 INDIAN SPACE RESEARCH ORGANIZATION (ISRO)
DEPARTMENT OF SPACE, GOVERNMENT OF INDIA,
LIQUID PROPULSION SYSTEMS CENTRE, VALIAMALA P.O.,
THIRUVANANTHAPURAM, PIN - 695547
REPRESENTED BY ITS CHAIRMAN.
- 2 SECTION HEAD,
MAJOR CIVIL WORKS CONSTRUCTION AND MAINTENANCE
GROUP (CMG), LIQUID PROPULSION SYSTEMS CENTRE (LPSC)
ISRO, DEPARTMENT OF SPACE, GOVERNMENT OF INDIA,
VALIAMALA P.O., THIRUVANANTHAPURAM, PIN - 695547
- 3 GROUP HEAD,
CONSTRUCTION AND MAINTENANCE GROUP (CMG),
LIQUID PROPULSION SYSTEMS CENTRE (LPSC) ISRO,
DEPARTMENT OF SPACE, GOVERNMENT OF INDIA,
VALIAMALA P.O., THIRUVANANTHAPURAM, PIN - 695547
- 4 UNION OF INDIA,
DEPARTMENT OF SPACE, 3RD FLOOR,
LOKNAYAK BHAWAN, NEW DELHI, PIN - 110003.
REPRESENTED BY ITS SECRETARY.

BY ADV.SRI.G. HARIKUMAR (GOPINATHAN NAIR)

RESPONDENT/WRIT PETITIONER:

M/S.ROOPAM ENGINEERS AND CONTRACTORS PRIVATE
LIMITED, VIII/129, PAREKKATTIL BUILDING,
COCHIN BANK JUNCTION, NAD ROAD, ASHOKAPURAM,
ALUVA, ERNAKULAM, PIN - 683101.
REPRESENTED BY ITS MANAGING DIRECTOR V.S. MYTHEEN.



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BY ADV.SRI.P.K.SURESH KUMAR (SR.)
BY ADV.SRI.C.HARIKUMAR
BY ADV.SMT.SANDRA SUNNY
BY ADV.SRI.ARUN KUMAR M.A

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
01.08.2024, THE COURT ON 05.08.2024 DELIVERED THE
FOLLOWING:



"C.R."

J U D G M E N T

Dr. A.K. Jayasankaran Nambiar, J.

The respondents 1 to 4 in W.P.(C).No.17515 of 2022 are the appellants before us aggrieved by the judgment dated 09.12.2022 of the learned Single Judge in the writ petition.

2. The brief facts necessary for disposal of this Writ Appeal are as follows:

The 1st appellant is a Government of India organisation for promoting the development and application of Space Science and Technology. It had invited tenders for establishment of a Mechanical Testing Research Laboratory for Propulsion Systems - Liquid Propulsion Systems Centre [LPSC] at Valiyamala, Thiruvananthapuram. Ext.P1 notice of tender was issued on 04.05.2019 and the period of completion of the work was stipulated as 12 months. The minimum validity of the tender was 120 days from the last date of receipt of tender. On account of a delay in technical evaluation and approval for opening of a price bid, the respondent/writ petitioner was requested to extend the validity of the tender on various occasions, which was apparently agreed to



by the respondent without any objections or demur. Eventually, the technical bid was opened on 17.06.2019, and the price bid was opened on 05.11.2019. The work order was issued to the petitioner on 16.03.2020, and the agreement for the work was executed with the petitioner on 19.03.2020.

3. It would appear that even before the work could commence pursuant to the issuance of the work order, the Government of India declared a complete lock-down in connection with the Covid-19 pandemic on 22.03.2020. The 1st appellant therefore intimated the respondent of the fact of lock-down. Thereafter, upon the partial lifting of the lock-down, there was a need to re-prioritize the works and therefore an administrative decision was taken by the 1st appellant to postpone the execution of work awarded to the respondent by six months. Accordingly, Ext.P11 letter dated 23.06.2020 was issued to the respondent seeking his willingness to execute the work at a later date strictly as per the work order and the agreement that was executed. Ext.P11 letter was accepted by the respondent unconditionally by issuing Ext.R1(a) communication dated 24.06.2020. Pending confirmation of budget availability due to the re-prioritization of works post lock-down, the 1st appellant once again wrote to the respondent by Ext.P13 letter dated 21.12.2020 seeking his willingness to execute the work at a later date after four months,



again strictly in accordance with the work order and the agreement executed. The said letter was also unconditionally accepted by the respondent by Ext.R1(b) communication dated 07.01.2021. Thereafter Ext.P14 letter dated 10.03.2021 was issued by the 1st appellant to the respondent to commence the construction activities for the work awarded within 15 days, and the site was handed over to him on 24.03.2021.

4. While so, the respondent/writ petitioner, by Ext.P15 letter dated 12.03.2021, requested the appellants to consider the application of Clause 10C(ii) of the General Conditions of the Contract that dealt with price escalation to the contract awarded to him. The letter was issued in the phase of the express provisions of the contract which made it clear that the price escalation clause was applicable only to contracts where the stipulated period for completion of the contract was beyond 12 months. The appellants considered the said request of the respondent along with another similar request dated 08.03.2022 and rejected the same by Ext.P17 communication dated 10.03.2022. A further reiteration of the request by the respondent on 17.03.2022 was also similarly rejected by Ext.P19 communication dated 19.04.2022. In the writ petition, the respondent/writ petitioner impugned Exts.P17 and P19 communications issued by the 1st appellant *inter alia* on the contention that in view of the extension granted for commencement



of the work awarded to the respondent, and by implication an extension of the time for completion of the work under the contract, the respondent was eligible for the benefit of Clause 10C(ii) of the General Conditions of Contract and entitled to be compensated for the escalation in the price of materials.

5. Although a counter affidavit was filed on behalf of the 1st appellant refuting the claims of the respondent/writ petitioner and raising *inter alia* the issue of maintainability of the writ petition seeking monetary benefits under a contract, the learned Single Judge, by the judgment impugned in this Writ Appeal, proceeded to hold that the contract period being 12 months, the writ petitioner would have taken into account the possible hike in rates of materials and labour for the one year period, and since contrary to expectation, the work was unduly delayed, and by the time the agreement was executed almost 10 months had elapsed, and even thereafter by the time the work actually commenced a period of 21 months had elapsed after submission of the bid, he was entitled to claim compensation in accordance with Clause 10C(ii) of the General Conditions of Contract. The learned Judge opined that in view of the principle of novation under Section 62 of the Contract Act coming into play on account of the voluntary extension of the time limits stipulated for completion of the work by the contracting parties, the writ petitioner's request for compensation could not



have been rejected by the orders impugned in the writ petition. The learned Judge opined that being an instrumentality of the State, as envisaged under Article 12 of the Constitution of India, the appellant herein was expected to function in a just and proper manner and to refrain from acting in an irrational and arbitrary manner.

6. In the appeal before us, we have heard Sri.Harikumar G. Nair, the learned counsel for the appellants and Sri.P.K.Suresh Kumar, the learned senior counsel assisted by Sri.C.Harikumar, the learned counsel on behalf of the respondent/writ petitioner.

7. The contention of Sri.Harikumar G. Nair, the learned counsel for the appellants, is threefold:

- Relying on the decisions of the Supreme Court in **Rajasthan State Industrial Development and Investment Corporation and Another v. Diamond and Gem Development Corporation Ltd. and Another - [(2013) 5 SCC 470]** and of the Allahabad High Court in **R. K. Road Lines Pvt. Ltd. (M/s.) v. Uttar Pradesh Co-operative Federation Ltd. and Others - [2021 KHC 4747 (All)]**, he would point out that this Court ought not to have interfered in a non-statutory contractual matter involving the appellants on the one hand and the writ petitioner on the other,



especially when there was no element of public interest involved and the subject matter of the writ petition was purely a private contractual dispute entailing a claim for money by the respondent/writ petitioner.

- The respondent/writ petitioner having consented to a delayed commencement of the work, and by implication, a delayed completion of the work through Exts.R1(a) and R1(b) communications and having agreed to continue the work on the same terms and conditions as originally stipulated, could not now turn around and go back on the said undertaking. The action of the respondent/writ petitioner would be inequitable and ought not to have been countenanced by the writ court.

- The learned Single Judge erred in declaring Clause 10C(ii) of the General Conditions of Contract as being inapplicable to the contract entered into between the appellants and the respondent/writ petitioner. Relying on the decisions of the Supreme Court, it is contended that in matters involving disputed questions of fact, this Court ought to have relegated the respondent/writ petitioner to his alternate remedy of approaching a Civil Court for establishing his rights for the benefit of a clause in a contractual document. It is pointed out that by declaring Clause 10C(ii) of the General Conditions of Contract as inapplicable to the



contract entered into with the respondent/writ petitioner, the learned Single Judge had virtually decided the price escalation/compensation claim put forth by the respondent/writ petitioner in a writ petition under Article 226 of the Constitution of India.

8. Per contra, the submission of the learned senior counsel Sri.P.K.Suresh Kumar on behalf of the respondent/writ petitioner essentially supports the finding of the learned Single Judge in the impugned judgment. In addition, he would point out that inasmuch as the period of 12 months, for completion of the work envisaged under the contract, commenced only from 24.03.2021, that is, the date on which the site was handed over by the appellants to the respondent/contractor, the restriction in Clause 10C(ii) of the General Conditions of Contract - that the price escalation would not apply to works with stipulated period of completion less than 12 months - would not disable the respondent/writ petitioner from claiming the benefit of the price escalation clause. It is pointed out that when the effect of the decisions taken by the 1st appellant, was to enlarge the period for completion of the work to beyond 12 months from the date of entering into the contract, the logical effect of that extension was to convert the nature of the work under the contract as one which had to be completed beyond 12 months. It is the submission of the learned senior counsel therefore that



unless the price escalation clause is so interpreted, in the peculiar facts and circumstances obtaining in the instant case, severe prejudice would be caused to the respondent/writ petitioner.

9. We have considered the rival submissions, and for the reasons that are to follow, we are of the view that this Writ Appeal must necessarily fail.

10. Firstly, we find ourselves unable to accept, as a general proposition, the argument of the learned counsel for the appellants that in every case where an entity that answers to the description of "State" under Article 12 of the Constitution of India enters into a non-statutory contractual relationship with a private person, the writ court would be denuded of its jurisdiction to interfere with a contractual dispute that arises between the parties. In **M.P. Power Management Company Limited, Jabalpur v. Sky Power Southeast Solar India Private Limited and Others - [(2023) 2 SCC 703]**, the Supreme Court, after a survey of all the precedents on the issue, found that the principle that in the case of a non-statutory contract, the rights are governed only by the terms of the contract may not continue to hold good. It was observed that the mere fact that relief is sought under a contract which is not statutory, will not by itself, entitle the respondent State in a case to ward-off scrutiny of its action or inaction under the contract if the



complaining party is able to establish that the action/inaction is, *per se*, arbitrary. If the actions of a State betray caprice or the mere exhibition of the whim of the authority, it would sufficiently bear the insignia of arbitrariness. Accordingly, if there is an absence of good faith and the State action is actuated with an oblique motive, it could be characterised as being arbitrary. Similarly, a total non-application of mind, without due regard to the rights of the parties and public interest, would be a clear indicator of arbitrary action. There would be a myriad circumstances where there may not be any necessity to drive a party to a litigation before the civil court especially when the contention by the State, that there are disputed questions of fact necessitating a recourse to the civil court, is found to be merely illusory. As reiterated by the Court, the need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when the actual resolution of a disputed question of fact is unnecessary to grant the relief to a writ applicant.

11. On the facts of the instant case, we find, as rightly found by the learned Single Judge in the impugned judgment that, on reckoning the completion period of 12 months from the date of handing over of the site, the total period of operation of the contract between the parties had stretched to well beyond two years from the date of executing the agreement for the work in



question. It would be grossly unfair for the appellants to now contend that, for the purposes of the price escalation clause, the work under the contract has to be seen as one for which the stipulated period of completion was less than 12 months. This is especially so when we find from a reading of the contractual terms [Clause 10C(ii)] that the price increase envisaged thereunder was to compensate a contractor for any increase in the price of the materials used under the contract, in the event of the execution of the work under the contract extending beyond the period of 12 months. We are of the view that it would be grossly inequitable and unfair for the appellants to contend that, although the period of operation of the contract was extended well beyond the originally envisaged period of 12 months, for the purposes of considering the respondent's claim for price escalation, the work had to be seen as one that was to be completed in less than 12 months

12. We are also not persuaded by the submission of the learned counsel for the appellants, placing reliance on Clause 3A of the General Conditions of Contract, that the respondent/writ petitioner had not chosen to close the contract by refusing to accept the request of the appellants for a delayed commencement of the work envisaged under the contract. Although it may be a fact that the respondent/writ petitioner/contractor had agreed to commence the work under the contract belatedly, by acceding to



the request of the appellants, that by itself cannot be seen as a waiver by the respondent/writ petitioner/contractor of his rights to a price escalation when the work under the contract could be realistically completed only beyond two years from the date of entrustment/handing over of the site to him.

We therefore see no reason to interfere with the impugned judgment of the learned Single Judge. The Writ Appeal therefore fails, and is accordingly dismissed.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
SYAM KUMAR V.M.
JUDGE

prp/