

(1968) 05 J&K CK 0002
In the Jammu And Kashmir High Court

J.K.Timber Trader

APPELLANT

Vs

Government of Jammu & Kashmir and others

RESPONDENT

Date of Decision : 31-05-1968

Acts Referred:

Constitution of India, 1950 — Article 32(2A)

Constitution of Jammu and Kashmir, 1956 — Section 103

Citation : (1969) KashLJ 74

Hon'ble Judges : J.N.Bhat, J

Bench : Single Bench

Advocate : R.N.Kaul, D.D.Thakur, Advocates appearing for the Parties

Judgement

(1) This is a writ petition under section 103 of the Jammu and Kashmir Constitution and Article 32 (2A) of the Indian Constitution to quash the order No. 5355 of respondent Nos. 2, 3, 4 and 5 dated 16121966 and a writ of Mandamus or any other appropriate writ. The allegation of the petitioner is that he is an approved forest lessee in the State of Jammu and Kashmir. The lease of Compartments 4b, 5 and 7 of Chiralla Jangalwar Block Badarwah Coupe 196064 was granted to the petitioner by respondent No. 1 by its order No. Forest/38/59JL dated 1081961 for a consideration of Rs. 52,00,000/-. The petitioner paid the security of Rs. 52.000/ and in pursuance of the Government order referred to above, the petitioner executed an agreement on 1431960 with the respondent No. 1 for this lease. That the petitioner's lease is one of the major leases of the Chenab Valley. According to the original terms of the lease, the whole produce was to be removed by the end of March 1967 by the petitioner from the forest. Due to climatic disturbances, labour limitations! serious dislocation and ,unprecedented rains in 1963 the extraction work was

completely paralysed. On the representation of all the lessees of the State bringing to the notice of the Government the above calamities one year's

extension was granted for working out their respective leases to different lessees by the respondent No. 1 by means of its order No. FST/165/63

of 1963. This extension was granted by virtue of clause 43. Before this extension could be availed of by the petitioner, the war between India and

Pakistan broke out and again the work of exploitation of the leased forest by the petitioner came to a standstill because irreparable huge monetary

loss was caused to the petitioner. The forest lessees again approached the Government for extension of time, which was accepted by the

Government and one year's extension in general was granted in favour of lessees including the petitioner. This order of the Government is

FST/155/66 dated 23111966. The clauses 11 and 12 of the original agreement of the petitioner stood changed as under :

Clause 11 15131967 and end of

Clause 12 March 1969.

(2) This extension was in addition to the one year's extension granted previously by the respondent No. 1 in the year 1963. The petitioner in

conformity with the extension granted to him on the basis of the original agreement made arrangements of extraction of the forest, paid huge

amounts of money in advance, installed at huge cost two saw mills in the forest, employed skilled and unskilled labour for the speedy exploitation

of the forest. All of a sudden the respondent No. 4, who is the Forest Range Officer concerned, by means of his notice No. 5355 dated

16121966 directed the petitioner to stop the working, extraction and operation of the forest. The petitioner was prevented from carrying on the

extraction and exploitation work of his leased forest by the order of the respondent No 4, which was ultra vires, illegal and violated the

fundamental rights of the petitioner. This was a clear case of discrimination and arbitrary and mala fide use of power by the respondent. The

contention of the petitioner was duly supported by the Divisional Forest Officer Badarwah Forest Division, who is respondent No. 5 in this

petition, by means of his letter No. 3 12/C. VIII118 dated 2811967 but no heed was paid to it by the first three respondents namely the State of

Jammu and Kashmir, Chief Conservator of Forests and Conservator of Forests,

Chenab Circle. The petitioner further states that he is the brother of the exPrime Minister of the State, Bakshi Ghulam Mohamad and therefore the respondent No. 1 through the instrumentality of other respondents in Order to harm the petitioner's reputation and cause him loss, has issued there arbitrary instructions. Even after this general extension was granted by the Government by means of its order above referred to, the Government granted further extension in favour of other lessees vide its order No. 373/C VII 692/41 dated 26/1967. The petitioner has been singled out and a differential treatment has been meted out by the respondents to the petitioner. The petitioner cannot be deprived of the benefit given to him by the two extension orders passed by the Government.

The orders of 16/12/1966 and 21/1967 issued by the respondent No. 4 the petitioner not to enter the forest compartment 7 Cheralla Range Badarwah Forest Division are without jurisdiction and contrary to the order issued by the respondent No. 1. That the respondent No. 4 had no power to issue such orders. The order is ultra vires. It denies equal protection under the law to the petitioner and is an abuse of the process of the law and the power vested in the State and its employees.

(3) The petitioner has placed a copy of the order of the Range Officer, respondent No. 4 i.e. Order No. 5355 dated 16/12/1966 and another order of one Falil Singh incharge felling directing the petitioner to stop all work inside the Coupe after 15th December 1966 and further prohibiting the petitioner to enter the forest after 15/12/1966. The petitioner has also placed a copy of letter from Divisional Forest Officer Bhadarwah to the Conservator of Forests, No. 3112/C VIII 118 dated 28/1/1967 in which this gentleman has given the factual position of the lease and recommended that the petitioner be given the benefit of the two Government orders in extension of the time of working of the lease. On that date the D.F.O. reports that there is an outstanding of Rs. 15,49,078 as royalty against the petitioner. Another copy of order FST/155 of 1966 dated 23/11/1966 has also been placed on the file by the petitioner. This order recites that extension has been granted by one year in case of forest lessees who have suffered loss during the IndoPak conflict of August 1965 and deferment of royalty payments that had fallen due from 1st April 1965 to 1st April 1966 by one year. This order has two Annexures A and B

attached to it. The name of the petitioner appears in this Annexure B at item No. 8 and it is shown under clause 12 the period would be 3/68 and under clause 11 the period would be 151269 This annexure has been put on the file by the respondent.

(4) It took a long time for the respondents to file their objections but ultimately no objections were filed by the respondents 2 to 5. Objections in the form of an affidavit were put in by the Addl. Forest Secretary on behalf of the respondent No. 1 alone. These objections are very lengthy and discuss matters and details not germane to the disposal of this writ petition. Some of the details elaborate the part played by the ExPrime Minister of the State. Bakshi Ghulam Mohammed in securing this lease for his brother, who is the petitioner in this case The affidavit contains certain factual misstatement. Anyhow with these brief observations about the affidavit, I might reproduce briefly the sum and substance of affidavit. It starts with the narration that this lease was first tendered for by the petitioner under the name Haji and Co, offering a royalty of Rs. 65.11.000/-. The tender of Haji & Co. being the highest, they were asked to execute the agreement, but they managed to back out from this bargain by misrepresentations and by undue advantage being given to them under the instructions and directions of the ExPrime Minister. Later on the lease was again retendered and the petitioner's was the only tender. This was accepted. It is admitted that the lease was sanctioned for royalty amount of Rs. 52 lacs in favour of the petitioner and an agreement was executed by the petitioner on 1131960 the lease period being from 1960 to 1964. The petitioner got this lease at a very low rate and according to clause 11 of the agreement the lease was to ensure upto 15th Dec. 1965 by which date all produce was to be removed beyond the coupe boundaries or to the bunching stream. It is admitted that extension of one year was made in favour of all leases in the year 1963 According to this extension all produce was to be removed beyond the coupe boundaries by the 15th of December 1966 provided the royalty instalments were paid exactly according to the terms of standing agreement. A balance of Rs. 10.44 853/55 was outstanding against the petitioner. The allegation of loss suffered by the petitioner is denied. As the arrear in royalty to the tune of Rs. 10,44.853/55 is outstanding against the petitioner upto 151266 the order of extension did not confer on the petitioner

any extension. It is further stated that the petitioner has misconstrued Government Orders FST/165.63 of 1963 dated 4121963 and FST155 of 1966 dated 131166. If the petitioner made arrangements and invested some money, he did it at his own risk. The issue of notice No. 5355/C dated 16121966 by the Range Officer was justified. The petitioner had got the lease at a very cheap rate. The petitioner handed over the Compartments 4b and 5 after fully working and exploiting the same and even in Compartment 7 they have, removed a major portion of the out turn. After 15121966 the petitioner had no right to carry on operation in the forest. No fundamental right of the petitioner is violated. The petitioner was not refused the advantage of the orders. The D.F.O's recommendation is admitted but it is stated that it was not based on a correct and true legal position. The petitioner has tried to create prejudice against the respondent? The extension in the working period cannot be claimed by the petitioner as a matter of right and every case depends on its own merits. If some lessees have been granted extension in view of their special circumstances that does not establish discrimination. The petitioner had worked the compartments uninterruptedly and besides causing a loss of over Rs. 13 lacs to the Government had extracted much more timber. The subject of this lease was a matter of investigation before the Ayyanger Commission which was set up to enquire into the irregularities committed by Bakshi Ghulam Mohammad. The petitioner and Bakshi Ghulam Mohammad were given an opportunity to present their case and the Commission had held "the lease in question was got by the petitioner by abuse and exploitation of the position of his brother. The Commission has also made adverse comments in regard to the contention of Haji Ghulam Nabi, the principal partner of the firm". The writ does not lie in respect of contractual obligations or concessions.

(5) After this affidavit was filed, on behalf of the respondent No. 1 the petitioner filed two more affidavits the last of these affidavits is important for the disposal of this case. The petitioner by means of this supplementary affidavit dated 2041968 has stated that the allegations on behalf of the respondent that a sum of Rs. 10,44,853.55 was outstanding against the petitioner upto 15121966 is not correct and are palpably false. That he had paid all instalments due by 151266 and had made excess payments. The

petitioner has placed a detailed list of payments made by him on this lease upto 311266, which shows that he has paid an amount of Rs. 42,44,161/92.

These are the pleadings of the parties.

The case took a long time to get completed. The respondents did not file their objections for a pretty long time. After the objections were filed

again attempts were made to get the matter settled amicably out of court. Some adjournments were taken for this purpose but ultimately no

compromise was arrived at. The learned counsel who appeared from time to time on behalf of the respondent No. 1 were directed to produce the

original file of the case. This became necessary because the only paper on order bearing on the subject placed before the court is the propitiatory

order of the Range Officer namely No. 5355 dated 16121966 one of Falil Singh dated 211967 describing himself as incharge of felling. No order

of either the Government, the Chief Conservator of Forest or of Conservator of Forest prohibiting the petitioner from availing of the extension

granted to him have been placed before the Court, The D.F.O. respondent No. 5 has supported the case of the petitioner, a copy of that letter

already referred to namely No. 3L12/C VIII118 dated 2811967 has been placed on the file, Therefore we do not know the exact position of the

case as it was understood or dealt with by the respondents 1 to 3. Again the affidavit was put in on behalf of the respondent No. 1, the State of

Jammu & Kashmir, only by the Addl. Forest Secretary. The other respondents did not choose to put in any objections or affidavit. The fact

remains that the respondents have not put the whole case before the Court nor have they cared to make the record of the case available to the

Court. With these initial handicaps, we have to dispose of the case on its merits on the material available on record.

(6) I have already stated that the affidavit on behalf of the Additional Forest Secretary is very loose besides it contains misstatements of fact also. I

have already quoted the very words of the affidavit pertaining to the allegation that this lease formed the subject matter of an enquiry before the

Ayyanger Commission and the findings of the Commission as indicated in the affidavit of the Additional Forest Secretary vide para 18. The learned

counsel for the petitioner has pointed out the finding of the Commission on this

charge by the Ayyanger Commission. This formed charge No. 30

before the Commission and the Commission after devoting enough of space to this charge, ultimately came to the following conclusion :

On the other hand I have no doubt that if the respondent had acted with due regard to the interests of the State the resolution would not have

been passed, at least not in that form, but this, however, would not be Sufficient to hold that he had abused his power or position as Prime Minister

to get this resolution passed. The utmost that could be said, therefore, is that he did not do all that he ought to have done to protect the interests of

the State because the interest of his brother was involved. Though there is some element of impropriety of the attitude which he must have taken at

this Cabinet meeting, I am unable to hold that the charge of abuse of power as formulated in Allegation 30 is made out. The Government no doubt

have in the event suffered a loss of at least Rs. 4 lacs by the acceptance of the pretender, the benefit of which has accrued to Ghulam Nabi, I

cannot hold that this financial advantage has accrued to him as a result of the abuse of power on the part of the respondent."" (Page 220 of the

report)

(7) A further allegation of the respondent that there is an arrear of Rs. 10,44,853.55 outstanding against the petitioner also refuted by the petitioner

by means of his supplementary affidavit dated 20/4/1968. The petitioner has filed a detailed list of payments made by him on this lease to the State.

The respondents did not care to contradict this affidavit of the petitioner although they had enough opportunity to do so. The affidavit of the

respondent No. 1 attaches more importance to irrelevant considerations, some of which are political in nature, in meeting the case of the petitioner.

The petitioner also accuses the respondents of this discrimination used against him because he happens to be the brother of the ExPrime Minister

of the State, Bakshi Ghulam Mohammad. As a court of law, I have nothing to do with the political allegations raised in this petition. So also I shall

not go into irrelevant matters raised by the Addl. Forest Secretary in his affidavit. I may mention here that the points very much stressed in the

affidavit of the Addl. Forest Secretary are that it is due to exercise of undue influence and abuse of his power by the ExPrime Minister of the State.

Bakshi Ghulam Mohammad that this lease was secured for the petitioner. The

second point stressed is that this lease was obtained by the petitioner at very cheap rates. So far as the first point is concerned, it has not been found correct by the Ayyangar Commission. Apart from that finding of the Commission that would give no ground to the State to put to an end to this lease in an arbitrary manner, The second contention is also without any substance. Whether the petitioner managed to get this bargain at cheaper rates also does not effect either the contract of this writ petition. There is a concluded agreement between the parties, and it has to be enforced unless it can be annulled on some cogent legal grounds.

(8) From the pleadings of the parties, the following matters seem to be established beyond any controversy in this case. The petitioner originally took this lease for a period of five years for a royalty amount of Rs. 52 lacs in the year 1960 and executed an agreement in that behalf on 14.3.1960. Under the extension orders No. FST/165/63 of '63 and No. FST/155/66 of 23.11.1966 clause II of the original agreement stood extended upto 15th of December 1966 and Clause 12 upto the end of March 1968. The petitioner has paid the royalty due under the various clauses of agreement read with the extension orders referred to above. Legally therefore but for the order of the respondent No. 4 (notice Nos. 5355 of 16.12.1966) and of Falil Singh dated 21.1.1967 the petitioner would have continued to work out this lease as indicated to above. The first order of extension was a general order in favour of all the lessees working in the State. The second order of extension specified the lessees who according to the Government had suffered losses during the IndoPak conflict 1965. The annexures to this order contain the list of the lessees to whom this concession was granted. There is a further concession after this order also in favour of some other lessees as given in the Order No. 373/C. VII 692/41 dated 26.1.1967. The number of such lessees runs into hundreds. According to the petitioner, which allegation is not denied by the respondent, all the other persons who have been granted extension are taking benefit of the extensions granted. The petitioner alone has been denied this right. The contention of the respondent No. 1 that the extension cannot be claimed as a matter of right and each case depends upon its own merits are legal arguments meaning nothing in the context of this case. The petitioner does not claim an extension. The extension has already

been granted to him. That is admitted. His grievance is that the extension which was granted to him alongwith others has been taken away from him

by a mere Executive fiat in the shape of an order from the Range Officer in charge of this range. No order, as I already stated, of the other

respondents has been shown to me justifying this cancellation of extension in the case of the petitioner alone. On the other hand the allegations

made in the affidavit of the Additional Forest Secretary which seek to justify this action on the part of the respondent No. 4 are factually incorrect

and unsustainable.

(9) From this analysis of the case, it is clear that the respondents have no defence, which can be even faintly pressed against the writ petition of the

petitioner. It is for this very reason, perhaps that the respondent Nos. 2, 3 and 4 did not put in any objections or affidavit justifying the action of the

Range Officer. The affidavit of the Additional Forest Secretary appears to me to have been put in. without being cognizant of the entire facts of the

case by the said gentleman.

(10) Two arguments were advanced on behalf of the respondents by Mr. D.D. Thakur, their learned counsel. One that the petitioner cannot claim

extension as a matter of right; and secondly that it was violation of a contract. So far as the first contention is concerned on the face of it this

contention is unfounded. The petitioner does not claim or pay for a concession. In that Orissa the State Government might or might not have

granted to him under the two Orders of the Government referred to more than once in this judgment. Therefore the question of claiming extension

does not at all arise. The real Point is that extension has been granted on the one hand; it is being taken away by a comparatively petty employee of

the Government by means of this notice dated 161266. What is the basis of this order is not understandable. Rather it is in contradiction with the

extension granted to the petitioner alongwith others because this order of the respondent No. 4 refers to only Clause 11 of the agreement and

states that it expires on 15121966. Either the Range Officer purposely ignores and bypasses the extension order passed by the Government or is

ignorant of the same. If he bypasses these orders he has no power to do so. If he is ignorant, even on that score also the order cannot stand ;

because the original time of 15121966 stood extended in the case of the

petitioner and hundreds of other lessees similarly situated. On this ground alone the writ has to be issued because respondent No. 4 Range Officer had no jurisdiction to ignore or supersede an order passed by the Government.

(11) The second argument of the learned counsel for the respondent that this is a violation of contractual obligation is not correct. There is no breach, of the contract as such by one of the contracting parties. The Range Officer, as an officer of the Government passes an order, which in law, is not correct. That order he does not himself support nor has he come to state the grounds whereupon he issued the order. The respondent No. 1 has unnecessarily complicated matters by the Addl. Forest Secretary's swearing in an affidavit on his behalf. The affidavit does not disclose any defence but Owns an illegal action of one of the subordinate officers of the State. So the question of contract and its violation as brought to be argued in' this case, is not correct. The legal position in the case is that the petitioner was working out a leave and he had the authority to work it out upto a certain time limit as contained in the original agreement subsequently amended by the two extension orders. All of a sudden the Range Officer incharge of the Range passed an order, which has no justification in law, stopping the petitioner from carrying on his trade and business.

This brings us to the legal aspect of the case, whether a writ can issue in such circumstances.

(12) This is a case of an absolutely arbitrary act in the shape of a notice issued by one of the employees of the Government. This act has unfortunately and far aught one knows unwittingly been owned by the State by means of the Addl. Forest Secretary's affidavit. In such circumstances the Courts are not powerless. The Courts have the authority to redress wrongs and do justice to the parties. When the executive over does or passes an order which cannot be justified, the Courts have jurisdiction to quash the orders passed by the executive or any of its officers even on the administrative side. The following authorities and the observations of eminent Judges in this respect may be quoted.

(13) In 1916, the law Reports, King's Bench Division, Lord Reading C. J. in the case "The King Vs. Governor of Brixton Prison observed.

If we are of the opinion that the powers were being misused, we should be able

to deal with the matter. In other words, if it was clear that an act done by the Executive with the intention of misusing those powers, this court would have jurisdiction to deal with the matter...

At page 752 of the same report, in the same judgment Lord Low J. observed that :

I do not agree that if the Executive were to come into this Court and simply say ""a person is in our Custody and therefore the writ of habeas

Corpus does not apply because the custody is at the moment technically legal"" the Court would have no power to consider the matter and if

necessary, deal with the application for the writ. In my judgment that answer from the Crown in reply to an application for the writ would not be

sufficient if this Court were satisfied that what was really in contemplation was the exercise of an abuse of power. The arm of the law in this country

would have grown very short and the power of this court very feeble, if it were subject to such a restriction in the exercise of its power to protect

the liberty of the subject as that proposition involves.

(14) Similarly the House of Lords, in *Mayor etc. of Westminster and London and North Western Railways Co.* reported as 1905 Appeal Cases

426 at page 430 Lord Macnaghten observed that :

It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or

abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last

proposition is involved in the second, if not in the first

(15) In another authority reported as 24 Q.B.D. 371, 375 Lord Esher M.R. in *Reg. Vs. Vestry of St. Pancras* observed that :

If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper

for the guidance of their discretion, then in the eye of the law they , have not exercised their discretion.

(16) This authority was referred to with approval in another case reported as *Chancery Division Vol. 11924* page 483 in *Sadler Vs. Sheffield*

Corporation and Dyson Vs. Sheffield Corporation.

(17) In another authority of the Supreme Court of India reported as AIR 1957 SC 397, in *M/s. Pannalal Binjraj and other Vs. Union of India and*

others, Bhagwati, J. on page 409 while commenting upon that there would be presumption in favour of official acts being properly discharged remarked.

This presumption, however cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory treatment.

(18) His Lordship referred to *Gulf. Colorado etc Vs. W. H. Ellis* (1897) 165 U.S. 150 : 41 Law Ed. 666 (M). Further his Lordships observed

that :

There may be cases where improper execution of power will result in injustice to the parties.....the possibility of such discriminatory treatment

cannot necessarily invalidate the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law.

(19) Referring to further authorities his Lordships observed that :

What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself.

(20) In another authority *State of Bombay v. K. P. Krishana and others* reported as 1 Supreme Court Reports 227 (1961) Gajendragadkar J. as

he then was remarked,

The order passed by the Government under Sec. 12 (5) may be an administrative order and the reasons recorded by it may not be justifiable in

the sense that their propriety adequacy or satisfactory character may not be open to judicial scrutiny; in that sense it would be correct to say that

the court hearing a petition for mandamus is not sitting in appeal over the decision of the Government; nevertheless if the Court is satisfied that the

reasons given by the Government for refusing to make a reference are extraneous and not germane then the court can issue and would be justified

in issuing a writ of mandamus even in respect of such an administrative order.....

(21) In *S. Partap Singh Vs. The State of Punjab*, reported as AIR 1964 Supreme Court 72 Ayyangar J. remarked that :

.....The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into

account circumstances, events or matters wholly extraneous to the purpose for which the power was vested or whether the proceedings have been initiated mala fide for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court. In such an event the fact that the authority concerned denies the charge of mala fides, or asserts the absence of oblique motives or of its having taken into consideration improper or irrelevant matter does not preclude the court from enquiring into truth of the allegations made against the authority and affording appropriate reliefs to the party aggrieved by such illegality or abuse of power in the event of the allegations being made out.

(22) In AIR 1953 Madras 41' in the matter of A. K. Goapalan the court held that :
A statutory authority must always be exercised honestly and without malice. There should be no fraudulent exercise of the power conferred or colourable exercise of it to gain an ulterior object. The question when that power has been exercised mala fide will depend upon the circumstances of the case.

(23) More law need not be discussed. The ratio decidendi of the above authorities is that if an act or an order is passed by the Executive or an officer arbitrarily without any reasons supporting the same the Courts not only have the power but it is their duty to redress the grievances and grant proper relief to the aggrieved party.

(24) As the act and the order of the Range Officer is purely arbitrary and has no justification, it is to be set aside. I need not therefore go into the allegations of mala fides so vehemently argued on behalf of the petitioner.

(25) The result is that this writ petition succeeds and it is ordered that the order of the respondent No. 4 Nos. 5355 dated 16/12/1966 and of Falil Singh dated 21/1/1967 are hereby quashed. The petitioner will work out the lease without any interference as based on the original agreement dated 14/3/1960 read with the extensions contained in Government orders No. FST/165/63 of 1963 and FST/155/66 of 23/3/1966.