UNION OF INDIA AND ORS. A

v.

M/S. GRAPHIC INDUSTRIES CO. AND ORS.

JULY 28, 1994

[A.M. AHMADI AND B.L. HANSARIA, JJ.] B

Constitution of India, 1950 :

Articles 14 and 226—Party supplying goods to Railways—Goods accepted and payment withheld—Fairness in State action—Whether Railways acted unfairly—Judicial Review of State action—Court's discretion under extra ordinary jurisdiction—Directing the party to seek remedy in some other foum or take recourse to arbitration—Held: Proper exercise of discretion. C

The respondents supplied different items of stores to the Eastern Railways to the tune of about Rs. 50 lakhs. Since the payment was not forthcoming they made a grievance of it to the Union Minister of Railways. Some correspondence took place between the local M.P. and the Railway Minister and between the Additional Private Secretary to the Railway Minister and the Controller of Stores. D

The respondents filed a Writ Petition before the High Court for recovery of the amount due to them. They relied on the above said correspondence. A Single Judge, who heard the matter, took the view that the correspondence in question could not be treated as decision of the President of India as visualised by Art. 377 of the Constitution. E

Respondents preferred an appeal before the Division Bench and before it could be heard, a letter was addressed to the General Manager, Easter Railways by the Additional Private Secretary to the Railways by the Additional Private Secretary to the Railway Minister stating that the Minister has instructed to do as contained in the letter. The Bench took the view that the instructions contained in the letter were binding on the General Manager, he being a subordinate authority. It also observed that it was the duty of the General Manager to act fairly, properly and reasonably and the goods having been accepted several years back the Railways had no authority to sit over the matters and directed the Railways to make the payment. F G H

A In this appeal, the appellants challenge the abovesaid judgment, contending that the letters in question being not in terms of Art. 377 of the Constitution, did not confer any legal right or even legitimate expectation in favour of the respondents and as the matter was purely in the realm of contract the public law remedy of seeking mandamus under Art. 226 was not available dehors the terms of the agreement which included an arbitra-
B tion clause. On behalf of the respondents it was contended that the appellants had not acted properly and fairly in denying the payments several years after accepting the goods.

Allowing the appeal, this Court

C HELD : 1. It cannot be said that the Railways had acted unfairly in withholding the payment to the Respondents. What has been said about unfair act of the Railways is based on what has been mentioned in the letter of the Additional Private Secretary to the Railway Minister and not on the basis of any independent examination of the matter by the Division Bench.
D This would be clear from the fact that in the letter reference has been made about rejection of materials also as to which it has been stated that the defects which led to the rejection of the materials be communicated to the firm; and it is this which the Bench too in its aforesaid operative order directed. It is thus clear that the view taken by the Bench relating to unfairness is solely based on what found place in the aforesaid letter.
E [356-C, 355-H]

Hindustan Sugar Mills v. *State of Rajasthan,* AIR (1981) SC 1681 = [1980] 1 SCC 599; *Kumari Shrilekha* v. *State of U.P.*, [1991] 1 SCC 212; *Mahavir Auto Stores* v. *Indian Oil Corporation*, [1990]] 3 SCC 752 and *Dwarka Das Marfatia* v. *Board of Trustees of the Port of Bombay*, [1989] 3
F SCC 293, referred to.

2. Having come to the conclusion that the materials which the Division Bench noted do not make out a case of unfairness, it is not necessary to examine the question as to whether in the field covered by
G contractual rights and obligations it would always be permissible to invoke the extra ordinary jurisdiction of the High Court under Article 226 of the Constitution. It would be enough to say that this remedy being discretionary, it would be open to the High Court to take a view on the fact situation before it that invocation of power under Article 226 would not be proper exercise of discretion, leaving the aggrieved person to seek remedy in some
H other forum, or to take recourse to arbitration if that be visualised by the

agreement between the parties. [356-F-G] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4524 of 1992.

From the Judgment and Order dated 2.3.92 of the Calcutta High Court in F.M.A.T. No. 989 of 1991. B

Altaf Ahmed, Additional Solicitor General M. K.K. Manglam, A.K. Sharma and V.K. Verma for the Appellants.

A.K. Ganguli, R.F. Nariman and Ms. V.D. Khanna for the Respondents. C

The Judgment of the Court was delivered by

HANSARIA, J. This appeal is by Union of India and some officers of the Central Government attached to the Ministry of Railways and they have felt aggrieved at the judgment and order passed by a Division bench D of the Calcutta High Court on an appeal preferred by the respondents against the judgment of a learned single Judge which was rendered in a writ petition filed by the respondents under Article 226 of the Constitution.

2. The respondents invoked the extraordinary jurisdiction of the High E Court on payments not having been made to them of the different items of stores supplied to the Eastern Railways. The respondents had made a grievance about the non-payment even to the Union Minister of Railways and certain correspondence which took place between the local M.P. and the Railway Minister and between the Additional Private Secretary to the Minister of railways and Controller of Stores were sought to be relied on F in seeking a mandamus for payment of a sum of about rupees half a crore.

3. The learned single Judge took the view that the correspondence in question could not be treated as decision of the President of India as visualised by Article 377 of the Constitution. Being of this view, the writ G petitioners were left with the liberty of moving appropriate forum for redressal of their grievances including going in for arbitration as per the contract, leaving all the questions open to be decided in an appropriate forum.

4. By the time the appeal came to be heard by the Division Bench, H

A a development had taken place and the same was issuance of another letter by the aforesaid Additional Private Secretary on 8/9.5.91 addressed to General Manager, Eastern Railways Calcutta, which stated, *inter alia,* that Minister of Railways had instructed to do as contained in the letter. The Bench took the view that the instructions contained in the aforesaid letter
B were binding on the General Manager, he being a subordinate authority. The non-carrying out of the instructions by the General Manager was taken to be floating of the order of the Minister who being the head of the Ministry of Railways was said to be answerable to the House of the People. The Bench also took the view that What said in the letter was just and proper in the facts and circumstances of the case and was in consonance
C with views expressed by this Court in *Hindustan Sugar Mills* v. *State of Rajasthan*, AIR (1981) SC 1681 = [1980] 1 SCC 599 wherein it was held by this Court that the Central Government should honour its legal obligation arising even out of contract and not drive a citizen to file suit. It was reiterated in that judgment that in a democratic society governed by the
D rule of law, it is the duty of the State to do what is fair and just to the citizen and the State should not seek to defeat the legitimate claim of the citizens by adopting a legalistic attitude but should do what fairness and justice demand.

5. The Bench then observed that it was the duty of the General
E Manager to act fairly, properly and reasonably and the goods having been accepted several years back the Railways had no authority to sit over the matters by folding their hands. Such an attitude was regarded as contrary rule of law by which a democratic society is governed. The Bench ultimately passed the following operative order :

F

> "The respondents are directed to make payment of the amount stated in the schedule of bills enclosed to the said letter after verification that the bills were complete in all respect subject to the condition that if any goods had been rejected which has already been made from (sic, over) to the petitioner though the reason for
G rejection had not been communicated the same should be communicated forthwith. Such steps shall be taken within a period of two months from today."

6. Learned Additional Solicitor General Shri Ahmad appearing for
H the appellants has advanced two submissions in the main. He first contends

that the letter of 8/9.5.91 being not in terms of Article 377 of the Constitution had not conferred any legal right or even legitimate expectation in favour of the respondents to advance any legal claim on its basis. The second submission is that the matter being purely in the realm of contract the public law remedy of seeking mandamus by approaching under Article 226 was not available dehors the terms of the agreement which included an arbitration clause. Relying on these two submissions the contention of the Additional Solicitor General is that the judgment of the Division Bench is vitiated by error of law.

7. Shri Ganguli who advanced arguments on behalf of the respondents has not attempted, and rightly, to support the judgment of the Division Bench by placing reliance on what is contained in the letter in question. The learned counsel's submission has been that independently of this letter the judgment is perfectly legal as the appellants had the duty to act fairly which obligation has to be discharged even in matters pertaining to contractual rights. He has contended that persual of the impugned judgment would show that according to the Bench the appellants had not acted properly and fairly in denying payments to the respondents because the goods had been accepted several years back and the Railways had no authority to sit over the matter by folding their hands.

8. A submission has also been advanced in this context that on the face of payments made to other suppliers of identical articles of stores the denial of payment to the respondents was an act of discrimination. We do not propose to deal with this submission because in the impugned judgment there is no mention about this facit of respondents case about which, according to Shri Ganguli, averments had been made in the writ petition.

9. We, therefore, propose to confine our attention to the ground of unfairness mentioned in the impugned judgment and see whether in the facts and circumstances of the case it could justifiably be said that the appellants had acted unfairly in withholding the payments of the respondents. A persual of the judgment shows that the Bench came to the conclusion of unfairness, not on the basis of any independent examination of the matter by it (indeed in the absence of a counter by the appellants no such factual assessment was possible by the Bench, instead, what has been said about unfair act of the Railways is based on what has been mentioned in the aforesaid letter of the Additional Private Secretary. This would be clear from the fact that in the letter reference has been made

about rejection of materials also as to which it has been stated that the defects which led to the rejection of the materials be communicated to the firm; and it is this which the Bench too in its aforesaid operative order directed. It is thus clear to us that the view taken by the bench relating to unfairness is solely based on what found place in the aforesaid letter.

10. We are not satisfied from what has been stated in the impugned judgment that the Railways had acted unfairly in withholding the payment of the respondents. In view of this we need not dilate on the submission of Shri Ganguli that even in contractual matters public authorities have to act fairly; and if they fail to do so approach under Article 226 would always be permissible because that would amount to violation of Article 14 of the Constitution. In support of this submission, Shri Ganguli has mainly relied upon a two-Judge Bench decision of this Court in Kumari Shrilekha v. *State of U.P.*, [1991] 1 SCC 212, in paragraphs 21 to 28 of which this aspect of the matter has been dealt with by stating that the requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing State always to so act even in contractual matters (see paragraphs 24). What has been stated in paragraph 28 is that it would be difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of the judicial review to test its validity on the anvil of Article 14. The Bench thereafter referred to various earlier decisions of this Court on this point including *Mahavir Auto Store* v. *Indian Oil Corporation*, [1990] 3 SCC 752 and *Dwarka Das Marfatia* v. *Board of Trustees of the Port of Bombay*, [1989] 3 SCC 293.

11. Having come to the conclusion that the materials which the Division Bench noted do not make out case of unfairness, it is not necessary to examine the question as to whether in the field covered by contractual rights and obligations it would always be permissible to invoke the extra ordinary jurisdiction of the High Court under article 226 of the constitution. It would be enough to say that this remedy being discretionary, it would be open to the High Court to take a view on the fact situation before it that invocation of power under Article 226 would not be proper exercise of discretion, leaving the aggrieved person to seek remedy in some other forum, or to take recourse to arbitration if that be visualised by the agreement between the parties.

12. In the aforesaid view of the matter we agree with shri Ahmad

that the judgment of the Division Bench is vitiated by error of law. We, therefore, set aside the same and restore the judgment passed by the learned single Judge. A

13. The appeal stands allowed with costs assessed at Rs. 10,000 to be paid by the respondents within a period of six weeks from today.

B

In view of the judgment delivered today in CA No. 4524 of 1992, this application does not survive and is dismissed.

G.N. Application dismissed.