

## S.B. CIVIL WRIT PETITION NO.5649/2005

M/s. Hukampal &amp; Co. vs. Union of India and others.

Date : 22.9.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. SD Vyas, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner's injunction application was dismissed vide order 2.8.2005 and appeal against this order was dismissed by the appellate court vide order dated 31.8.2005.

According to learned counsel for the petitioner, no agreement has been executed between the parties in terms of Article 299 of the Constitution of India, therefore, the respondents have no right to enforce any of the terms or conditions of the alleged agreement which has not been duly executed in accordance with the said provision. Despite this fact, the respondents after rescinding the contract issued a letter to the petitioner informing that the respondents will award the contract to other person at the cost and risk of the petitioner. The petitioner in the injunction application prayed that the respondents be restrained from giving contract at the risk and cost of the petitioner.

According to learned counsel for the petitioner, it is

settled law that the term of any contract which has not been executed as per Article 299 of the Constitution of India, cannot be enforced and in view of the above, the action of the respondents is wholly without jurisdiction, illegal and contrary to the law laid down by the Hon'ble Supreme Court.

I have considered the submissions of learned counsel for the petitioner and perused the reasons given by the two courts below.

It is true that the Government contracts are required to be in conformity with Article 299 of the Constitution of India and this position is not in dispute. But here in this case, the only grievance of the petitioner is that the respondents are giving a contract to another contractor by mentioning that it is at the risk and costs of the petitioner. Admittedly, neither the risk and cost has been determined by the respondents nor has been demanded by the respondents from the petitioner yet. Therefore, at present, the grievance of the petitioner is against using the words "risk and costs" while inviting tenders for the contract in question. For this purpose, I do not find that any injunction can be issued.

The actionable cause arises only when civil rights of the plaintiff is affected. Apart from it, two courts below were of the opinion that whatever amount will be demanded, will be ascertained amount only and, therefore, the

petitioner will not likely to suffer any irreparable injury and it can avoid the injury by making payment under protest, if it feels that the said amount cannot be recovered from the petitioner.

In view of the above, this Court is not inclined to interfere in the impugned orders passed by the courts below. Accordingly, this writ petition, having no merit, is hereby dismissed.

(PRAKASH TATIA), J.  
S.Phophaliya