
(1980) 10 RAJ CK 0001
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1254 of 1979

Mohanlal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-10-1980

Acts Referred:

Citation : AIR 1981 Raj 3 : (1980) RLW 528

Hon'ble Judges : Guman Mal Lodha, J

Bench : Single Bench

Advocate : Kashinath Joshi, for the Appellant; Rajesh Balia, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Guman Mal Lodha, J.—"White collar" crimes and there again, "economic crimes", shocking and rocking the entire society, ever increasing either in the form of "black marketing" or "Food adulteration" or "smuggling", have assumed disastrous dimensions, providing manifold litigation. The snail moving, halting and faltering speed. with which the administration and prosecution both act rather in-act is not only shocking, but is challenging the very utility of the laws which are fast "break- ing and cracking" on account of this lethargy, indifference and "red tapism". Whether, this tantamounts to moral abetment or acquiescence is a question to be answered by law-makers and not law-interpreters, if not. the decision would be of pauserity (posterity ?) alone and not courts of law.

2. With the above preface, let me now come to the brass text of the present case and the controversy raised.

3. The stock of cement was confiscated after a "raid" and on inspection on 18-6-1977, but even after three years, neither petitioner-accused has been convicted, nor acquitted. That apart, even the proceedings of confiscation or cancellation of the licence have not become final. The present writ petition challenging the same, filed in September, 1979, has now come up for

consideration for decision as to whether the petition should be admitted. Are we not all abetting these alleged social crimes by such inordinate delays ?

4. Mr. K. N. Joshi, learned counsel for the petitioner was very vehement. when he prayed for quashing the impugned order of cancellation of licence, on the ground that it is very valuable fundamental right of the petitioner and he is being deprived of the same by an executive fiat without a proper opportunity to show cause, thus violating both the principles of law and justice. According to him, there was no prima facie case of "black marketing" by contravention of Cement. Order of License conditions, and the case against, his client was wholly fabricated and concocted one,

4A. Petitioner's case is that on 18-6-1977 Inspector of District Supply Office, Barmer visited shop of the petitioner and directed the petitioner (not ?) to sell the cement to the customers. The shop of the petitioner including the stocks. was sealed.

5. A notice was received under Clause 11 of the Rajasthan Cement Order, 1974 (hereinafter referred to be as the Cement Order) and the petitioner submitted explanation along with his affidavit dated 9-8-1977. Against the written order-sheet, it was pointed out by Mr. Joshi, that opportunity was claimed for producing evidence, but the Officers concerned asked the petitioner to put signature on a blank order-sheet which was later on fabricated to show that petitioner voluntarily closed the evidence on that day. An appeal was filed under Clause 20 of the Rajasthan Cement Order, before the Collector. Barmer and since there was no substance in the same in view of the Collector, he dismissed the appeal on 23-11-1977. A revision was then filed before the State of Rajasthan but the same was rejected on 25-4-1979 with the observation that no revision lies. In this writ petition petitioner has made the following prayers:

"(i) that by an appropriate writ, order or direction, the order of the District Supply Officer, Banner, Ann. 1 and the order of the Collector, Barmer Ann. ? may be quashed.

(ii) That by an appropriate writ, order or direction, the respondents may be directed to return the forfeited commodity to the petitioner and his licence may be renewed.

(iii) Any other appropriate writ, order or direction to which the petitioner may be entitled to in the circumstances of the case may be passed."

6. As mentioned earlier, Mr. Joshi, appearing for the petitioner, vehemently argued that his client has not been given proper opportunity of hearing or showing cause by leading evidence before the impugned order was passed. It was pointed out that the order-sheet was fabricated later on, by the officers concerned who told the petitioner that they would intimate the date. This submission of the petitioner was vehemently opposed by the learned Deputy Government Advocate. The respondent along with their reply filed a copy of the

order-sheet dated 9-8-1977 (Ex. Rule 6) which reads as under:

"OFFICE NOTE"

9&8&77 Jh eks guyky lhesaV Mhyj flokuk mifLFkrh-

mDr Mhyj us uksfVI dk tckc is" k fd;k tks "kfey i=koyh fd;k x;k A Mhyj us viuh IQkbZ esa Jh Fkwadk jke dk gYQuek is" k dj;k A Mhyj viuh IQkbZ cUn djrk gS A

QSlyk tqnkukek fy[kk x;k A

Mhyj dk lhesaV ykbZIsUI fujLr djrs gq;s mldh izfrHkwfr jkf" k ds :i;s 1000@& tCr fd;s tkrs gS A

i=koyh QSly lqekj gS A

g% vifBr 9&8& \

gLrk{kj % eks guyky ?fgUnh esa? 98-77

It means that the petitioner, who was the dealer voluntarily closed his evidence. This has been signed by the petitioner, Mohanlal. All explanation of Mr. Joshi given during the arguments to persuade the Court that the signatures were obtained on the blank paper and the order-sheet was fabricated later on, can only be equaled with a "cock and bull" story. There is no foundation for such an argument nor there are any circumstances, to accept it as correct or even plausible. The petitioner filed his own affidavit and then, stated that he does not want to lead any more evidence. A dealer of cement cannot be treated as an illiterate, ignorant, rustic villager. Since he was operating licence of cement, he was conversant with the office of the District Supply Officer and the proceedings, which are taken there. I am therefore, not at all, prepared to accept the contention of Mr. Joshi that an opportunity was not given to his client to produce evidence or defend himself or show cause against the order of cancellation of licence and forfeiture of security.

7. Even otherwise, coming to the merits of the case, explanation which the dealer submitted, was that since packing was old. the weight of cement in every gunny bag differed. A cement bag normally is required to be of 50 Kilos in one bag. It is most shocking and surprising that out of that, only 29 Kilos remained and the rest of the cement evaporated. Another most surprising special feature of this case is that 55 gunny bags of cement out of 56 lying in the godown, were of the customers. The explanation given was that all those consumers left cement in the godown there because of rains. This explanation is preposterous. As is well known, cement supply is very restricted and there being great scarcity, there is a great rush. In fact, in the instant case, a written complaint was made against the petitioner that he is indulging in black-marketing and on that complaint, above inspection-cum-raid was carried out by the Supply Inspectors. Reply of the petitioner gives out a different story that these 55 cement gunny bags were given to one Dhankaram, a truck driver who kept them with the petitioner because of rains. It was also stated that one Jasrai purchased three

cement bags but took 2 with him and left one with the petitioner. All these stories on the very face of them are so unrealistic and against the ordinary course of human conduct that they failed to carry any conviction of truth with me.

8. Inspector examined purchasers on the spot at the time of inspection and they corroborated allegations of "black marketing". As per the checking report (Annexure Rule 2) dated 8th January, 1977, the cement bags, which were given to the various complainants or customers, were weighed on the spot. One was found to be of 37 kilogrammes, other one was found to be 42 kilogrammes and third one was found to be 43.500 kgs. These bags were those which were sold to the different customers by the petitioner, M/s. Mohanlal, further Rupees 21 were charged per bag.

8A. Mr. Joshi, learned Advocate, appearing on behalf of the petitioner, submitted that in some of the cement bags, cement was less and in others, it was more and therefore, what was to be seen was total weight of the cement divided by the number of bags. It is not for me to finally comment over this but undoubtedly, cement bags are received in packed condition and they should be (of) standard weight, according to law. A dealer cannot be allowed to take away cement from one bag and put more in other bag. Whether this was modus operandi of the petitioner Mohanlal in the commission of the offence and is not a question which calls for determination now but the violation of the license condition and the law is patent warranting cancellation of the license.

The petitioner was charging 15 paise more but petitioner gave no explanation in his reply for the same nor examined any consumer or customer. Petitioner in reply to the notice, admitted that cement bags did not contain standard weight and cash memos were not given because of rush and so also the entries were not made in the Register because of the same rush. The District Supply Officer has given detailed order dated 9-8-1977 and I am convinced that not only proper opportunity was given but all aspects of the case have been considered by him in details and a comprehensive judgment has been given.

9. Mr. Joshi placed reliance upon the judgments of Hon'ble the Supreme Court in (i) Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, (ii) State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, and (iii) Khem Chand v. Union of India AIR 1958 SC 3001, about the concept of opportunity. Clause 11 of Cement Order reads as under:--

"11. Contravention of terms and conditions of licence or provisions of this order: No holder of a licence issued under this order or his agent or any other person acting on his behalf, shall contravene any of the provisions of this order or any of the terms or conditions of the licence and if any such holder or his agent or servant or any other person acting on his behalf contravenes any of the said provisions or terms or conditions, then, without prejudice to any other action that may be taken against him, his licence may be cancelled or suspended by order in writing of the licensing authority:

Provided that, no order shall be made under this clause unless the licensee has been given a reasonable opportunity of stating his case against the proposed cancellation or suspension.

Proviso makes it clear that all that is required is that the licensee should be given reasonable opportunity of stating his case, against the proposed cancellation or suspension. This reasonable opportunity of stating the case cannot be equated with reasonable opportunity contemplated to be given to a civil servant before passing major punishment of dismissal. That being so, the above judgments and decisions cannot provide any guidance for deciding the ambit and scope of opportunity of stating the case to be given to the licensee before his licence is cancelled.

10. Under the Essential Commodities Act various orders have been issued for ensuring equitable and fair distribution of commodity at a fair price. Licences are given to the dealers on the condition that they would act according to the law of the land, the orders and the instructions of the statutory authorities passed from time to time. Any contravention of the licence condition and/or clauses of the order or Rules, is sufficient to cancel the licence. All that is required is that the reason for the same should be made known to the licensee so that he can state his case. A detailed inquiry or investigation or trial of the nature of the civil or criminal case is neither contemplated nor permitted under Clause 11.

11. I am, therefore, firmly of the view that the phrase, "stating the case" means that the opportunity to file reply and also any documentary evidence or oral evidence, if it is relevant in respect of the same. But it cannot mean a trial or inquiry like that of civil or criminal case.

12. No one can claim a right of licence as such, although one can claim consideration for the same amongst his similar situated persons. The cancellation of a licence under the Cement Order as referred to above is, therefore, not a judicial order but it is an administrative order under the statute and should follow the condition of the statute only. Principle of natural justice cannot be invoked because the proviso of the Clause 11 expressly provides the nature of the opportunity which is required to be given. When a rule or section provides nature of the opportunity to be given the principles of natural justice and the ambit and scope of them, as held by many Courts would not come in picture at all. Similarly, reasonable opportunity available to a civil servant or industrial workman either under Article 311 of the Constitution of India or the Standing Orders, would not be applicable to a case of defaulting licensee whose licence is sought to be cancelled for certain omissions or commissions.

13. In this view of the matter, I am convinced that the petitioner was given full opportunity before the order of cancellation of licence was passed and further, that the cancellation of licence was made on valid, cogent and reasonable grounds. The writ petition, therefore, cannot be allowed and deserves to be dismissed.

14. The result is that this writ petition cannot succeed.

15. Before parting with this case, I cannot restrain myself from observing that "invoking of principles of natural justice" sounds most "unnatural", when it comes from the alleged economic offender, who commits daylight robbery and shameless rape on "social and natural justice", in greed of profiteering by unnatural methods of "black marketing", exploiting the scarcity of essential commodities. This is misuse, exploitation and prostitution of Article 226.

16. I am inspired to say so, on reading the following weighty observation of my learned brother, Mr. Justice M. L. Shrivastava in *Fatehlal v. State of Rajasthan* 1977 WLJ 88:

"Making the supply of fertilizer scarce and selling it at higher rates than prescribed (black marketing) is bound to have a disastrous impact on the State's efforts to stabilize the country's economy. Smugglers, hoarders and black marketers have no country, caste or nation of their own. Their only "God" and concern is the yellow metal, -- "Gold". The offence for which the accused-petitioner has been convicted is of the species of "economic" crime which need to be curbed effectively. The ineffectiveness of prosecution in arresting the wave of white collar crime must disturb the judges' conscience. The Court is not a computer, which registers what is fed into it and answers by mechanical intelligence but a human being to get at the truth and public good. An antisocial adventurer cannot claim for his nefarious and injurious activities any greater legal regard than for the defence of society, itself. If members belonging to higher status in life should show scant regard for the laws of this country which are for public good, for protecting the common man, the consequential punishment for the violation of such laws must be equally deterrent and such person should be made to suffer inequity for the harm he has done to the society. I do not consider it to be a fit case in which benefit of Section 4 of the Probation of Offenders Act may be extended to the accused-petitioner. The Commission also had in its 47th Report recommended the exclusion of the applicability of probationary process in the case of special (social ?) and economic offences".

17. Again, the same learned Judge sitting with Justice Mr. N. M. Kasiwal in *Associated Cement Co. Ltd., Lakheri v. State of Rajasthan* (Civil sc. Appeal No. 66 of 1980 decided on 25-9-1980) observed as under:

"Public policy does not remain static in any given community. It may vary from generation to generation and even in the same generation. Public policy would be almost useless if it were to remain in fixed moulds for all times. The difficulty of discovering what public policy is at any given moment certainly does not absolve the Judges from the duty of doing so. In conducting an enquiry as already stated, Judges are not hide-bound by precedent. The Judges must look beyond the narrow field of past precedents, though this still leaves open the question in which direction they must cast their gaze. The Judges are to base their decision

on the opinions of men of the world, as distinguished from opinion based on legal learning. In other words, the Judges will have to look beyond the jurisprudence and that in so doing, they must consult not their own personal standards or predilections but those of the dominant opinion at a given moment, or what has been termed customary morality."

18. I have also expressed similar views in *Ganganraj Nagori v. Union of India* 1979 WLN 634. on Sex, Morality and Law.

19. I am, therefore, convinced that it is time that exploitation abuse and misuse of equitable jurisdiction is stopped, as founding fathers never intended it to make it an "Aladdin's lamp" for providing protective umbrella to all inequitable evil geniuses and social parasites. Anti-social dishonest and unjust litigants cannot use smoke screen of "natural justice" to perpetuate unnatural injustice. Tainted hands cannot be allowed to touch pure fountains of justice.

20. The writ petition is dismissed with costs, but it is made clear that none of the observations made above in this judgment would prejudice the consideration and decision of the criminal case against the petitioner.