

## **Orissa Agro Industries Corporation ... vs Bharati Industries And Ors on 8 November, 2005**

**Equivalent citations: AIR 2006 SUPREME COURT 198, 2005 AIR SCW 5715, (2005) 6 ALL WC 5908, 2005 (8) SLT 610, 2005 (9) SCALE 128, 2005 (12) SCC 725, (2005) 10 JT 19 (SC), 2006 (2) SRJ 229, (2006) 1 ALLMR 128 (SC), (2006) 38 ALLINDCAS 392 (SC), (2006) 62 ALL LR 495, (2006) 1 CIVILCOURTC 767, (2005) 8 SCJ 713, (2006) 1 BANKCAS 362, (2005) 7 SUPREME 481, (2006) 1 RECCIVR 89, (2005) 9 SCALE 128, (2006) 1 CAL LJ 271**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, C.K. Thakker**

CASE NO.:  
Appeal (civil) 39 of 1999

PETITIONER:  
Orissa Agro Industries Corporation Ltd. and Ors.

RESPONDENT:  
Bharati Industries and Ors.

DATE OF JUDGMENT: 08/11/2005

BENCH:  
Arijit Pasayat & C.K. Thakker

JUDGMENT:

**JUDGMENT ARIJIT PASAYAT, J.**

Challenge in this appeal is to the judgment rendered by a Division Bench of the Orissa High Court directing the appellant-Corporation to pay to the respondent no. 1 a sum of Rs. 8.5 lakhs within a period of three months from the date of order with default stipulation that in case of non-payment the amount shall carry interest @ 12% p.a. after three months. The writ petition filed by respondent no. 1 was accordingly allowed.

Background facts as projected by the writ petitioner in a nutshell are as follows:

Appellant-Corporation for disposal of its unserviceable machineries/equipments and other scrap materials called for successive tenders on three different dates, but because of low offers cancelled them and the respondent no. 1 writ petitioner on all these occasions was a tenderer. On the last occasion the writ petitioner offered price

of Rs. 4,950 per metric tonne. However, ultimately on negotiation his offer of a lump sum of Rs. 55,00,000 for the entire lot described in the schedules of the list of articles was accepted. It was stipulated that the entire lifting should be completed by 30.11.1993. The writ petitioner besides the deposit of Rs. 2,75,000 being the earnest money was required to deposit Rs. 11,00,000 as first instalment being 1/5th of the total price offered by him, which he undisputedly deposited by bank draft dated 27.9.1993. After depositing the amount, according to the writ petitioner when he went to take delivery of the materials he was disappointed to see that many valuable and/or important parts from the truck and jeep etc. were missing. In respect of some other materials, it was found to have been shifted to the Central Store. Further, though item nos. 16, 17 and 18 of the Schedule 9 were to be delivered pursuant to delivery order, they were not available at the store at Kalahandi. So far as item no. 32 which related to a 'trekker' the same was found to have been seized by the Bhawanipatna police in connection with some theft case. Instead of facilitating lifting of the materials, for which the money was paid, the officials of the Corporation asked the writ petitioner to deposit the second instalment of Rs. 11,00,000 for taking delivery of the second lot of materials and it was given out by them that question of consideration of release of the vehicle (sl. 32) would be considered only after the second instalment amount was deposited.

surprisingly enough without any response to the various letters of the writ petitioner about such deficiencies sent on different dates, the Corporation by letter dated 2.3.1994 directed the writ petitioner to deposit the balance price amounting to Rs. 40,16,000 within a period of fifteen days. The writ petitioner by his letter dated 27.4.1994 gave details of articles which were found missing and also stated that although he had deposited Rs. 14,84,000 which included earnest money, it could take delivery of goods only worth Rs. 3,75,000, since rest of the materials could not be lifted because of inaction of the functionaries of the Corporation. As no positive response was received, writ petition was filed.

The appellant-Corporation filed a counter-affidavit taking the stand that writ petitioner's claim was merely a money claim arising out of alleged breach of contract and, therefore, the writ petition was not maintainable, since an alternative remedy in the civil court is available. It was further stated that the writ petitioner had taken delivery of materials worth about rupees 14.9 lakhs. The allegations of missing or removal of important valuable parts from the truck and jeep were specifically denied. It was stated that there was no negligence or laches on the part of the Corporation. On the other hand, it was the inaction and ill motive on the part of the writ petitioner who wanted to lift the valuable items out of schedule 1 to 20 of the list of articles. After considering the rival stands the High Court came to a conclusion that since there were disputed facts those cannot be adjudicated in a writ petition. It was noted by the High Court that after hearing the learned counsel for the parties it was noticed that a lot of statements were made by the writ petitioner which were disputed by the opposite party-Corporation. The main dispute revolved round the value of article lifted by the writ petitioner. After having concluded that the disputed facts cannot be adjudicated in a writ petition, the High Court came to apparently contradictory conclusions/findings. Some of them are quoted below:

``However, we feel that the stipulation under the contract that the materials which admittedly stood at such distant places be lifted within a short period is difficult one to be fulfilled, even the party makes his best effort for the same to lift the same. Availability of stock at such distant places is itself a factor to create bottleneck in many ways to get them lifted from their respective places.

Be that as it may, from the allegation and counter allegation of the parties the mercantile cordiality is broker and it will be difficult to join the thread even if we direct. Therefore, we feel it appropriate to consider the petitioner's prayer for the refund of his amount which will be rather a just relief the petitioner may be entitled to get in equity." The High Court also noted that though it was pleaded that articles worth nearly rupees 14.90 lakhs were lifted, there was no specific indication of the items. Only on that basis the High Court held that when the writ petitioner claimed that he had taken goods worth rupees 3,75,300 and had deposited a sum of rupees 11 lakhs with the appellant-Corporation, latter was to pay back a sum of rupees 8.5 lakhs to the writ petitioner. The writ petition as indicated above was allowed.

In support of the appeal, learned counsel for the appellant-Corporation and its functionaries submitted that the High Court's conclusions are contradictory in terms. On one hand the High Court held that the factual questions cannot be adjudicated in a writ petition. Strangely enough after this conclusion, the High Court virtually on the basis of the writ petitioner's assertions directed payment of rupees 8.5 lakhs. Abundant documentary evidence was placed by the Corporation to substantiate its claim that the writ petitioner had lifted goods worth nearly rupees 14.90 lakhs. The writ petitioner had alleged breach of a contract and on highly disputed factual position prayed for relief under Article 226 of the Constitution of India, 1950 (in short the `Constitution') which is clearly untenable. The writ petition should not have been entertained.

In response, Mr. Sada Nand Mishra, Power of Attorney Holder of respondent no. 1-writ petitioner submitted that there was no factual dispute. In fact, the appellant-Corporation with a view to confuse the issues and introduced untenable disputes. It is pointed out that effort was made to arrive at a compromise by the Corporation apprehending non success in the appeal. That itself is a ground to dismiss the appeal.

By way of clarification, learned counsel for the appellant-Corporation brought on record correspondences between the writ petitioner and the appellant-Corporation. It appears that to sort out the controversy the Corporation wanted to explore the possibility of a settlement. But the writ petitioner made a claim of rupees 18.46 lakhs which include the following amounts:

1. Amount as per order of High Rs. 8.50 lakhs Court of Orissa

2. Interest accrued thereon Rs. 6.12 lakhs

3. Security Money (EMD) Rs. 2.75 lakhs

4. Additional Deposit Rs. 1.09 lakhs Rs. 18.46 lakhs He did not want to settle and insisted on Corporation paying the above amount.

A bare perusal of the High Court's judgment shows that there was clear non- application of mind. On one hand the High Court observed that the disputed questions cannot be gone into a writ petition. It was also noticed that essence of dispute was breach of contract. After coming to the above conclusions the High Court should have dismissed the writ petition. Surprisingly, the High Court proceeded to examine the case solely on the writ petitioner's assertion and on a very curious reasoning that though the appellant-Corporation claimed that the value of articles lifted was nearly rupees 14.90 lakhs no details were specifically given. From the counter- affidavit filed before the High Court it is crystal clear that relevant details disputing claim of the writ petitioner were given. Value of articles lifted by the writ petitioner is a disputed factual question. Where a complicated question of fact is involved and the matter requires thorough proof on factual aspects, the High Court should not entertain the writ petition. Whether or not the High Court should exercise jurisdiction under Article 226 of the Constitution would largely depend upon the nature of dispute and if the dispute cannot be resolved without going into the factual controversy, the High Court should not entertain the writ petition. As noted above, the writ petition was primarily founded on allegation of breach of contract. Question whether the action of the opposite party in the writ petition amounted to breach of contractual obligation ultimately depends on facts and would require material evidence to be scrutinized and in such a case writ jurisdiction should not be exercised. (See: State of Bihar v. Jain Plastic and Chemicals Ltd., [2002] 1 SCC 216).

In a catena of cases this Court had held that where dispute revolves round questions of fact, the matter ought not be entertained under Article 226 of the Constitution. (See: State Bank of India and Ors. v. State Bank of India Canteen Employees' Union and Ors., [1998] 5 SCC 74, Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) and Ors. v. Sukamani Das (Smt.) and Anr., [1999] 7 SCC 298).

In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was adjudicating the money claim in a suit. The course is clearly impermissible. (See: General Manager Kisan Sahkari Chini Mills Ltd., Sultanpur U.P. v. Satrughan Nishad and Ors., [2003] 8 SCC 639, Rourkela Shramik Sangh v. Steel Authority of India Ltd. and Anr., [2003] 4 SCC 317).

In National Highways Authority of India v. Ganga Enterpress and Anr., [2003] 7 SCC 410, it was observed by this Court that the question whether the writ petition was maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the matter. The writ petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for impeaching contractual obligations. (See: Har Shankar and Ors. etc. etc. v. The Deputy Excise and Taxation Commissioner and Ors., AIR (1975) SC 1121 and The Divisional Forest Officer v. Bishwanath Tea Co. Ltd., AIR

(1981) SC 1368).

In *M/s. Radhakrishna Agarwal and Ors. v. State of Bihar and Ors.*, AIR (1977) SC 1496, the types of cases in which breaches of alleged obligation by the State or its agents can be set up were enumerated. The third category, indicated is where the contract entered into between the State and the person aggrieved in non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract and in exercise of executive power of the State. The present case is covered by the said category. No writ order can be issued under Article 226 to compel the authorities to remedy a breach of contract; pure and simple. It is more so when factual disputes are involved.

Above being the position the High Court's judgment is clearly unsustainable and is set aside. However, our interference in the matter shall not stand in the way of the writ petitioner seeking any other remedy as is available in law.

The appeal is allowed. But in the circumstances without any order as to costs.