
**Gunji Bushakaiah Vs The Superintending Engineer, Irrigation and
Command Area Development Department and Another**

Writ Petition No. 10371 of 1996

Court: Andhra Pradesh High Court

Date of Decision: June 12, 1996

Acts Referred:

Constitution of India, 1950 – Article 14, 226

Citation: (1996) 3 ALT 286

Hon'ble Judges: M.H.S. Ansari, J

Bench: Single Bench

Advocate: M. Ravindranath Reddy, for the Appellant; Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.H.S. Ansari, J.

The petitioner is questioning the action of the respondents in not paying an amount of Rs. 17,680/- which is said to be

due to the petitioner under Contract No. 8/94-95 and has filed this Writ Petition questioning the said action as illegal and arbitrary.

2. For sake of convenience, it would be appropriate to extract the averments made in the affidavit filed in support of the above Writ Petition at

paras 4 to 7 which are as under:

4. I submit that I am a farmer owning 2 acres of wet land under the Ayacut of Kothapallikowrugunta Tank of Dagadarthi Mandal, Nellore

District. The total Ayacut under the said tank is 400 acres and all the farmers have been cultivating their lands drawing water from the said Tank.

The said Tank receives water from Somasila Project through a feeder Channel. Due to silting of the feeder channel, the tank was not drawing the

required quantity of water. In view of the same, it has become necessary to desilt the feeder channel on emergency basis. Accordingly, the

respondents have awarded the work of desilting to me under Agreement No. 8 Dr/94-95 for an amount of Rs. 17,800/-. The said agreement was

executed on 12-4-1994, and the site was entrusted to me in the last week of April, 1994. I have completed the said work by the middle of May,

1994. The execution of the said work was entered in the Measurement Book and L.F. Book and the Deputy Engineer, Buchireddypalem, has also

put up the bill for payment to the Executive Engineer, the 2nd respondent herein on the 20th August, 1994. But till now the said amount was not

paid.

5. I submit that in furtherance of the policy of the Government to give the repair works of Tanks to concerned Ayacutdars themselves, the contract

in question was entrusted to me. Though, I have completed the work. within the prescribed time and though there are no impediments in paying the

amounts due to me, the respondents are not taking steps in this regard.

6. I submit that it has been reliably learnt that the respondents are not in a position to pay the said amount in view of the seizure of M. Book and

L.F. Books. On enquiry, I have also come to know that the A.C.B., the 3rd respondent herein have seized the said books in connection with

irregularities alleged to have been committed with respect to the contract entrusted to one Sri V. Adisheshaiah as the relevant measurements

connected therewith were also recorded in the same M. Book and L.F.Book. It is also relevant here to submit that there are no irregularities or

any other complaint with respect to my contract and it has nothing to do with the said A.C.B. enquiry.

7. I submit that I have been representing to the respondents periodically requesting them to pay the amount due under the said contract, but the

respondents have not paid the said amount nor they have taken any steps either to inspect the relevant books with the permission of the 1st

respondent, so as to clear my dues.

The other averments made in the affidavit of the petitioner are that the petitioner will be put to irreparable loss and hardship if the above said

amount is not directed to be paid to the petitioner and that the respondents ought to have communicated the reasons for not paying the amount and

hence the action of the respondents is arbitrary and illegal.

3. The petitioner has filed a copy of the letter No. DB/1093/22.4.1994 of the Irrigation Department wherein it is stated that the work covering one

item in favour of the petitioner is accepted and the original agreement is said to be enclosed therewith.

4. I do not propose to go into the merits of the matter or the contentions raised by learned counsel for the petitioner in that behalf as I am of the

opinion that the writ jurisdiction has not been rightly invoked and the petitioner has to seek his remedy in a Civil Court of competent jurisdiction.

5. Though the respondents are Officers of State and amenable to writ jurisdiction under Article 226 of the Constitution of India, the relief claimed,

however, is one arising out of a Contract of a purely commercial nature for the works said to have been performed by the petitioner and for which

the petitioner claims monetary value for the works done. In the instant case, no fundamental right is involved nor violation of any statutory

obligation is alleged and in such cases, the High Court does not normally exercise its jurisdiction under Article 226 when an alternative, adequate

and efficacious legal remedy is available. This is a self imposed rule which the Courts have evolved for themselves. The entrustment of the work by

the respondents to the petitioner is based upon a contract which is not a statutory contract and all and whatever rights and remedies, the petitioner

may have against the respondents, the same are regulated by the contract, The relief sought is in the nature of an action for realisation of money for

which a suit would lie in a Civil Court of competent jurisdiction even against the State.

6. Sri M. Ravindranath Reddy, learned counsel for the petitioner, however, relied upon several cases in support of his contention that availability of

alternative remedy is not a bar to entertain the Writ Petition. In all fairness to the learned counsel and the vehemence with which the submissions

were made, the judgments cited by the learned counsel at the Bar may now be taken up for consideration.

7. Learned counsel relied upon State of Uttar Pradesh and Others Vs. Indian Hume Pipe Co. Ltd., in support of his contention, that there is no

rule of law that High Court should not entertain a Writ Petition when an alternative remedy is available to a party. In the same Judgment, the

Supreme Court has stated that it is always a matter of discretion with Court and if the discretion has been exercised by the High Court not

reasonably or perversely, it is settled practice of the Supreme Court not to interfere with the same. This case is therefore of no assistance to the

petitioner.

8. Next, reliance was placed on Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another, in support of the contention

that alternative remedy is not a bar. That was a case where the Supreme Court observed that where demand of a tax is made not backed by

authority of law or want of jurisdiction or a branch of principles of natural justice, in such case, the provisions of other remedy open to the

petitioner do not stand in the way. This case also is of no assistance to the petitioner on the facts of the instant case.

9. Next learned counsel relied upon Assistant Collector of Central Excise Vs. Jainson Hosiery Industries, . In that case, the Apex Court held that

the High Court must have regard to established principles for the exercise of its jurisdiction and unless it is satisfied that the normal remedy is likely

to be dilatory or difficult to give reasonable quick relief, it should be loath to act under Article 226. This case is also of no assistance to the

petitioner. It cannot be presumed that the normal remedy of a Suit is dilatory.

10. Next, learned counsel relied upon Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, in support of his

contention that even where disputed questions arise, the High Court is not barred from entertaining Writ Petition. In that case, however, the

Supreme Court was concerned with the relief of Mandamus sought by the petitioner therein against the State to forbear from enforcing any of the

provisions of the Madras Act 32 of 1955 against the petitioner. As already noted above, no statutory provision is claimed to have been infringed in

the instant case and therefore this case also does not lend any support to the petitioner.

11. Next reliance was placed upon LIC of India v. Consumer Education and Research Centre AIR 1995 SCC 482 in support of the contention

that even in the domain of contractual law, writ is maintainable and that the distinction between public law and private law remedy had narrowed

down and every action of State and its Officers or authorities should not be arbitrary, unjust or unfair and if it is so, they are amenable to judicial

review. In that case, what was assailed was the conditions imposed by the Life Insurance Corporation and denial to accept policies sought by the

respondent. In paragraph 52 of the said Judgment, the nature of relief sought by the respondents has been set out. What the respondents were

seeking in that case was not a direction in their favour to call upon the Life Insurance Corporation to enter into a contractual relation, instead they

sought for a declaration that the policy confining to only salaried class from Government or reputed Commercial firms is discriminatory offending

Article 14. That was a case in respect of matters prior to entering into contract and not one where the parties had entered into a contract and

sought reliefs in respect thereof. This case also is of no help to the petitioner.

12. Sri M. Ravindranath Reddy, learned counsel for the petitioner strenuously urged that the fundamental right of the petitioner under Article 14

has been infringed by inaction on the part of the respondents and that the respondents have neither paid the amount nor communicated reasons

therefor. It was the submission of the learned counsel that when infringement of Article 14 is claimed and where the action of the respondents are

to be tested on the touch-stone of Article 14 and if the same are arbitrary, the Writ is maintainable. In this connection, suffice it to state here that

once a contract is entered into, it is the terms of contract that govern and no question of Article 14 or arbitrary action arises. A Division Bench of

this High Court in National Thermal Power Corporation Ltd. Vs. Bhanu Construction Co. P. Ltd. and Others, held as follows:

25. From the above decisions, it is clear beyond any doubt that merely because the Government, or an officer of the Government, or an agency or

instrumentality of the State enters into a contract for execution of certain works with another person, it cannot be said to be acting in the public law

field. Its rights and obligations are the same as those of any other person entering into a contract. The only limitation is that before entering into the

contract, it must act consistent with the guarantee contained in Article 14. But once a contract is entered into, it is the terms of the contract that

govern and no question of Article 14 or arbitrary action arises. The very concept of one party to the contract acting arbitrarily and thereby violating

Article 14 is misplaced. The action may be wrongful, but it is not such an action as is amenable to writ jurisdiction on the ground that it is arbitrary.

If a contract is terminated wrongfully, it cannot be questioned in a writ petition saying that the termination is arbitrary or unreasonable. The concept

of arbitrary or unreasonable action amenable to writ jurisdiction is relevant only where the State acts under a statute, or in exercise of its

executive/administrative power. Taking any other view would not only be contrary to well established authority, but would also cast an uncalled for

burden upon this Court. Not only this Court would be exercising its jurisdiction for determining the private rights of the parties arising from, or

relating to a contract, but would also be obliged to enquire into disputed questions of fact, which it would not ordinarily undertake.

13. In view of the above judgment of the Division Bench, I am of the view that there is no action by the respondents which needs to be judicially

reviewed by this Court in the instant case. If there is any breach of the terms of the Contract or moneys are due and payable to the petitioner for

performance of the contract of his part, the petitioner can always obtain appropriate relief in a properly constituted suit before a Civil Court of

competent jurisdiction. Invocation of the writ jurisdiction is neither proper nor appropriate remedy for seeking a money decree from the

respondents. The claim as made by the petitioner is one relating to a commercial transaction and dependent upon establishment of facts which

need not be adjudicated by the Court. The petitioner, thus has an efficacious alternative legal remedy. The remedy provided under Article 226 is

not intended to supersede the modes of obtaining relief before a Civil Court or to deny defences legitimately open to the opposite party.

14. For the reasons aforesaid, I hold that this Writ Petition is not maintainable and the same is accordingly dismissed with liberty to the petitioner to

pursue the alternative remedy available to him under law, if so advised.