APHC010549542023

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

Bench Sr.No:-___ [3446]

WRIT APPEAL NO: 1060/2023

M/s.srinivasulu Reddy And Co, ...APPELLANT

Vs.

The State Of Andhra Pradesh and Others ...RESPONDENT(S)

****

M.V.PRATAP KUMAR, Advocate representing vice AISHWARYA NAGULA, Advocate(s) for Appellant(s)

GP FOR ROADS & BUILDINGS, Advocate(s) for Respondent(s)

CORAM :THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE R RAGHUNANDAN RAO

DATE : 04.04.2024

Per DHIRAJ SINGH THAKUR, CJ :

The present appeal under Clause 15 of the Letters Patent has been preferred against the judgment and order dated 01.03.2023 passed in W.P.No.41906 of 2018 whereby the petition filed by the petitioner has been dismissed.

2. It is pertinent to mention briefly the material facts in the light of which the present controversy has arisen:

The petitioner was allotted the contract for construction of a court complex at Kurnool on 05.05.2012 and an agreement came to be executed between the petitioner and the Superintending Engineer, R & B Circle, Kurnool, on 23.11.2012. According to Clause 46 of the contract so entered between the parties, price adjustment was envisaged for both increase and decrease in the prices for the works completed within the original agreement period. Clause 46.2 & 46.4 are relevant and are reproduced hereunder:

> "46.2 – Price adjustment shall be both for increase and decrease in the prices for the works completed within the original agreement period.
>
> 46.4 – The variation clause will be when the variation in rates is more or less than 5% of the rate provided in the technical sanctioned estimate based on which bids are invited or all India wholesale price Index of the respect item."

3. The agreement among others also envisaged resolution of disputes through arbitration in terms of Clause 23 of the said contract only if the amount in dispute was less than Rs.50,000/-. For facility of reference, Clause 23 of the said contract is reproduced hereunder:

"**23. Settlement of disputes:**

.....

Settlement of Claims for Rs.50,000/- and below by Arbitration:

All disputes or difference arising of or relating to the Contract shall be referred to the adjudication as follows:

a) Claims up to a value of Rs.10,000/- - Superintending Engineer, (R&B), Kadapa.
b) Claims above Rs.10,000/- and up to Rs.50,000/- - Engineer-in-Chief, (R&B), Admn & N.H, Hyderabad

The arbitration shall be conducted in accordance with the provisions of Indian Arbitration and Conciliation Act, 1996, or any statutory modification thereof."

4. According to the stand taken by the petitioner, the Government of Andhra Pradesh issued a G.O.Ms.No.23, dated 11.02.2014 with regard to the treatment of price adjustment in contracts pertaining to Transport, Roads and Buildings. According to which, the price variation over and above 5% was to be applied whether there was an increase or decrease in the price. According to the said G.O., recovery was to be made from the contract beyond

5%. In other words, if there was a variation in the rate to an extent of 9%, the amount that would be payable to the contractor would be 4% i.e. 9% - 5% since the contractor would have factors into his original bid, such an increase up to 5%. Similarly if the price is decreased by 9%, the contractor would be permitted to retain 5% and what would be deducted is 4%.

5. Subsequently, another G.O.Ms.No.67, dated 27.11.2015 was issued reiterating that the price variation clause would apply to both increase and decrease wherever the variation was more than 5%. It is stated that a supplemental agreement was executed on 27.06.2016, which in effect took away the benefit of price adjustment in the event of decrease in the cost as was otherwise envisaged under G.O.Ms.Nos.23 & 67. It is stated that the supplemental agreement was executed by the petitioner on account of "financial problems and due to the urgency in settling payments to the workers and the suppliers". Additionally, it is stated that the supplemental agreement was executed by the petitioner, as it was always under the impression that the benefit of price adjustment as reflected in the G.O.'s would be implemented.

6. After the execution of the supplemental agreement, the petitioner addressed two communications, one, dated 20.07.2016,

to the Superintending Engineer, R&B Circle, Kurnool, and the other dated 17.08.2016 to the Engineer-in-Chief (R&B), Buildings, Hyderabad (A.P.), seeking the benefit of price adjustment in the case of decrease in prices. In response of the aforementioned communications, the Superintending Engineer vide the letter, dated 29.08.2016, addressed to the petitioner that the benefit of price adjustment on decrease of prices could not be given to the petitioner inasmuch as the petitioner had executed the supplemental agreement without any protest. It was also stated in the said communication that report had also been submitted in that regard to the Chief Engineer and action would be taken thereupon. The Chief Engineer finally vide the communication, dated 22.12.2016, directed the Superintending Engineer to follow the guidelines issued by the Government from time to time in regard to the price adjustment for building works. Much after the aforesaid communication, for the first time, the petitioner addressed a communication, dated 15.11.2017, to the Superintending Engineer explaining the circumstances in which the supplemental agreement came to be executed. For facility of reference, the relevant portion of the letter is reproduced herein below:

> "We wish to submit that in spite of GO's and instructions of the Engineer-in-Chief regarding the price

adjustment calculations methods for the above work, this office had worked out in wrong method by which we are incurred huge loss.

As we were held up with huge amounts in the final bill, and due to repeated pressures from the workers and material suppliers to clear their dues, there was no alternative for us at the time to clear the dues of the above except to sign on the supplemental agreement for the price adjustment which was done wrong method.

Further, we submit that however, we protested for the final bill in the measurement book by writing "under protest for the price adjustment is not done properly".

Hence, we request once again that the price adjustment calculations may please be done as per GO's and the instructions of the Engineer-in-Chief (R&B), as per the memo order No.DEE.1/AE-2/CTS/17722/2009, dt:22-12-2015 by the Engineer-in-Chief (R&B)."

7. It is not however denied by either of the parties that the amount reflected in the final bill, dated 16.08.2016, was received under protest by the petitioner on 17.09.2016.

8. It is in the background of the aforementioned facts that the petitioner approached the learned Single Judge seeking writ of mandamus for enforcement of the price adjustment clause as contained in the contract, dated 29.11.2012, as also G.O. Nos. 23 of 2014 and 67 of 2015 with a further direction in the nature of

mandamus to recalculate the price adjustment amount in connection with the said contract and to pay the differential amount to the petitioner. The learned single Judge, by virtue of the judgment and order impugned, observed that the differential amount claimed by the petitioner cannot be ordered by the writ Court and that the petitioner had accepted the final bill issued by the Executive Engineer on 17.09.2016 and further that the petitioner had filed the writ petition in the year 2018 when the final bill was prepared in the year 2016 and therefore, the writ petition was filed 'beyond the period of limitation for claiming the differential amount' and dismissed the petition in the light of the fact that there was a dispute resolution clause which envisaged that claims above Rs.50,000/- would be settled by a Civil Court of competent jurisdiction by way of a civil suit and not by arbitration and in that view of the matter, directed the petitioner to approach the competent Civil Court for redressal of his grievances. For facility of reference, what the learned single Judge held in the impugned judgment and order is reproduced hereunder:

> "7.On a perusal of the material placed on record, the relief sought for by the petitioner is to direct the respondent Nos. 2 and 3 to recalculate the price adjustment amount in connection with the said contract dated 23.11.2012 and to pay the differential amount to the petitioner, which in fact cannot be ordered by this Court and on the other hand, the petitioner has also accepted the

> final bill issued by the Executive Engineer, Roads and Buildings Division, Kurnool on 17.09.2016, and thereafter, he approached this Court in the year 2018 which is admittedly beyond the period of limitation for claiming the said differential amount.
>
> 8. In view of the same, the redressal of the grievance of the petitioner is not here, but elsewhere. Therefore, this Court feels it appropriate to direct the petitioner to approach the competent Civil Court for payment of said differential amount."

Hence, the present writ appeal.

9. Learned counsel for the appellant would submit that only because there was a dispute resolution clause as per the agreement envisaged settlement of disputes by way of a civil action before the Civil Court would not take away the right of the petitioner to approach the High Court seeking exercise of jurisdiction under Article 226 of the Constitution of India inasmuch as the action of the respondent - State was totally arbitrary and contrary to the terms and conditions as envisaged in the agreement, dated 23.11.2012, as also was contrary to the G.O.Nos.23 and 67 of 2014.

10. Reliance was placed upon the Apex Court judgments in the cases of **ABL International Limited and another Vs. Export Credit Guarantee Corporation of India Limited and others**[1]; **R L Kalathia and Company Vs. State of Gujarat**[2]; and **M.P. Power Management**

[1](2004) 3 SCC 553
[2](2011) 2 SCC 400

Company Limited Vs. M/s. Sky Power South East Solar India Private Limited and Others[3].

11. Learned counsel for the respondents on the other hand questioned the very maintainability of the writ petition under Article 226 of the Constitution of India in a contractual matter which is non-statutory in character and did not possess any public law character. Even otherwise, it was stated that assuming that the contract in question was held to be one having such a statutory character and public law character, yet there was no arbitrariness in the action of the official respondents in not giving the benefit of price adjustment on the decrease of the prices in view of the fact that the petitioner had executed the supplemental agreement, dated 27.06.2016. It was urged that the petitioner had executed the supplemental agreement and accepted the price adjustment calculation on 29.06.2016 on the following basis:

* When variation is more than +5%, say +6%, price adjustment computed for 1% (6% - 5%)
* When variation is -6%, recovery computed for 6%, which is advantageous to the Government.
* When variation is within +/-5%, no recovery was made.

[3] (2023) 2 SCC 703

12. It was also stated that the G.O.No.23, dated 11.02.2014, was issued by the Panchayat Raj & Rural Development of the Government of Andhra Pradesh, which related to the road works related to the Panchayat Raj only and not for all the Engineering Departments especially the current contract which related to the Roads and Building Department and hence it is stated that the said G.O. was not followed. It is however stated that the supplemental agreement having been executed by the petitioner without any murmur, the petitioner cannot be permitted to go back on the same and claim that the price adjustment as envisaged under G.O.No.67 r/w Clause 46 of the agreement ought to have been granted to the petitioner.

13. Heard learned counsel for the parties.

Maintainability of the writ petition under Article 226 of the Constitution of India:

14. The issue of maintainability of a petition under Article 226 of the Constitution of India in contractual matters where the State is a party, has been a subject under consideration by Courts from time to time. One of the earlier cases in this regard where the issue was

considered was in the case of **Radhakrishna Agarwal v. State of Bihar**[4] wherein the Apex Court held as under:

> "10. It is thus clear that the Erusian Equipment & Chemicals Ltd.'s case (supra) involved discrimination at the very threshold or at the time of entry into the field of consideration of persons. with whom the Government could contract at all. At this stage, no doubt, the State acts purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State of its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract."

15. However, in **Kumari Shrilekha Vidyarthi v. State of UP**[5], the Apex Court expanded the scope of applicability of Article 14 beyond the threshold stage of making a contract and held that even after entering into the contract, Article 14 required the State to adhere to the requirements of Article 14. It was held as under:

> "20 ..... Applicability of Article 14 to all executive actions of the State being settled and for the same reason its

[4] (1977) 3 SCC 457
[5] (1991) 1 SCC 212

applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, can it be said that the State can thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more? We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts. which cannot co-exist.

21. The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directives Principles of State Policy which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14-non-arbitrariness which is basic to rule of law from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of

judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

22. There is an obvious difference in the contracts between private parties and contracts to which the State is a party, Private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes failing within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent, challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also fails within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions."

16. Subsequently, in **Verigamto Naveen v. Govt. of A.P.**[6], it was held as under:

> "21..... In cases where the decision making authority exceeded its statutory power or committed breach of rules or principles of natural justice in exercise of such power or its decision is perverse or passed an irrational order, this Court has interceded even after the contract was entered into between the parties and the Government and its agencies. We may advert to three decisions of this Court in Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay; Mahabir Auto Stores v. Indian Oil Corporation; and Srilekha Vidyarthi v. State of U.P. Where the breach of contract involves breach of statutory obligation when the order complained of was made in exercise of statutory power by a statutory authority, though cause of action arises out of or pertains to contract, brings within the sphere of public law because the power exercised is apart from contract."

In **Praga Tools Corporation v. Shri C.A. Imanual**[7], it had been held that if the challenged action did not have any public element, writ of mandamus could not be issued as the action would essentially be of a private character.

17. The issue was also considered at length in **ABL International Limited v. Export Credit Guarantee Corporation of India Limited**[8], and after noticing the various judgments on the point, the following legal principles were crystallized regarding maintainability of the writ petition:—

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[6] (2001) 8 SCC 344

[7] 1969 1 SCC 585 = 1969 AIR SC 1306

[8] (2004) 3 SCC 553

a. In an appropriate case, a writ petition as against the State or an instrumentality of the State arising out of the contractual obligations 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 the consequential benefit of monetary claims is also maintainable.

The Court further proceeded to hold that in entertaining the writs under Article 226, the Court has the discretion to entertain or not to entertain the petition and with reference to **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai**[9], it was held that the Court has imposed upon itself certain restrictions in the exercise of this power. It was further held that the 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 writ jurisdiction.

[9] (1998) 8 SCC 1

18. In "**Joshi Technologies International Inc. v. Union of India**"[10] , the Apex Court on a detailed conspectus of the ratio of the judgments rendered from the said Court from time to time crystallized the legal position in regard to exercise of writ jurisdiction in paragraph Nos. 68 & 69. It was held thus:—

> "68. The position thus summarized in the aforesaid principles has to be understood in the context of discussion that preceded which we have pointed out above. As per this, no doubt, there is no absolute bar to the maintainability of the writ petition even in contractual matters or where there are disputed questions of fact or even when monetary claim is raised. At the same time, discretion lies with the High Court which under certain circumstances, can refuse to exercise. It also follows that under the following circumstances, 'normally', the Court would not exercise such a discretion:
>
> (a) the Court may not examine the issue unless the action has some public law character attached to it.
>
> (b) Whenever a particular mode of settlement of dispute is provided in the contract, the High Court would refuse to exercise its discretion under Article 226 of the Constitution and relegate the party to the said made of settlement, particularly when settlement of disputes is to be resorted to through the means of arbitration.
>
> (c) If there are very serious disputed questions of fact which are of complex nature and require oral evidence for their determination.

[10] (2015) 7 SCC 728

(d) Money claims per se particularly arising out of contractual obligations are normally not to be entertained except in exceptional circumstances.

69. Further legal position which emerges from various judgments of this Court dealing with different situations/aspects relating to the contracts entered into by the State/public Authority with private parties, can be summarized as under:

(i) At the stage of entering into a contract, the State acts purely in its executive capacity and is bound by the obligations of fairness.

(ii) State in its executive capacity, even in the contractual field, is under obligation to act fairly and cannot practice some discriminations.

(iii) Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, Involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases court can direct the aggrieved party to resort to alternate remedy of civil suit etc.

(iv) Writ jurisdiction of High Court under Article 226 was not intended to facilitate avoidance of obligation voluntarily incurred.

(v) Writ petition was not maintainable to avoid contractual obligation. Occurrence of commercial difficulty, inconvenience or hardship in performance of the conditions agreed to in the contract can provide no justification in not

complying with the terms of contract which the parties had accepted with open eyes. It cannot ever be that a licensee can work out the license if he finds it profitable to do so : and he can challenge the conditions under which he agreed to take the license, if he finds it commercially inexpedient to conduct his business.

(vi) Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

(vii) Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.

(viii) If the contract between private party and the State/instrumentality and/or agency of State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitutional of India and invoking its extraordinary jurisdiction.

(ix) The distinction between public law and private law element in the contract with State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract. This Court has maintained the position that writ petition is not maintainable. Dichotomy between public law and private law, rights and remedies would depend on the factual

matrix of each case and the distinction between public law remedies and private law, field cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether action of the State and/or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision making process or that the decision is not arbitrary.

(x) Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

(xi) The scope of judicial review in respect of disputes falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes."

19. In **K.K. Saksena v. International Commission on Irrigation & Drainage**[11], the Court held that even when a body was performing a public duty and was amenable to writ jurisdiction, its decisions would not be subject to judicial review except those which had a public law element therein.

[11] (2015) 4 SCC 670

While elucidating as to what constituted a public function amenable to judicial review, reliance was placed upon **R. (Hopley) v. Liverpool Health Authority**[12] and held:

> "50. ...In *R. (Hopley)* v. *Liverpool Health Authority* [2002 EWHC 1723 (Admin) : 2002 Lloyd's Med Rep 494] (unreported)(30-7-2002), Justice Pitchford helpfully set out three things that had to be identified when considering whether a public body with statutory powers was exercising a public function amenable to judicial review or a private function. They are : (*i*) whether the defendant was a public body exercising statutory powers; (*ii*) whether the function being performed in the exercise of those powers was a public or a private one; and (*iii*) whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration."

20. In a recent judgment, the Apex Court in **M.P. Power Management Company Limited, Jabalpur v. Sky Power Southeast Solar India Private Limited and Others**[13] on a conspectus of the law as it developed starting from the case of **Radhakrishna Agarwal** (supra) held that the principle of law laid down in **Radhakrishna Agarwal** (supra) would not hold good in view of the law laid down in **ABL International Limited v. Export Credit Guarantee Corporation of India Limited**[14] and further held that even if a contract was non-statutory in character, it would not

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[12] [2002 EWHC 1723 (Admin) : 2002 Lloyd's Med Rep 494] (unreported)(30-7-2002)
[13] (2023) 2 SCC 703
[14] (2004) 3 SCC 553

entitle the State to ward off scrutiny of its action or inaction under the contract if it was established that such action or inaction, *per se,* was arbitrary and further held that Article 14 enabled the writ Court to deal with arbitrary action even after contract was entered into by the State.

The Supreme Court in the aforementioned judgment while holding that existence of an arbitration provision would be viewed as a near bar to the entertainment of a writ petition and existence of an alternate remedy was to be borne in mind in declining relief in a writ petition in a contractual matter, yet there was no prohibition in the writ Court in deciding even disputed questions of fact particularly when the dispute pertained only to demystifying of documents. It was further held as under:

> "82.12. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (see in this regard Shrilekha Vidyarthi v. State of U.P. [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742]). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary

> action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely mala fide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases."

21. Reference to the aforementioned judgments would thus make it clear that even in non-statutory contracts wherever there is arbitrariness by the State, being one of the contracting parties, judicial review is permissible under Article 226 of the Constitution of India. In that view of the matter, the objection in regard to maintainability of the petition in regard to a non-statutory concluded contract is unsustainable. However, a connected question that requires to be dealt with is whether this is a fit case where the petitioner ought to have been relegated to the remedy of a civil suit as has been ordered by the learned single Judge in the judgment and order impugned. In our opinion, the issue raised by the petitioner in the writ petition was not such as would consume much time in demystifying the issues and the documents relied upon by the petitioner with a view to support and buttress its claim

regarding the price adjustment in reference to the agreement executed between the Government and the petitioner and therefore, we now proceed to deal with the issue with regard to the respective stands of the parties.

22. Admittedly, as per the agreement executed between the petitioner and the respondents, it was agreed that price adjustment would be both for increase and decrease in the prices for the works completed. G.O.23, dated 11.02.2014, although issued by the Panchayat Raj Department of the Government of Andhra Pradesh did envisage such a similar price adjustment which was applicable both for increase and decrease in the prices for the works completed. In any case, G.O.No.67 was issued by the Transport, Roads and Buildings Department of the Government of Andhra Pradesh, which envisaged a similar provision as was contained in the agreement with regard to price adjustment. Notwithstanding the agreed terms and conditions with regard to price adjustment in the agreement, dated 23.11.2012, so executed between the parties and notwithstanding the G.O.67, dated 27.11.2015, it is not denied that the petitioner did execute a supplemental agreement with the Government and agreed to accept the amounts, which were based upon calculations giving effect to the price adjustment clause to the extent of 5% only in the case of increase of rates and not in a case

where the rates stood decreased from the agreed rates. Therefore, the petitioner even when had a right to claim in terms of the agreement executed between the parties had a right to enforce the price adjustment clause, the condition as regards price adjustment as it appears in Clause 46 of the agreement and reiterated in G.O.Nos.23 of 2014 and 67 of 2015, yet must be deemed to have waived his right to the limited extent of the supplemental agreement.

23. It is not the case of the petitioner that the supplemental agreement was executed under any undue coercion or duress as the communications on record do not suggest so. It needs to be noted that the petitioner in the writ petition has not made any murmur about the supplemental agreement having been executed under any fraud, coercion or undue influence.

24. On the other hand, the averment made in the writ petition by the petitioner is that supplemental agreement was executed by the petitioner due to financial problems and due to urgency in settling payments to the workers and suppliers.

25. It is not out of place to mention that two communications, both dated 20.07.2016 and 17.08.2016, addressed by the petitioner to the Superintending Engineer and the Engineer-in-

Chief of R & B Circle only prayed for the price adjustment beyond 5% of the decrease in the rates and did not in the least mention that the supplemental agreement was executed under any fraud, coercion or undue influence by the respondents. In the absence of such an averment and in the absence of such material on record, the official respondents based upon the supplemental agreement were justified in refusing any differential payment as claimed by the petitioner and to that extent, in our opinion, it cannot be said that there has been any arbitrariness on the part of the official respondents in that regard, which would justify the exercise of extraordinary jurisdiction of this Court under Article 226 to issue a mandamus to make such a payment.

26. In **R.N.Gosain Vs. YashpalDhir**[15], the Court held:

> "Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for purposes of securing some other advantage."

27. The petitioner having entered into supplemental agreement and having agreed to receive a particular amount based upon the calculation reflected in the supplemental agreement cannot be

[15](1992) 4 SCC 683

permitted to take a somersault and claim an amount which was otherwise not reflected in the supplemental agreement as payable to the petitioner. Unless and until the petitioner succeeded in establishing that the supplemental agreement was executed under fraud, coercion or undue influence, which in the present case the petitioner has failed to establish, it will not help the petitioner to succeed in the present case on the ground that the supplemental agreement was executed on account of financial compulsion, commercial pressure or economic duress. Reference in this regard can also be made to the Apex Court judgment in the case of **National Insurance Company Limited Vs. M/s. Boghara Polyfab Pvt. Ltd.**[16], which held as follows:

> "52 (v). A claimant makes a claim for a huge sum, by way of damages. The respondent disputes the claim. The claimant who is keen to have a settlement and avoid litigation, voluntarily reduces the claim and requests for settlement. The respondent agrees and settles the claim and obtains a full and final discharge voucher. Here even if the claimant might have agreed for settlement due to financial compulsions and commercial pressure or economic duress, the decision was his free choice. There was no threat, coercion or compulsion by the respondent. Therefore, the accord and satisfaction is

[16](2009) 1 SCC 267

binding and valid and there cannot be any subsequent claim or reference to arbitration."

28. It is settled law in the case of **Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath**[17] that general allegations of fraud, coercion or undue influence, in howsoever strong language they may couch in are insufficient without a party putting forth full particulars in that regard before the Court. Not only should there be a specific averment in the pleadings but there must also be sufficient material to buttress the allegations in that regard.

29. Be that as it may, we find no merit in the present appeal which is accordingly dismissed. No costs.

Consequently, connected miscellaneous petitions, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

R RAGHUNANDAN RAO, J

kbs/akn

[17] AIR 1951 SC 280

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HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE R.RAGHUNANDAN RAO

W.A. No.1060 of 2023

(per Dhiraj Singh Thakur, CJ)

Dt: 04.04.2024

kbs/akn