

SUPREME COURT OF INDIA

Executive Director, Steel Authority of India

Vs.

Tycoon Traders

C.A.No.4026 of 2014

(Gyan Sudha Misra and Pinaki Chandra Ghose JJ.)

26.03.2014

JUDGMENT

PINAKI CHANDRA GHOSE, J.

1. Leave granted.
2. This appeal has been filed against the order dated February 21, 2012 passed by the High Court of Karnataka in W.P. No.38280/2011.
3. The facts of the case reveal that on February 19, 2007, Steel Authority of India (for short 'SAIL') had advertised for E-auction of 1.00 lakh metric tons of iron ore (fines) from Kemmanagundi mines. On March 13, 2007, auction was held and respondent No.1 was declared as the successful tenderer. It would be evident from the sale order dated March 16, 2007 that the price was agreed upon at 1,132/- per metric ton plus VAT of 4% aggregating to 11,32,00,000/- plus VAT of 4%. The appellant duly paid 176 lakhs being 15% of the total sale value on March 15, 2007. Out of the said amount, 58.86 lakhs being 5% of the total sale value was retained as Security Deposit and a sum of 117.74 lakhs was kept for adjustment along with the final instalment. The balance payment was to be made in two monthly instalments with the grace period of 30 days with interest at the rate of 6% per annum. The entire material was to be lifted within four months from the date of the sale order.

4. On May 26, 2010, SAIL informed the respondent that the contract was revalidated by letter dated July 27, 2009 till November 26, 2009 for a period of four months commencing from July 27, 2009 and that the said contract had expired on the lapse of the said period. It is also not in dispute that on November 9, 2009, SAIL had addressed a letter to the Principal Chief Conservator of Forests (Wildlife) and Chief Wildlife Warden, Karnataka, for renewal of permission granted for lifting and transporting iron ore fines through Bhadra Wildlife Sanctuary. The Principal Chief Conservator of Forests by letter dated March 31, 2010, declined to grant such permission for the removal of 1.00 lakh tons of iron ore fines by plying vehicles. In these circumstances, the High Court held that the contract itself stood frustrated and could not have been performed by the respondent even if it desired to do so, and further held that in case of frustrated contract, parties must be restored to their original position.

5. On the basis of the aforesaid reason, the High Court held that it is illegal and unconscionable for SAIL not to refund the entire sum of money received by it from the respondent. The High Court further held that the extension was granted at the instance of SAIL and such extension amounts to waiver of the delivery conditions in the sale order dated March 16, 2007. The High Court further held that the Bhadra Wildlife Sanctuary has been declared as a 'Tiger Reserve' and that it is required to be maintained as 'inviolable' for tiger population, and the permission which has been refused cannot be granted in view of section 38(v) of the Wildlife (Protection) Act, 1972 as amended in 2006. In this background, the writ petition was allowed and SAIL was directed to refund the entire amount within four weeks from the date of the order.

6. Being aggrieved, the appellant filed the present appeal before this Court. It was contended before us that this is a case where there was a breach of contract which was committed by the respondent and thereby SAIL has a right to forfeit the earnest money and security deposit on the basis of such breach. It is also stated whether it would come within the purview of a case of frustration of the contract. Dr. Rajiv Dhawan, learned senior counsel appearing in support of the appellants, has drawn our attention to the original agreement and contended that there was a breach of the original agreement since no clearances were obtained, payments were not made and further contract was not completed. It has been further submitted that the respondent could not lift the iron ore fines although SAIL could manage to get permission from the State Government. Furthermore, it is the case of the appellant that in the light of the

respondent's request, the contract was revalidated on July 27, 2009 on the same terms and conditions and, in fact, there was no waiver of any conditions stipulated in the sale order dated March 16 2007; therefore, on this question the High Court is not correct since, according to him, there was no question of any waiver. He further submitted that there was no frustration due to impossibility because the Principal Chief Conservator of Forests had granted clearance.

7. Per contra, Mr. Sushil Kumar Jain, learned senior counsel appearing on behalf of the respondent, drew our attention to the letter dated March 31, 2010 whereby the Principal Chief Conservator of Forests (Wildlife) & Chief Wildlife Warden, Bangalore, has specifically stated to the General Manager (Operations) of the appellant that Bhadra Wildlife Sanctuary was declared as a Tiger Reserve and was required to be maintained as 'inviolable' for tiger population, hence, refused to allow the transportation through the said Tiger Reserve under Section 38(v) of the Wildlife (Protection) Act, 1972 as amended in 2006. By the said letter, the request to lift and transport the iron ore fines was rejected. Therefore, the contract which was entered into between the parties, as would be evident, is in violation of the said Act and is against public policy. Hence, the contract cannot be given effect to as the contract is already frustrated. He also drew our attention to the fact that the appellant by a fax message dated July 6, 2007 duly relaxed condition Nos.8, 9 and 10 as stipulated in the G.O. dated 2nd May, 2007. Learned senior counsel further contended that by relaxing the said conditions, there was no need for the respondent to obtain permission. On the contrary it was the duty of the appellant to take permission from the authority for implementation of such contract.

8. After considering the submissions made on behalf of the parties, we find that there is substance to accept the contentions of Mr. Jain, learned senior counsel in the matter. In our opinion, the contract is unenforceable and further, the contract is also hit by Section 38(v) of the Wildlife (Protection) Act, 1972 as amended in 2006. Therefore, the object of the contract is forbidden by law. Hence, the said contract is unlawful and cannot be given effect to. In these circumstances, we do not accept the contention of Dr. Dhawan, appearing on behalf of the appellants.

9. Accordingly, we hold the High Court was correct in allowing the writ petition, and we do not find any reason to interfere with the said order of the High Court. Hence, we do not find any merit in the appeal, and the same is dismissed.