

(1950) 06 CAL CK 0004
In the Calcutta High Court
Case No : O.O.C. Matter No. 35 of 1950

Carlsbad Mineral Water Mfg. Co. Ltd.	APPELLANT
Vs	
H.M. Jagtiani	RESPONDENT

Date of Decision : 19-06-1950

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1952 Cal 315

Hon'ble Judges : J.P. Mitter, J

Bench : Single Bench

Advocate : I.P. Mukerji and S.K. Sen Gupta, for the Appellant; H.N. Sanyal and E.R. Meyer, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Mitter, J.—This is an application for a writ of Mandamus to compel the respondent H. M. Again as General Manager of the East Indian Railway to issue to the applicants a license or licenses for the period of 1-6-1950 to 31-3-1951 for sale, throughout the railway system, of ice, mineral waters ft cordials, & to direct the Divisional Superintendents of the Railway to permit the applicants to use the premises heretofore used by them as depots b stalls for the sale of their products.

2. The applicants are manufacturers & caterers of ice & mineral waters. For 27 years or so they have worked as Railway contractors for catering ice, aerated waters & cordials to "bonfire" passengers, Railway servants, Railway Institutes & hospitals & to refreshment room contractors over the entire system of the said Railway. The respondent was lately the Chief Commercial Manager, & is now the General Manager, of the East Indian Railway. The Head Office of the said Railway is at No. 105, Netaji Subhas Road, Calcutta.

3. The applicant's claim to relief is founded upon an allegation that the East Indian Railway Administration has wrongfully refused to renew their catering contract for a fresh term in spite of a subsisting agreement for such renewal.

They say that although during the last 27 years formal contracts embodying the terms & conditions of their services as caterers were periodically entered into by It between the parties, yet they often in fact rendered such services from time to time even without such formal contracts & that such services were accepted by the Railway Authorities as in continuation & or renewal of the contract last expiring. It is said that in the course of such services it became necessary for them to expand their factory at Howdah by importing expensive & up-to-date machineries in order to meet the growing requirements of the said Railway Administration. It is the applicants' case that in or about 1928 they asked that subject to their services being satisfactory, the periodical catering contracts should thenceforward stand on a permanent basis with regard to renewals thereof, so that they could continue & improve their services by making further investments & thus pursue a policy of expansion of their factory to meet the growing demands of the said Administration. This proposal, according to them, was accepted by the then Chief Operating Superintendent of the Railway who assured the applicants that no other contract would be employed by the Administration so long as the applicants' services were satisfactory & that the periodical contracts would be renewed by the Administration from time to time as a matter of course.

4. It is said that on the applicants insisting upon the said agreement or arrangement being incorporated into the then next contract, the said Administration, in order to remove the feeling of insecurity on the part of the applicants, convened a meeting of the various Divisional Superintendents of the said Administration. The said meeting was presided over by said Chief Operating Superintendent, & a copy of the minutes of the said meeting dated 15-9-1928, was forwarded to the applicants. The said minutes ran as follows:

"It was agreed that a long-term contract should not be given to Messrs. Carlsbad Mineral Water Manufacturing Co. & it was considered that the assurance they have already received that so long as their work is satisfactory the contract will remain with them is sufficient guarantee to warrant this Company proceeding with any policy of expansion they may have in view."

It is said that in reliance upon the said agreement the applicants from time to time invested large sums of money amounting to several lakhs, of rupees in enlarging their factory & equipping it with modern machineries of foreign manufacture. They claim that their services to the Administration have all along been satisfactory & that they have sold their products at the same rates as were fixed in 1923. They say further that since 1923 they have been in possession of a number of depots & stalls at different stations over the entire system of the said Railway & that they have paid rents in advance from year to year at rates fixed by the said Administration. The last of the catering contracts under which they have worked was executed on 3-1-1947, clause 3 whereof provided as follows:

"This contract comes into force from 1-1-1947 for a period of 3 years, provided always that it would be lawful for this contract to be terminated by either party

giving three calendar months" notice in writing to the other on the expiry of which the licensee shall peacefully vacate the premises allotted to him."

5. It is said that in or about May 1949 the applicants, in the usual course & on the footing of the agreement for renewal, paid rents in respect of such depots & stalls in their occupation for a period commencing from April 1949 to March 1950, both inclusive, & that such rents were accepted without any objection, although the contract was due to expire on 31-12-1949. On or about 30-7-1949 the applicants requested the respondent, who was then the Chief Commercial Manager of the Railway, to send a draft of the contract for the next term of 3 years from, 1-1-1950 in renewal of the then current contract. In or about the first week of October 1949 the applicants sent one of their Directors, R. Sen Gupta, to interview the said Chief Commercial Manager who then informed him that the contract between the parties would be renewed as usual by the proper authorities & that the applicants should, in the meantime, proceed to make all preparations necessary for the next term. On 17-10-1949 the applicants received an official communication from the Chief Commercial Manager saying - "the new contract is being drawn up, a copy will be sent to you later." Thereupon the applicants made all preparations necessary for the next term of three years, imported & purchased all necessary raw material, bottles & other articles. It is said that they also started an ice factory of their own at considerable expense at the request & under the directions of the said Administration.

6. The gravamen of the charge of the applicants is that thereafter the said Chief Commercial Manager wilfully neglected & or wrongfully refrained from getting the formal contract completed as agreed upon in renewal of the said contract of 1947 in the following circumstances: On 7-11-1949 the applicants were served with a notice dated 1st/3rd November 1949 signed by the said Chief Commercial Manager purporting to terminate the said contract dated 3-1-1947 in total disregard of the agreement for renewal & in breach of the express terms of the said current contract. The Company objected to the said notice & insisted upon the renewal of the 1947 contract. It is stated by the applicants that thereafter one J. N. Das, who had in the meantime become the Chief Commercial Manager, purported to waive the said notice dated 1st/3rd November 1949, & by a letter dated 30-12-1949, served upon the Company on 3-1-1950, purported to extend the:

"Contract for the sale of ice & aerated waters on this Railway by a period of two months with effect from 1-1-1950 without prejudice & irrespective of consideration of any other matter."

& asked for "acceptance of the extension of the contract as stated above." It is said that thereafter the said Chief Commercial Manager Similarly purported to extend the said contract for the month of March & then again for April 1950. It is the applicants' case that they never accepted such conditional extensions & pointed out that their services were being continued from 1-1-1950 upon the same terms & conditions "in performance of the agreement for renewal as

aforesaid." The applicants then point out that by a letter dated 27-4-1950 the said Chief Commercial Manager purported to extend again the said contract:

"Further by one month only with effect from 1-5-1950 on the clear understanding that the contract will stand terminated with the expiry of the month of May 1950."

7. By this letter, according to the applicants, they were for the first time required to vacate the premises allotted to them and to remove all their properties immediately on the expiry of the month of May 1950. The applicants contend that the person acting as the Chief Commercial Manager had no authority either to extend the contract of 1947 or to terminate the same unless he was in fact authorized by the Governor-General-in-Council or the President of India, as the case may be. They contend that the said Notices purported to have been given by the Chief Commercial Manager including the one dated 27-4-1950 were void, inoperative & of no consequence & not binding Upon the applicants. On 4-5-1950 the applicants informed the then Chief Commercial Manager that they could not accept any extension of the contract as set out in his letter of 27-4-1950, that they were entitled to a renewal of their contract for a further period of three years from 1-1-1950 & that it was on the basis of such renewal that they had continued to render their services from 1-1-1950. They say that they paid rents upto March 1951 & that such rents were accepted by the Administration. According to them, the notice of 27-4-1950 was "mala fide", unreasonable, Unlawful & without any authority & was of no effect. On 24-5-1950 the applicants' solicitors addressed the following letter to the Chief Commercial Manager, East Indian Railway:

Dear Sir, Clts: Messrs. Carlsbad Mineral Water Mfg. Co. Ltd. of No. 14, Watkins Road. Howrah:

Sub: Ice & Aerated Waters.

Your letter No. CCM/C/22-C/PTI, dated 15th instant addressed to our clients abovenamed & received by them on the 17th following has been handed over to us with instructions to address you as follows:

It appears that the Administration has wrongfully refused to renew the contract for a fresh term without proper notice in spite of the subsisting agreement for such renewal. Furthermore, in spite of the fact that the Administration accepted rent from our clients in advance till March 1951 they have been wrongfully & unreasonably required to vacate the stalls & depots under their occupation. Our clients further understand that the Administration is preparing to evict our clients forcefully by the help of the police knowing fully well that such action on the part of the Administration will entail serious disturbance & consequent loss of the valuable properties belonging to our clients spread over the entire system.

In these circumstances please take notice that unless you forbear from taking such illegal step our clients will have no other alternative but to take protection

from a competent Court.

An early reply will much oblige.

Yours faithfully, Sd/- Roy Chowdhury & Co."

At the date of this application this letter remained unanswered. The applicants contend that in all the circumstances of the case it was clearly incumbent upon the respondent in his public character to forbear from ousting the applicants in contravention of the existing law of the land, that they have no other specific & or adequate remedy & that they are accordingly entitled to a writ of Mandamus, which would afford them adequate, expeditious & complete reliefs.

8. The respondent contests this application on several grounds. It is contended on his behalf that the application is misconceived inasmuch as it seeks to enforce an alleged agreement (which is denied) to enter into another agreement. It is contended next that the contract, if any, being one for personal services, cannot be specifically enforced. It is also said that there was no consideration for the alleged agreement & that the same was, in any case, void for non-compliance with the provisions of Section 175, Govt. of India Act. It is contended further that the acts complained of in the petition were purely executive or administrative, done "bona fide" in the interests of the Railway Administration, & that; most of the applicants' depots & stalls, with reference to which certain acts are required to be done by the respondent, are outside the State of West Bengal. It is also contended that the applicants' relief, if any is by way of a suit in respect of which notice u/s 80, Civil P. C, claiming Rupees twenty-six lakhs as damages has already been served. It is contended further that the contractors, who were appointed with effect from 1-6-1950, not having been impleaded as respondents, this application is bad for conjoiner of parties. It is contended lastly that the resolution of 15-9-1928 did not amount to an agreement & is not binding on the Railway Administration. As to the merits on facts, the respondent's case is that the services rendered by the applicants during the last few years have been unsatisfactory; that there were numerous complaints against the applicants both from passengers & Railway-servants; & that on investigation many of these complaints were found to have been well-founded. It is said that the contracts given to the other contractors from 1-6-1950 contain more stringent conditions than those which governed the contract with the applicants. As to the applicants' allegation that "depot rents" or license fees were accepted by the Administration, the respondent's case is that such payments were accepted by local officers under a misapprehension & that the applicants have refused to take a refund of the money so paid in spite of being asked to do so. In para. 16 of the affidavit of R. K. Bokil, Deputy Chief Commercial Manager (Goods), affirmed on 6-6-1950, have been set out the circumstances leading up to the termination of the applicants' contract. The allegations made there are based upon official records of the Administration. It would appear from this narrative that on 26-11-1949, the applicants addressed a letter to the Secretary, Railway Board, on the subject of certain difficulties which

they experienced in the execution of their contract. In this letter no mention was made that there had been an agreement to renew their contract, nor was any claim made that the applicants were entitled to permanent renewal of their contract. The notice u/s 80, Civil P. C. alluded to above contains no reference to any alleged agreement for extension or to any alleged preparations undertaken on the basis of any such agreement. The respondent's case is that in a letter dated 24-5-1950 written by the applicants' solicitors to the Chief Commercial Manager, East Indian Railway, it was alleged for the first time that there was a subsisting agreement for renewal of the contract. It is said that the applicants had ample notice of the fact that their contract was not going to be renewed & that they should have taken all necessary steps for removal of their properties. As to the extensions for the months of January, February, March & April, 1950, the respondent's case is that the applicants rendered their services during the said period as licensees & that they are liable to be ejected from Railway premises. Both the respondent & the said J. M. Das, by separate affidavits, say that the facts contained in the affidavit of R. K. Bokil are true as far as they are aware:

9. For the purpose of disposing of this application it is not necessary to refer to further facts. The applicants' claim to relief is founded upon the allegation that the Administration has wrongfully refused to renew the contract for a fresh term without proper notice in spite of the subsisting agreement for such renewal. This case is to be found in the letter of 24-5-1950 which their solicitors addressed to the Chief Commercial Manager, East Indian Railway. This case is also to be found in their petition, & in particular, in para 19 thereof. The relevant allegation in the said para is as follows:

"The Company never accepted such conditional extensions as aforesaid & pointed out that its services were being continued from 1-1-1950 upon the same terms & conditions in performance of the agreement for renewal as aforesaid."

It will be recalled that by a letter of 27-4-1950 the Chief Commercial Manager intimated to the applicants that their contract would stand terminated with the expiry of the month of May 1950 & that they should vacate the premises & remove all their properties immediately on the expiry of the month of May 1950.

10. The question which I have to decide is whether in these circumstances the applicants are entitled to any of the reliefs claimed in this petition. Even assuming the applicant's case to be true, it is my view that they are not entitled to a Writ of Mandamus or to an order in the nature of mandamus. Mr. I. P. Mukherjee on behalf of the applicants was conscious of this difficulty & argued that the facts stated in the petition made out a case of a license coupled with a grant & that the Administration was accordingly not entitled to evict the applicants. There is no reference to this case either in the petition or in any of the letters or documents produced by either of the parties.

11. The petition is entitled, "inter alia", "In the matter of Article 226 of the

Constitution of India & in the matter of the Specific Relief Act." Mr. Mukherjee argued that whatever might have been the position as to the purpose for which an order in the nature of a mandamus issued prior to the Constitution coming into force, the High Courts have now power under Article 226 of the Constitution to issue to any person directions, orders, or writs including writs in the nature of "habeas corpus", mandamus etc. for any purpose & that therefore an order in the nature of a mandamus could issue for the reliefs asked for in this petition. The language of Article 226 is very wide, & there can be no doubt that the Article concerned gives the widest possible powers to the High Courts within the ambit of that provision. Article 226 is as follows:

"(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Govt. Within those territories directions, orders, writs including writs in the nature of "habeas corpus", mandamus, prohibition, quo warranto & certiorari, or any of them, for the enforcement of any of the rights conferred by Part III & for any other purpose."

* * * * The two matters which call for discussion are: (1) the power of the High Court to issue any of the writs mentioned in the Article "to any person" & (ii) "for any other purpose". At first sight it would, appear that the language used in Article 226 imposes no limits whatsoever as to the category of persons to whom, & the purpose for which, orders or writs, including writs in the nature of "habeas corpus" mandamus, prohibition, quo warranto & certiorari or any of them may be issued by the High Court . But once the origin, & history of the High Prerogative Writs are remembered, it is clear that the powers given to a High Court under Art, 226 are to be exercised in accordance with the principles which governed the said writs. The power of the High Court to issue such a writ to " any person" can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. That a writ may Issue to an appropriate person for the enforcement of any of the rights conferred by Part, III is clear enough; from the language used. But the words "and for any other purpose" must mean "for any other purpose for which any of the writs mentioned would, according to well-established principles issue. That the respondent is a person to whom a writ of mandamus may issue cannot be doubted. The question is whether a writ pf mandamus could issue for the purpose alleged. In my view, a writ of mandamus cannot issue to compel a person to enforce an agreement. So far as Section 45, Specific Relief Act, is concerned, the applicants have to show that the doing or the forbearing, which it is sought to enforce, is, under any law for the time being in force, clearly incumbent on the respondent in his public character & that the applicants have no other specific & adequate legal remedy. To determine whether it is incumbent or not, regard must be had to the provisions of the Act under which it is said that the act ought to have been done or forborne. Even assuming that there was an agreement to renew the applicants" contract, I know of no statute under which it is incumbent on the

respondent to do what it is said be must be compelled to do. No one can suggest that in the circumstances of this case the applicants have no other specific & adequate legal remedy. Indeed, the applicants have already given notice u/s 80, of the Code of a proposed suit for damages for the alleged breach.

12. Having regard to Article 226 of the Constitution, considerations which would ordinarily arise in an application u/s 45, Specific Relief Act, may for the moment be ignored. The question then is - can this application nevertheless succeed if it is judged by the principles applicable to a writ of mandamus? The writ of mandamus was a high prerogative writ. In form it was a command directed to any person, corporation, or inferior court of Judicature requiring him or them to do some particular thing therein specified which appertained to his or their office & was in the nature of a public duty. As is stated in Section 4, p. 744 of Vol. IX of Halsbury's Laws of England (Hailsham Edition), the purpose of the writ was to supply defects of justice; & accordingly it issued to the end that justice might be done, in all cases where there was a specific legal right & no specific legal remedy for enforcing such right. That was the nature of the high prerogative writ of mandamus. It appears that the prerogative writ is no longer issued, its place being taken by an "order of mandamus". The conditions under which the order is issued in England are, however, the same as in the case of the prerogative writ: See Administration of Justice (Miscellaneous Provisions) Act, 1938, Section 7. The grant of an order or a writ of mandamus is, as a general rule, a matter for the discretion of the Court. It is said that it is not a writ of right & that it is not issued as a matter of course. Some of the conditions precedent to the issue of mandamus appear to be: (i) the applicant for a writ of mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought: (ii) the Court will not interfere to enforce the law of the land by the extraordinary remedy of a writ of mandamus in cases where an action at law will lie for complete satisfaction. In order, therefore, that a mandamus may issue to compel something to be done, it must be shown that the statute imposes a legal duty; (iii) the writ is only granted to compel the performance of duties of a public nature; (iv) the Court will, as a general rule, & in the exercise of its discretion, refuse a writ of mandamus when there is an alternative specific remedy at law which is not less convenient, beneficial & effective; (v) when mandamus is refused on the ground that there is another special remedy, it is a remedy at law that is referred to.

13. Judged by the above principles, the present application, in my view, must fail. The question whether rights under a contract can be the subject of a mandamus was considered in P.K. Banerjee Vs. L.J. Simonds and Another, . Gentle, J. on a review of the authorities, held that a (mandamus would not issue to enforce a contract. In this connection the learned Judge quoted the following observation of Patterson, J. in Ex parte, Pering (1836) 4 Ad. & El. 949: "We cannot grant a mandamus to a public Board and order them to carry a contract into effect." The learned Judge also cited "Commr. of Income Tax Bombay Presidency & Aden v. Bombay Trust Corporation Ltd. 63 I. A. 408 in which their

Lordships of the Judicial Committee observed as follows:

"Before mandamus can issue to a public servant it must therefore be shown that a duty towards the applicant has been imposed upon the public servant by a statute so that he can be charged thereon, and independently of any duty which as servant he may owe to the Crown, his principal." Gentle, J. proceeded:

"Their Lordships make no reference to a right under a contract being enforceable by mandamus; they clearly enunciate that the duty imposed upon a public servant, which can be the subject of mandamus, is a statutory duty."

In the case before me, the applicants cannot point to any such duty on the part of the respondents. What they seek to do, even assuming their case to be true, is to enforce the ordinary law of the land by the extraordinary remedy of a writ of mandamus. The duty alleged on the part of the respondent cannot possibly be a duty of a public nature.

14. As the applicants have given notice u/s 80 of the Code of a proposed suit against the Union of India, I do not propose to discuss the merits of their case on the facts, lest either party might be prejudiced. In resisting this application many matters have been raised by the respondent, but having regard to my view that a mandamus does not lie to enforce a contract, it is not necessary to decide these issues. An order in the nature of a mandamus is in the discretion of the Court. In this case the factum of an agreement, which is the foundation of the application, is in dispute, & I cannot in all the circumstances of this case, use my discretion in the applicants' favour. In my view, the applicants have failed to make out any case for the grant to them of any of the reliefs asked for.

15. In the result, this application is dismissed with costs.