Kerala State Electricity Board & Anr vs Kurien E.Kalathil & Ors on 19 July, 2000

Equivalent citations: AIR 2000 SUPREME COURT 2573, 2000 (6) SCC 293, 2000 AIR SCW 2647, 2000 (3) UPLBEC 2414, (2000) 8 JT 167 (SC), 2000 (3) LRI 474, 2000 (7) SRJ 299, 2000 (8) JT 167, 2000 (2) ARBI LR 652, 2000 (5) SCALE 202, (2000) 4 SCT 242, (2001) 1 MAD LJ 23, (2000) 6 SERVLR 775, (2000) 3 UPLBEC 2414, (2000) 2 ARBILR 652, (2000) 5 SUPREME 158, (2000) 5 SCALE 202

Author: S.R.Babu

Bench: S.R.Babu

PETITIONER:
KERALA STATE ELECTRICITY BOARD & ANR.

Vs.

RESPONDENT:
KURIEN E.KALATHIL & ORS.

DATE OF JUDGMENT: 19/07/2000

BENCH:
Y.K.Sabharwal, S.R.Babu

JUDGMENT:

Y.K.SABHARWAL J.

Leave granted.

An agreement dated 16th September, 1981 was executed between the first respondent (for short `the contractor') and the Kerala State Electricity Board (for short `the Board') for construction of a dam. This was pursuant to a tender notice issued by the Board inviting tenders; tenders submitted by the contractor; correspondence exchanged between the parties and the negotiations held. A supplementary agreement was also executed; extensions for completion of work were granted and there were deviations of works as well which aspects are, however, not necessary to be narrated for the purpose of the disposal of these matters.

The Government of Kerala issued a notification dated 30th March, 1983, under the Minimum Wages Act, 1948 revising the minimum wages payable to the employees employed in the works stated in the notification w.e.f. 1st April, 1983. The contractor claims that he started paying revised minimum wages to the employees and applying the labour escalation formula, the Board made payments to the contractor for the work done from 1st April, 1983 till December, 1984. The Board, however, stopped making payment of labour escalation from January, 1985. By letter dated 28th April, 1986, Government of Kerala wrote to the Board that the works in question come under Item 31 of the Schedule added to the Schedule by Kerala Government by notification dated 23rd December, 1969 and the work undertaken by the contractor, though may include stone crushing as a part of their labour, but the notification dated 30th March, 1983 does not apply to the work of constructing a dam and hence the contractor's claim for escalation under notification dated 30th March, 1983 is not maintainable. Thus, the Board stopped clearing the bills for enhanced minimum wages claimed by the contractor. It is claimed by the contractor that a settlement entered with the workers regarding payment of enhanced wages as per 1983 notification, stipulated that the increased wages paid will be treated as advances to be adjusted later depending upon the decision of the dispute.

The validity of the letter/direction dated 28th April, 1986 of the State Government was considered by the Kerala High Court in judgment dated 25th September, 1990. By the said judgment, four writ petitions were disposed of by the High Court noticing that the Advocate General after obtaining instructions from the State Government agreed to withdraw the letters/direction dated 28th April, 1986 leaving it free to the authorities to take a decision in regard to the applicability of the notification dated 30th March, 1983 on an objective assessment of legal and factual position. In view of the withdrawal of the said letter, the Court relegated the parties to other remedies available to them to work out their respective rights. The parties were thus directed to work out their rights either before the Civil Court or before the other authorities under the Industrial Disputes Act or under the Payment of Wages or other relevant law applicable. In view of this decision, the State Government referred the dispute regarding the applicability of the notification dated 30th March, 1983 to the Industrial Tribunal. According to the contractor, he was making payment of enhanced wages to the employees as per the notification dated 30th March, 1983 despite that from January, 1985, the Board had stopped making payment of the labour escalation to the contractor. The increased payment said to have been made by the contractor to the employees was to be treated as advances to be adjusted later depending upon the decision of the dispute. By an award on 14th October, 1993 the Industrial Tribunal held that the revised minimum wages notification was applicable to the works in question and that the workmen concerned in the dispute are entitled for wage rates and other benefits fixed in the minimum wage notification issued by the State Government on 30th March, 1983 in the case of employees coming under Clauses 7 and 8 of Part I of the Schedule of Minimum Wages Act till a separate minimum wage notification is issued in relation to Item 31 of the First Schedule. The Tribunal further held that the additional wages received by the workmen shall be treated as part of the wages. It is not in dispute that the award has become final.

There is no dispute that the workmen are entitled to enhanced wages in terms of the notification dated 30th March, 1983. The Board does not dispute its liability to reimburse the contractor if in

fact the payment of enhanced wages has been made by the contractor to the workmen in terms of notification. The Board, however, claims that the contractor has failed to prove the payment of enhanced wages to the workmen.

According to the contractor, he made payment of a sum of Rs.9,93,93,868/- towards the escalated minimum wages to the workmen for the period commencing from 1st January, 1985 to 31st March, 1993 and he is entitled to be reimbursed for the said amount. The contractor is said to have entered into a memorandum dated 4th July, 1994 with the workmen through their union giving effect to the award of the industrial tribunal and the said settlement has also been endorsed by the Labour Officer and it shows payment of aforesaid sum having been made by the contractor. The Board accepted the award but at the same time, constituted a committee to go into the matter of making payment by the contractor in implementation of the award of the tribunal. The Committee gave its report which was filed alongwith the counter affidavit of the Board in the High Court. The report inter alia notices that muster roll produced by the contractor indicates payment of minimum wages but states that the committee cannot certify the authenticity of payment in the absence of other documents like wages pay slips/returns. It seems, in the meanwhile, the Board was making payments of various amounts as advances to the contractor under the various heads to enable the work to proceed. However, on 23rd December, 1994, the Board ordered recovery of these advances amounting to Rs.3.65 crores with interest from the works bill of the contractor from January, 1995 onwards. This led to the contractor filing a writ petition (O.P. 283 of 1995) in the High Court seeking quashing of the letter dated 23rd December, 1994 as also praying for issue of directions to the Board for paying to the contractor the amounts of labour escalation with interest. During the pendency of the writ petition, under interim orders, a sum of Rs.4 crores in instalments was paid to the contractor. These directions, it seems, were issued considering the public interest involved in the early construction of the dam. While the writ petition (OP No. 283 of 1995) was pending, the Board passed an order on 26th February, 1997 terminating the contract. This led to filing of another writ petition (OP No. 10759 of 1997). Both these writ petitions were disposed of by the common impugned judgment. The High Court has held the termination of the contract to be arbitrary, unjust and not in public interest and has directed the Board to pay to the contractor the labour escalation amounts. It has been further directed that the Board shall pay to the contractor interest @ 18% on the amounts shown in the statement Exhibit P20.

Mr. Rawal, learned Additional Solicitor General has put forth two contentions. The first contention is about the maintainability of the writ petition (O.P. 283 of 1995) wherein directions as aforesaid for payment were issued by the High Court. Learned counsel submits that the writ petition is not the proper and appropriate remedy. The second contention is that the contractor, in absence of proof of actual payments of enhanced wages to the workmen, is not entitled to get reimbursement of any amount from the Board. Learned counsel submits that in case the contractor proves payment to the workmen as per the notification dated 30th March, 1983, the Board will have no difficulty for reimbursement.

Elaborating the first submission, learned counsel for the appellant submits that the dispute relating to interpretation of a clause in a contract and implementation of such clause cannot be made subject matter of a writ petition and remedy of the aggrieved person lies in approaching the Civil Court or

some other appropriate forum. It was further contended that all contracts entered into by a body whose existence may be governed by the provisions of a statute are not statutory contracts.

On the other hand, it was contended for the contractor that the obligation of the Board arises as soon as the wages payable to the workmen get enhanced on account of Government notification revising minimum wages and it does not contemplate any investigation into the question whether enhanced payments were in fact made or not. The contention further is that under the Minimum Wages Act and under the industrial law, the authorities do oversee the payments and make sure that the workmen are not denied such benefits. It was further contended that the Board did not contend in the earlier writ petition before the High Court or even before the industrial tribunal that the payment as per the notification was not made by the contractor and, in fact, the award of the industrial tribunal which has become final records the factum of payment at the enhanced revised rate to the workmen and further that the memorandum between the union and the contractor witnessed by the Deputy Labour Officer also notices the factum of such payment. It was stressed that, in fact, the contractor had sought issue of Writ of Mandamus directing the Board to discharge its obligation under the notification issued under the Minimum Wages Act, the directions contained in the judgment dated 25th September, 1990 and the award dated 14th October, 1993 and to further issue a Writ of Mandamus to the Board directing it to pay to the petitioner the amount shown in the settlement between the contractor and the workmen through its union alongwith the interest.

We find that there is a merit in the first contention of Mr. Rawal. Learned Counsel has rightly questioned the maintainability of the writ petition. The interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition. Whether the contract envisages actual payment or not is a question of construction of contract? If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body. We are also unable to agree with the observation of the High Court that since the obligations imposed by the contract on the contracting parties come within the purview of the Contract Act, that would not make the contract statutory. Clearly, the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature.

A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not of itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if

provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have been relegated to other remedies.

Ordinarily, in view of aforesaid conclusions on the first contention, we would have allowed the appeal and directed dismissal of the writ petition (O.P.283 OF 1995) without examining the second contention. However, despite holding that the disputes in question could not be agitated in a writ petition and thus the High Court wrongly assumed jurisdiction in the facts of the case, yet we are not inclined in the exercise of our power under Article 136 of the Constitution, to dismiss the writ petition of the contractor at this stage because that is likely to result in miscarriage of justice on account of lapse of time which may now result in the foreclosure of all other remedies which could otherwise be availed of by the contractor in the ordinary course. Those remedies are not efficacious at the present stage and, therefore, in view of peculiar circumstances of the case, we have examined the second contention and the factors which weighted with the High Court in granting relief.

The contract was awarded in 1981. It was for construction of a dam. The expeditious construction of the dam was necessary for generation of hydro electric power in the State. The construction was at final stage and it is in public interest that the construction is completed without any further delay. The notification for minimum wages was issued in 1983 and admittedly it was applicable to the construction in question. The High Court considering the peculiar facts of the case and the inordinate delay which had already taken place in completion of the work and bearing in mind the fact that work of the dam was one of national importance and admittedly the labour escalation formula had been accepted, directed the payment of the amount worked out as per the formula to the contractor and further issued directions fixing time frame for the completion of the work. The formula regarding labour escalation payment was incorporated in the correspondence exchanged between the parties prior to entering into formal contract on 16th September, 1981. The facts broadly taken into consideration by the High Court were that the contractor initially in his letter dated 18th March, 1981 submitted along with the tender had suggested the additional financial liability to be borne as a consequence of increase in wages or other benefits to labour to be reimbursed with reference to actuals. During the negotiations, the Board expressed its unwillingness to accept such proposals of reimbursement of increased wages paid, after quantification of the actual disbursement of such increased wages and was willing to provide for revision in the rate structure on the basis of an agreed formula to take into account the increase in the minimum wages statutorily notified. In this view, the contractor suggested formula for revising the rate structure. The formula initially suggested by the contractor in his letters dated 21st May, 1981 and 5th June, 1981 was not accepted by the Board and the Chief Engineer in his letter dated 11th June, 1981 asked the contractor to modify the conditions in such a way that the terms and formula are acceptable to the Board. Thereupon, the contractor submitted the revised formula in his letter dated 15th June, 1981. This was accepted by the Board when it communicated to the contractor by letter dated 1st July, 1981 that the contract has been awarded to the contractor. The formula regarding labour escalation as described in the letter dated 15th June, 1981 was accepted by the Board subject to the stipulation that the minimum wages for ordinary `mazdoor' will not be less than Rs.13/- per day viz. the rate as per PWD Schedule for rates 1980 applicable to the locality. It also provided that the labour escalation will be given only in case all the benefits are given to the labourers by the

unilateral decision of the Board or of the Government. It was thus evident that the contractor was entitled to at the rate structure revised as per agreed formula. It was also noticed by the High Court that the Board did not take a stand before the industrial tribunal that the contractor was not paying the minimum wages. The workmen through union entered into a Memorandum of Settlement with the contractor which showed payment at the revised rate which was amount sought to be recovered by the contractor from the Board. The award mentioned that the additional wages received by the workmen as advance shall be treated as part of their wages. The Board had accepted the award. In fact, the Board was making payment of advances to the contractor presumably to be adjusted against labour escalation as and when the dispute is settled.

In view of the aforesaid facts, the High Court directed the Board to discharge its obligation under the contractual provisions. It was noticed that earlier the Board had made payment to the contractor for enhanced wages from 1st April, 1983 to 31st December, 1984. Under the circumstances, declining to accept the second contention, we refrain from interfering with the directions for payment given in the impugned judgment except in respect of the rate of interest awarded by the High Court.

The High Court has directed the Board to pay to the contractor the amounts shown in the Statement EX.P-20 alongwith interest @ 18% per annum. Having considered the totality of the circumstances, we feel that it would be just and proper to award interest @ 9% per annum instead of 18%. In the statement EX.P-20, the contractor has calculated interest @ 18% per annum. The interest amount would now be calculated at 9% instead of 18% per annum. The impugned judgment of the High Court is modified accordingly.

The appeals are thus partly allowed as above leaving the parties to bear their own costs.