

(1988) 04 GUJ CK 0025
In the Gujarat High Court

Jamnadas Hiralal Mendha

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 12-04-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115
State Financial Corporations Act, 1951 — Section 25(1)(g)

Citation : (1988) 2 GLR 1288

Hon'ble Judges : A.P. Ravani, J

Bench : Single Bench

Judgement

A.P. Ravani, J.—At the request and with the consent of the parties all these revision applications have been heard together and are being disposed of by this common judgment and order.

2. Except C.R.A. No. 1219 of 1987 rest of the nine revision applications together with C.R.A. No. 1303 of 1987 arise out of a common judgment delivered by the learned Assistant Judge, Surendranagar. C.R.A. No. 1303 of 1987 appears to have been left out by inadvertance. Therefore it is not being disposed of by this common judgment. The petitioners are holding authorisation as dealers of fair price shops. They entered into contract with the Collector, Surendranagar for running fair price shops for the purposes of distribution of food-grains, pamolive oil, sugar and such other essential articles of human consumption. The officers of the respondent-State Government visited the shops of the petitioners and found that the petitioners had committed irregularities in respect of running of the fair price shops. The irregularities were to the effect that in certain cases stock of food-grains and pamolive oil was less than what it should be as per the stock registers.

3. In certain cases the dealers had not purchased food-grains from the Government. Nature of irregularities alleged against each of the petitioners may differ but the fact remains that in each case the officers of the Civil Supplies Department found that certain irregularity was committed in respect of running

of the fair price shops. Thereafter the respondent-authorities invoked Clause 11 of the Contract and forfeited the amounts of deposit paid by the petitioners. Then notice terminating the contract has been served upon the petitioners. On receipt of notice of termination of contract all the petitioners filed different civil suits praying that the cancellation of the authorisation to function as authorised fair price shops dealer be declared to be illegal and void. The petitioners contended that they have not committed any serious irregularities which would warrant cancellation of the contract. It was contended that the defendants had no authority to unilaterally cancel the contract. At any rate once the amount of deposit is forfeited their contract should not have been cancelled because it would amount to imposing double penalty and they will be subjected to double jeopardy. It was also contended that the plaintiffs were not afforded an opportunity of being heard before termination of the contract and hence the action is illegal and void. The plaintiffs filed application for interim injunction praying that the respondents-defendants be restrained from obstructing them from doing the business under the contract. The trial Court initially granted ex-parte interim injunction as prayed for, but after hearing the parties vacated the same holding that the plaintiffs had committed serious irregularities in the management of the fair price shops. The Government had authority to cancel the contract and authorisation given under the contract in question. The trial Court came to the conclusion that the petitioner had no prima facie case and even balance of convenience was not in their favour because they could claim damages if the action of the Government is held to be illegal and void. All the plaintiffs preferred civil miscellaneous appeals in the Court of learned District Judge, Surendranagar. In appeals substantially same contentions were raised by the appellants. The learned Assistant Judge who heard the appeals negatived all the contentions and concurred with the findings arrived at by the trial Court. By his judgment and order dated November 25, 1987, the learned Assistant Judge disposed of all the appeals. The petitioners have preferred different civil revision applications challenging the legality and validity of the aforesaid order.

4. In case of Civil Revision Application No. 1219 of 1987 the facts are substantially similar. Therein also the question is with regard to termination of the authorisation to run the fair price shop. The case arises out of an order passed by the Collector, Kutch-Bhuj.

5. All these matters are filed under the provisions of Section 115 of the Civil Procedure Code. Scope of exercise of jurisdiction by this High Court in revision u/s 115 of the C.P. Code is very limited. The High Court cannot go into the question as to whether the decision arrived at by the lower Courts is right or wrong. Decision of the lower Courts may be right or may not be right. It may be in accordance with law or it may not be in accordance with law. Once it is shown that the lower Courts had jurisdiction to pass order it would be difficult for the High Court to interfere with the same unless it is shown that the jurisdiction has been exercised illegally or with material irregularity, and that it has resulted into failure of justice. If this aspect is borne in mind while dealing with all these

revision applications, all the revision applications are required to be rejected on this short ground alone. There is concurrent findings of fact by both the lower Courts and it is not pointed out that the lower Courts have exercised jurisdiction with material irregularity or illegally and that it has resulted into failure of justice. Even so, the arguments advanced by the learned Counsels for the petitioners may be dealt with in brief.

6. It is contended that the cancellation of contract is unfair and unconscionable and therefore this High Court should interfere even at this stage. In support of the aforesaid contention reliance is placed on the decision of the Supreme Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . In the aforesaid case, before Supreme Court it was contended that there was mutuality in contract between the employer and the employee and Clause 9(i) which also formed part of the contract had conferred equal rights on both the parties. The employer as well as the employee could terminate the services by giving three months notice or by paying three months' basic pay and dearness allowance in lieu thereof. In this context the Supreme Court has observed as under:

It is true that there is mutuality in Clause 9(i) the same mutuality as in a contract between the lion and the lamb that both will be free to roam about in the jungle and each will be at liberty to devour the other. When one considers the unequal position of the Corporation and its employees, the argument of mutuality becomes laughable.

Relying on the aforesaid observations it is contended that there was no mutuality between the plaintiffs who are petty businessmen on the one hand and there is mighty Government on the other hand. The contract empowering the Government to terminate the same unilaterally by giving 15 days' notice was unfair and unconscionable by lack of mutuality and therefore the same cannot be permitted to be terminated. The argument cannot be accepted for the simple reason that the reliance placed by the learned Counsel for the plaintiffs on the aforesaid decision is not at all applicable to the facts and circumstances of the case. It was a case between employer and employees. A Company carrying on the business of maintenance and running of river services entered into a scheme of arrangement with the Central Inland Water Transport Corporation Ltd., a Government Company owned by Central Government and two State Governments. The scheme was approved by the High Court. The Company was dissolved by the order of the High Court. The officers of the Company had no choice when they accepted the job with the Corporation as in the alternative they would have received a meagre sum by way of compensation and would have been required to search for alternative jobs. The Rules framed by the Corporation inter alia provided for termination of services of the officers by giving three months' notice. The officers had to accept such conditions incorporated in the Rules. Otherwise they would have lost their service at that very moment. Therefore the Clause in the Rule was struck down by the High Court and the

Supreme Court also approved the decision of the High Court and observed that considering the inequality in the bargaining power of the parties the Clause in the Contract of employment was void u/s 23 of the Contract Act as opposed to public policy. It was also observed that it was ultra vires Article 14 of the Constitution. Therefore the aforesaid observations of the Supreme Court can be applied only if it is held that the Clause in the Contract is void u/s 23 of the Contract Act as opposed to public policy. For arriving at this decision one will have to hold that the contract is unreasonable and unconscionable.

7. Be it noted that neither the plaintiffs nor the State was under any compulsion to enter into the contract in question. The plaintiffs who, according to them, are petty businessmen were and are free to conduct the business in lawful manner. The question is-why there any compulsion to run fair price shop as authorised dealers of the Government? In the facts of the case it does not appear that this point was ever argued before the lower Courts. No case appears to have been made out on facts that the plaintiffs were under compelling circumstances obliged to enter into contract with the Government. On the contrary it appears that their licence under the Essential Commodities Act to do business in food-grains and such other articles is not cancelled. In the instant case it is not a case of contract between lion and lamb both having freedom to roam about in the jungle and both being at liberty to devour the other if and when such opportunity arises. On the contrary the arrangement brings about different situation. The State is duty bound to make necessary arrangements for distribution of food-grains and other essential articles at reasonable rate to the relatively poor section of the society. The State may make these arrangements of its own or may appoint and/or authorise other businessmen to carryout these functions. The State which has to protect the interests of weaker section of the society is duly bound to see that the dealers or agents authorised and appointed by it are not roaming about in the jungle like lions and they do not start devouring the lambs (i.e. people belonging to the weaker section of the society). For achieving this object the State is duty bound to exercise its powers and keep its agents and or declare in leash. If the agent feel constrained, they are free to get themselves relieved and do their business in any other manner. So long as they want to continue as authorised dealers appointed by the State they have got to abide by the Rules and Regulations and the restrictions imposed upon them under the contract. Not to insist upon such compliance would be against the public policy. Therefore reliance placed upon the aforesaid decision of the Supreme Court is of no help to the petitioners.

8. The learned Counsel for the petitioners relied upon the decision of the Supreme Court in the case of Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., . In that case the State Finance Corporation entered into an agreement with the respondent-Hotel to advance certain amount of loan. On the basis of the promise the respondent incurred expenses and liabilities to set up the Hotel. Thereafter the Corporation refused to disburse further amount. Hence in that context it was observed by the Supreme Court that the State cannot

commit breach of a solid undertaking on which the other side had acted and then contend that the part may suo for damages but cannot apply for specific performance of the contract. The aforesaid observations have been made by the Supreme Court on the basis that the statutory Corporation had entered into contract in discharge of and in performance of its statutory duties. The respondent had acted upon the contract. Thus the question required to be decided by the Supreme Court was in altogether different context. Therein the "State" had entered into a contract on account of its statutory duties. The contract was not purely in the sphere of contract but was in fulfilment of the statutory obligation u/s 25(1)(g) of the State Finance Corporation Act. The observations made by the Supreme Court in the aforesaid decision does not help the petitions a for the following reasons.

(1) The agreement in question has not been entered into purely in the sphere of contract and it is not on account of fulfilment of statutory obligation of the Government.

(2) No question of promissory estoppel arises in this case. In above view of the matter the argument that before cancelling the contract the plaintiffs ought to have been afforded an opportunity of being heard has also no merits. The relationship between the parties is in the realm of pure and simple contract. Remedy of the plaintiffs would be at the most by way of claiming damages if at all they are in a position to show that the respondent-defendant had committed breach of the contract. In absence the plaintiffs are seeking specific performance of the contract which has been terminated by the respondent-defendants. In fact such a suit is not maintainable at all. If at all there is breach of contract the remedy is not by way of filing suit for specific performance of the same. In the facts and circumstances of the case and in this type of contracts where one of the parties to the contract has lost confidence the contract cannot be imposed upon the parties by the Court. The party which has lost the confidence and which has brought about termination of the contract cannot be asked to perform the contract. This is much more so in the instant case when interests of people at large are involved. The Government cannot be asked to jeopardies the interests of the weaker sections of the people and that too at interim stage.

9. In similar situation it is held by the Supreme Court that the relationship is governed by contract. Here reference may be made to a decision of the Supreme Court in the case of S. Chandra Sekharan and Others Vs. Govt. of Tamil Nadu and Others, . The petitioners therein were appointed by the Government under contract for distribution of levy sugar. The Government as a matter of policy decided to eliminate the retailers and therefore terminated the contract. The question arose as to whether there was violation of any of the Articles of the Constitution of India. The Supreme Court held that the petitioner had no legal right to trade in levy sugar. The Government had terminated the agreement under the terms of the contract and eliminated the retailers. In the facts of the case the Supreme Court held that there was no discrimination and the matter

was in the realm of contract. In Para 11 of the judgment the Supreme Court has observed:

The petitioners were authorised distributors. The State appointed the petitioners agents for such distribution. The contract of agency provided for termination. The rights of the parties were purely contractual.

Almost similar fact situation is to be found in the case of the petitioners herein. Therefore relying upon the aforesaid decision it has got to be held that the petitioners have no prima facie case whatsoever. Here it may be noted that this High Court has taken the same view in Special Civil Applications Nos. 1654 of 1972 and 1656 of 1972 decided on June 24, 1977 (Coram: P.D. Desai, J.).

10. The learned Counsel for the petitioners, Shri K.A. Puj in Civil Revision Application No. 1219 of 1987 tried to distinguish the Supreme Court's decision in the case of S.C. Sekharan (supra). The basic fact remains that the relationship between the parties is contractual. Once this is found as a matter of fact the decision of the Supreme Court and other two decisions of this High Court would be applicable to the facts of the present case. There is no merit in the argument that the facts in the aforesaid cases and in these cases are not similar, and therefore the aforesaid decision could not be applied.

11. The learned Counsel for the petitioners submitted that now the Government has adopted new form of agreement in which it is provided that if any irregularity is to be found in respect of working of any fair price shop, the dealer should be afforded an opportunity of being heard. Therefore it submitted that in the instant case also an opportunity of being heard ought to have been afforded to the petitioner. The submission is not based on correct facts. As shown by the learned Counsel for the respondents, Clause 14 in the Agreement now finds its place in the New Agreement at Clause 22. In substance there is no change in the New Agreement at all. Be that as it may. The fact remains that the relationship between the plaintiffs and the respondent-Government authorities is in the realm of contract only. If the contract is terminated, assuming for a moment, unlawfully, the redressal, of the grievance can be claimed by pursuing the remedy under the law which in the instant case would be to claim damages only and not to claim that the other side be asked to perform the contract. There is no substance in the argument that before terminating the contract the petitioners ought to have been afforded an opportunity of being heard.

12. As stated hereinabove no jurisdictional error is pointed out. It is not pointed out that the lower Courts have committed illegality or irregularity in exercising the jurisdiction vested in it or that it has failed to exercise jurisdiction resulting in to failure of justice. I am in agreement with the reasons given and the conclusions arrived at by the lower Courts. No case for interference by this High Court in exercise of its power u/s 115 of the C.P. Code is made out. Hence all the Revision Applications are required to be rejected.

13. In the result the Revision Applications are rejected. Rule discharged. Ad

interim relief granted earlier stands vacated.