Eastern Coalfields Ltd. Vs Ravi Udyog

Court: Calcutta High Court

Date of Decision: May 6, 1993

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 95
Constitution of India, 1950 â€" Article 226
Contract Act, 1872 â€" Section 70
Law Commission Act, 1965 â€" Section 3(1)
Supreme Court Act, 1981 â€" Section 31

Citation: (1993) 2 ILR (Cal) 312

Hon'ble Judges: Bhagabati Prasad Banerjee, J; Amal Kanti Bhattacharjee, J

Bench: Division Bench

Advocate: Pradesh Kumar Mallick, Pratap Chatterjee, Debal Banerji and Udayan Sen, for the Appellant;P.K. Das, for the Respondent

Final Decision: Dismissed

Judgement

Bhagabati Prasad Banerjee, J.
This is an appeal against the judgment and order dt. June 2, 1992, passed by U.C. Banerjee J. in Matter

No. 4821 of 1991. By the said order the learned trial Judge disposed of the writ application with the following directions: The Eastern Coalfields

Ltd. shall pay a sum of Rs. 76 lacs to the writ Petitioners, being the admitted value of the work done, within a period four weeks from the date of

this order. But since Eastern Coalfields have also noted a claim for damages in the counter-claim the writ Petitioners shall file an Indemnity Bond to

the extent of Rs. 50 lacs, in favour of Eastern Coalfields a duplicate copy whereof shall be filed with the Registrar, Original Side, Calcutta, within a

period of" two weeks from the date hereof.

2. It is, however, clarified that the payment of the writ Petitioner shall be released by Eastern Coalfields Ltd. within Indemnity Bond. The Eastern

Coalfields Ltd. however, would be at liberty to institute such proceeding or proceedings, as they may be advised for recovery of their dues, if any,

in accordance with law. In the event, however, such proceeding initiated within a period of three months from the date hereof the Indemnity Bond

shall remain valid until after the disposal of the said proceedings, and in that event the writ Petitioner is directed to keep the Bond alive till the

disposal of such proceedings.

3. In the event no such proceeding in initiated within the period of three months as noted above; the Indemnity Bond directed above, shall stand

automatically discharged.

4. The facts and the circumstances of the case under which the learned trial Judge passed the said order are follows: In 1978 several contractors

were engaged by Eastern Coalfields Ltd. for hiring Heavy Earth Moving Machines in order to remove overburden and coal in various small open

cast patches of Eastern Coalfields Ltd. In 1984 in pursuance of an open Tender floated by Eastern Coalfields Ltd., 7 contractors including Ravi

Udyog. Writ Petitioners opposite parties were awarded the job at various open cast patches under Eastern Coalfields Ltd., and carried on the job

for valuable coal production of Eastern Coalfields Ltd. accordingly. The said Ravi Udyog had been engaged since 1980 without any break by the

Eastern Coalfields Ltd. for the work of hiring of Heavy Earth Moving Machine in various small open cast patches of the said Appellants. Writ

Petitioners opposite parties received a work order from Eastern Coalfields Ltd. on April 14, 1988 the purpose whereof, was to engage the writ

Petitioners as one of the 7 contractors for hiring of Heavy Earth Moving Machine in order to remove overburden coal in various small cast patches

of Eastern Coalfields Ltd. The said work order dated April 14, 1988, was awarded for the period of three years with effect from April 1, 1988, in

pursuance of the offer placed by the writ Petitioners opposite parties and received by the Appellants on April 14, 1988. In February 1991 the writ

Petitioners opposite parties received another work order from Eastern Coalfields on February 15, 1991, for the purpose of hiring of Heavy Earth

Moving Machine in order to remove overburden coal in various small cast patches of Eastern Coalfields Ltd. The validity period of the said work

order dated April 14, 1988, expired, but in view of the course of dealing between the parties it was alleged that the writ Petitioners opposite

parties legitimately expected that such work order would be renewed for a further period of 3 years with effect from April 1, 1992. On March 14,

1991, the writ Petitioners opposite parties received two letters from Eastern Coalfields Ltd. stating, inter alia, that the work orders issued would

remain operative until upto March 31, 1991. On April 1, 1991, the writ Petitioners opposite parties moved a writ application before the learned

trial Judge, inter alia, for an order of continuance of the work order and for extension of the validity period thereof. On the said writ application

being moved the learned trial Judge directed status quo as on March 31, 1991, to be maintained for a period of 10 days. The said order of

maintaining status quo was extended from time to time, and ultimately by order dated July 17, 1991, the learned trial Judge dismissed all the writ

petitions and vacated the interim orders. Thereafter the writ Petitioners opposite parties preferred an appeal against the said order dated July 17,

1991, and made an application for stay. The Division Bench of this Court refused to grant any stay of the operation of the order dated July 17,

1991, by an order dated July 30, 1991, and on July 25, 1991, the Appellants, Eastern Coalfields advised the writ Petitioners opposite parties to

stop work forthwith. The question that calls for determination in this appeal is whether the writ Petitioners opposite parties were entitled to get

payment of money in respect of the worked done and services rendered between April 1, 1991, and July 25, 1991, and whether the writ Court

exercising powers and jurisdiction under Article 226 of the Constitution of India can direct payment of money in favour of the writ Petitioners if the

claim is an admitted one. It is not disputed that six other contractors moved six separate writ petitions upon which similar orders were passed for

extension, as a result whereof extension of the period of validity of the works order as effected and it is stated that those six contractors were paid

their dues by the Appellants for the aforesaid period and that in so far as the writ Petitioners opposite parties are concerned, part payments have

been made by the Appellant, to the writ Petitioners opposite parties in respect of the works done for the period from April 1, 1991, to July 25,

1991. The learned trial Judge on the basis of the prayer made by the writ Petitioners opposite parties directed the Appellants Eastern Coalfields

Ltd. to measure the works done and to make payments in respect thereof. The Appellants filed affidavit-in-opposition to the writ application

affirmed by one Jyotish Kumar, General Manager of the Appellants and in para. 16, of the said affidavit-in-opposition it was admitted that the

works done by the ""writ Petitioners opposite parties were valued at Rs. 76 lacs, but the Appellants have claimed for damages amounting to Rs.

223 lacs and upon giving credit to the writ Petitioners for the said sum of Rs. 76 lacs, a sum of Rs. 147 lacs was payable by the writ Petitioners

opposite parties to Eastern Coalfields Ltd. On April 21, 1991, the learned trial Judge passed an order after hearing the parties to the writ petition

whereby a Special Officer was appointed for the purpose of supervising the measurement of the total works done by the writ Petitioners opposite

parties from April 1, 1991, to July 25, 1991, and the Special Officer so appointed was directed to make his report on or before June 8, 1992. In

the report of the Special Officer appointed by the learned trial Judge it was recorded that the final measurement in the order dated April 21, 1992,

had already been carried out and that there was no dispute between the parties with regard to quantum that had been done by the writ Petitioners

opposite parties in the several collieries inasmuch as the measurements so produced before the Special Officer in all the collieries contained the

signature of both sides. Further there was no dispute with regard to the total value of the work that had been carried out by the writ Petitioners

opposite parties from April 1,1991, Bill the date of the works executed by the writ Petitioners opposite parties. From the report of the Special

Officer it was clear that there was no dispute with regard to the quantum of the works done and also the value of such works performed by the

writ Petitioners opposite parties and that the Appellants had also admitted on affidavit before the learned trial Judge that the money value of such

works done by the writ Petitioners opposite parties as Rs. 76 lacs as per contractual rates. After the Special Officer had filed the report in terms of

the Order passed by the learned trial Judge on the question to be gone, by the Special Officer, no objection was raised with the said report of the

Special Officer nor any application was made for setting aside the said report or taking exception to any of the findings of the Special Officer of the

report. It is also admitted that in order to perform the works by the writ Petitioners opposite parties, materials were required to be supplied by the

Appellants, Eastern Coalfields Ltd., and as a matter of fact for the purpose of carrying out those jobs for April 1, 1991 to July 25, 1991, the

Appellants Eastern Coalfields supplied blasting power and/or explosives to Respondent, opposite parties, but the works so carried out were not

measured. After interim order of injunction was vacated by the learned trial Judge the writ Petitioners opposite parties stopped further works in the

said collieries and demanded the making payments of dues in respect of the works done by the writ Petitioners opposite parties which was denied.

The writ application was filed for recovery of the payment of money for the works done for the period April 1, 1991, to July 25, 1991. Even

though the Appellants have made a counter-claim of Rs. 223 lacs against the writ Petitioners opposite parties because of loss or damages,

admittedly, the Eastern Coalfields Ltd. have failed to furnish any particulars with regard to their claims for damages, if any, in this regard. The

learned trial Judge also proceeded on the footing that when regard to the counter-claim of the Appellant, the Appellant failed to furnish any

particulars before the learned trial Judge, and under such circumstances the learned trial Judge has passed the said order.

5. Mr. P. K. Mallick, appearing on behalf of the Appellants duly assisted by Mr. Pratap Chatterjee and Debu Banerjee, submitted that the writ

application is not maintainable as the questions are all disputed questions of fact and that the validity of the contract extended beyond March 31,

1991. After the validity period of contract if any service is rendered by the Respondents writ Petitioners on the strength of an interim order which

was ultimately vacated, it should be taken that the Appellants did not take voluntarily accept the said work or did it ask the writ Petitioners

opposite parties to carry on any work subsequent to March 31, 1991. It was stated that in this case initially an interim order of injunction was

passed by the learned trial Judge. The said interim order of injunction continued from April 1, 1991, to July 20, 1991. It was submitted that the

claim of the writ Petitioners opposite parties was a monetary claim. A writ proceeding-is not substitute for a money suit. It was further alleged that

the said claim could only be made on the basis of Section 70 of the Contract Act. It was submitted that in order to sustain a claim u/s 70 of the

Contract Act it must be proved as a matter of fact and law that the person who tried to be held responsible must have had an opportunity or

option to accept or not to accept the benefit. In this connection reference was made to a decision of Gujarat High Court in the case of Jhala

Umedsinghji Merubhabhai. Reference was also made to a decision of Madras High Court in the case of Doraipandi Konar v. Sundar Patha AIR

1970 Mad. 1991 wherein it was held that

in the second place, the section is not attracted in cases of services rendered by the claimant against (wrongly printed as at) the request of or

against the will of the other party sought to be charged with.

Reliance was also placed on decision of Supreme Court in the case of State of West Bengal Vs. B.K. Mondal and Sons, wherein it was held that

Section 70 of the Contract Act is not intended to entertain claims for compensation made by a person who officiously interfere with the affairs of

another or who imposes on other''s service not desired by them. It is thus clear that when a thing is delivered or done by one person it must be

open to the other person to reject. Therefore acceptance and enjoyment of the thing delivered or done which is the basis for the claim for

compensation u/s 70 must be voluntary.

It was submitted that since the Division Bench refused to extend the stay granted by the learned trial Judge it must be held that the writ Petitioners

opposite parties were not entitled to any interim order at any stage and that whatever work had been done by the writ Petitioners opposite parties

was unlawful and no claim could be made for such unlawful act. Several decisions were relied on in support of the contention that if any injunction

was improperly obtained in that event deriving an injunction unlawfully is entitled to such damages which are necessary and proximate result

thereof. It was submitted that in the instant case because of the fact that the interim order was vacated, the interim order of injunction must be held

to have been taken out unlawfully and for such unlawful act of the writ Petitioners opposite parties were not entitled to any relief whatsoever.

Accordingly, it was submitted that the Appellant was not entitled to pay any damages and/or compensation for the services rendered by the writ

Petitioners opposite parties against the will of the Appellant.

6. Mr. P. K. Das, learned Advocate appearing for the Respondents writ Petitioners, submitted that the writ Court within the scope or ambit

conferred upon the Courts under Article 226 of the Constitution was competent to pass any order including the order for compensation, damages

and or even monetary benefit. In support of this contention reliance was placed to a series of decisions which are as follows: Hindustan Sugar Mills

Vs. State of Rajasthan and Others, , Mrs. Mukti Maitra Vs. State of West Bengal, , D.K. Kumar v. State of West Bengal AIR 1987 Cal. 391 ,

Indian Fuel and Another Vs. State of West Bengal and Others, , Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav

Smarak Trust and Others Vs. V.R. Rudani and Others, , and also the decision of the Supreme Court in the case of Sterling Computers Limited

and Others Vs. M and N Publications Limited and Others, It was next submitted that in the instant case the learned trial Judge had passed the

order on the basis of the admission made by the Appellants in the affidavit-in-opposition and that such admission was corroborated by the report

of Special Officer appointed by the learned trial Judge who had measured the works on the basis of papers and documents and measurement and

determination made by the Special Officer was not challenged. The appointment of the Special Officer was not challenged, and the report made by

the Special Officer was also not challenged and as such the Appellants were bound by its own admission. Next it was submitted by Mr. Das that

along with the admission of the claim by the writ Petitioners opposite parties, a counter-claim was also lodged by the Appellants, but so far as the

counter-claim was concerned such counter-claim was frivolous and that no materials and/or particulars or nothing could be produced before the

learned trial Judge to justify such frivolous counter-claim. It was further submitted that such counter-claim was made contrary to law and facts. In

this connection reference to provision of Section 95 of the CPC and that it was for the Appellants to apply for compensation and the maximum

extent of compensation that can be obtained u/s 95 of the CPC was Rs. 1,000. Next it was submitted that in the instant case that there was no

mandatory order passed by the Court upon the Appellants to allow the writ Petitioners opposite parties to go on with the works or continue with

the works, but there was merely an order for maintaining status quo and on the basis of the order for maintaining status quo the Appellants

voluntarily allowed the writ Petitioners to continue the works, and for the purpose of performing the work plastic materials and other materials

were supplied at the site and that admittedly because of the works done the writ Petitioners were entitled to a sum of Rs. 76 lacs and that it would

be wholly iniquitous and unfair on the part of the Appellants to deny such admission. Public authorities, it was submitted, cannot act arbitrarily,

unfairly and unjustly. It was further submitted by Mr. Das that public authorities cannot be allowed to be unjustly enriched by it own voluntarily and

thereafter turn down and taken technical pleas and pretext solely for the purpose of pretending the lawful and legitimate dues. It was further

submitted that public authorities must set up example by acting fairly, properly and reasonably. It was submitted that the stand taken by the

Appellants before this Court was wholly unreasonable and unfair being a public authority discharging public duties at the cost of public exchequer.

It was submitted that Special Officer was appointed by an order passed by the learned trial Judge on April 21, 1992, but no appeal was preferred

against the. said order. No objection or exception was taken to the report submitted by Special Officer under such circumstances and the

Appellants have acquiesced in it and as such they are not entitled to challenge the order passed by the learned trial Judge. It was submitted that the

status quo order did not mean to supply plastic materials and to go on with the works. Under such circumstances it was submitted that the

Appellants'' contention are misconceived and that there was no substance to the contention raised by the Appellants in this appeal.

7. The moot question is whether a writ Court can pass an order granting monetary benefit or damages arising out of any matter. In the instant case,

admittedly, the claim for damages was based upon the effect of an order for maintaining status quo or, in other words, it was a case of enforcing a

simple contractual obligation in writ jurisdiction. It was a case where a party has rendered some services on the strength of an order for maintaining

status quo and that after the interim order was vacated whether the Court can direct payment of money in respect of the works done by a party on

the strength of such an interim order where one party has derived some advantages. The power of the writ Court is not confined only to issue of

writs. Under Article 226 of the Constitution the High Courts have been conferred power to issue to any person or authority (any direction, orders

or writs, including writs in the nature of habeas corpus, mandamus, prohibition, co-warranto and certiorari or any of them) the expression

''directions'' or ''orders'' is wide enough to include the power of the High Court to issue any order including order for payment of money or

damages as the Court may deem fit and proper, but power of the Hight Court under Article 226 of the Constitution to exercise supervisory

jurisdiction is only over the activities of public authorities in the field of public law. the primary method by which this control is exercisable is

through an application under Article 226 of the Constitution. This procedure is generally regarded a public law remedy. Writ jurisdiction only

operates in the field of public law. The Courts have begun to elaborate a more generalised definition of what constitutes a public law issue which

may be resolved by application under Article 226. In the past, the Courts focussed on the source of a power in determining the availability of

judicial review. Powers derived from statutes and more recently the prerogatives were seen as public law powers. However, the modern approach

is to consider whether the exercise of a power or purpose of duty involves a ''public element''. The Supreme Court in case of Sree Anadi Mukta

Sadguru v. V. R. Rudani (Supra) '' considered the scope of power of the High Court under Article 226 of the Constitution. In this case the

Supreme Court held in paras. 15,16 and 21 as follows:

8. The law relating to mandamus has made the most spectacular advance. It may be recalled that the remedy by prerogative writs in England

started with very limited scope and suffered from many procedural disadvantages. To overcome the difficulties, Lord Gardiner (the Lord

Chancellor) in pursuance of Section 3(1) of the Law Commission Act, 1965, requested the Law Commission ""to review the existing remedies for

the judicial control of administrative acts and commission with a view to evolving a simpler and more effective procedure."" The Law Commission

made their report in March 1976 (Law Com. No. 73). It was implemented by the Rules of Court (Order 53) in 1977 jrfnd given statutory, force in

1981 by Section 31 of the Supreme Court Act, 1981. It combined all the former remedies into one proceeding. called judicial review. Lord

Denning explains the scope of this ''judicial review''. At one strickle the Courts could grant whatever relief was appropriate. Not only certiorari and

mandamus but also declaration and injunction. Even damages. The procedure was much more simple and expeditious. Just a summons instead of a

writ. No formal pleadings. The evidence was given by affidavit. As a rule no- cross-examination, no discovery, and so forth. But there were

important safeguards. In particular, in order to qualify, the Applicant had to get the leave of a Judge.

9. The statute is phrased in flexible terms. It gives scope for development. It uses the words ''having regard to''. Those words are very indefinite.

The result is, the Courts are not bound hand and foot by the previous law. They are to "have regard to" it. So the previous law as to who are and

who are not public authorities, is not absolutely binding. Nor is the previous law as to the matters in respect of which relief may be granted. This

means that the Judges can develop the public law as they think best. That they have done and are doing. There, however, the prerogative writ of

mandamus confined only to public authorities to compel performance of public duty. The "public authority" for them means every by which is

created by statute and whose powers and duties are defined by statute. So Government departments, local authorities and statutory authorities,

Police authorities, and statutory undertakings and corporations are all "public authorities". But there is such limitation for our High Courts to issue

the writ "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a

striking departure from the English Law. Under Article 226, writs can be issued to "any person or authority". It can be issued" for the enforcement

of any of the fundamental rights and for any other purpose.

10. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the nature.

Commenting on the development of this law, Professor De Smith stated:

To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have

been imposed by charter, common law, custom or even contract. (Judicial Review of Administrative Act, 4th ed., P. 540)

We share this view. The judicial control over the first expanding maze of bodies affecting the rights of the people should not be put into water-tight

compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily

available "to reach injustice wherever it is found". Technicalities should not come in the way of granting that relief under Article 226. We, therefore,

reject the contention urged for the Appellants on the maintainability of the writ petition.

11. In England with regard to public law principles regulating the exercise of contractual power the Courts have been prepared to super-impose

public law principles into contractual situations and to ensure the observance of those principles by way of judicial review. They are prepared to do

even if the effect of granting public law remedy is to vary the right existing under a contract. Where a decision to terminate contract is quashed and

the contractual provisions then revived. (See Judicial Remedies in Public Law by Clive Lewis, at 53-54). In R. v. Liverpool City Council, ex parte

Ferguson and Ferguson, (1985) I.R. L.R. 501, the Divisional Court had held that decision not to pay wages due under a contract of employment

could constitute both a breach of contract and also be so unreasonable in the public law since that judicial review would be available to correct the

error. The Divisional Court did grant the application for. judicial review and declared that the decision to withhold wages was unlawful. Principles

of fairness had developed to a large extent in recent times and fairness is being developed as an independent concept and not only in relation to

natural justice itself, Selvarajan v. Race Relation Board (1975) 1 W.L.R. 1686 In Hindusthan Sugar Mills v. State of Raj as than (Supra) the

Supreme Court observed that we hope and trust that the Central Government will honour its legal obligation and not drive the Appellant to file a

suit for recovery of the amounts of sales tax. We hopefully expect that the Central Government will not try to shirk its legal obligation by resorting

to any legal technicalities for we maintain that in a democratic society governed by the rule of law, it is the duty of the State to do what is fair and

just to the citizen and a State should not seek to defeat the legitimate claim of the citizen by adopting a legalistic attitude but should do what fairness

and justice demand. In Mrs. Mukti Moitra v. State of West Bengal (Supra) '' where the High Court following Hindusthan Sugar Mills (Supra) ''

directed payment of the admitted claim of the writ Petitioner by issuing a mandamus on the ground that the claim of the writ Petitioner was an

admitted one ""and it was only just and fair that the State should make payment on a writ petition, because the Government cannot act arbitrarily at

its sweet will and that every activity of the Government must have a public element in it and must therefore be informed with reasons and guided by

public interest and that such activities will be liable to be tested for heir validity on the touchstone of reasonableness and public interest, and if it fails

to satisfy such test it would be unconstitutional and valid. The State Government cannot act arbitrarily even though the matter arises out of a

contractual obligation. In the case of Indian Fuel v. State of West Bengal (Supra) '' it was also held by the Single Judge of this Court that the writ

Court has every jurisdiction to award compensation upon loss to a party by State Machinery or by public authority in violation of the rights of such

parties. In that case it was also held that unless the Courts have such power to award compensation in appropriate cases the fundamental rights

granted to its citizen by our Constitution would become a mere leave service. Accordingly, there cannot by any doubt that the writ Court is

competent to pass any order even for payment of money and/or for damages as the scope of Article 226 of the Constitution is not confined to

issue of only writs but also conferred with the power to issue any direction or order. Such directions or orders may travel beyond the scope of the

recognised writs. If it is held that the Courts have no such powers that would be contrary to the powers conferred by the Constitution under Article

226 of the Constitution upon the Courts.

12. Next question is whether anything done on the strength of an interim order of injunction the Court is entitled to pass an order to make good the

loss. It is well-settled principle that a party cannot be allowed to be unjustly enriched by an order passed by the Court. In the instant case, there

was order for maintaining status quo and on the strength of order of status quo the Appellant allowed the writ Petitioners opposite parties t

perform the works, and for performing the works the Appellants have supplied plastic materials and/or explosives and that writ Petitioners

opposite parties performed such job the value of which was Rs. 76 lacs was clearly admitted. In view of such admission made by the Appellant,

the Appellant would be allowed to go back from that position. True the Appellant also alleged the counter-claim, but before the learned trial Judge

no particulars were furnished in support of such counter-claim. Public authorities when making a counter-claim before a Court of law are bound to

make on materials in support of such claim, but as the Appellants have failed to furnish materials before the learned trial Judge, the right of the

Appellants of such a claim, or in other words, the rights of the Appellants in support of such counter-claim would be frustrated and for the purpose

of enforcing any possible decree the learned trial Judge has also passed an order for furnishing bonds by the writ Petitioners opposite parties to the

extent of Rs. 50 lacs, but the Appellants have preferred this appeal challenging the jurisdiction of the learned trial Judge to pass such an order. It is

admitted that the Appellants did not challenge the validity of the order appointing the Special Officer who was appointed by the learned trial Judge

for the purpose of assessing the works done.

12A. It is not disputed that the Appellants'' officers co-operated with the Special Officer to produce all records and documents, and from, the

records and documents it was clear that the Appellants have performed the job to the extent of Rs. 76 lacs which was admitted but a counterclaim

was made by the Appellants. Report of the Special Officer was not challenged. Under such circumstances it is evident that the order that was

passed by the learned trial Judge cannot prejudice the claim of the Appellants if the Appellants can establish before a Court of law. If on the

strength of an interim order of a party performs the work in that event the Court which passed the order retains its jurisdiction to pass appropriate

order for the purpose of compensating the party loss or injury suffered during the continuance of the interim order. In the instant case, the writ

Petitioners opposite parties rendered services which was accepted by the Appellants, and that the Appellants were unjustly enriched by the

works" done or the services rendered by the writ Petitioners opposite parties and that being a public authority the Appellant cannot take a stand

which is contrary to the principles of fairness inasmuch as public authority cannot act as it pleases like individuals. Public authority is bound to act

reasonably and in public interest. Public authorities cannot take-a legalistic attitude to defeat the legitimate claim of the citizen. But they should do

what fairness and justice demand and as pointed out in the Supreme Court in Hindusthan Sugar Mill"s case (Supra) When of the strength of an

order for maintaining status quo the Appellants have allowed the writ Petitioners opposite parties to render such services and for the purpose of

rendering such services they voluntarily supplied with the materials inasmuch as there was no order by the Courts to supply with the materials for

the purpose of discharging such duties and functions, and when the Appellants have admittedly derived benefits of services rendered by the writ

Petitioners opposite parties in the facts and circumstances of the case, we are of the view that the Courts have power to grant such relief as has

been granted in the instant case. In In Re: Veeral alias Kanal, in which it was held that the principle laid down u/s 70 of the Indian Contracts Act is

not applicable in case the persons sought to be charged with the liability did not wish to have rendered or in other words to invoke the principles of

Section 70 of the Indian Contract Act it has to be proved that such services were rendered not against the will of the other party. These principles

have no manner of application in the instant case inasmuch as in the facts and circumstances of the case the Appellants have acquiesced in it by its

own voluntary act. Voluntarily supplying with the plastic materials and maintaining accounts and giving facilities to perform such works clearly

indicates the motive of the parties and the Appellants after voluntarily allowing the writ Petitioners opposite parties to render services to the benefit

of the Appellants, the Appellants cannot avoid it on the principle that the Appellants were forced to accept such services and the Appellants did

not wish to get such services rendered. In the affidavit-in-opposition the Appellants had taken the only stand that the writ Petitioners opposite

parties were allowed to continue the works as the Appellants have no alternative but to allow to retain at site and continue to work in due

deference to the order passed by this Court. This was not correct at all. There was no order by the Court to allow the writ Petitioners opposite

parties to continue the work and there was no direction upon the Appellants in this behalf. The Appellants by their own acts and representation

encouraged and induced the writ Petitioners opposite parties to perform such works. Encouragement or acquiescence creates an estoppel. Ref.

Ramsden v. Daison 1866 L.R. 1 H.L. 129 " In ""The Law relating to Estoppel by Representation" at p. 304 it was observed that:

If a stranger begins to build on my land supposing it to be his own, and I, perceiving his mistake, abstain from setting him right, and leave him

preservers in his error, a Court of equity will not allow me afterwards to assert my title to the land on which he had expended money on the

supposition that the land was his, own. It considers that, when I saw the mistake into which he had fallen, it was my duty to be active and to state

my adverse title and that it would be dishonest in me to remain wilfully passive on such an occasion, in order afterwards to profit by the mistake

which I might have prevented: But it will be observed that to raise such an equity two things are required, first, that the person expending the

money suppose himself to be building on his own land, and secondly, that the real owner at the time of the expenditure knows that the land belongs

to him and not to the person expending the money in the belief that he is the owner. For if a stranger builds on my land knowing it to be mine, there

is no principle of equity which would prevent my claiming the land with the benefit of all the expenditure made on it. There would be nothing in my

conduct, active or passive, making it inequitable in me to assert my legal rights.

13. In the same case Lord Wenaleydal says:

If a stranger builds on my land, supposing it to be his own, and I, knowing it to be mine, do not interfere, but leave him to go on, equity considers it

to be dishonest in me to remain passive and afterwards to interfere and take the profit.

14. On the basis of the aforesaid principles, in my view, the learned trial Judge considered in the facts and circumstances of the case and on the

basis of the measurement obtained by the Special Officer who has obtained such information on the basis of books, papers and documents that

were placed before him by the parties, rightly directed the Appellants to pay the said sum. Public authorities cannot take a stand which is not fair

and proper. Public authorities cannot defeat the legitimate claim of any party on purely technical pleas or pretext. In the facts and circumstances, it

cannot be said that the vacating the interim order relates back retrospectively and anything done on the staying of an order is wiped out.

15. Accordingly, it is a case where the principles underlying Section 70 of the Contract Act have no manner of application inasmuch as it was not a

case that something was done forcibly by the writ Petitioners opposite parties against the will of the Appellants and, secondly, it is the fundamental

legal principles that an interim order of injunction passed by a Court cannot act to the prejudice of any person and that it would be wholly an

iniquitous to hold that a person who has performed duties after performing an interim order would not get anything for the service rendered even in

case of granting injunction in properties matters Court grants interim order of injunction and that damages are levied by the Court in such use and

occupation on the strength of interim order. In such case also on the strength of interim order of injunction and that the damages are levied by the

Court in such use and occupation on the strength of interim order. In such case also on the strength of interim injunction the owner and/or landlord

of the property is compelled to allow the tenant or persons in occupation to continue in occupation and that the Court should compensate the loss

of the landlord or the owner by way of damages payable by persons in occupation on the strength of interim order of injunction. If the Court grants

injunction, it is equally the duty on the part of the Court to see that if any person does anything and performs anything on the strength of the interim

order is compensated for the same. It would be contrary to justice and fair play to hold that on the strength of interim order if a party derives any

benefit and at the cost of the persons at whose instance the interim order was obtained"" and thereafter interim order was vacated and then anything

done during the period of injunction becomes void or invalid. It is not the case where a person has obtained an order in gross abuse in the process

of the Court and it was a case where interim order was obtained on contest and ultimately. The interim order was vacated. The vacation of the

interim order cannot make anything done during the continuance of interim order invalid or non-est in the eye of law. We are of the view that the

learned trial Judge has sufficiently protected the interest of the Appellants and at the same time granted relief to the Petitioner on conducting of

furnishing a bond for Rs. 50 lacs. The learned trial Judge rightly relegated the Appellants to a suit for establishing its counter-claim in accordance

with the law as counter-claims are not admitted. So far as the claim of the Respondents writ Petitioners are concerned that it is admitted by the

Appellants, and once Appellants have admitted the same, we do not find that the learned trial Judge has committed any error in directing the

Appellants to pay the same after protecting the interest of the Appellants.

16. Accordingly, we do not find any reason to interfere with the order passed by the learned trial Judge.

17. The direction given by the learned trial Judge in so far as the executing the bond as well as the other directions will be effective from today,

May 6, 1993.

18. We make it clear that we have not adjudicated on the question on interest which is left open.

19. The appeal is dismissed.

20. There will be no order as to costs.

21. On the prayer of the learned Advocate for the Appellants, let there be an order of stay of the operation of this judgment and order for a period

of six weeks from date.

22. All parties concerned to act on a signed copy of the minutes of the operative part of this judgment and order on the usual undertaking.

Amal Kanti Bhattacharjee, J.: I agree.