

RITONA CONSULTANCY PVT. LTD. AND ORS. ETE. ETC.

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v

LOHIA JUTE PRESS AND ORS. ETC.

FEBRUARY 5, 2001

[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

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Suit—Government—Award of contract for preparation of photo Identity Cards—Dispute between contractor and sub-contractor—Suits by contractor and sub-contractors—In those suits applications filed for interim relief—Interim order passed by High Court—Appeals preferred before Division Bench of the High Court against said order—Order passed by Division Bench—Appeal before Supreme Court—Held—An interlocutory order is made by way of aid to the proper adjudication of the claims and disputes arising in and not made beyond the scope of the suit or against the parties who are not before it—That neither excessive conservatism or traditional technical approach nor over-zealous activist approach is conducive to advancement of justice—The High Court shall decide on applications bearing in mind the salutary principle.

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
Nos. 10072-10073 of 1998.

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From the Judgment and Order dated 5.5.98 of the Calcutta High Court in G.A. No. 1835/97 and 4659/97 in A.P.O.T. No. 273 of 1997.

With

SLP (C) NOS. 10456/98, 17765/98, 18274/98 and 2273/2001 Cont. Pet. (Civil) Nos. 457-462/99 in SLP(C) Nos.10072-10073/98, 10456/98, 17765/98 and SLP(C) No. 18274/98.

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K.V. Vishwanathan Anil Agarwalla, Z. Rehman, K.V. Vijayakumar, Jaideep Gupta, H.K. Puri, A.K. Roy, S.K. Puri, Rajesh Srivastava, Ujjwal Benerjee, Satish Vig, Vijay Hansaria and Jain Hansaria & Co. for the appearing parties.

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The following Order of the Court was delivered :

Two suits were filed in the High Court of Calcutta. Suit No. 228/96 was filed by Lohia Jute Press against (1) Ritona Consultancy Pvt. Ltd. (2) Smrity

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- A Securities Pvt. Ltd. (3) River Blue Commodities Pvt. Ltd. and 18 others, alleging that having obtained a contract with the Government of Assam on 17.7.1995, entered into agreements with defendant Nos. 1, 2 and 3 on 31.8.1995 for preparation and supply of 49,26,465 photo identity Cards-defendant No. 1 to cover the area in the district of Barpeta and Kamrup; defendant No. 2 for Nalbari, Darang and Marigaon and defendant No.3 for Dhuburi, Kokarajahar, B
- B Bangiagaon and Goalpara [in all nine districts]. Defendant No. 4, who was a Director in the defendant companies guaranteed due performance of the obligation by defendant Nos. 1, 2 and 3. Defendant Nos. 1, 2 and 3 were liable to furnish bank guarantee i.e., performance guarantee of Rs. 10 Lakhs each and on failure to do so, pledge share scrips with duly signed transfer deeds
- C by way of security. On various facts and grounds averred in the plaint, the plaintiff sought for relief against defendant Nos. 1,2 and 3 for (a) delivery of photo identity cards/video cassettes or cartridges containing photos of electors/generator sets or payment of Rs. 80,000 in lieu thereof; (b) decree of Rs.1 crore against defendant Nos. 1 and 4; decree of Rs. 1 crore against defendant Nos. 2 and 4; decree of Rs.1 crore against defendant Nos. 3 and
- D 4, alternatively inquiry for damages; (c) declaration that shares stand pledged to plaintiff and for sale thereof for adjustment of the proceeds against dues to the plaintiff from the defendants.

- Suit No. 209-A/96 was filed by (1) Ritona Consultancy Pvt. Ltd. (2)
- E Smrity Securities Pvt. Ltd. (3) River Blue Commodities Pvt. Ltd. against Lohia Jute Press and its partners and shareholders [defendant Nos. 5 to 22] whose shares have been pledged and defendant Nos. 23 to 190 to whom shares are transferred for (a) return of the shares or debentures from defendants other than defendant Nos. 5 to 22 or inquiry into their value and decree for such sum as may be fixed; (b) decree for money in favour of plaintiffs or for inquiry
- F into damages and decree thereof; (c) decree for injunction restraining defendant Nos. 1 to 4 from lodging any of the Shares or debentures with defendant Nos. 23 to 190 not to further alienate or alter ownership and if altered, to restore ownership to defendant Nos. 5 to 22; and (d) declaration that plaintiffs are owners of video cassettes, cartridges and photographs and injunction from
- G claiming ownership.

- These two suits arose out of contract awarded to M/s Lohia Jute Press for preparation and supply of 49, 26,465 photo identity cards to be completed by 3.9.1995 subject to several conditions with which we are at present not concerned. M/s. Lohia Jute Press entered into contracts with the three
- H defendants in Suit No. 228/96 to which the State of Assam is not a party. In

those suits applications were filed for interim reliefs and the High Court of Calcutta, on its original side, made an order on 26.8.96 appointing court receiver in respect of video cassettes and directions were given to him to take steps for preparation of the voter identity cards and deliver the same on preparation thereof. In furtherance of this order, another order was made on 28.4.1997 framing a scheme for preparation of the identity cards by the court receiver. Appeals were preferred before the Division Bench of the High Court against the order of the learned Single Judge dated 28.4.1997 framing the scheme. The Division Bench directed the joint receivers to complete the work of preparation of photo identity cards within a time frame by taking necessary assistance of outside agency for preparation of the same by an order made on 5.5.1998. This order is challenged in SLP(c) Nos. 10072-10073/98. Certain other orders made by the Division bench which do not effectively dispose of the matters before it are also challenged in different special leave petitions. This Court has passed several orders to complete the work of preparation of photo identity cards within a particular time frame by taking help of the Chief Electoral Officer, though he was not a party to the proceedings and as many as 12 different orders have been passed on various dates from 28.8.99 to 18.8.2000. Still as per the status report filed in the court, the work is not complete.

As this stage of the proceedings, we must notice certain staggering features of the case:

- (a) Contract was awarded by the Government of Assam on 17.7.1995 to be completed by 3.9.1995 which is not still complete, though over five years have elapsed;
- (b) In the disputes between the main contractor and sub-contractors arising out of certain contract to which the State Government is not a party, various reliefs are sought for even affecting the rights and interests of the Government of Assam; thus this is a case of playing Hamlet without the Prince of Denmark.
- (c) In the event the contract with the Government of Assam and Lohia Jute Press is cancelled (for which step there is no impediment) many of the reliefs sought for in the suits filed by either of the parties would become infructuous and different kinds of reliefs will have to be worked out;
- (d) Suits are filed in the High Court of Calcutta forum found to be convenient to the parties, and not where the contract has to be

A executed or the Government upon which it is binding is located.

 In these circumstances, no useful purpose will be served in keeping these proceedings in this Court pending and the orders made by the High Court as modified by this Court shall be effective until further orders are made by the High Court either on the trial side or in the LPA side. In respect of those reliefs sought for in different applications, either pending or not effectively disposed of by allowing or rejecting or in any similar manner or fresh or new aspects, it is open to the parties to seek for further directions in the High Court. The High Court shall decide on such applications bearing in mind the salutary principle that an interlocutory order is made by way of aid to the proper adjudication of the claims and disputes arising in and not made beyond the scope of the suit or against the parties who are not before it. That neither excessive conservatism or traditional technical approach nor over-zealous activist approach is conducive to advancement of justice.

C Subject to the aforesaid observations, these special leave petitions shall stand disposed of accordingly.

D In view of the orders made by us now, the petitions invoking the jurisdiction in contempt have become unnecessary. The proceedings in the contempt petitions shall thus stand dropped and shall be treated to have terminated with this order.

E T.N.A.

Petitions disposed of.