

PETITIONER:
THE COMMISSIONER, CORPORATION OF THE CITY OF BANGALORE, BANG

Vs.

RESPONDENT:
K.N. VASUDEVA MURTHY (DEAD) THROUGH L.R.S. & ORS.

DATE OF JUDGMENT: 28/07/1998

BENCH:
K. VENKATASWAMI, A.P. MISRA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Special leave granted.

These two appeals are filed against the two orders of the Division Bench of the Karnataka High Court dated 23.8.95 in W.A. No.2825/95 and dated 10.11.95 in I.A. VI for recalling the order dated 23.8.95.

We do not consider it necessary to give full facts of the case relating to these appeals in view of the order proposed to be passed. Brief facts are given below:-

The husband of the first respondent and father of respondents Nos.2 to 9 (hereinafter called the "Contractor") was entrusted with the execution of a work for the construction of storm water drain by the appellant-Corporation. It is common ground that the Contractor failed to complete the work within the stipulated time, which necessitated the Corporation to entrust the balance work to a new Contractor, namely, M/s J.K. Construction Company, who completed the work. The Contractor claimed that he was to be paid some amount by the appellant-Corporation for the work executed by him. The Corporation, however, was not prepared to accept the liability which necessitated the appointment of an Expert Committee. The Expert Committee seems to have recommended that the Corporation has to pay the contractor a sum of Rs.39,53,096.50 with interest from 1.10.81 to 10.8.94. It appears that the Corporation has paid the said sum of Rs.39,53,096.50 but did not pay the interest as recommended by the Expert Committee.

Aggrieved by the non-payment of interest, the Contractor has moved the Karnataka High Court under Article 226 of the Constitution for a direction to the Corporation for payment of the interest as noticed above. When the matter came up before a learned Single Judge, the learned counsel appearing for the Corporation said to have made the following statement:-

"Smt. B.L. Hemavati, learned counsel appearing for respondent No. 2 would not dispute that the second respondent is liable to pay interest as recommended by the Expert Committee and the approval

is being sought from the Standing Committee of the Works and Taxation and Finance."

It may be noticed at this stage that the grievance of the appellant-Corporation is that before the learned Single Judge the Corporation was not given sufficient time to file a Counter/Reply to the claim of the Contractor. Be that as it may. The learned Single Judge has directed the appellant-Corporation to pay the interest on Rs.39,53,096.50 paise from 1.10.81 to 10.3.94 holding that since Government had accepted the Report of the Export Committee there was no need to seek the approval of the Standing Committee of the Works and Taxation and Finance.

The Corporation, feeling aggrieved by the order of the learned Single Judge, preferred a Writ Appeal (FR) No. 1056/95 before the Division Bench. Unfortunately, the learned counsel for the Corporation could not be present when the matter was taken up by the Division Bench and the Division Bench, however, disposed of the appeal on 23.8.1995 holding as follows:-

"In fact the whole case proceeded on the basis of the concession made before the Court by the learned counsel for the appellant. The learned counsel did not dispute that they are liable to pay interest as recommended by the Expert Committee appointed by them. All that was needed was approval of the Standing Committee. The Court noticed, that seeking of the approval of Standing Committee in such a matter is wholly unnecessary because the Expert Committee had already given its recommendation. In the circumstances, without going into the question of delay this appeal is rejected."

The Corporation moved the Division bench for recalling the order dated 23.8.1995 passed in Writ Appeal on the ground that the counsel for the appellant was not heard. The application for recalling the order was disposed of on 10.11.1995 by the Division Bench by observing as follows:-

"Even after hearing Sri P. Vishwanatha Shetty, we find no grounds to change the order in Appeal or recall the order made on 23.8.95."

Aggrieved by the above two orders, these appeals are now filed by special leave.

Mr. Oavali, learned senior counsel appearing for the appellant-Corporation, while arguing on merits also submitted that the Division Bench was not right in proceeding that there was an unconditional/absolute concession before the learned Single Judge, which enabled the Court to allow the Writ Petition. According to the learned senior counsel, there was no concession and the learned counsel before the learned Single Judge, as a statement of fact, has stated that the Corporation was liable to pay as recommended by the Expert Committee, but after the approval by the Taxation Committee. We must bear in mind, for what it is worth, the grievance of the Corporation that it was not given an opportunity to file its return before the learned Single Judge.

Mr. Naik, learned senior counsel appearing for the

respondents, while answering the submissions made by the learned senior counsel for the appellant-Corporation on merits, also submitted that the Division Bench was perfectly in order in construing the statement of the learned counsel appearing for the Corporation before the learned Single Judge as a concession and further the Court was also right in holding that the approval of the Taxation Committee was not required on the facts of the case.

After considering the rival submissions and bearing in mind the huge public amount involved in this case and also the circumstances attending to the disposal of the matters before the learned Single Judge and the Division Bench, we are of the view that the Division Bench should have considered the question whether the statement made before the learned Single Judge (extracted supra) by the counsel for the Corporation amounted to an unqualified concession and, therefore, no further question arose. Even assuming that there was a qualified concession, whether the circumstances brought out in the memorandum of grounds required any consideration especially when the Division Bench disposed of the writ appeal on merits in the absence of counsel for the appellant-Corporation. We set aside the impugned orders of the Division Bench and remand the matter to the High Court. We deliberately refrained from considering the merits at this stage for obvious reasons. The High Court will restore on its file the Writ Appeal (FR) No. 10526/95 (W.A. No. 2825/95) and dispose of the same in accordance with law.

The appeals are disposed of accordingly with no order as to costs.