

(2006) 08 GAU CK 0040

Gauhati High Court

Case No: None

A.I.A. Enterprise and
Others

APPELLANT

Vs

Guwahati
Metropolitan
Development
Authority and Others

RESPONDENT

Date of Decision: Aug. 4, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 384, 420

Citation: (2007) 3 BC 196 : (2007) 2 GLR 386 : (2006) 4 GLT 441

Hon'ble Judges: B. Biswas, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D. Biswas, J.

Petitioner No. 1 is a proprietorial firm owned by the petitioner No. 2. A contract was executed between the firm and the respondent No. 1 on 8.10.2002 for improvement, of GMDA's Truck Parking Yard at Gotanagar on "Build Operate and Transfer Basis". It was agreed upon that the petitioner firm would invest an amount of Rs. 1,07,06,125 by mobilizing its own financial resources and would operate the parking yard for a period of five years with effect from the date of handing over the site and to pay a sum of Rs. 43.50 lakh annually to the GMDA. After construction/improvement, the yard was inaugurated on 9.4.2003. As per contract, the petitioner is entitled to operate till 8.10.2008. Despite satisfactory management strictly in terms of the contract, the petitioner firm was served with a notice dated 25.8.2003 to show cause as to why the agreement would not be terminated for violation of Clauses 5 and 9 of the additional condition of agreement because of

complaints of extortion/realization of parking fees in excess of the fees prescribed by the authority. By the letter dated 7.10.2003, the respondent authority also informed the petitioner of its decision to terminate the agreement dated 8th October, 2002. Petitioner challenged the aforesaid decision by filing Writ Petition (C) No. 8696 of 2003. The writ petition was disposed of by the order dated 28.1.2004 directing the respondent No. 1 to reconsider and decide the matter afresh after hearing the writ petitioner etc. Accordingly, the petitioner was furnished with copies of the relevant documents and heard in person. Eventually, by the letter dated 27.2.2004, the order of termination dated 7.10.2003 has been made final.

2. The petitioner firm has approached this court for setting aside and quashing the orders dated 27.2.2004, 7.10.2003 and show cause notice dated 25.8.2003 with consequential direction for handing over the parking yard for the remaining period of the contractual period.

3. The respondents No. 1, 2 and 3 have filed their return challenging the maintainability of the writ petition based on disputed questions of fact. According to them, the rights and obligations of the parties are governed by a contract agreement and a civil action for damages may lie for breach thereof. It is reiterated that the question raised cannot be resolved in exercise of powers under Article 226. Denying arbitrariness and illegalities in terminating the agreement, it is asserted that the authority had taken the decision in strict compliance with the terms and conditions stipulated in the agreement dated 8.10.2002. The claim of the firm that they have invested a sum of Rs. 1,07,06,125 has been specifically denied. According to them, the authority is vested with the powers to terminate the contract on account of breach of any of the terms and conditions stipulated therein and such powers could be invoked on the happening of the contingencies enumerated in additional clauses Nos. 5, 9 and 10 of the contract agreement. Apart from claim of investment, the respondent authority denied that a certificate of completion of work was issued by the engineer concerned. According to them, the work in question was not completed. The respondent authority merely agreed to allow the petitioner to operate the parking yard as a licensee under the respondent No. 1 for a period of five years from the date of handing over of the site subject to fulfillment of the contractual obligations. The work site was handed over to the petitioner on 9.10.2002, but the claim that he was allowed to operate the yard till 8.4.2008 is absolutely baseless and misleading. In terms of clause 3, the petitioner firm deposited their first instalment of bid price on 3.6.2003 i.e., on expiry of six months of moratorium reckoned from the date of handing over of the site, i.e., 9.10.2002. The respondents received a number of complaints regarding acts of extortion by the petitioner firm and its employees within the parking yard as well as on adjoining National Highway-37. Exorbitant amount ranging from Rs. 200 to Rs. 800 were collected from owners/drivers in the name of parking fees whereas Clause 5 stipulates parking fees at the rate of Rs. 50 for 8 hours. The Superintendent of Police (City), Guwahati lodged an FIR against the employees of the firm for collecting

money much in excess of the permissible limits from the truck owners/drivers under duress and threat. The Superintendent of Police also informed the respondent No. 1 by the letters dated 8.8.2003 and 16.9.2003 in details the illegal activities indulged in by the petitioner firm and its employees. The Officer-in-Charge of Jalukbari Police Station also conducted a spot enquiry and submitted a report on 7.8.2003 appraising the Superintendent of Police of the illegal activities committed by the petitioners, to enquiry was also carried out by Shri C.K. Bhuyan, Sub-Divisional Magistrate, Guwahati and the complaints against the petitioners stood established on evidence. The letter dated 8.8.2003 was not the only basis for issuing the show cause notice dated 28.3.2003. There were other materials and authentic information including videography of the enquiry made by the Magistrate, The petitioner was also given bearing in the matter and the decision was eventually taken on the basis of the materials on record after furnishing the copy of the report submitted by the Superintendent of Police.

4. It would appear from the pleadings reproduced above that the respondent authority have denied the claim of the petitioner firm that they have invested a sum of Rs. 1,07,06,125 and further pleaded that the rights and obligations of the parties following out of a contract in the private realm can be adjudicated only by a court of civil jurisdiction, it is further pleaded that the petitioner was allowed to operate the parking yard as a licensee for a period of five years and not till 8.4.2008, as claimed. The respondent further asserted that because of extortionist activities and collection of higher fees, they had to terminate the contract after hearing the petitioner firm.

5. It would be apposite to quote hereinbelow the relevant excerpts from the contract agreement/additional agreement:

5. The Bidder shall collect fees at the rate of Rs. 50.00/8 hours only: In case of excessive demand of fees, either by the Bidder himself or by the agent or employees, the Bid shall be terminated forthwith and will be liable to be prosecuted u/s 384 I.P.C. If the rate of collection of the fees needs to be further enhanced during the period of B.O.T. the same may be made obtaining prior approval from the employer, who reserves the right to do so with proper justification of enhancement of the rate of-collection of fee it if appears to his satisfaction. If the enhancement in the rate of collection fee is made, the payment made to GMDA by the Bidder will also be increased proportionately.

9. If it appears to the satisfaction of the Employer that there is apprehension of extortionist activities carried out by the Bidder for collection of excess parking fee than that of the approved fee rate, the employer shall have the right to terminate B.O.T. contract outright.

10. Charging of parking fee from the vehicles beyond proposed fee rate is to be considered as a deliberate criminal offence. If the Bidder and his men commits such offence on report/complain to the Employer and if it appears to the satisfaction of

the employer, the Bidders shall be fined immediately a sum of Rs. 1,000.00 (Rupees one thousand) only for 1st instance and for continuous breach, the B.O.T. contract shall be terminated forthwith.

6. It would appear from above three clauses that the petitioner was allowed to collect fees at the rate of Rs. 50 per eight hours and demand in excess thereof would result in termination of the contract besides prosecution. Clause 5 further reserves right with the GMDA to enhance the fees if the situation so demand with consequential increase in the payment to the authority. Clause 9 prohibits collection of excess parking fees with similar clauses of termination of the agreement. Clause 10 stipulates that collection of parking fees in excess of the prescribed fees will entail criminal prosecution. The authority terminated the contract for violation of the provisions of the aforesaid three clauses. As is evident, the decision to terminate the contract was taken on the basis of certain report from the police. It is in this context the petitioner has approached this court.

7. The first question relates to the claim of investment of Rs. 1,07,06,126 by the petitioner in terms of the agreement dated 3.10.2002. Their case is that they have spent the amount for completion of construction/ improvement of the parking yard as per specification given by the respondent authority; The petitioner firm, after completion, was allowed to operate the yard for a period of five years with effect from 9.4.2003. Their specific case is that because of premature termination, they are entitled to direction from this court to the respondent authority to allow them to operate the parking yard till expiry of the contractual-period. But the respondents, in para 4 of their affidavit, specifically denied that the petitioner firm has invested an amount of Rs. 1,07,06,125 for developing the truck parking yard. The respondents further denied that a certificate of completion of the work was issued by the concerned engineer. The respondents' case is that the construction work in question was neither completed nor any work completion certificate was issued to the petitioner. The petitioner firm was allowed to operate the truck parking yard only as a licensee. According to them, the agreement does not envisage compensation for construction made, and they were simply allowed to operate the yard by charging parking fees in compliance with the conditions of contract. In para 6 of the affidavit dated 7.3.2006, it is submitted that the works executed by the petitioner firm were not jointly measured by the engineers of the respondent authority and, hence, the question of payment of compensation cannot be entertained.

8. The rival contentions of the parties reproduced above clearly show that the question of investment is highly disputed and it would not be possible on the part of this court to" embark upon an enquiry and analyze the materials on record to determine the correctness of the claim and denial by the parties. But the fact remains that the petitioner was allowed to operate the parking yard by the letter dated 8.4.2003 as per terms of the contract. It would appear that the attorney of the

petitioner firm by the letter dated 8.4.2003 (Annexure-N) informed the Chief Executive Officer that the build part (i.e., the works for construction of Gotanagar Truck Parking Yard) have been completed in all respect and necessary arrangement has also been made for inauguration on 9.4.2003. In response, on the very same day, the Chief Executive" Officer wrote a letter No. GMDA/DEV/278/2001-2002/ dated 8.4.2003 (Annexure-O) allowing the petitioner firm to operate the parking yard provisionally from 9.4.2003. The contents of the letter reads as follows:

With reference to your letter dated 8.4.2003 mentioning that you have completed construction of yard in all respects, you are allowed to operate the yard provisionally from 9.4.2003. The work done by you will be assessed by project engineer, GMDA for issuing completion certificate. You will be required to complete the short fall if any within the time specified by GMDA.

9. It would appear from above that it was only on the basis of the letter written by the petitioner firm that the construction of the parking yard was complete, the Chief Executive Officer allowed the petitioner to operate the same. The Chief Executive Officer did not appear to have authorized any officer of the Department to inspect and submit completion report nor appear to have personally satisfied that the construction has been made. It was on the claim of the petitioner, the Chief Executive Officer allowed the firm to operate the same. The documents made available do not show that the respondent authority had issued any completion certificate before or after petitioner firm was allowed to operate the parking yard. In the face of denial of the claim of investment and for reasons recorded above, this court is not inclined to further delve deep into the matter. The claim that the amount has been invested and the construction has been completed cannot be adjudicated by invoking writ jurisdiction of this court.

10. The next question relates to collection of exorbitant fees and extortion of money. It is on this ground that the contract has been terminated. It has already been mentioned hereinbefore that the respondent in their counter has asserted that they had to terminate the contract for breach of the terms and conditions stipulated in Clauses 5, 9 and 10. They pleaded that the petitioner was indulging in collection of exorbitant amount ranging from Rs. 200 to Rs. 800. This led the Superintendent of Police (City), Guwahati to file FIR against the employees of the firm. That apart, the Superintendent of Police also informed the respondent No. 1 about the illegal activities of the petitioner firm and its employees. The report submitted by the Officer-in-Charge of Jalukbari Police Station highlighted the illegal activities. Besides, an enquiry was also carried out by Mr. C.K. Bhuyan, Sub-Divisional Magistrate, Guwahati. The pleadings as well as the documents annexed in support of the pleadings leave no doubt that the controversy relating to realization of excess money cannot be resolved under Article 226 of the Constitution. Ex-facie, the pleadings of the parties indicate that the question poised calls for a detailed enquiry and this is possible only by a civil court of original jurisdiction. Nothing being

admitted on record, this court is unable even to perceive any probable answer to the question.

11. We may try to understand the gravity of this situation from the available documents. Annexure- I(a) is the copy of the letter dated 8.8.2003 written by the Superintendent of Police, City, Guwahati to the Chief Executive Officer, GMDA. From this letter, it appears that on 4.8.2003 Shri A. Bharracharyyee, Director, M.K.B. (Asia) Pvt. Ltd., Zoo Narengi Road lodged a complaint that the Truck No.AS-25-A/4525 belonging to his Company was on his way to Rani. It was stopped in front of the Gotanagar Parking Yard by six boys and they started pelting stones. The aforesaid boys of Gotanagar parking yard issued a slip of Rs. 50 as parking fee as against Rs. 200 to Rs. 800 collected from the truck owners. The Superintendent of Police further informed that on the basis of the said complaint, Jalukbari P.S. Case No. 313/2003 was registered and that the employees of the parking yard were found extorting money from the trucks by forcing the trucks to enter the parking yard. The Manager was given warning and asked to refrain from such illegal activities. Despite that, the Manager and his employees have been resorting to such illegal collections.

12. Annexure-I(b) is the copy of the report dated 7.8.2003 submitted by the Officer-in-Charge of Jalukbari Police Station. From this report, we find that the Superintendent of Police, City, Guwahati was informed about the registration of a case on the basis of an FIR submitted by Shri A. Bhattacharyyee, Director, MKB (Asia; Pvt. Ltd., Zoo-Narengi Road. From this report, we find that the employees of the parking yard were involved in stopping trucks on the National Highway and collecting fees beyond the prescribed rate. It is also apparent from the report that Shri Dinesh Kalita and Shri Dwipen Das, employees of the parking yard were arrested in connection with this case. Infact, the letter dated 8.8.2003 was written by the Superintendent of Police on the basis of this information submitted by the Officer-in-Charge of Jalukbari Police Station vide his report dated 7.8.2003.

13. The Superintendent of Police vide his letter dated 16.9.2003 informed the Commissioner and Secretary to the Chief Minister, Assam about the illegal activities in the Gotanagar Parking Yard. It would be better understood if the letter is read as it is;

OFFICE OF THE SUPERINTENDENT OF POLICE GUWAHATI CITY

No. CP/Misc.2003/CB/536

Dated 16.9.2003

To

Shri M.G.V.K. Bhanu, IAS,
Commissioner and Secretary to the CM, Assam G.M.D.A.,
Dispur.

Sub : Action against illegal activities by GMDA Gotanagar Parking Yard.

Ref: Your instruction dated 14.9.2003.

Sir,

With reference to the above, I have the honour to submit the following report for your kind perusal.

That Sir, last evening @ 7.30 P.M., acting on repeated verbal complaints received from truck drivers, police party accompanied by the S.D.M. (Metro) Shri K.C. Bhuyan, conducted raid at the GMDA Truck Parking Yard at Gotanagar under Jalukbari P.S. During the raid police party caught red-handed the employees of the Parking Yard forcibly collecting money in excess of the determined rate. The employees were extorting Rs. 200 to Rs. 300 per truck in place of the fixed rate of Rs. 50 for eight hours. Many truck drivers assembled there complaint that the employees of the Parking Yard assaulted them and damaged the windshields of their trucks by throwing stones in case they refused to pay the extra money. In this connection two FIRs were also lodged by the truck drivers and Jalukbari P.S. case No. 392/03 u/s 384/420 IPC were registered. The following accused persons caught red-handed while extorting money have been arrested in this connection and brought to Jalukbari O.P. for further interrogation. They are - (1) Mukta Gogoi (30) S/o Late Mom Ram Gogoi of Gondhiagaon, P.S. Panitola, Dist. Tinsukia (2) Basanta Das (26) S/O Shri Hari Das of Gotanagar, PS Jalukbari (3) Jayanta Sarma (25) S/o Ganeswar Sarma of Jalukbari, Pragjyotishnagar (4) Lalit Bora (28) S/o Cheniram Bora of Bihpuria, P.S. Lakhimpur (5) Mukul Kalita (30) S/O Late Harmohan Kalita of Haribhanga, P.S. Tihu, Dist. Nalbari and (6) Md. Babul Ali, S/o Md. Tarib Ali of Balikuchi, P.S. Baihata Chariali.

In this regard, I would like to mention here that on two earlier occasions also cases were registered against employees of the Parking Yard for extortion of money from truck drivers and hooliganism. In this regard, the matter was informed to Shyamala Rao, IAS, Chief Executive Officer, G.M.D.A. vide this office memo No. CP/Misc/2003.CB/462 dated 8.8.2003 copy of which is enclosed herewith for favour of kind perusal.

Since it has been observed that the Lessee of the G.M.D.A. Parking Yard are not paying any Importance to repeated police action and number of arrests of their employees, I, therefore, request your honour kindly to take necessary action to cancel the lease against the parking yard so that illegal action by the employees of the Lessee can be stopped once for all.

Submitted for favour of kind necessary action.

Along with the above letter, the FIR dated 15th September, 2003 was also forwarded which shows of allegations of forceful collection of parking fees.

14. From all these documents, it appears that the authorities were in receipt of complaints of collection of excessive money from the truck owners/drivers. That apart, in para-8 of the affidavit-in-opposition, reference has been made of a report submitted by Shri C.K. Bhuyan, SDJM, Guwahati which shows that the petitioner firm and its employees had actually been extorting money in the name of collection of parking fees causing immense harassment to the truck owners in general. From the contents of the above documents, it cannot be said that in the given circumstances the authorities have acted beyond their jurisdiction in terminating the contract in violation of the Clauses 5 and 9 of the Additional Conditions of Contract. Since the contract is terminable on the happening of certain contingencies and has been terminated for alleged breach of Clauses 5 and 9, remedies, if any, would be by way of indemnifying the loss, if any, occasioned by such termination and definitely not by revival of the contract. The action taken by the authority in terminating the contract cannot be said to be on the basis of no evidence. Adequacy or inadequacy of evidence cannot be examined by this court to overrule the decision. Remedy by way of civil action is available to the petitioner for redressal of his grievances if any, for premature termination of the contract. No direction could be issued by this court for reinstatement of the petitioner for operating the parking yard.

15. In the result, the writ petition is dismissed.

No costs.