

(1952) 07 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : Civil Miscellaneous No. 39 of 1952

Devi Dayal

APPELLANT

Vs

State of Patiala and East Punjab State Union and Another

RESPONDENT

Date of Decision : 17-07-1952

Acts Referred:

Constitution of India, 1950 — Article 226, 31

Citation : AIR 1953 P&H 9

Hon'ble Judges : Teja Singh, C.J

Bench : Single Bench

Advocate : N.C. Chatterji, Assisted by, Narain Budley and D.S. Nehra, for the Appellant; Chetan Dass and Moti Ram, A.A.G., for the Respondent

Judgement

Teja Singh, C.J.—This is a petition by one Devi Dayal of Delhi under Article 226 of the Constitution of India against the State of Patiala and the Director of Civil Supplies, for issue of a writ of mandamus or prohibition, or such other writ or order as the Court might deem proper in respect of the orders made by the respondents whereby five wagons of rock salt alleged to belong to the Petitioner were taken hold of and the Petitioner was directed not to remove them outside the limits of Patiala Union.

The facts briefly stated are as follows:

2. A number of wagons of rock salt were booked from Khewra in Pakistan to India somewhere in 1950. As they reached India after the expiry of the trade agreement that had been arrived at between India and Pakistan, they were frozen by the custom authorities of India. Later on six out of these wagons were allowed to proceed to Patiala and reached here in December, 1950. The Petitioner claims that he was the owner of these wagons and he wanted to take them to Calcutta, but the Station Master Patiala would not re-book them. This was perhaps because of the notifications issued by the Government of Patiala & East Punjab States Union on 11th February, 1951. By virtue of one notification (No. 11 of 11th Feb. 1951) it was declared that scarcity of salt including rock salt

existed in the State and it had become necessary for the public advantage to control supply of that commodity. The other Notification (No. 12 of 11th Feb., 1951) laid down inter alia that

no railway authority shall move or cause to be moved salt including rock salt by rail from any railway station within the State of Patiala & East Punjab States Union except under a written authority of the Government

and further

that no person, Bank or firm shall move or cause to be moved salt including rock salt whether by rail, road, water, or air, from any place within the State of Patiala & East Punjab States Union except under a written authority of the Government.

On 15th February, 1951 the Government of the State promulgated an order called the Rock-salt (Stocks in Railway Premises) Order, 1951, empowering the Director of the Civil Supplies to direct the Station Master of any railway station in the Union to deliver any stock of rock salt lying in the premises of the Station which is not booked to any station outside the State, to any person specified in the order. The order also laid down that

where any rock salt is delivered to any person in pursuance of the order made by the Director Railway Administration concerned shall be discharged from all liability in respect of such rock salt in so far as such liability arises from a compliance with such order,

and that the owner of the salt which is delivered in pursuance of an order of the Director may make an application to the Deputy Commissioner for payment of compensation and further that the Director or any other officer authorised by him in writing" may enter and search any railway pitsoises in the State and seize any stock of rock salt found in such premises.

On the same day the Government promulgated another order called the Rock Salt (Acquisition and Distribution) Control Order, 1951. The most important provisions of this Order were that no dealer shall sell or otherwise dispose of the stocks of rock salt held by him on the date of publication of the order in the official gazette, except under and in accordance with the directions of the Deputy Commissioner of the District in which such stocks are held, that no dealer shall take delivery of rock salt imported by him from outside the State unless the railway receipt in respect of such rock salt is countersigned by the Food & Supplies Officer and when delivery is taken of the salt after the railway receipt in respect of such salt is countersigned as mentioned above, he shall not sell it or otherwise dispose of except under and in accordance with the directions of the Deputy Commissioner and that for the more effective enforcement of the provisions of the Order the Director may either by himself or by some other person duly authorised by him in this behalf, among other things, seize any rock salt found in any person's possession or in any vehicle, in respect of which he has reason to believe that contravention of any of the provisions of the Order has

been, is being or is about to be committed.

After the promulgation of the above order and by virtue of the powers given to the Director thereby he took hold of the Petitioner's wagons as well as a number of other wagons that were lying on various railway stations in the Union and addressed a letter to the Deputy Commissioners of all districts with the exception of Mohindargarh and Kandaghat, giving directions for distribution of salt. This letter (No. Rock/Salt/257 to 262/CS Dated 28th July, 1951) a copy of which has been placed on the record by the learned Counsel for the State, goes to show that action had been taken in respect of 73 wagons in all and they were all lying sealed at various places. The main directions were:

1. That the distribution was to start at once.
2. That the distribution of salt to the consumers was to be made by the consignees of wagons recognised by the department.
3. If the consignees were unable to undertake the distribution it was to be entrusted to the agents appointed by the consignees and approved by the Deputy Commissioners.
4. That the consignees or their approved nominees would get at the retail stage a price of -/4/3 per seer minus a wholesale margin of 10 per cent which was to be deposited in the treasury, before the distribution was taken in hand.
5. That the nominees would have to enter into an agreement with the Government for, selling the salt according to the instructions given to them.
6. That salt would be distributed against ration cards at a fixed scale.
7. That if a consignee and his approved nominee was not prepared to lift the salt for sale according to the instructions of the department the Deputy Commissioner was to take steps to appoint his own nominee.
8. That a strict supervision over the distribution of the salt was to be kept and
9. That the Procurement and Civil Supplies Officers and the Enforcement Stair was to be asked to see that salt did not go to the black-market and it was to be made clear to the distributors that their security was liable to be forfeited in whole or in part the moment any maldistribution on their part came to light.

3. it was under these conditions, and probably because of them, that the Petitioner approached the Government for permission to take his wagons to deficit areas of the Union and to dispose of the salt in accordance with the directions of the Government. The first letter he addressed to the Director of Civil Supplies is dated 13th October, 1951 and the second is dated 23rd October, 1951. The contents of the second letter go to show that the Petitioner was aware of the action that the Government had taken. The relevant parts of it read as follows:

I beg to approach with the request that there are 23 wagons of rock salt in

District Patiala. Out of these 23 wagons about 12 wagons have been allotted to District Patiala for distribution and the rest 11 wagons are considered to be surplus at Patiala and are being allotted by your office to the other areas within Pepsu where there is no rock salt.... I applied to your office to allow me to move my 11 wagons from Patiala to other deficit areas within Pepsu. But permission for only four wagons has been granted to me...and when I am prepared being the consignee, to move my stocks to the deficit areas and to distribute there according to Government conditions, the question of appointing any other person than the consignee and to get the rock salt distributed through him does not arise....

It appears that the Petitioner's request was granted and he was allowed to move some of the wagons from Patiala to the deficit areas on his giving an undertaking and furnishing security for performance of the conditions laid down by the Government. Two documents were executed by him, one on 25-10-1951 and the other on 14-11-1951. The former is related to four wagons and the latter to two. Copies of both these documents have been placed, on record by the Petitioner and they are admitted by the respondents. Two things are clear from them. One that the Petitioner claimed to be the owner of the wagons and this claim of his was admitted by the Government and second that the Petitioner acknowledged the right that the Government had acquired in the wagons by having requisitioned them and agreed to hold them as a trust for a specific purpose i.e., for being distributed in accordance with the Government instructions.

4. The Petitioner alleges that he took delivery of the salt from the respondents in November, 1951, disposed of some of it and was going to dispose of the rest when the respondents, about a fortnight before he put in this petition, seized his stock and restrained him from dealing with it. The order of the Director of Civil Supplies which appears to be responsible for this is contained in letter No. 653/Sm dated 28-4-1952 addressed to all the Deputy Commissioners. After referring to the fact that five wagon loads of rock salt acquired by the Pepsu Government were delivered to one Devi Dayal Aggarwal (Petitioner) for transporting it to various places the letter proceeds:

It has now come to the notice of this department that the above referred person has removed the bulk of the salt surreptitiously without reference to this office to some place outside Patiala. The quantity still lying in the above said premises is to be taken possession of by this department as the godowns are locked and the possession is with Devi Dayal Aggarwal. It is requested that some Magistrate may kindly be deputed to accompany Captain Sardar Metiar Singh Asstt. Commissioner Rationing and Sardar Jagdish Rai Garg District Food & Civil Supplies Officer to the Patiala Hotel so that the salt may be taken possession of by breaking open the godowns and making necessary inventory and weighing of the contents in the presence of the Magistrate.

Both sides are agreed that, in compliance with this letter two godowns of salt in the Patiala Hotel were taken possession of by Captain Mehar Singh and S.

Jagdish Rai Garg mentioned therein.

5. The position taken up by the Petitioner is two-fold. First he urges that the various notifications issued and the orders promulgated by the Government were illegal, ultra vires and void, because they were not within the power and authority of the Government to make or promulgate, and they contravened the provisions of Article 31 of the Constitution of India, inasmuch as they violated the fundamental right of the Petitioner's property. Secondly he urges that the documents A and B executed by the Petitioner in favour of the Government were void and inoperative, because they were executed under fear of prosecution and coercion etc.

6. The petition is opposed by the respondents on various grounds, the most important of which is that since it is open to the Petitioner to seek relief against the respondents by a regular suit, this Court should refuse to move under Article 226 of the Constitution.

7. It will be clear from the brief survey of events given above that the various notifications and orders, the legality of which the Petitioner questions, were made and promulgated more than a year ago and not only the Petitioner did not raise any objection to them, but in a way he even admitted the legality of them, because in the documents (A and B) that he executed on 25th October, 1951 and 14th Nov. 1951 he acknowledged the rights that the Government had acquired by requisitioning his wagons, I do not mean to say that merely because the Petitioner executed the said documents wherein he admitted that his wagons had been requisitioned by the Government, he is estopped from questioning the legality of the Order under which the action was taken, but I cannot help observing that his conduct has a very important bearing on the question whether he should be allowed to have the matter decided in this petition. Assuming for the sake of argument that the Order promulgated by the Government under which the Petitioner's wagons were first requisitioned was ultra vires or that it violated one of the fundamental rights guaranteed to the Petitioner by the Constitution of India, can it be said that it was not open to the Petitioner to acquiesce in the requisition or to accept it as valid. After all when a valuable right is guaranteed to a person either, by the Constitution or by some other law, it is ordinarily open to him to waive that right, unless there be an express or implied provision to the contrary.

8. As regards the plea that the Petitioner executed the two documents under coercion, etc., on the face of it, there does not appear to be any force in it. It is true that the necessity for their execution arose because the Government would not release the wagons and would not allow the Petitioner, or for the matter of that any consignee of the wagons, to move them out of Patiaia unless he agreed to take the salt to the places where the Government wanted it to be taken and to distribute it according to the directions of the Director of Civil Supplies, but the letters addressed by the Petitioner to the Government, to which a reference has been made above, show that the initiative for the proposal came from the

Petitioner himself and he executed the documents with his eyes open. He has put in an affidavit to the effect that the reason why he executed the documents was that he had no choice in the matter and he felt that unless he did so he would be deprived of his property, but by the very nature of things no importance can be attached to it. Moreover, I am of the opinion that a petition under Article 226 of the Constitution for a declaration that the contract was void because of duress, etc., is hardly the correct remedy and the proper course for the Petitioner was to go to a Civil Court and file a regular suit. I am supported in this view by a Bench Decision of the Patna High Court - Bukhtiarpur Bihar Light Rly. Co. Ltd. Vs. State of Bihar and Others, I agree with Mr. N.C. Chatterjee, learned Counsel for the Petitioner, that the facts of that case were somewhat different and the relief claimed by the Petitioner in that case could have been refused for other reasons, but the legal aspect with which we are concerned here was also considered by the learned Judges and this is what they observed after referring to some of the authorities cited, by the Petitioner's counsel:

None of those decisions are an authority for the proposition that a party who has entered into an agreement with another party can ask a superior Court for a writ of mandamus under Article 226 when illegally dispossessed by the latter party in breach of the agreement, instead of going to the ordinary Civil Court of competent jurisdiction for the necessary reliefs. I have great doubt if Article 226 of the Constitution can be invoked in a case of this nature. The aggrieved party in this case can get an effectual and adequate remedy by an ordinary action in the Civil Court-for enforcement of the agreement, for recovery of possession and damages, if any. The power to issue writs under Article 226 of the Constitution is an extraordinary power, & in several recent decisions of this Court it has been held that where there is an alternative adequate remedy, this Court will be reluctant to exercise its powers under Article 226.

9. Then, after quoting paragraph 1269 of Halsbury's Laws of England, Volume IX, the learned Judge added:

I can see no reason for thinking that the alternative legal remedy available to the aggrieved party in this case is less convenient, beneficial and effectual, except perhaps for the fact that the aggrieved party will have to pay fairly heavy court-fees for bringing an action in the ordinary Civil Court.

10. Mr. Chelan Dass, learned Counsel for the respondents, also cited a single Bench decision of the Calcutta High Court - Dubar Goala and Another Vs. Union of India (UOI) and Others, in which it was held that it is inappropriate to grant a declaration in an application under Article 226 that a particular contract is illegal and therefore unenforceable because it contains a provision for forced labour. It was also held that even if an. agreement had in fact been entered into under duress the remedy would be by an action and not under Article 226 of the Constitution. I respectfully follow these decisions and hold that it would not be proper to afford him any relief on the plea of duress, etc., in a petition under Article 226 of the Constitution for issue of a writ.

11. The last point urged by Mr. N.C. Chatterjee was that assuming for the sake of arguments that the Petitioner was bound by the documents that he executed and he violated the terms on which the wagons of salt had been given to him, the respondents had no authority under law to take hold of the wagons. He also argued that Since the documents executed by the Petitioner as well as the bonds given by the persons, who stood surety for the Petitioner, clearly provided that in case of any breach of conditions on the part of the Petitioner the sureties would be liable to pay to the Government the amounts mentioned in their respective bonds, the only course open to the Government was to proceed against the sureties. In my judgment the right given to the Government to proceed against the sureties does not debar them from preventing the breach of the contract and in taking hold of the salt, because the Petitioner's possession of the wagons was on behalf of the Government and he was not free to move or deal with them as he liked. In addition I may point out that no one can claim a writ of mandamus as a matter of right and the grant of such a writ is in the discretion of the Court. This is the view that I have taken in several cases and is supported, inter alia, by the latest Bench decision of the Patna High Court mentioned above. In order to decide whether the discretion should be exercised in his favour, we must take into consideration his conduct. He approached the Government with the request that his wagons should be released and assured them that he would take them to deficit areas and distribute the salt according to the instructions of the Government. It was on this assurance that the wagons were released and he was allowed to move them, but as soon as he got hold of them he changed his mind and made an effort to take the wagons to the places to which he had no right to take. The respondents' position is that the Petitioner's object was to sell the salt in black-market and to make illicit money. The probability is that this contention is well-founded, but even if it be not, it cannot be denied that the reason why the Petitioner is not prepared to abide by the terms of his undertakings is that he wants to make more money than he could do by sticking to his undertakings.

On the other hand, the main object of the Government in insisting that the wagons should be taken to deficit areas and the salt should be sold according to the fixed rate is to benefit the consumer. Mr. Chatterjee argued that when the action taken by the Government is illegal and contravenes the fundamental rights guaranteed by the Constitution it cannot be upheld because the motive underlying the action is laudable. I am inclined to think that this would be a valid argument in a civil suit in which the Court is called upon to decide the questions in dispute on their strict merits but not in a case of this kind where the remedy sought by the Petitioner is in the discretion of the Court.

12. For all these reasons the petition fails and is dismissed with costs. Counsel's fee Rs. 200/-