
(1999) 12 GUJ CK 0020
In the Gujarat High Court

Ajmera and Co.

APPELLANT

Vs

Development Commissioner, Gujarat State and Others

RESPONDENT

Date of Decision : 30-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 3 GLR 2217

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—The petitioner a registered partnership firm, by this petitioner under Article 226 of Constitution of India praying for quashing and setting aside the order dated 21-6-1986 of the respondent No. 2 purported to have been passed u/s 294(4) of the Gujarat Panchayat Act, 1961 and the order of respondent No. 1 dated 8-12-1986 purported to have been passed u/s 294(5) of the aforesaid Act. Further, prayer has been made for injuncting respondent No. 2 from executing/implementing the order passed by him dated 21-6-1986 and the respondent No. 1 from executing and implementing its order dated 8-12-1986.

2. The facts of the case in brief are that the respondent No. 3 decided to give the work of the collection of Octroi on Ijara. The petitioner gave offer to the respondent No. 3 for collection of octroi for the period commencing from 15-1-1986 to 14-4-1986 on the payment of Rs. 8.55 lacs. This offer of the petitioner was came to be accepted by the respondent No. 3 in its meeting held on 15-1-1986. An agreement was came to be executed for collection of the Octroi for the period aforesaid on 31-1-1986 by the petitioner in favour of respondent No. 3. On 21-3-1986 the petitioner made an application to the respondent No. 3 that having regard to the famine and scarcity condition, the concession may be given to the petitioner in the matter of the price which was to paid by the petitioner to the respondent No. 3 of this agreement. After receipt of this application of the petitioner, the respondent No. 3 in its meeting held on 31-3-1986 resolved that the petitioner to pay Rs. 7 lacs as the cost of this Ijara

as against of Rs. 8.55 lacs as what it was offered of the petitioner. So, the concession to the petitioner was came to be given by the respondent No. 3 for the sum of Rs. 1.55 lacs. It is the say of the petitioner that in pursuance to the resolution aforesaid of the respondent No. 3 the petitioner executed a supplementary agreement on the very day. The respondent Nos. 4 to 7 residents of Vanthali a public spirited citizens made an application to the respondent No. 2 u/s 249(4) of the Gujarat Panchayats Act, 1993 challenging there under the resolution of the respondent No. 3 dated 31-3-1986 reducing the amount of Ijara agreement from Rs. 8.55 lacs to Rs. 7 lacs. The respondent No. 2 after hearing the parties under its order dated 21-6-1986 held that the resolution of respondent No. 3 dated 31-3-1986 is contrary to law and accordingly that resolution was ordered to be set aside and directed the respondent No. 3 not to implement or execute the said resolution. That order of the respondent No. 2 was taken by the petitioner in appeal before the respondent No. 1. The respondent No. 1 after hearing the parties under its order dated 8-12-1986 confirmed the order of the respondent No. 2, hence this Special Civil Application.

3. It is not shocking that the respondent No. 3 is not opposing this Special Civil Application. The respondent Nos. 4 to 7 filed the reply to this Special Civil Application. As usual, the respondent No. I has also felt contended (sic.) and satisfied not to contest this Special Civil Application.

4. I do not find on the record of this Special Civil Application any rejoinder to the reply filed by the respondent Nos. 4 to 7.

5. The Special Civil Application was placed in the Court for preliminary hearing on 26-2-1987. The Court thus ordered as under:

Rule.

Ad-interim relief in terms of para 9(c) on the conditions that (i) petitioner gives bank guarantee for payment of Rs. 1,55,000/- with interest, if any, that may be directed to be paid by this Court while passing a final order, and (ii) gives an undertaking to this Court signed by all the parties of the petitioner firm that they will pay the said amount of Rs. 1,55,000/- with interest as aforesaid, in case petitioner fails in this petition.

Undertaking and bank guarantee to be filed within two weeks from today.

Notice as to interim relief returnable on 25-3-1987.

6. In pursuance to the order aforesaid on the record of this Special Civil Application the undertaking were given by the partners of the petitioner firm viz. Premachand Mulachand Ajmera, Jitendra N. Anadpara, Mahendra Shinh N. Padhiar and Natvarlal M. Trivedi.

7. On 24-6-1987 it has been brought to the notice of Court by respondent Nos. 4 to 7 that in spite of the conditional order passed by this Court, the petitioner has not furnished the bank guarantee for payment of Rs. 1,55,000/- with interest

and that he has not furnished undertaking as ordered by this Court. In view of this fact the interim relief granted by the Court was vacated. On that day the Counsel for the petitioner was not present. On 9-9-1999 this Court after hearing the learned Counsel for the parties, who were present and perusing the Full Bench decision of this Court in the case of Parshottambhai G. Chavda v. State of Gujarat reported in 1998 (1) GLH 519 (FB) : [1998 (2) GLR 1048 (FB) the petitioner was ordered to deposit Rs. 1,55,000/- in the Court within a period of 10 days. The learned Counsel for the petitioner on that day given out to the Court as if the petitioner firm as well as its partners are not traceable. The learned Counsel for the respondent No. 2 was directed to make necessary inquiry in the matter and to ascertain the whereabouts of the petitioner and its partners. The order of this Court dated 9-9-1999 reads as under:

1. Having heard the learned Counsel for the parties and going through the judgment of the Full Bench of this Court in the case of Parshottambhai G. Chavda v. State of Gujarat reported in 1998 (1) GLH 519, the petitioner is directed to deposit Rs. 1,55,000/- (Rupees One Lac Fifty Five Thousand Only) in this Court within a period of ten days from today. After deposit of this amount the Court shall consider further course to be adopted for disbursement of payment of this amount.

2. After hearing the learned Counsel for the petitioner, it appears that the petitioner-firm as well as its partners are not traceable. The respondent No. 2 is directed to make necessary inquiry in the matter and to ascertain whether these persons are available or not. If they are available, then he may report to this Court with their complete address.

3. S.O. to 23rd September, 1999.

4. A copy of this order be given to the learned Counsel for the petitioner as well as be sent to the respondent No. 2 forthwith.

8. On 23-9-1999, the Counsel for the respondent has given out the names of two of the partners of the firm and accordingly this Court has given direction to them to remain personally present in the Court on 14-10-1999. On 14-10-1999 those two partners were not present. The learned Counsel for the petitioner given out that due to Navratri fast they are not present.

9. From the orders of this Court dated 9-9-1999 and 14-10-1999 it is clearly borne out that whatever stated by the learned Counsel for the petitioner on 9-9-1999 was not correct.

10. The matter was ordered to be placed in the Court on 20-10-1999. During these proceedings the two of the partners of the firm were present and they have given out that they cannot deposit this amount. It has also been informed to the Court that the respondent No. 2 has already filed a civil suit for recovery of Rs. 1,55,000/-. At one point of time the learned Counsel for the petitioner has given that the petitioner does not want to press this petition, but when the Court

has given out that even they pray for withdrawal of this Special Civil Application, the petitioner to pay Rs. 1,55,000/- to the respondent No. 3 on which the learned Counsel for the petitioner given out that such a direction cannot be given by this Court more so when the respondent No. 3 has already filed suit for recovery of this amount. On 28-10-1999 this Court has given direction to the Counsel for the petitioner to produce for its perusal the pleadings of the two proceedings, the reference of which has been made in Annexure "C" and the pleadings of the civil suit which has been filed by the Panchayat. The learned Counsel for the petitioner presented the xerox copy of the plaint and the written statement of civil suit.

11. The learned Counsel for the petitioner contended that the respondent No. 3 is an independent statutory body and the provisions contained in the Act empowered it u/s 180 of the Act to give Ijara for collection of octroi by public auction. It is the best judge of its financial interest or public interest and if it is reduced amount of Ijara from Rs. 5.88 lacs to Rs. 7 lacs to which no exception could have made.

12. It has next been contended that as the contracts were executed the respondent Nos. 1 and 2 have no power or authority to suspend the execution of the contract in exercising of their powers u/s 249 of the Act, 1993. Carrying this contention further, Shri Nanavati, learned Counsel for the petitioner contended that the respondent Nos. 1 and 2 while passing the impugned orders have not applied their minds to the provisions contained u/s 180 and 249(294) of the Act. It has further been contended that the petitioner had already paid the instalment in terms of agreement of Ijara and collected the octroi in pursuance of the agreement neither the respondent Nos. 1 or 2 has power or authority to cancel the contract. Lastly, it is contended that the petitioner has not taken any benefit of the interim relief which has been granted by this Court in their favour. In his submission, this Court even if ultimately does not accept this writ petition, may not give any direction to the petitioner for the payment of Rs. 1,55,000/- together with interest thereon to the respondent No. 3.

13. Ms. Siddhi Talati on the other hand supported the impugned orders.

14. It is not in dispute nor it can be disputed that the Panchayat has all the power to give collection of octroi on "Ijara" (contract). This is clearly borne out from the provisions of the Act, 1993. The impugned orders have also not been passed on the ground that the Panchayat has no power to give the work of the collection of octroi on contract. Though it may be correct to contend to certain extent that the Panchayat is the best judge of its financial interest or public interest, but in the present case, I find that it has acted contrary to its own and the public interest. The Panchayat has passed the Resolution on 15-1-1986 to give the contract for collection of octroi in favour of petitioner and the agreement was executed on 31-1-1986 for Rs. 7 lacs. I fail to see any reason good, bad or indifferent that within less than two months, an application has been filed by petitioner for reduction of the contract amount to the extent of Rs. 1.55 lacs on

the ground of famine and scarcity condition. That was claimed as a concession. It is too difficult to accept that there would have been any serious difference regarding scarcity or famine condition on 15-1-1986 when this contract was given and the day on which the application has been filed for giving of the concession. This concession is nothing but only a favour which has been extended to the petitioner by the members of the Panchayat at the cost of interest of the Panchayat as well as public at large. Whatever the amount the Panchayat collects as octroi has to be used for the development of the area as well as to provide facilities to the residents. This is a handsome amount and on this flimsy ground no concession should have been given. It is really shocking that first the petitioner has agreed to take this contract for Rs. 8.55 lacs and then it has got this amount reduced by way of concession to the extent of Rs. 1.55 lacs. This is clearly a fraud which has been committed by petitioner with the Gram Panchayat in conspiracy of the members of the Panchayat. In case, it would have been made clear to the persons concerned, then there is all the possibility that other person would have taken this contract on higher amount. The facts have come on the record of this Special Civil Application in the affidavit of the respondent Nos. 4 to 7 and which are to be briefly stated. This concession was extended to the petitioner for political collusion or brotherhood. The respondents Nos. 4 to 7 have given out that this Ijara of octroi given in the name of the partnership firm consisted of partners having political background of B.J.P. It is stated that at the relevant time, the respondent No. 3 was holding majority of B.J.P. members. It has further been stated that a close scrutiny of the resolutions and particularly second resolution gives out that some favour has been extended to the petitioner.

15. Ijara was stated to be in the name of Pareshkumar Natvarlal Trivedi who was stated to be B.J.P. member and members of the respondent No. 3. However, this is difficult to accept for the reason that the partnership deed has not been produced on the record of this Special Civil Application. Though there is nothing on the record of the Special Civil Application to support this averment but it appears to be correct to certain extent as Natvarlal Trivedi, the partner of the petitioner-firm, the father of Pareshkumar, who is the member of the respondent No. 3. Another partner Mr. Mahendra Padhiyar is son of President of Junagadh Nagar Palika and member of B.J.P. These facts are not being disputed. In the facts of this case, there is all the possibility that because of Pareshkumar Natvarlal Trivedi, who is the member of respondent No. 3, this contract has been given to the petitioner. This is further fortified from the fact that immediately after giving this contract, on the application of the petitioner-firm, the contract amount has been reduced to the extent of Rs. 1.55 lacs by respondent No. 3. It is not disputed that in the meeting of the Panchayat wherein the Resolution in dispute is passed Pareshkumar was present. From this circumstance, which is also undisputed and coupled with the fact that this concession has been sought on flimsy ground, leaves no doubt in the mind of the Court that both contract and the concession are procured things. It is as a result of extending of benefits

to the persons belonging to the same political party. I do not find any substance in the contention of the learned Counsel for the petitioner that after the contract is executed, the authorities have no power to pass any order to suspend the Resolution and ultimately to cancel it. If this contention is accepted, then it will be very easy and convenient for the Panchayats to make their resolution fait accompli by simultaneously executing the contract also. If we go by the facts of this case, it is clearly borne out that though the first contract was executed after some days of the Resolution of the Gram Panchayat, the supplementary contract has been entered into on the very next date on which the Resolution has been passed by the Panchayat. (Emphasis supplied). If the Panchayat will not leave any time-gap between the Resolution and the contract, this will become a tool in the hands of the Panchayat to make redundant all the provisions, check and control on its acts and deeds of the officers and State Government. This cannot be taken to be the meaning of this provision. It is a case where the petitioner has been given benefits for which otherwise it was not entitled. It is people's money and not the money of the members of the Panchayat. The people, by this extension of concession to the petitioner, have been deprived of the benefit of their money and this is a matter where more strict view should have been taken by the authorities rather than to feel contented and satisfied to hold the Resolution to be bad in law. It is a clear case where the powers have been exercised by the Panchayat which are totally detrimental to the interest of the citizens residing in its area and undue benefit and favour is extended to the contractor who has given his offer of Rs. 8.5 lacs. This is clearly a fraud in the matter of contracts and if the same is permitted, then it will be very very serious thing and it will adversely affect the interest of the Panchayat as well as its residents. It will become a very easy tool in the hands of unscrupulous people to get the contract with higher offer, meaning thereby to deprive the contract to other competitors and then to manipulate in collusion with the members of the Panchayat to get concession in the contract. In case the petitioner considered it to be an offer towards higher side what for it has taken the contract? The facts of this case speak how these members of the Panchayat have acted and it is a clear case of giving advantage to the petitioner who has given its offer of Rs. 8.55 lacs for this contract. Such things cannot be permitted and should not have been permitted and rightly the authorities below have not committed any error in passing of the impugned orders.

15.1. The next point which falls for consideration is whether this Court can give direction to the petitioner to pay this amount of Rs. 1.55 lacs with interest to respondent No. 3. It is true that the suit has been filed by the Panchayat for recovery of this amount but merely because of filing of the suit, the Court fails to see how any plea can be taken that this Court cannot give any direction to the petitioner to pay this amount of Rs. 1.55 lacs with interest to the respondent No. 3. Once the authorities have held that the Resolution of the Panchayat of giving concessions to the petitioner to the extent of Rs. 1.55 lacs is illegal, how this benefit can be permitted to be retained by the petitioner. The petitioner has

made all the attempts to get these orders set aside. Earlier suit has been filed but when it failed to take interim relief, it has shifted to this writ petition and this Court has granted interim relief. The undertaking has been furnished by them to the effect that all the partners of petitioner-firm will pay amount of Rs. 1.55 lacs with interest where the petitioner fails in the petition. These undertakings of the partners are on the record of the Special Civil Application and it reads as under:

I, Premchand Mulachand Ajmera partner of M/s. Ajmera & Co., the petitioner herein do hereby solemnly give this undertaking in compliance with the order passed by this Hon"ble Court as under:

1. That the partners of the petitioner firm including myself will pay the amount of Rs. 1,55,000/- with interest, if any, that may be directed to be paid by this Hon"ble Court in case the petitioner fails in the petition.

Solemnly declared at Ahmedabad on this day of March, 1987.

Identified by me : Sd/- Sd/- illegible Partner of the Petitioner firm Advocate

16. There appears to be no justification in the submission that because the benefit of interim order was not taken by petitioner, the partners of the petitioner-firm are not bound by their undertakings. The undertaking is very very specific and clear that in case where the petitioner fails in this writ petition, the partners have to pay Rs. 1.55 lacs with interest to respondent No. 3. Leaving apart these undertakings, otherwise also, where this Court finds that the orders passed by the authorities challenged in the Special Civil Application are legal and justified, then while rejecting the petition it has all the powers to give directions to the petitioner to pay this amount to the respondent No. 3 with interest. The petitioner has come up before this Court to seek relief under its extraordinary equitable jurisdiction. The petition has been admitted and this Court cannot be oblivious of the fact that for all the years, the petitioner has utilised this amount for its own benefit. How far it is justified on the part of the petitioner to retain this amount which is people's money on this technical approach that the suit has been filed or that the undertakings furnished are only enforceable in case the petitioner availed of the benefit of interim relief. I have my own reservation in the approach of the Gram Panchayat to file a suit as well as there is no justification from the side of the petitioner when the stay has not been granted by the Court not to voluntarily pay this amount to respondent No. 3. It will be a clear case of the abuse of the process of the Court in case such directions are not being given against such litigants. The petitioner has challenged that order in these proceedings and now I fail to see how any defence can be had by it on the basis of the suit. The matter attained finality and the action of the authority was held to be justified by this Court and as a result there, the petitioner is under legal obligation to pay this amount to respondent No. 3. If the money of the Panchayat which is people's money is permitted to be retained by such unscrupulous litigants, certainly it is loss to the people's money. The petitioner is not only to pay this amount but this Court has all the power to direct the

payment of this amount by the petitioner to respondent No. 3 with interest. Further, in the facts of this case in case the petitioner is permitted to retain this amount it will result in its unjust enrichment. In fact, the petitioner should have voluntarily deposited this amount.

17. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief earlier granted stands vacated. The partners of the petitioner-firm, who furnished the undertakings before this Court, are hereby held to be jointly and severally liable for payment of amount of Rs. 1.55 lacs to respondent No. 3 with interest thereon at the rate of 18% p.a. from the date of filing of the Special Civil Application till the date of payment thereof. The partners are directed to deposit this amount together with interest at the rate aforesaid with the respondent No. 3 within a period of one month from the date of receipt of writ of this order. In case, this order is not complied with by partners of the petitioner-firm, the respondent No. 3 is at liberty to bring this fact to the notice of this Court. The partners of the petitioner-firm are also directed to report compliance of this order to this Court. The petitioner is directed to pay Rs. 500/- as costs of this writ petition to the State of Gujarat.