
(2017) 04 AHC CK 0202
In the Allahabad High Court
Case No : 8071 of 2015

M/S Daffodills Pharmaceuticals Ltd. Throu Its Dir.& Anr.	APPELLANT
Vs	
State Of U.P.Thru.Prin.Secy.Ministry Of Medical & Anr.	RESPONDENT

Date of Decision : 24-04-2017

Acts Referred:

Constitution of India, Article 14 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions
Indian Penal Code, 1860, Section 120B, Section 420, Section 468, Section 471, Section 467 - Punishment of criminal conspiracy - Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document - Forgery of valuable security, will, etc
Prevention of Corruption Act, 1988, Section 13(2), Section 13(1)(d) - Criminal misconduct by a public servant - Criminal misconduct by a public servant

Citation : (2017) 04 AHC CK 0202

Hon'ble Judges : Narayan Shukla, Sheo Kumar Singh

Bench : Division Bench

Advocate : Amitabh Mishra, Vijit Saxena

Final Decision : Dismissed

Judgement

1. Heard Mr. Amitabh Mishra, learned counsel for the petitioner as well as learned Chief Standing Counsel for the respondents.

2. The petitioner's firm is supplier of medicine and was supplying the medicine as per rate contract. Certain information regarding irregularity in supplying of substandard items were brought into the notice of the Government and the First Information Report was lodged under Section 120B and 420 I.P.C. with Section 13(2) read with Section 13 (1)(d) Prevention of Corruption Act 1988, and the matter was referred to CBI, and after investigation charge sheet was submitted before the Competent Court in which Surender Chaudhary, the then, director of

the petitioner's firm was found guilty. The Central Purchase Committee constituted in respect of the supply of the medicine took a decision by rejecting the unqualified tender of the petitioner's company with the reason that the CBI case was pending against the firm and passed the order impugned directing the authorities is concerned not to purchase the medicine from the petitioner's firm. Aggrieved by the order, the petitioner by means of present writ petition have challenged the impugned order dated 21.08.2015 contained as annexure no.6 of the writ petition, with the prayer to quash the order in question with further prayer to issue order, commanding the respondents not to interfere in the functioning of the petitioner as supplier of medicine. The State of U.P. has issued the purchase policy for the purchase of medicine. The local purchase on the rate contract is regulated under the provisions of clause 9 of the purchase policy which is reproduced as under:-

" 9-Supply should be same according to the sample deposited at the time of tender, in the short term tender notice.

14. Firms should give an affidavit that there is no Court Case/Vigilance Case/CBI Case pending against the firm. All the documents given in the tender are true. If found false/fake the person who is giving affidavit is fully responsible. Any action taken against person/firms will be accepted. (court case means " criminal case" against firm/board of director/director/principle stock holder as per relevant laws."

3. While dealing the matter in writ petition no. 3611 (MB) of 2011 and other similar writ petitions, this Court passed an order to enquire in the matter of execution and implementation of National Rural Health Mission in respect of utilization of the funds so given by the Government of India through Union Ministry of Health & Family Welfare, New Delhi. In compliance of the said order, Central Bureau of Investigation had registered the case for preliminary inquiry as mentioned above and investigated the case and submitted a chargesheet in the Competent Court against Surender Chaudhary, the then, Director of the petitioner's firm and other co-accused.

4. Learned counsel for the petitioner has submitted that presently Surender Chaudhary, ceased to be a director of the company and presently Mr. Prateek Chaudhary, Praveen Chaudhary and Amit Chaudhary, directors of the Company are looking after the affairs of the company. None of these director are facing any inquiry and CBI has not submitted chargesheet against these directors. Thus, the impugned order against the petitioner's firm on the ground of " CBI case pending" is not justified.

5. In reply, thereof, the learned Standing Counsel has submitted that all these directors are member of the family of the Surender Chaudhary against whom the chargesheet have been submitted before the Competent Court by the CBI for committing the offence punishable under Section 120B, 420, 467, 468, 471 and 477-A and 3 (2) read with Section 3 (1) (d) of the Prevention of Corruption Act

1988. Further more the address of the accused and the present directors are the same.

6. Previously on the same facts when the Central Purchase Committee took decision to reject the unqualified tender of the petitioner's company on the ground of CBI case, the petitioner's company and other director had preferred a writ petition bearing no. 35253 of 2015 (M/s Daffodills Pharmaceuticals Ltd. & Another Vs. State of U.P. & Others), before this Court at Allahabad and the Court while dismissing the writ petition observed as follows:-

" In view of the terms and conditions of the tender notice, which require disclosure of the pendency of the criminal case against the company, the Central Purchase Committee has disqualified the petitioner on the ground that a CBI case is pending against the petitioner's company.

In the facts and circumstances of the case, we find no illegality in exclusion of the petitioners from the tender for supply of medicine.

The writ petition is accordingly dismissed."

7. In light of the above observation by the Court, Principal Secretary, Government of U.P. has issued a Government Order dated 21.08.2015 directing the authorities concerned within his control that no tender order to purchase medicine, be issued to the firms against whom the CBI has submitted chargesheet or firm and entities which were found to be involved in the offences connected with NHRM programme.

8. Learned Standing Counsel has also submitted that the petitioner's firm had already filed a Civil Suit in original Suit No. 340 of 2015 in the Court of Civil Judge/ Senior Division, Meerut with the prayer of issue of permanent injunction in favour of the petitioner's company restraining the finalization of tender dated 15.10.2014, and the suit is still pending.

9. Learned Counsel for the petitioner has submitted that opportunity of hearing was not given to the petitioner while passing the impugned order.

10. Learned Chief Standing Counsel has submitted that the order in question does not in anyway curtails the right of the petitioner because it is simply directive in nature to the officers within the control of the State to regulate the supply of the medicine.

11. It is necessary to mention certain facts relating to CBI case, on the basis of which the order impugned was passed by the Competent Authority. It is alleged that with the intention to obtain maximum orders of medicine and equipment and obtain profit by way of fake supply to various persons. Shri Surendra and Narender Chaudhary, props M/s Daffodills Pharmaceuticals and M/s Eastern Drug & Sanitary Products in conspiracy with senior officers of Department of Health & Family Welfare, got CMO/CMO (FW) posted in various District by paying huge illegal gratification to Senior Officers, politicians and other public functionaries.

The CMOs/ CMO (FW) once posted awarded maximum supply orders for various purchases of medicine, equipment and other items above Rs. 2.72 crore for respective District through their firms flouting all the norms of purchases, by splitting orders to bring them under their financial powers, obtaining bogus quotations, receiving fake supply, accepting spurious/sub standard drugs without proper batch number, expiry dates, creating false/bogus records at Distt level, Primary Health Centers and other Sub Centers. The FIR further says that the PE conducted about the then above mentioned CMOs revealed that they in conspiracy with the supplies ordered and received bogus supply of medicine and other items above 87 lacs (approx) from Shri Surender and Shri Narender Chaudhary, props M/s Daffodills Pharmaceuticals and M/s Eastern Drug & Sanitary products. The enquiry at the above said Distt disclosed that in the above said Distt medicines, medical and surgical equipments were allegedly purchases at very exorbitant rates which were found to be 4 to 5 times higher than the actual prevailing market rates for the same items from said firms and other companies. Also it was revealed during the enquiry that the said medicine and medical equipments were purchased on the basis of forged quotations of the forged letter heads of reputed companies and payments were received by opening bogus accounts in various banks.

12. On the facts mentioned as above, learned counsel for the respondents has submitted that contractual obligations or non fulfillment of the specification or its breach and consequential order passed by the Competent Authority/Purchaser are not the subject matter of writ jurisdiction.

13. It has been said from time and again by the Hon"ble Supreme Court that a party cannot be permitted to dispute the contractual obligations by invoking the extraordinary writ jurisdiction. In Bareilly Development Authority & anr Vs. Ajay Pal Singh & ors, AIR 1989 SC 1076, a similar contention had been raised. The Apex Court considered a catena of judgments, particularly, M/s. Radha Krishna Agarwal & ors Vs. State of Bihar & ors, AIR 1977 SC 1496; Premji Bhai Parmar & ors Vs. Delhi Development Authority & ors, AIR 1980 SC 738; and The Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., AIR 1981 SC 1368, and arrived at the conclusion that where the contract entered into between the State and the persons agreed is non-statutory and purely contractual and the rights are governed only by the terms of the contract, writ petition under Article 226 of the Constitution of India is not maintainable. Similar view has been taken in State of Gujarat & ors. Vs. Meghji Pethraj Shah Charitable Trust & ors., (1994) 3 SCC 552; and Noida Entrepreneurs Association Vs. U.P. Financial Corporation & anr., 1994 Supl. (2) SCC 108.

14. In Indore Development Authority Vs. Smt. Sadhana Agarwal & ors., (1995) 3 SCC 1, the Hon"ble Supreme Court affirmed and approved the view taken by the Apex Court in Bareilly Development Authority (supra), but it further observed that the High Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution, may satisfy itself on the materials on record that the

State has not acted in an arbitrary or erratic manner. A similar view has been taken by the Supreme Court in *Union of India & ors. Vs. M/s. Graphic Industries Co. & ors.*, (1994) 5 SCC 398. In the said judgment, the Apex Court referred to its earlier judgments, particularly in *Kumari Shrilekha Vidyarthi & ors Vs. State of U.P. & ors*, AIR 1991 SC 537; *Mahabir Auto Stores & ors. Vs. Indian Oil Corporation & ors.*, (1990) 3 SCC 752; and *M/s Dwarkadas Marfatia & Sons Vs. Board of Trustees of the Port of Bombay*, (1989) 3 SCC 293, and observed that even in contractual matters, public authorities have to act fairly and if the State or its instrumentalities have failed to do so, then writ jurisdiction of the High Court under Article 226 of the Constitution can be resorted to because acting unfairly and arbitrarily amounts to flagrant violation of Article 14 of the Constitution.

15. In *L.I.C. of India & anr. Vs. Consumer, Education & Research Centre & ors.*, (1995) 5 SCC 482, the Apex Court observed as under:-

"While exercising the power under Article 226, the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case... each case is to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy.... If a contract or a clause in a contract is found unreasonable or unfair or irrational, one must look to the relative bargaining power of the contracting parties."

16. In *Har Shankar & ors. Vs. The Deputy Excise and Taxation Commissioner & ors*, AIR 1975 SC 1121, the Apex Court has held as under:-

"The writ jurisdiction of the High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred."

17. Similarly, in *State of Orissa & ors Vs. Narain Prasad & ors.*, AIR 1997 SC 1493, the Apex Court has observed as under:-

"A person who enters into certain contractual obligations with his eyes open and works the entire contract, cannot be allowed to turn round.... and question the validity of these obligations or the validity of the Rules which constitute the terms of contract. The extraordinary jurisdiction of the High Court under Article 226, which is of a discretionary nature and is exercised only to advance the interest of justice, cannot certainly be employed in aid of such persons. Neither justice nor equity is in their favour."

18. Similarly, in *Raunaq International Ltd. Vs. I.V.R. Construction Ltd. & ors.*, AIR 1999 SC 393, the Hon'ble Supreme Court has held that in absence of mala fides or extreme case of arbitrariness, it is not permissible for the Writ Court to have a judicial review of contract or to enforce the contractual obligations in exercise of its jurisdiction under Article 226 of the Constitution.

19. In *Kerala State Electricity Board & anr Vs. Kurien E. Kalathil & ors*, (2000) 6 SCC 293; the Hon'ble Supreme Court, in a similar situation, observed as under:-

"If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observation of the High Court the contractor was seeking enforcement of a statutory contract. A contract would not become statutory merely because it is for construction of a public utility and it has been awarded by a statutory body. We are also agree with the observation of the High Court that since the obligation imposed by the contract on the contracting parties comes within the purview of the Contract Act, that would not make the contract statutory. Clearly the High Court fell into an error in coming to the conclusion that the contract in question was statutory in nature..... The contract between the parties is in the rem of private law. It is not a statutory contract. The dispute relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. This is a matter for adjudication by a civil court or in arbitration if provided for in the contract."

20. In *National Highways Authority of India Vs. Ganga Enterprises & anr.*, (2003) 7 SCC 410, the Hon"ble Supreme Court cautioned the High Courts that while examining the contractual matters in a writ jurisdiction, the Court is duty bound first to examine the issue of maintainability for the reason that contractual matters cannot be entertained in a routine manner.

21. In *State of U.P. & Ors. Vs. Bridge & Roof Company (India) Ltd.*, (1996) 6 SCC 22, it was held that the High Court was justified in not going into the dispute as it involved interpretation of terms of the contract.

22. In the matter of policy decision and economic tests the scope of judicial review is very limited. Unless the decision is shown to be contrary to any statutory provision or the Constitution, the Court would not interfere with an economic decision taken by the authorities of the State. The court cannot examine the relative merits of different economic policies and cannot strike down the same merely on ground that another policy would have been fairer and better. In a democracy, it is the prerogative of each elected Government to follow its own policy. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular decision or policy is wise or whether better decision can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different order or policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the authority has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within the limits of the authority. Normally, there is always a presumption that the State action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest.

The burden is a heavy one and it has to be discharged to the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the Government in taking an action.

23. It cannot be doubted that the principles of natural justice cannot be put into a strait-jacket formula and that its application will depend upon the fact situation obtaining therein. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. This is what has been held by the Supreme Court in *K.L. Tripathi Vs. State Bank of India & Ors.*, AIR 1984 SC 273; *N.K. Prasada Vs. Government of India & Ors.*, (2004) 6 SCC 299; *State of Punjab Vs. Jagir Singh*, (2004) 8 SCC 129; *Karnataka SRTC & Anr. Vs. S.G. Kotturappa & Anr.*, (2005) 3 SCC 409; and in *Viveka Nand Sethi Vs. Chairman, J&K Bank Ltd.*, (2005) 5 SCC 337.

24. In *Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. Vs. Ramjee*, AIR 1977 SC 965 the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference of the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

25. In *Union of India Vs. Tulsiram Patel*, AIR 1985 SC 1416 the Hon'ble Supreme Court held:-

"Though the two rules of natural justice, namely, *nemo judex in causa sua* and *audi alteram partem*, have now a definite meaning and connotation in law and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal straitjacket. They are not immutable but flexible."

It is equally well settled that the principles of natural justice must not be stretched too far and in this connection reference may be made to the decisions of the Supreme Court in *Sohan Lal Gupta & Ors. Vs. Asha Devi Gupta & Ors.*, (2003) 7 SCC 492; *Mardia Chemicals Ltd. Vs. Union of India*, AIR 2004 SC 2371 and *Canara Bank Vs. Debasis Das*, AIR 2003 SC 2041.

26. In *Hira Nath Mishra & Ors. Vs. The Principal, Rajendra Medical College, Ranchi & Anr.* AIR 1973 SC 1260, the Hon''ble Supreme Court held that principles of natural justice are not inflexible and may differ in different circumstances. Rules of natural justice cannot remain the same applying to all conditions.

27. The Constitution Bench of the Supreme Court in *Managing Director ECIL, Hyderabad Vs. B. Karunakar*, AIR 1994 SC 1074 made reference to its earlier decisions and observed:-

"In *A.K. Kraipak & Ors. Vs. Union of India & Ors.*, AIR 1970 SC 150, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why, they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice." (Emphasis added)

28. The Hon''ble Supreme Court in *Bihar School Examination Board Vs. Subhas Chandra Sinha & Ors.*, AIR 1970 SC 1269 while considering the cancellation of the entire examination because of use of mass copy considered the scope of the principles of natural justice in such a matter and observed:-

"It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go....."

After referring to the aforesaid decision, the Supreme Court in *Chairman J&K State Board of Education Vs. Feyaz Ahmed Malik*, AIR 2000 SC 1039, emphasised that the Board is entrusted with the duty of proper conduct of examinations.

29. In *Biswa Ranjan Sahoo & Ors., Vs. Sushanta Kumar Dinda & Ors.*, AIR 1996

SC 2552, the Hon"ble Supreme Court had the occasion to examine whether principles of natural justice were required to be followed in a matter where because of large scale malpractice in the selection process, the selection was cancelled and in this context it was observed:-

"Nothing would become fruitful by issuance of notice. Fabrication would obviously either be not known or no one would come forward to bear the brunt. Under these circumstances, the Tribunal was right in not issuing notice to the persons who are said to have been selected and given selection and appointment."

30. In Union of India & Ors. Vs. O. Chakradhar, AIR 2002 SC 1119, the Hon"ble Supreme Court considered the question whether it was necessary to issue individual show cause notices to each selected person when the entire selection was cancelled because of widespread and all pervasive irregularities affecting the result of selection and it was observed:-

"The illegality and irregularity are so intermixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable."

31. In the case of S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. & Ors., AIR 1994 SC 853, the Hon"ble Supreme Court refused to interfere on the ground of breach of principles of natural justice by observing that a person, whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

32. It is clear that when there is a failure on the part of the contractor to comply with the express terms of the contract and/or to commit breach of the said terms resulting into failure to commence/execute the work or supply the items as per specification as stipulated in the agreement or giving the performance that does not meet the statutory requirements of the contract or the action of the petitioner is reported against the provisions and against the interest of the State, the Department has a right to regulate its business through various directions to State Agencies in which the petitioner has no right to interfere.

33. Thus, the writ petition lacks merit and is liable to be dismissed and is hereby dismissed with costs.