
(1989) 08 AHC CK 0031
In the Allahabad High Court
Case No : Civil Misc. Writ No. 12147 of 1989

Jagat Bahadur

APPELLANT

Vs

The District Supply Officer, Allahabad

RESPONDENT

Date of Decision : 08-08-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32, 39, 39(4)
Contract Act, 1872 — Section 23, 72

Citation : AIR 1990 All 113

Hon'ble Judges : D.P.S. Chauhan, J;A.N. Varma, J

Bench : Division Bench

Advocate : Dinesh Dwivedi and Rakesh Dwivedi, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—The petitioner was an authorised retail distributor appointed by the District Supply Officer, Allahabad, for selling Government food grains and levy sugar under a written agreement containing the terms and conditions of retailership. He is aggrieved by the order dated June 22, 1989 passed by the District Supply Officer, Allahabad, terminating his retailership on the ground that in view of the facts stated in that order it would be against public interest to allow the petitioner to sell Government foodgrains.

2. The order is challenged broadly on two grounds. One, that clause (16) of the agreement under which the impugned action has been taken is violative of Art. 14 of the Constitution of India in that it vests in the District Supply Officer an unbridled and arbitrary power to terminate the retailership without assigning any reasons. Two, the impugned order visits the petitioner with civil consequences and consequently the same is liable to be quashed inasmuch as it was taken without complying with the principles of natural justice.

3. Having given the contentions our careful and anxious consideration, we find no merit in either of them. Before, however, we deal with these submissions we may

briefly set out essential facts. For the purpose of distribution and sale of Government food grains and other essential articles the Government has authorised the District Magistrate/District Supply Officer/Town Rationing Officer to appoint agents called the authorised retail distributors. The appointment is made by means of a written agreement executed by one or the other officers mentioned above as well as the agent. The terms and conditions of appointment of these agents have not been laid down under any statutory order. The appointment as an agent is, therefore, regulated entirely by the terms and conditions incorporated in the agreement as has been consistently ruled by this Court right from the year 1975 (See *Shitla Prasad Vs. M. Saidullah and Others*, ; *Raj Kumar Sheo Kumar v. ADM, Civil Supplies* 1981 All LJ 261; *Prakash Chand Srivastava v. State of U. P.* 1983 All LJ 1139 as well as the decision in Writ Petition No. 77 of 1981 which has also been affirmed by the Supreme Court. Clause (16) of the agreement provides that the District Magistrate/ DSO/ TRO shall have the right to terminate the agreement at any time without assigning any reason therefore. Relying on this clause the District Supply Officer, Allahabad, has, by the impugned order, terminated the agency of the petitioner. The order states that on June 21, 1989 at 9.30 a.m., the Additional Commissioner (Shops), Allahabad, accompanied by two Supply Inspectors, viz., Prabhajil Singh and B. P. Rastogi made a surprise inspection of the petitioner's shop. Upon inspection serious irregularities were discovered in the petitioner's sale register. The instances cited are that under the signature of the same individual sugar had been supplied in the name of several card holders, Likewise, on the same page of the register sugar is shown to have been distributed to twelve persons but in the column of signatures of the card holders only eight persons had signed. The register further discloses that from several card holders prices had been charged in excess of the control price fixed by the Government. The order then goes on to state that it was apparent that the petitioner was misusing the distributorship. The sale register was accordingly taken into custody by the aforesaid officers. Thereupon the petitioner with the help of certain anti-social elements got the register snatched from the custody of these officers and thereby obstructed the officers from performing their duties. An FIR of the incident was accordingly lodged by the officers with the police. On these facts the agreement of the petitioner was cancelled.

4. We then revert to the two contentions urged by the learned Counsel. Both these contentions are being disposed of together as they are in a way interconnected. The nature of the agreement and the power of the District Magistrate to terminate, the same under Cl. (16) thereof have been the subject of exhaustive consideration in several decisions of this Court cited above. The earliest of them is a Full Bench decision in the case of *Shitla Prasad Vs. M. Saidullah and Others*, . This case was concerned with the termination of the agreement entered into between the petitioners and the District Magistrate for the distribution and sale of levy sugar. After examining the nature of the right of a retailer to sell levy sugar, their Lordships held that the right of the petitioner

was founded in a contract and that the same was regulated by the terms and conditions incorporated in the agreement clause(16) whereof specifically provided for revocation of the agreement without assigning any reason. It was further held that the petitioner had no legal right to trade in levy sugar relying on the decision of the Supreme Court, reported in *S. Chandra Sekharan and Others Vs. Govt. of Tamil Nadu and Others*, . The infringement, if any, of the petitioner's right was merely that of a contractual right and consequently there was no question of following the principles of natural justice.

5. In the case of *S. Chandra Sekharan* (supra) their Lordships had occasion to consider an identical situation. There the petitioners before the Supreme Court Had been appointed retailers by the Collector under a written agreement for the distribution of levy sugar. The agreement contained a clause under which the Collector was authorised to terminate the agency or distributorship of the retailer. Subsequently the State of Tamil Nadu formulated a policy of eliminating retailers dealing in controlled sugar and replacing them by model shops and co-operative societies to ensure equitable distribution of sugar. The private retailers challenged the order of the Collector terminating their retailership. Repelling the contention their Lordships of the Supreme Court ruled that the relationship between the State and the petitioners was purely contractual and that the contract itself provided for termination of the agency. Their Lordships further ruled that the petitioners had no legal right to trade in levy sugar.

6. The nature of the rights of the retailers appointed by the Collector under written agreements to distribute Government food-grains and levy sugar and the effect of the termination of their agency by the Collector under clause (16) thereof again came up for consideration before a Division Bench of this Court in the case of *Raj Kumar Sheo Kumar v. ADM (Civil Supplies)*, reported in 1981 All LJ 261 . The Bench relying on the Full Bench decision of this Court in the case of *Shitla Prasad Vs. M. Saidullah and Others*, and *S. Chandra Sekharan and Others Vs. Govt. of Tamil Nadu and Others*, held that the rights of the retailers were purely contractual and that inasmuch as the agreement itself contained a clause for termination of the contract without assigning any reasons, no question of a breach of principles of natural justice arises when the contract under which the petitioners were working is terminated. The decision of the Supreme Court in the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, which was cited by the petitioners was distinguished by the Division Bench on the ground that the decision applied to a stage of granting a particular privilege or other benefit. However, once concluded contract has come into existence by the execution of a written agreement by the citizen and the Slate Government, the matter is governed wholly by the terms and conditions incorporated in the agreement. The same reasoning was adopted by another Division Bench of this Court in *Writ Petn. No. 77 of 1981* and other connected petitions which was called upon to consider the same clause, namely, clause (16) regarding the right of the Collector to terminate unilaterally the retailership of the agent appointed to distribute Government food grains. The petitioner

challenged the decision before the Supreme Court which dismissed their special leave petitions with the following observations:

"Having considered Sri Gupta's submissions carefully and the decisions cited by him we are of the opinion that there is no substance in these Special Leave Petitions. We concur in the reasons given by the High Court for upholding the impugned orders by the Government of Uttar Pradesh in order to gradually replace all the existing Fair Price shops. Accordingly, we confirm the judgment of the High Court and dismiss the S.L.Ps."

7. The next decision of this Court expressing the same view is reported in the case of Prakash Chand Srivastava 1983 All LJ 1139 (supra). The Bench stated the law thus (at p. 1142 of All. L.J.):

"We find no merit in the above contention. The submission was considered at some length by two Division Benches of this Court, one by which the abovementioned bunch of Writ Petn. No. 77 of 1981 and other was disposed of and the other reported in 1981 All LJ 261 Raj Kumar Sheo Kumar v. Addl. District Magistrate (Civil Supplies). Both these Division Benches relied on a Supreme Court decision in the case of S. Chandra Sekharan and Others Vs. Govt. of Tamil Nadu and Others, and a Full Bench decision of this Court in Shitla Prasad Vs. M. Saidullah and Others, in both of which it was held that the appointment of retailers as authorised distributors for selling essential commodities was governed by the terms and conditions of the agreement under which the appointment was made and that consequently the rights claimed by such retailers were essentially contractual in nature. It was held that such retailers when replaced by the Government by co-operative societies in pursuance of any policy decision so as to ensure a more equitable and fair distribution of essential commodities through Government fair price shops have no legal right to continue to act as agents of the Government so as to be able to claim reliefs either under Art. 32 or 226 of the Constitution.

The preponderating view of this Court thus seems to be that the appointment of a dealer as an authorised distributor of Government food grains and other essential commodities is regulated and controlled by the terms and conditions of the agreement under which the dealers were appointed as authorised distributor and consequently the relationship between the Government and such dealers is purely contractual."

8. We entirely agree with these observations.

9. We thus find that there is overwhelming authority in support of the view that the right of retailers appointed to distribute Government foodgrains is wholly contractual in nature and that the same can be terminated unilaterally by the Collector without assigning any reason. The validity of a provision in the written agreement to terminate the retailership of these distributors has been upheld by this Court as well as by the Supreme Court in the case cited above. The issue sought to be raised by the learned Counsel for the petitioners is hence not res

integra but one which stands foreclosed by a series of decisions of this Court and of the Supreme Court. In the case of *S. Chandra Sekharan and Others Vs. Govt. of Tamil Nadu and Others*, , the Supreme Court was considering an identical situation and the provision in the agreement under which the petitioners were appointed agents by the Collector was in pari material with clause (16) of the agreement with which we are concerned. As mentioned above, the Supreme Court ruled that the rights of the parties were purely contractual and that the contract of agency itself having provided for termination of the agency, the action of the Collector in terminating the agency could not be validly challenged. Indeed the Supreme Court went on to hold that the petitioners did not have any legal right to trade in levy sugar.

10. It must be remembered that the agency in question is one which is concerned with the distribution of Government food-grains and other essential commodities. The basic purpose sought to be achieved by appointment of these distributors under agreements and having a clause therein authorising the District Magistrate to terminate the agency at any time without assigning any reason seems to be fair and equitable distribution of foodgrains and other essential commodities to the people. The object is designed to promote a Directive Principle of State Policy enshrined in Art. 39(b) which provides that the State shall in particular, direct its policy towards securing the distribution of the material resources of the community as to best subserve the common good.

11. The system under examination is, in our opinion, designed to ensure that the work of distribution of so vital a thing as Government food grains and other essential commodities is not hampered in the slightest degree. It was for this reason that the District Magistrates were armed with the power to terminate the agency without assigning any reasons. Such an agency has a rule which is inherently different from the rights and activities of dealers concerned with the sale of food grains and other commodities derived from private sources under licenses granted under various Control Orders.

12. Once, therefore, we reach the conclusion that the rights of the parties have crystallized into a concluded contract the relations between the parties must be governed wholly by the terms of the contract and not by any constitutional provisions as has been ruled by the Supreme Court in their latest pronouncement in the case of *Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others*, . Dealing with a similar problem their Lordships of the Supreme Court summed up the law thus (at pp. 1082-83 of AIR):

"Thus the factual position in this case clearly and unambiguously reveals that the respondents after voluntarily accepting the conditions imposed by the BDA have entered into the realm of concluded contract pure and simple with the BDA and hence dents can only claim the right conferred upon them by the said contract and are bound by the terms of the contract unless some statute steps in and confers some special statutory obligations on the part of the BDA in the contractual field. In the case before us, the contract between the respondents

and the BDA does not contain any statutory terms and/ or conditions. When the factual position is so, the High Court placing reliance on the decision in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, has erroneously held:

"It has not been disputed that the contesting opposite party is included within the term "other authority" mentioned under Article 12 of the Constitution. Therefore, the contesting opposite parties cannot be permitted to act arbitrarily with the relevance. Where an authority appears acting unreasonably this Court is not powerless and a writ of mandamus can be issued for performing its duty free from arbitrariness or unreasonableness."

"This finding, in our view, is not correct in the light of the facts and circumstances of this case because in *Ramana Dayaram Shetty's* case there was no concluded contract as in this case. Even conceding that the BDA has the trappings of a State or would be comprehended in "other authority" for the purpose of Article 12 of the Constitution, while determining price of the houses/ flats constructed by it and the rate of monthly installments to be paid, the "authority" or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. In this sphere, they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e. BDA in this case) in the said contractual field."

The dictum fully applies to the present case. The rights of the parties are governed by the terms of the contract which indisputably provides for the termination of the contract by the District Magistrate at any time without assigning any reasons. And if the complaint is that the contract has been wrongly terminated the remedy is not a petition under Art. 226 of the Constitution of India as ruled by the Supreme Court. The aggrieved party in such cases has only that remedy which is available to any party complaining of breach of contract i.e. by instituting a civil suit for appropriate relief.

13. Learned Counsel for the petitioners, however, placed strong reliance on the decision of the Supreme Court in the case of the *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, and submitted that the decision clearly establishes that judicial review under Art. 226 of the Constitution of India is available even in matters falling in the realm of concluded contracts, where the contract is unfair and unreasonable and is contrary to law or opposed to public policy and where it is demonstrated that the contract was entered into between the parties who were not equal in bargaining position.

14. Relying on the aforesaid decision, learned Counsel submitted that the retailers have no choice but to sign on the dotted lines in the standard form of

agreement containing the clause that the agency could be terminated by the District Magistrate at any time without assigning any reasons. That being so it is urged clause (16) of the contract was clearly unconscionable and was consequently void liable to be ignored altogether.

15. We are unable to agree. In the first place, the decision of the Supreme Court in the case of Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, is the latest pronouncement on the subject, and being directly in point we are not free to follow an earlier decision of the Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . Secondly, in the case cited above by the learned Counsel for the petitioners it was clear that the employees of the erstwhile Rivers Steam Navigation Co. Ltd., which was taken over by the Central Inland Water Transport Corporation Ltd., had no choice but to sign the agreement containing the clause that the services of even permanent employees could be terminated on three months notice. For if they did not sign the agreement they stood to lose their employment altogether. It was in these circumstances that their Lordships of the Supreme Court held that the clause under challenge was on the face of it unfair and unjust having been entered into between the parties who were not in equal bargaining position. We do not venture to think that the same thing cannot be said of the situation with which we are concerned. As mentioned above, the contract in question is concerned with the right to distribute Government food-grains only. The persons aspiring for that agency were perfectly free not to enter into such a contract. Instead, of Government food-grains and other essential commodities they could engage in the business of sale of all other commodities including foodgrains derived from private sources. We cannot, therefore, hold that clause (16) is either opposed to public policy or is otherwise unreasonable, unfair or unconscionable. There is no parity between the two situations, that is, one which was being dealt with by the Supreme Court in the Central Inland Water Transport Corporation Ltd., and that with which we are concerned. Indeed the decisions of the Supreme Court in the case of Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, and S. Chandra Sekharan and Others Vs. Govt. of Tamil Nadu and Others, are more apposite. The latter, in our opinion, completely concludes the controversy against the petitioners.

16. What has been stated above is equally applicable to the petitioner's contentions based on alleged breach of the principles of natural justice. Once it is held that the relations between the parties were wholly contractual in nature there is no question of the application of the principles of natural justice if in terms of the agreement, the agency is terminated in view of the decision of the Supreme Court in Bareilly Development Authority as well as other decisions of this Court cited above.

17. In the result, the petition fails and is dismissed.

18. Petition dismissed.