

(2014) 09 AHC CK 0255

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 45762 of 2014

Ambe Carrier

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Specific Relief Act, 1963 — Section 14, 14(1)(a), 14(1)(c)

Citation : (2014) 8 ADJ 599 : (2015) 1 ALJ 68 : (2014) 107 ALR 529 : (2015) 126 RD 404

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Shri Kant Shukla, Advocate for the Appellant

Judgement

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1. The second petitioner is a partner of petitioner No. 1, which is a firm. The first petitioner claims to be registered with the Regional Food Controller, Gorakhpur Region and carries on the business of transportation. The petitioners participated in a tender proceeding for carrying out the work of handling and transportation of food-grain for Kaptanganj and Sukrauli centres of District Kushi Nagar and Deoria Sadar centre of District Deoria for 2012-13. An agreement was entered into with the petitioners on 2 February 2013. The contract was extended until 31 March 2014 for the financial year 2013-14. According to the petitioners, the State Government addressed a communication to the Regional Food Controller, Gorakhpur on 14 February 2014 seeking necessary action for extension of the term of the existing contracts of the petitioners and certain other contractors for 2014-15. The petitioners submitted a letter indicating their willingness for extension of their contract for 2014-15. On the basis of recommendations of a Committee constituted by the Regional Food Controller, Gorakhpur, the term of the contract of the petitioners is stated to have been extended on 29 March 2014 for financial year 2014-15 in respect of three centres, noted above. The

petitioners are aggrieved by an order dated 27 May 2014 passed by the Regional Food Controller, Gorakhpur terminating the contract of the petitioners for Kaptanganj centre on the ground of negligence, breach of contractual provisions and other irregularities in the execution of the agreement and performance of the work. The petitioners, thereafter, submitted a representation to the Regional Food Controller, Gorakhpur (Annexure-16).

2. The learned counsel appearing on behalf of the petitioners submits that the termination of the contract must be held to be invalid since no opportunity of hearing was afforded to the petitioners in compliance with the principles of natural justice. In this connection, reliance has been placed on an unreported decision of a Division Bench of this Court dated 27 October 2004 in M/s. Shiv Transporters, Deoria v. State of U.P., Civil Misc. Writ Petition No. 44928 of 2004. Reliance has also been placed on an interim order dated 17 March 2011 passed in M/s. Adya Prasad Jaiswal v. State of U.P., Writ - C No. 16112 of 2011, a decision dated 8 November 2012 in Sobran Singh v. State of U.P., Writ - C No. 57623 of 2012 and a decision dated 22 October 2013 in M/s. Super Fast Transport v. State of U.P., Writ - C No. 44489 of 2013.

3. Now, at the outset, it would be necessary to note that the decision in Shiv Transporters involved a situation where, besides the cancellation of a contract, the contractor was sought to be blacklisted without affording him an opportunity of being heard. The Division Bench while allowing the writ petition by a judgment dated 27 October 2004 noted as follows:

"From a perusal of the impugned order dated 7.10.2004, it is clear that no opportunity of hearing was given to the petitioner before cancelling his contract or before blacklisting him. The impugned order is, therefore, in violation of the principles of natural justice and cannot be maintained. Further, a contractor cannot be blacklisted without affording him an opportunity of hearing as held by the Apex Court in Grosos Pharmaceuticals (P) Ltd. and Another Vs. The State of Uttar Pradesh and Others, . Therefore the impugned order cannot be maintained."

4. Similarly, in the more recent decision in Super Fast Transport (supra) also, an order of blacklisting had been passed which was challenged on the ground that it was passed in violation of the principles of natural justice. This is evident from the order of the Court dated 22 October 2013 which reads as follows:

"The order of black listing and cancellation of the contract granted in favour of the petitioners in the matter of transportation of the Government foodgrains etc. dated 6.8.2013 is challenged basically on the ground that the said order has been passed without notice and opportunity of hearing to the petitioners.

In our opinion, the order of black listing and cancellation of the contract of the petitioners visit the petitioners with evil civil consequence and therefore such order has to be made in accordance with the principle of natural justice.

The order impugned dated 6.8.2013 is directed to be treated as a show-cause

notice only. The petitioners may submit a reply to the facts mentioned in the said order within two weeks alongwith certified copy of this order and may inform the authority that in fact neither any foodgrains has been stolen nor has been diverted nor petitioners have breached any terms and conditions of the agreement.

The reply may be supported by such document as the petitioners may be advised.

The Regional Food Controller is directed to take a fresh decision in the matter after considering the explanation of the petitioners within four weeks. All consequential action shall be taken immediately thereafter. The order impugned shall remain in abeyance for 6 weeks and shall thereafter abide by the order to be passed afresh by the Regional Food Controller as directed above.

The writ petition is disposed of subject to the observation made."

5. The order passed in Adya Prasad Jaiswal (*supra*) is an interim order. Similarly, in Sobran Singh (*supra*), the licence was cancelled by the Notified Authority under the Fertilizer Control Order 1985 without an opportunity of being heard and it was held that the principles of natural justice ought to have been observed.

6. The blacklisting of a contractor, it is well-settled, has serious civil consequences and, hence, the consistent position in law is that such an order cannot be passed without complying with the principles of natural justice. Similarly, the cancellation of a licence under the provisions of a statutory Order, such as the Fertilizer Control Order, 1985, as held by the Division Bench, requires compliance of the principles of natural justice.

7. These decisions would, in our view, not advance the case of the petitioners. The petitioners had a contract, plain and simple, for the handling and transportation of food-grain which was extended. The termination of the contract for breach would be subject to the remedy in the form of a claim for damages. Section 14(1)(a) of the Specific Relief Act, 1963 provides that a contract, for the non-performance of which compensation in money is an adequate relief, cannot be specifically performed. Similarly, a contract which, in its very nature, is determinable cannot be specifically performed or enforced under Section 14(1)(c). A contract, the performance of which involves the performance of a continuous duty which the Court cannot supervise, cannot also be enforced under clause (d) of sub-section (1) of Section 14 of the Act of 1963. In a situation, such as the present, where the contract had been terminated on the ground of breach, by the nature of things, it would not be possible for the Court to grant specific performance, which is what the petitioners essentially seek by challenging an order of termination dated 27 May 2014 and by seeking a mandamus to the Regional Food Controller not to interfere in the working of the petitioners as a contractor until 31 March 2015.

8. Clause 45 of the contract agreement provides as follows:

"(45) In case it is found in future that the contractor has been actively involved

in mafia activities, antisocial work and is engaged in organized criminal activities, the contract or work awarded to the said contractor shall be rejected after giving a reasonable opportunity to the contractor."

9. On this basis, it is sought to be submitted that the contract could not have been terminated without a reasonable opportunity to the contractor. An opportunity has been provided in Clause 45 in specific situations. We need not comment upon the provisions of Clause 45, save and except to observe that the specific situations which have been referred therein, are not the basis on which the order of termination has been passed in the present case. As a matter of fact and as a first principle, we are of the view that the writ Court under Article 226 of the Constitution ought not to decree the specific performance of a contract where ordinary principles of law, more particularly the Specific Relief Act, 1963 would disentitle even the grant of specific relief in a suit to be instituted. The matter does not lie in the realm of public law and parties are necessarily governed by the mutual rights and obligations under the terms of the contract.

10. In this connection, we need to remind ourselves of the following observations made by the Supreme Court in Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, :

"A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a Civil Court or in arbitration if provided for in the contract..."

11. We may, at the cost of repetition, emphasise that this is not a case of a blacklisting of a contractor where principles of natural justice are required to be observed. Accordingly, we relegate the petitioners to the remedy of a suit for damages. No relief of the nature sought can be granted in a writ petition under Article 226 of the Constitution, decreeing specific performance. The petition is, accordingly, dismissed. There shall be no order as to costs.