

Court No. - 6

Case :- WRIT - C No. - 11479 of 2024

Petitioner :- M/S Shivam Enterprises Sahabganj Thru. Partner Anoop Singh Sombanshi

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Medical Health And Family Welfare Lko And 7 Others

Counsel for Petitioner :- Dwijendra Mishra, Vandana Singh, Vishva Deep Pandey

Counsel for Respondent :- C.S.C., Puneet Chandra

Hon'ble Alok Mathur, J.

Hon'ble Brij Raj Singh, J.

1. Heard Sri Dwijendra Mishra and Sri Vishva Deep Pandey, learned counsel for the petitioner as well as Sri Rahul Mishra, learned Additional Chief Standing Counsel for respondent nos. 1, 2, 3, 5, 6, 7 and 8 and Sri Puneet Chandra, learned counsel for respondent no. 4.
2. The petitioner has moved an application for urgency in the present case which has been allowed and consequently matter has been heard during the winter recess of this Court. With the consent of learned counsel for the parties, present writ petition is heard and decided at the admission stage itself. Instructions received from Chief Medical Superintendent, District Women Hospital, Barabanki are taken on record.
3. The petitioner has approached this Court being aggrieved by order dated 20.12.2024 passed by the Chief Medical Superintendent, District Women Hospital, Barabanki whereby contract of petitioner has been terminated which was granted to the petitioner firm on 30.08.2018 for the purpose of providing diet to pregnant women under the National Health Mission Programme.
4. It is submitted by learned counsel for the petitioner that petitioner firm had participated in the tender process issued by the Chief Medical Officer, Barabanki and the petitioner being lowest bidder was granted the said contract by means of letter dated 31.07.2018. An

agreement was also executed between the petitioner and respondent no. 7 on the same day, according to which tender was to be operative for a period of one year and was to expire on 30.03.2019. It was further provided that the contract can be extended on satisfactory performance of service by the petitioner after getting approval and sanction from the competent authority. It is the case of the petitioner that he has been continuously performing under the said contract till passing of the impugned order and his services have been satisfactory. Learned counsel for the petitioner has fairly submitted that no order was issued in the meantime for extension of the contract dated 30.08.2018, nor was any letter or certificate issued to the petitioner with regard to satisfactory performance of his duties under the said contract.

5. It has been next submitted by learned counsel for the petitioner that the respondents have terminated the contract of the petitioner and asked him to vacate the premises by 31.12.2024, as another work order has already been issued in favour of the lowest bidder from the GEM Portal maintained by the State Government. The fresh contract is to commence from 01.01.2025. Learned counsel for the petitioner has fairly submitted that the contract awarded to him was for a period of one year and there is no order in writing with regard to extension of the said contract which may indicate that he has any right to continue under the said contract. It is noticed that petitioner has already worked for the last six years under the said contract. The petitioner has argued at length assailing the procedure adopted by the respondents for grant of the fresh contract, but in absence of any prayer being sought in this regard, we do not find it fit to proceed to consider the said submission on merits.

6. Learned Additional Chief Standing Counsel on the other hand has opposed the writ petition on the ground of maintainability and further submits that after due consideration of the entire facts, decision was taken to invite fresh bids for running the canteen services and also to provide food services to the pregnant women and other patients. In this regard, it is stated that a Committee was constituted by the District Magistrate, Barabanki which consisted number of officials including Chief Medical Superintendent, District Women Hospital, Barabanki. The said Committee duly considered the entire conspectus of the matter and also held that diet/food can be given to the persons for an amount of Rs.150/- per day as per latest guidelines issued by

the National Rural Health Mission Programme. Recommendations of the Committee were duly accepted by the District Magistrate and in pursuance to which steps were taken to float fresh tender for inviting bidders for grant of new contract.

7. It is next submitted by learned Additional Chief Standing Counsel that petitioner was aware of the process undertaken by the respondents. The petitioner is a partnership firm and one of the partner had duly submitted earnest money through cheque under the signatures of one of the partner of the petitioner firm in favour of Chief Medical Superintendent, District Women Hospital, Barabanki amounting to Rs.4,40,100/- drawn on the ICICI Bank which was submitted on behalf of Namu Caterer, Barabanki. This clearly demonstrates that even the petitioner firm/partner was fully aware of the fresh process which has been commenced by the respondents for appointment of new contract to run the canteen and they never objected or assailed the said proceedings before any forum including this Court. The respondents have awarded the fresh contract in favour of one M/s Narendra Industry, Nizamuddinpur Ganeshpur, Bahramghat Ramnagar, Barabanki for a period from 31.01.2025 to 31.12.2025.

8. It is in the aforesaid circumstances, this Court has been called upon to consider the validity of the impugned order dated 20.12.2024.

9. Heard learned counsel for the parties and perused the record.

10. It is noticed firstly that there is no material on record to indicate that the contract of the petitioner was extended any time beyond the period prescribed in the contract dated 30.08.2018. It is not the case of the petitioner that the said contract was in perpetuity. The petitioner firm had already worked for six years and after change of policy of the State Government and subsequently, GEM Portal having come into existence it was thought fit to invite fresh tenders after enhancing money for per diet by the committee that fresh tenders were invited.

11. The prayer made in the writ petition is with regard to setting aside impugned order dated 20.12.2024, terminating the contract of the petitioner and also seeks direction to the respondents to permit the petitioner to continue to make supply of diet for pregnant women under the NRHM Scheme at The District Women Hospital, Barabanki.

12. With regard to prayer no. 2 [prayer 'b)' in the writ petition], it is noticed that prayer for injunction to permit the petitioner to continue supply of diet cannot be granted as it is clearly contrary to the provisions of Specific Relief Act. The contract of the petitioner was for providing food and canteen services is a contract for personnel service which cannot be specifically enforced as per the provisions of Section 14(b) of the Specific Relief Act, 1963. Even otherwise, as per Section 41(e) of the Specific Relief Act, 1963 injunction in favour of petitioner firm in this regard cannot be granted. This issue even otherwise has been interpreted by the Hon'ble Supreme Court in the case of **Nandganj Sihori Sugar Co. Ltd. v. Badri Nath Dixit, (1991) 3 SCC 54**, the Apex Court has observed as under :-

“8. In Halsbury's Laws of England (4th edn., Volume 44, at para 407) it is stated:

“407. Contracts for personal work or services.— A judgment for specific performance of a contract for personal work or services is not pronounced, either at the suit of the employer or the employee. The court does not seek to compel persons against their will to maintain continuous personal and confidential relations. However, this rule is not absolute and without exception. It has been held that an employer may be restrained from dismissing an employee in breach of contract if there is no loss of confidence between employer and employee or if (at least in a contract of employment to carry out a public duty) the employee has been dismissed in a manner which does not comply with statutory or contractual regulations governing dismissal. No court may, whether by way of an order for specific performance of a contract of employment or an injunction restraining a breach or threatened breach of such a contract, compel an employee to do any work or attend at any place for the doing of any work.

This principle applies not merely to contracts of employment, but to all contracts which involve the rendering of continuous services by one person to another, such as a contract to work a railway line”

9. As stated by this Court in Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain, (1976) 2 SCC 58:-

“... a contract of personal service cannot ordinarily be specifically enforced and a court normally would not give a declaration that the

contract subsists and the employee, even after having been removed from service can be deemed to be in service against the will and consent of the employer. This rule, however, is subject to three well recognised exceptions — (i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India; (ii) where a worker is sought to be reinstated on being dismissed under the Industrial Law; and (iii) where a statutory body acts in breach or violation of the mandatory provisions of the statute.

10. *A contract of employment cannot ordinarily be enforced by or against an employer. The remedy is to sue for damages. The grant of specific performance is purely discretionary and must be refused when not warranted by the ends of justice. Such relief can be granted only on sound legal principles. In the absence of any statutory requirement, courts do not ordinarily force an employer to recruit or retain in service an employee not required by the employer. There are, of course, certain exceptions to this rule, such as in the case of a public servant dismissed from service in contravention of Article 311 of the Constitution; reinstatement of a dismissed worker under the Industrial Law; a statutory body acting in breach of statutory obligations, and the like. (S.R. Tiwari v. District Board, Agra [AIR 1964 SC 1680] ; Executive Committee of U.P. State Warehousing Corporation v. C.K. Tyagi [(1969) 2 SCC 838] ; Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain [(1976) 2 SCC 58].*

11. *On the facts of this case, the High Court was clearly wrong in issuing a mandatory injunction to appoint the plaintiff. Even if there was a contract in terms of which the plaintiff was entitled to seek relief, the only relief which was available in law was damages and not specific performance. Breach of contract must ordinarily sound in damages, and particularly so in the case of personal contracts. Assuming that a contractual relationship arose consequent upon the letters addressed by defendant 3 to defendant 1, the plaintiff was a total stranger to any such relationship, for, on the facts of this case, no relationship of a fiduciary character existed between the plaintiff and defendant 3 or other defendants. Neither on principles of law or equity nor under any statute did the plaintiff acquire an enforceable right by reason of the letters exchanged between defendants 1 and 3. The plaintiff had no privity of any kind to their relationship. No*

collateral contract to which the plaintiff was a party did arise on the facts of this case. At no time was defendant 3 acting as an agent of the plaintiff. There is no express or implied contract which is enforceable by the plaintiff.”.

The other aspect of the matter is with regard to maintainability of the writ petition under Article 226 of the Constitution of India.

13. In the present case apart from the contract awarded to the petitioner firm on 30.08.2018, there is no document indicating that petitioner firm has satisfactorily performed the contract for the last six years or that the said contract was extended any time beyond 31.03.2019.

14. It is in the aforesaid circumstances that above are the disputed questions of facts and same cannot be adjudicated in writ proceedings under Article 226 of the Constitution of India. Even the Apex Court in number of decisions have stated that such disputed questions of fact arising out of contract cannot be adjudicated by the writ Court under Article 226 of the Constitution of India. This aspect was also considered by the Apex Court in the case of **State of Kerala & Others Vs. M.K. Jose, AIR ONLINE 2015 SC 448**, wherein the Apex Court has observed as under :-

“13. A writ court should ordinarily not entertain a writ petition, if there is a breach of contract involving disputed questions of fact. The present case clearly indicates that the factual disputes are involved. In State of Bihar v. Jai Plastics and Chemicals Ltd., a two-Judge Bench reiterating the exercise of power under Article 226 of the Constitution in respect of enforcement of contractual obligations has stated:-

“It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudicating such disputes. Under the law, it was open to the respondent to approach the court of competent jurisdiction for appropriate relief for breach of contract. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226.” In the said case, it has been further observed:-

“It is true that many matters could be decided after referring to the contentions raised in the affidavits and counter-affidavits, but that would hardly be a ground for exercise of extraordinary jurisdiction under Article 226 of the Constitution in case of alleged breach of contract. Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a court exercising prerogative of issuing writs.”

14. In National Highways Authority of India v. Gaga Enterprises, the respondent therein had filed a writ petition before the High Court for refund of the amount. The High Court posed two questions, namely, (a) whether the forfeiture of security deposit is without authority of law and without any binding contract between the parties and also contrary to Section 5 of the Contract Act; and (b) whether the writ petition is maintainable in a claim arising out of breach of contract. While dealing with the said issue, this Court opined that:-

“It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in the cases of Kerala SEB v. Kurien E. Kalathil, State of U.P. v. Bridge & Roof Co. (India) Ltd. And Bareilly Development Authority v. Ajai Pal Singh. This is settled law. The dispute in this case was regarding the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr Dave, however, relied upon the cases of Veriganto Naveen v. Govt. of A.P. and Harminder Singh Arora v. Union of India. These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed”.

15. Having referred to the aforesaid decisions, it is obligatory on our part to refer to two other authorities of this Court where it has been opined that under what circumstances a disputed question of fact can be gone into. In Gunwant Kaur v. Municipal committee, Bhatinda, it has been held thus:-

“14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner’s right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.

15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.

16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit.” [Emphasis added]

16. In ABL International Ltd. v. Export Credit Guarantee Corpn.of India Ltd., a two-Judge Bench after referring to various judgments as

well as the pronouncement in *Gunwant Kaur (supra)* and *Century Spg. And Mfg. Co. Ltd. v. Ulhasnagar Municipal Council*, has held thus:-

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur* this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.

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27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

While laying down the principle, the Court sounded a word of caution as under:-

“However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Whirlpool Corps. v. Registrar of Trade Marks*.) And this plenary right of the

High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction”.

15. In the impugned order it has been stated that the contract was initially awarded in favour of the petitioner on 30.08.2018, and he has worked under the said contract till date. Due to the fact that the decision has been taken to review the rates, process for grant of fresh contract has been undertaken and contract has been awarded and therefore the petitioner has been directed to vacate the kitchen by 31.12.2024.

16. It is clear that the contract of the petitioner has been determined by the impugned order. The rights if any of the petitioner, which are allegedly violated are out of contract, and no argument has been raised on behalf of the petitioner that any of his fundamental rights protected under Part III of the Constitution of India or any statutory provision has been violated rendering the impugned order illegal and arbitrary.

17. It is in the aforesaid circumstances that this Court has considered entire facts of the present case where a contract which was initially awarded for a period of one year, continued for six years, in the meanwhile the State Government has issued another policy with regard to supply of diet to the pregnant women and to other patients coming to the District Women Hospital, Barabanki, for which better facility has been sought to be provided and for the said purpose amount of money per diet has been enhanced. As per procedure provided fresh tenders were invited from the GEM Portal and the entire exercise has been concluded and contract has been awarded to another firm. The petitioner on coming to know of this fact, has chosen not to assail the proceedings of the State Government which resulted in grant of fresh contract to another firm namely M/s Narendra Industries and hence no such relief as argued by the petitioner can be granted in absence of impleading necessary parties in the present writ petition, and making a specific prayer in this regard.

18. We have also given our anxious consideration to the arguments of the petitioner and find that there is no illegality in the impugned order. The issue of breach of contract and the remedy of seeking

compensation can be raised by the petitioner before the appropriate forum, but we do not deem it fit and proper to exercise the extraordinary remedy under Article 226 of the Constitution of India in the facts of the present case.

19. In the aforesaid facts and circumstances, we are not inclined to grant the relief as claimed by the petitioner in the present writ petition. The writ petition being devoid of merits is **dismissed**.

Order Date :- 30.12.2024

A. Verma

(Brij Raj Singh, J.)

(Alok Mathur, J.)