
(1991) 11 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 3014 of 1990

Doki China Gurubalu and Sons and Co.	APPELLANT
Vs	
State of Orissa and Others	RESPONDENT

Date of Decision : 13-11-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226

Citation : AIR 1992 Ori 189 : (1992) 73 CLT 468

Hon'ble Judges : R.C. Patnaik, J; D.M. Patnaik, J

Bench : Division Bench

Advocate : Debasis Das, S. Mohanty, P.K. Mishra, N.C. Pati, A.K. Nanda, B.K. Nayak and B. Sachoo, for the Appellant; A.G. and Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—The petitioner, a partnership firm, has filed this writ application for the invalidation of the order of Government terminating leases for collection of tamarind in Rayagada and Narayanpatna ranges of Rayagada Division, as per Annexure-5 dated 18-6-90 and the consequential orders/directions given by the Divisional Forest Officer, Rayagada Division, as per Annexure-5/a.

2. The petitioner engaged in the business of procuring tamarind and manufacturing tamarind kernal established a unit known as Messrs Kalinga Tamarind Kernel products for the manufacture of roasted Dal out of tamarind seeds. The product is utilised by textile mills and jute mills for use as a paste. Pursuant to the Industrial Policy Resolution dated 31-7-1980 envisaging grant of long term leases for collection of raw materials for establishment of forest based industries, the petitioner applied and the opposite party No. 1 State granted a lease for three years for collection of tamarind and tamarind seeds in the Rayagada Forest Division. The grant was challenged by several persons in this Court in O.J.C. No. 1357 and 1786 of 1982 and O.J.C. No. 67 of 1983 but was

sustained by this Court and special leave was refused by the Supreme Court. In 1984, the lease for collection of tamarind and tamarind seeds in the Rayagada Division was renewed till 1-10-1989 as per order dated 27-9-84 which has been annexed as Annexure-2. The petitioner was granted lease for collection of tamarind and tamarind seeds in the Narayanpatna Range for the period from 1-10-1988 till 30-9-1991 as per Annexure-3 dated 21-2-89. The lease for collection of tamarind and tamarind seeds which as per Annexure-2 had been granted till 1-10-89 was renewed by order dated 20-1-1990 for five years, i.e. from 1-10-89 to 30-9-1994. That related to the Rayagada Division. Pursuant to the leases granted, the petitioner was carrying on its business by setting up a manufacturing unit to manufacture tamarind seed dal and it is asserted that it has not violated any term or condition of the leases nor has it committed any default in payment of royalty.

3. As a bolt from the blue, the Range Officer, Narayanpatna Range, passed on to him an order issued by the Government terminating the leases and the direction of the Divisional Forest Officer restraining him not to operate within the area any more and to take further steps.

The petitioner has alleged that the order of termination was passed behind its back. It was never intimated if it committed any default or violated any term or condition of the leases, or the leases granted in its favour were intended to be cancelled. It was never heard in the matter. Hence, the principles of natural justice were violated, It is averred that the royalty was fixed as per Annexure-4 while renewing the lease for collection of tamarind in Rayagada Range and it had agreed to the terms and conditions imposed therein and work order had been issued to it. The leases, conferred on it valuable civil rights and pursuant to the leases it had incurred lot of expenditure by investing considerable funds in establishing a unit, engaging labour and purchasing equipments. It has already established a cold storage with the financial help taken from the Orissa State Financial Corporation because under one of the leases, it could operate till 30-9-1994 and under the other till 30-9-1991. The order of termination is, therefore, allege to be arbitrary, unreasonable and mala fide.

4. In the counter affidavit, the opposite parties have indicated the reasons for the terminations of the lease which are as under:

(a) The General Secretary, Adibasis and Harijan Sangha, Rayagada, objected to the grant of lease- of tamarind in favour of the petitioner and submitted representations to the Chief Minister, Orissa and the Minister of State, Forest, alleging that the petitioner was making payment to the tribals for the tamarind and tamarind seeds at a rate much lower than that was previously paid by the T.D.C.C;

(b) the petitioner was smuggling tamarind to Andhra Pradesh for the purpose of selling the same at higher rate;

(c) the lease enabled the petitioner to enter into reserved forests to smuggle

bamboo and timber there from;

(d) the latest Government Policy with regard to collection of minor forest produce was to eliminate private parties from the trade and to entrust the same to T.D.C.C. and the Tribal Co-operative Societies Corporation; and

(e) the T.D.C.C. and H & T.W. Department moved the Government for grant of Rayagada and Narayanpatna Ranges of Rayagada Division to the T.D.C.C. in place of the petitioner in the interest of the tribals.

5. In support of the policy decision of the Govt, Annexure-C/1 has been filed. But that decision is prospective in character and does not eliminate existing leases, which can be terminated only in accordance with law, The minutes of discussion with the Chief Minister dated 21 -3-90 was thenceforth to be the policy of the Government. It did not touch the existing leases and, secondly, as it has been urged in the counter affidavit, if there were allegations against the petitioner that it had violated the terms and conditions of the leases and, therefore, the leases were to be cancelled, it should have been heard in the matter before any action was taken. Very valuable civil rights were acquired by it pursuant to the orders of Government granting the two leases in respect of the two areas. Ex parte statement of the secretary of Adivasi and Harijan Sangha should not have been treated as true and sacred. Even if those were true, law obligated affording an opportunity to the petitioner. Again if the petitioner had not established a unit, that matter should have been gone into after giving if an opportunity of hearing. There could be no ex parte cancellation of leases without affording an opportunity. There could be no decision behind its back that it had violated the terms and conditions of the leases. From the allegations made in paragraphs 8 and 11, it appears that what prevailed upon the Government was the allegations made by the secretary of the sangha and the plea of the T.D.C.C. to take the areas on lease for itself.

6. It is not disputed that the petitioner was not given an opportunity of hearing before the leases granted in his favour were terminated. That grossly violated the principles of natural justice and was, therefore, ran foul of and contravened Article 14, the decision being unreasonable, unfair and arbitrary. Though there is one sentence in the counter affidavit that no lease had been granted by the Government in favour of the petitioner, that point was not pressed at the hearing inasmuch as throughout the counter the stand of the Government has been that the leases had been granted to the petitioner and had been cancelled as it violated the terms and conditions of the leases.

7. The learned Additional Government Advocate has, however, urged that the rights sought to be enforced by the petitioner being contractual in nature, an application under Article 226 was not maintainable and relied upon two decisions of the Supreme Court Radhakrishna Agarwal and Others Vs. State of Bihar and Others, and The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, In both the cases it was held that an application under

Article 226 was not maintainable for enforcement of an obligation flowing from a contract. In *Radha-krishna's* case (supra) it was held that the allegations involved pure question of alleged breach of contract and, therefore, no writ or order could issue under Article 226 in such cases to compel the authorities to remedy a breach of contracts pure and simple. But in that case the allegations on which a violation of Article 14 could be based were neither properly made nor established. In *Bihar Estates* case (supra), a direction for renewal in favour of respondent No. 1 was not allowed to be operative by subsequent decision of the Government to settle the same with the appellant-society. That was a case where a mandamus was sought directing the State Government to execute the lease in favour of the respondent the petitioner in the application under Article 226. So, in that context, the Supreme Court said that mandamus could issue to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limits of their jurisdiction.

8. The decision in *Radhakrishna's* case (supra) has been distinguished by the Delhi High Court in *Ram Ratan Gupta v. Union of India* AIR 1984 Delhi 224 vide para 7 and by the Jammu & Kashmir High Court in *R.B. Jodhamal Bishen Lal and Others Vs. The State of Jammu and Kashmir and Others*, vide paragraph 22. It is emphasised in *Jodhamal's* case (supra) that the Supreme Court without expressing any opinion on the first two categories of cases formulated by the Patna High Court, gave its opinion on the third category where there was no question of exercising any statutory power and the action of the Government was clearly referable to a term or condition of the contract. Inasmuch as the petitioner before the Jammu & Kashmir High Court did not seek the remedy basing its case on any terms of the contract, but challenged the executive fiat of Government, *Radhakrishna's* case was held to have no application. As we understand, in *Radhakrishna's* case relief under Article 226 of the Constitution for violation of Article 14 was refused because that case involved adjudication of disputed questions of fact which were to be investigated and found. Evidence was necessary to be taken and assessed Counsel for the State also referred to a decision of this Court, to which one of us was a party, in the case of *Aravindalal Meheto v. N. A. C. Titilagarh* 60 (1985) CLT 582. That was a case of cancellation of lease for violation of terms and conditions and relief was sought through an application under Article 226. In that context, this Court, relying upon *Radhakrishna's* case and *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, held that since the contract was not a statutory contract, an application under Article 226 for mandamus was not maintainable. But it is worthwhile to notice that this Court also considered if the principles of natural justice were Violated and on facts held that there was compliance with the principles of natural justice.

We would now refer to a decision of the Supreme Court in *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, where the argument for the State that the dispute arose out of the terms of the contract and hence writ application was

not maintainable was turned down with the following observations (at page 206):

".....By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to petition by way of a writ, in view of the judgment of this Court in K.N. Guruswamy Vs. The State of Mysore and Others, there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power."

9. In our view, the present case comes even within the ratio of Radhakrishna's case. The Supreme Court did not categorically hold that an application under Article 226 for enforcement of fundamental rights under Article 14 was not maintainable in any circumstances, where the right flowed from a contract. Had it so held, it would not have gone into the question that the petitioner in that case had not laid the foundation by appropriate pleadings to make out a case of violation of fundamental rights under Article 14. Hence, in our view, it cannot be said as an absolute rule of law, that in no circumstances, a writ application for issue of mandamus can lie if the right involved flows from a contract. That would be circumscribing the extraordinary jurisdiction of this Court which was intended by the Founding Fathers to function as the sentinel always in the alert. Where without any authority of law, by an executive fiat, rights are trampled arbitrarily, this Court cannot and should not shut its door to the aggrieved party. Where valuable civil rights are taken away without any authority of law or by violation of principles of natural justice, this Court cannot fold its hands and look on as an helpless onlooker asking the party to approach the civil Court. Where there are disputed questions of fact, evidence is to be led by the parties and it would be necessary to scan and assess the same, it is a different matter. The ultimate remedy of suit should be followed. Whether extra ordinary jurisdiction should be exercised in a matter is in the discretion of this Court. Where a person has been deprived of his valuable civil rights by executive fiat without any justification in law, it would be futile to contend that this Court should refuse to exercise jurisdiction under Article 226.

10. We have considered the decision of the Govt. and we are of the view that the allegations which were accepted by the Government ex parte without giving the petitioner an opportunity of hearing did not only cast a stigma on it but affected its civil rights of which it cannot be deprived without following the principles of natural justice. We are not deciding whether in fact the petitioner violated the terms and conditions but we quash the order on the ground, namely, for violation of the principles of natural justice.

11. We may also notice in this connection a decision of this Court in Hrudananda Patra and Another Vs. Revenue Divisional Commissioner Central Division and Others, where various decisions of the Supreme Court were taken note of and it

was held that a monopoly could not be created by an administrative order. It could be created only by law made in the interest of the general public or in favour of the State or a corporation owned and controlled by the State. A co-operative society is neither a State nor owned or controlled by the State. Hence, no monopoly can be created in respect of the co-operative society. The stand taken in the counter-affidavit was unsustainable on this ground also.

12. In the result, we quash Annexures-5 and 5/1 and allow the writ application. There would be no order as to costs.

D.M. Pathaik, J.

13. I agree.