



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Writ Petition No. 16720/2021

1. Manoj Paliwal
2. Manoj Joshi

----Petitioners

Versus

1. State Of Rajasthan, Department Of Panchayati Raj, Through Its Principal Secretary, Secretariat, Jaipur.
2. Chief Executive Officer, Zila Parishad, Rajsamand.
3. Gram Panchayat Pasund, Through Its Secretary, Panchayat Samiti Rajsamand, District Rajsamand.
4. Sarpanch, Gram Panchayat Pasund, Panchayat Samiti Rajsamand, District Rajsamand.

----Respondents

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For Petitioner(s)	:	Mr. Sandeep Saruparia
For Respondent(s)	:	Mr. Falgun Buch for respondent No. 3 & 4

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**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

**Order**

**REPORTABLE**

**15/04/2024**

1. At the request of learned counsel for the petitioner, the service upon the respondent Nos. 1 and 2 is dispensed with as he is not pressing the writ petition against them.
2. With consent of learned counsel for the parties, the writ petition is taken up for final disposal.
3. The present writ petition has been filed against the notice/order dated 25.09.2021 passed by Gram Panchayat,





Pasund, Panchayat Samiti Rajsamand, whereby the petitioners have been ordered to deposit a sum of Rs.19,26,680/-.

4. Briefly, noted the facts in the present writ petition are that the Gram Panchayat, Pasund vide Notice dated 05.01.2019 invited tenders for removal of marble slurry and for dumping the same at the dump-yard. The petitioners being the highest bidder were awarded the Contract/Agreement on 30.01.2019 and as per the Contract/Agreement, the petitioners were to pay the amount per month as mentioned in Paragraph 4 of the Agreement. The petitioners started the operations and while they were working as per the Agreement, certain issues cropped up and for certain reasons, the contract/agreement of the petitioners was terminated vide order dated 13.03.2020. The petitioners preferred a writ petition before this Court being SB Civil Writ Petition No.4098/2020 and this Court while issuing notices, stayed the effect and operation of the order dated 13.03.2020. The petitioners, therefore, continued to perform the activities of dumping in pursuance of the agreement entered into between the parties. During the currency of the agreement, for certain periods of time, the petitioners were unable to undertake their contractual obligations for different reasons which have been mentioned in Paragraph 5 of the writ petition. Out of 4 periods mentioned in Paragraph 5 of the writ petition, the period from March 2020 to June 2021 was the period of outbreak of COVID-19 pandemic and because of the pandemic, all industrial operations were stopped and for most of the times, the lock-down was in force and therefore, the petitioners could not perform their part as per the





contract/agreement. It was for these reasons, the petitioners could not deposit the contractual amount with the Gram Panchayat Pasund, therefore, the Gram Panchayat, Pasund issued a recovery notice of Rs.19,26,680/- dated 25.09.2021 (Annex.7). Hence, the present writ petition has been filed.



5. Learned counsel for the petitioners submits that the petitioners were ready and willing to perform their part of contractual obligations, however, the situation beyond their control was created in the country due to outbreak of COVID-19 pandemic and therefore, they could not perform their part of contract and thus, the recovery ordered by the Gram Panchayat Pasund vide Annexure 7 is arbitrary, unreasonable and illegal.

6. Learned counsel further submits that because of the lockdown in the country from March 2020 to June 2021 (for most of the time), there was no industrial activity and since there was no industrial activity, there was no question of lifting and dumping the marble slurry and thus, the petitioners were not in a position to perform their part as per the contract/agreement dated 30.01.2019.

7. Learned counsel for the petitioners further submits that the petitioners were unable to undertake their contractual obligations for the reasons beyond their control and therefore, they fall in the category of "Force Majeure" and thus, the Gram Panchayat was not right in passing the order for recovery of a huge amount from the petitioners. Learned counsel submits that the petitioners come from a humble background and are earning their bread and butter by performing the small contracts and, if in these



circumstances, a huge recovery of Rs.19,26,680/- is ordered against them, they will be put to a financial crises resulting into the destitution of their families.

8. Learned counsel submits that in an identical situation, the State Government has granted the benefit of waiver of collection of royalty to the contractors who were having contracts of lifting the river-sand, therefore, the benefit which was extended by the State Government in the case of contractors, the same benefit on account of lock-down may also be extended to the petitioners. He, therefore, prays that the writ petition may be allowed and the order dated 25.09.2021 of recovery of Rs.19,26,680/- may be quashed and set aside.

9. Per contra, learned counsel for the respondent – Gram Panchayat, Pasund vehemently opposed the submissions made by the learned counsel for the petitioners and submits that the petitioners are under an obligation to perform their part of contractual agreement and if they are unable to do so, then the respondents are not responsible and as per the contract/agreement, the respondent-Panchayat is entitled to receive the monthly amount agreed by the petitioners.

10. Learned counsel further submits that there is no Clause in the agreement dated 30.01.2019 that if on account of certain conditions, if the contract/agreement is not honoured, the respondents will relax the condition of payment due from them. He further submits that there is no Clause in the agreement dated 30.01.2019 which prohibits the respondent-Gram Panchayat from not recovering the amount due to the petitioners on account of the





situation of pandemic or for the reasons beyond the control of the petitioners.

11. Learned counsel submits that there is no provision akin to the provision made by the State Government waiving the recovery of contractual amount on account of lockdown from the contractors of the royalty collectors of the river-sand and therefore, the respondents are not in a position to waive the contractual amount from the petitioners. He, therefore, prays that the writ petition may be dismissed.

12. I have considered the submission made at the bar and have gone through the relevant record of the case.

13. It is true that the petitioners have entered into the agreement for dumping of the marble slurry to the dumping-yard with the Gram Panchayat, Pasund vide agreement dated 30.01.2019. In pursuance of the agreement dated 30.01.2019, the petitioners continued paying the agreed amount for dumping of marble slurry, however, for certain periods, the petitioners could not perform their contractual obligations as mentioned in paragraph 5 of the writ petition.

14. It is noted that the contractual obligations which the petitioners could not perform for the period from March 2020 to June 2021 was on account of lockdown due to the outbreak of pandemic COVID 19 in the country. Since there was no industrial activity in the State of Rajasthan and therefore, the petitioners were unable to perform their part as per the agreement dated 30.01.2019. The outbreak of pandemic of COVID 19 was an act of God beyond the control of the petitioners and therefore, on





account of the same, if the petitioners could not fulfill their contractual obligations, they cannot be burdened with the liability of paying the amount due to the Gram Panchayat, Pasund. Merely, because there is no provision in the contractual agreement entered between the parties, if a situation had been created by an act of God which has disabled one of the parties to perform his part of the obligation, then the contingency arising out of the same is required to be taken which may not cause any hardship to one of the parties. In the present set of facts, if on account of lockdown, if the petitioners are unable to perform their contractual obligations for the reasons beyond their control, they cannot be burdened with the liability of paying the amount in accordance with the agreement entered into between the petitioners and the respondent Gram Panchayat. Thus, this Court is of the view that if the situations beyond human control happen during the currency of a contract and the same have not been taken note of or written in the contract/agreement, they are required to be considered while settling the dispute between the parties for balancing the equity and arriving at a just and proper decision.

15. The doctrine of "**Force Majeure**" comes into play wherein if by virtue of an act of God, if one of the parties to the contract is unable to perform his part, then the party which is unable to perform his part, cannot be burdened with the liability which may cause hardship.

16. The case of the present petitioners is also on the same footing wherein the State Government has provided the benefit to the contractors for recovery of royalty for lifting the river-sand on





account of lockdown due to outbreak of COVID 19 pandemic and therefore, this Court feels that on the same principle, the petitioners are also entitled to get the benefit of waiver of recovery of the amount due in pursuance of the agreement dated 30.01.2019.



17. Hon'ble the Supreme Court in the case of **Satyabrata Ghose Vs. Mugneeram Bangur and Company and Ors.** reported in **AIR 1954 SC 44** held as under :

9. .... The second paragraph enunciates the law relating to discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done. The wording of this paragraph is quite general, and though the illustrations attached to it are not at all happy, they cannot derogate from the general words used in the enactment. This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and unless from the point of view of the object and purpose which the parties had in view; and if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.
  
12. We hold, therefore, that the doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of Section 56 of the Indian Contract, Act. It would be incorrect to say that Section 56 of the Contract Act applies only to cases of physical impossibility and that where this



*section is not applicable, recourse can be had to the principles of English law on the subject of frustration.*

*It must be held also, that to the extent that the Indian Contract Act deals with a particular subject, it is exhaustive upon the same and it is permissible to import the principles of English law de hors these statutory provisions. The decisions of the English Courts possess only a persuasive value and may be helpful in showing how the Courts in England have decided cases under circumstances similar to those which have come before our Courts.*

17. *These differences in the way of formulating legal theories really do not concern us so long as we have a statutory provision in the Indian Contract Act. In that we have to go by is that of supervening impossibility or illegality as laid down in Section 56 of the Contract Act, taking the word 'impossible' in its practical and not literal sense. It must be borne in mind, however, that Section 56 lays down a rule of positive law and does not leave the matter to be determined according to the intention of the parties.*
  
18. *In cases, therefore, where the Court gathers as a matter of construction that the contract itself contained impliedly or expressly a term, according to which it would stand discharged on the happening of certain circumstances the dissolution of the contract would take place under the terms of the contract itself and such cases would be outside the purview of Section 56 altogether. Although in English law these cases are treated as cases of frustration in India they would be dealt with under, Section 32 of the Indian Contract Act which deals with contingent contracts or similar other provisions contained in the Act."*





18. This Court is firmly of the view that the petitioners were prevented by sufficient means to perform their part of contract for the reasons beyond their control and therefore, if the recovery vide order dated 25.09.2021 is allowed to sustain against the present petitioners, then it will create hardship for none of their fault. Even as per Section 56 of the Indian Contract Act, the petitioners were prevented by sufficient reasons and were unable to perform their part of contract on account of impossible situation and therefore, they are entitled to waiver of the monthly rent.

19. Even as per the reply filed by the respondents to one of the applications preferred by the petitioners, the respondents have admitted that the work was suspended for 10 months i.e. from March 2020 to June 2021 and not for 12 months.

20. In view of the discussion made above, the present writ petition merits acceptance and the same is partly allowed. The order dated 25.09.2021 is quashed to the extent of recovery ordered for the period from March 2020 to June 2021. The respondent – Gram Panchayat, Pasund shall recalculate the amount waiving the amount of recovery for the period from March 2020 to June 2021 against the present petitioners. The petitioners shall deposit the recalculated amount assessed by the respondents in the appropriate installments to be ascertained by the respondent No.3 – Gram Panchayat, Pasund.

21. Stay application as well as other pending applications, if any, shall stand disposed of.

**(VINIT KUMAR MATHUR),J**

536-/Anil/-