
(1975) 03 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2570 of 1974

Nathulal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-03-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 299

Citation : AIR 1976 Raj 12 : (1975) RLW 226 : (1975) WLN 309

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Advocate : K.N. Joshi, for the Appellant; M.D. Purohit, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

D.P. Gupta, J.—This is a petition under Article 226 of the Constitution of India praying for the quashing of the order of the State Government dated August 8, 1974, and for ancillary reliefs.

2. The facts briefly are that on November 15, 1965 the petitioner submitted an application to the Chief Conservator of Forests, Rajasthan praying that he may be allowed to collect and take away on contract basis, like other forest products, "Ratanjot seeds" which are a natural product of the forests in Udaipur forest area and which might be used for extracting oil. The petitioner made an offer for the collection and removal of "Ratanjot" seeds from the Udaipur forest division during a period of ten years on making payment of an annual lease amount of Rs. 10,000 in respect thereof. The State Government by an order dated August 6. 1970 agreed to grant a lease in favour of the petitioner for the collection of "Ratanjot" seeds from the entire Udaipur forest division for a period of ten years, on payment of the sum of Rupees 10,000 per annum as the lease amount therefor. However, for some reason, which is not very clear, the aforesaid order was cancelled by the State Government on June 19. 1971. Thereupon the petitioner made a representation and the State Government again "by its order

dated January 22, 1973 directed the Chief Conservator of Forests to grant a lease to the petitioner on the same terms as mentioned above for the collection of "Ratanjot" seeds and the order dated June 19, 1971 was withdrawn. The Divisional Forest Officer, Udaipur, in pursuance of the aforesaid order of the State Government, directed the petitioner on May 7, 1974 vide Ex. 9 to deposit a sum of Rs. 25,000 representing the 1/4 the of the contract amount and also directed him to execute a contract. The petitioner deposited the aforesaid amount of Rs. 25,000 on May 21, 1974, It appears that on the next following day i.e. on May 22, 1974 the petitioner also executed a contract in the prescribed form for the collection of "Ratanjot" seeds from Udaipur forest division. On that day the Divisional Forest Officer, Udaipur also issued a letter (Ex. 10) to the petitioner acknowledging the receipt of Rs. 25.000 representing 1/4th of the contract amount and also admitting the execution of the agreement by the petitioner. The petitioner was also directed by the aforesaid letter to deposit a sum of Rs. 8,500 in respect of the first year of the contract, namely for the year 1974-75 within 15 days of the receipt thereof.

It appears that some dispute cropped up at that stage between the petitioner and the State Government as to whether the petitioner would be entitled to collect "Ratanjot" seeds from the forest lying within the Panchayat areas or not. The petitioner did not make a deposit of the amount of Rs. 8,500 within 15 days of the receipt of the letter Ex. 10. However, he made a deposit of the aforesaid amount of Rs. 8,500 on August 13, 1974. It may be mentioned here that in the contract executed by the petitioner, a copy of which has been placed on record as Ex. R/4 it was stipulated that out of the amount of Rs. 25,000 deposited by the petitioner, a sum of Rs. 1,500 would be adjusted every year towards the yearly lease amount and that the petitioner would be required to make payment of the remaining sum out of the yearly lease amount within 15 days of the acceptance, of the contract during the first year and upto 30th April every year thereafter. After making the deposit of Rs. 8,500 the petitioner demanded that he should be put in possession, but the Divisional Forest Officer, Udaipur intimated to him on August 21, 1974 vide his letter Ex. R/3 that the State Government by its order dated August 8, 1974 had cancelled the lease granted to the petitioner in respect of the collection of "Ratanjot" seeds and that the petitioner could obtain a refund of the amount deposited by him in accordance with law. The Divisional Forest Officer, Udaipur also issued a public notice on August 19, 1974 to the effect that the contract for collection of "Ratanjot" seeds in all the ranges of Udaipur Forest Division for the year 1974-75 would be given "by public auction, which would take place on September 23, 1974. The petitioner thereupon protested against the unilateral revocation of the sanction of the State Government for giving a lease to him in respect of the collection of "Ratanjot" seeds for a period of ten years, so far as Udaipur forest division was concerned, yet as no further action was taken by the State Government in the matter to redress the grievance of the petitioner, he proceeded to file the present writ petition. 3. The respondents in their reply admitted that the State Government had sanctioned the grant of a

lease to the petitioner for the collection of "Ratanjot" seeds from the Udaipur forest division for a period of ten years by its order dated January 22, 1973 and also admitted that the petitioner deposited the amount of Rs. 25,000 representing the 1/4 th of the contract amount as also the sum of Rs. 8,500 on account of the balance of the first year's lease money. However, it is averred on their behalf in para 20 of their reply that the contract was cancelled by the State Government vide their order dated August 8, 1974 as the petitioner failed to make the deposit of the yearly lease money within the stipulated time. The respondents also produced a copy of the order dated August 8, 1974 along with their reply to the writ petition. The aforesaid order runs as under:--

"I am directed to say that the contract of Ratanjot for the Udaipur Division sanction in favour of Shri Nathu Lal s/o Shri Bhairulal, contractor, Jaswantpura, Jalore vide this Department letter of even number dated 21-1-1973 and subsequent orders in this "behalf may be treated as cancelled.

Action may be taken to auction this produce according to the Rules and Procedures.

Yours faithfully,

Sd/-

DY. SECRETARY TO THE GOVT."

4. Learned counsel for the petitioner has raised several grounds in support of the writ petition but the principal submission urged by him is that the State Government acted in utter violation of the principles of natural justice in cancelling the order sanctioning the grant of the lease for the collection of "Ratanjot" seeds to him for a period of ten years and that no reason was assigned for such cancellation in the order dated August 8, 1974. Learned counsel urged that the petitioner had invested considerable amount in establishing an industry for extracting oil from the "Ratanjot" seeds and had deposited a sum of Rs. 25,000 in the first instance and a further sum of Rs. 8,500 thereafter with the State Government in pursuance of the order dated January 22, 1973 granting a contract to the petitioner for a period of ten years in that respect and that the State Government was not empowered to unilaterally cancel the grant made in favour of the petitioner without affording him a reasonable opportunity of hearing. Learned Additional Government Advocate submitted that the . petitioner was directed to deposit the amount of Rs. 8,500 within a period of 15 days by the order of the Divisional Forest Officer, Udaipur dated May 22, 1974, but as the petitioner failed to do so, the State Government acted within its rights in cancelling the contract granted in favour of the petitioner.

5. It is not disputed by the respondents that before the grant made in favour of the petitioner by the order of the State Government dated January 22, 1973 was cancelled by its subsequent order dated August 8, 1974 the petitioner was not given any notice of the intention of the State Government to cancel the same nor

the petitioner was afforded an opportunity of hearing. Learned Additional Government Advocate contends that it was not necessary, because no contract in accordance with the provisions of Article 299 of the Constitution had come into being and no right had been created in favour of the petitioner. It is apparent that the petitioner had approached the State Government since 1965 for the grant of a lease for the collection of "Ratanjot" seeds for a period of ten years and had offered to pay Rs. 10,000 per year as the lease amount. The petitioner's offer was accepted by the State Government, which by its order dated January 22, 1973 agreed to grant a contract for the collection of "Ratanjot" seeds in the Udaipur forest division to the petitioner on the terms offered by him and the Chief Conservator of Forests was directed to get a contract executed from the petitioner in respect thereof. The petitioner was asked to deposit the sum of Rs. 25,000 representing 1/4 th of the contract amount which he did and the petitioner also executed a formal deed of contract on the prescribed form. Thus the petitioner did all that he was required to do for completing the contract on his part and acted to his prejudice and it cannot be denied in these circumstances, that equities were created in favour of the petitioner, because he had acted on the basis of the assurance contained in the order of the State Government dated January 22. 1973. It is well established by now that in such cases, even if a contract in accordance with the provisions of Article 299 of the "Constitution has not come into being, then the State Government is bound to comply with the principles of natural justice before bidding a good bye to the promise made by it in pursuance of which the other party has acted to its detriment, and thereby disturb the equities created in favour of the petitioner.

6. In *Union of India v. M/s. Anglo Afghan Agencies* AIR 1968 SC 718 it was held by their Lordships of the Supreme Court that where a person had acted upon the, representations made by a governmental authority he could not be deprived of the equities created in his favour and the departmental authority could not be released from, honouring its solemn promise, relying on which the petitioner had acted to his detriment, merely on the ground that the act was executive in character In that case the Textile Commissioner published a scheme called the Export Promotion Scheme providing incentives to exporters of woollen goods and it was represented that such exporters would be entitled to import raw materials of an amount equal to 100% of the f.o.b. value of the exports. The petitioner in that case, on the basis of the representations contained in the Export Promotion Scheme, exported woollen goods to Afghanistan and he claimed certificates for importing materials of the value equal to 100% of the f.o."b value of the goods exported. As the petitioner's claim was rejected by the Textile Commissioner, he filed a writ petition under Article 226 of the Constitution. The same argument which has been advanced before me was advanced before their Lordships of the Supreme Court in that case, namely that no contract in accordance with Article 299 of the Constitution was executed and the petitioner had no right "because the Export Promotion Scheme was merely a set of executive rules. Their

Lordships rejected this contention and observed:--

"We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have, acted to their detriment. Under our constitutional set up. no person may be deprived of his right or liberty except in due course of and by authority of law: if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law--common or statute--the Courts will be competent to, and indeed would be bound to, protect the rights of the aggrieved citizen."

It was further observed by their Lordships that a party who has acted on a representation made by the Government can claim that the Government should be bound to carry out the promise made by it even though the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution.

7. In *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, their Lordships of the Supreme Court observed:--

"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contract by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if the contract be not in that form may be enforced against it in appropriate cases in equity."

8. It was further observed in the aforesaid case:--

"If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is in our judgment, not exempt from liability to carry out its obligation arising out of representations made "by it relying upon which a citizen has altered his position to his prejudice."

9. In the *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, their Lordships of the Supreme Court held that it is unnecessary to consider in that case as to whether the impugned order was made on irrelevant grounds, because before making it the officer concerned did not call for any explanation of the person concerned and give him an hearing before passing that order. It was observed by their Lordships :

"Granting that the order was administrative and not quasi-judicial, the order had still to be made in a manner consonant with the rules of natural justice when it affected the respondent's rights to property..... The rule that a party to whose

prejudice the order is intended to be passed is entitled to a hearing applied alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. The Divisional Forest Officer in the present case set aside the proceeding of a subordinate authority and passed an "order which involved the respondent in considerable loss. The order involved civil consequences. Without considering whether the order of the Divisional Forest Officer was vitiated because of irrelevant considerations, the order must be set aside on the simple ground that it was passed contrary to the basic rules of natural justice."

In the last mentioned case Ram Sanahi Singh purchased a right to cut timber from the forest lots in South Kheri. The Divisional Forest Officer, however, by an order directed that the timber which the purchaser had actually removed with the sanction of forest authorities under a particular tally be treated as if removed in another tally. It was argued before their Lordships of the Supreme Court that the dispute arose in that case out of the terms of a contract, but their Lordships held that merely because the source of the right was initially in a contract, the party could not be driven to have recourse to a suit for the purpose of obtaining relief against an arbitrary and unlawful action on the part of public authority.

10. In a recent case, *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, where the State Government had black listed the person without prior notice to him and without affording him an opportunity of hearing, their Lordships of the Supreme Court were pleased to observe:--

"The fact that a disability is created by the order of black-listing indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the black-list."

11. Thus, it is well established that not only in judicial proceedings but also in cases where the executive authority is called upon to adjudicate matters involving civil consequences and affecting the rights of subjects, the fundamental principles of natural justice ought to be observed. If the State or its officers intend to pass any order to the prejudice of a party, which involves civil consequences or attaches a disability affecting right to property then fair play requires that before such an order is passed the party should be told the case he is required to meet and he should be afforded a reasonable opportunity to represent his case before the authority concerned.

12. In view of the foregoing considerations, without entering into other aspects of the matter, I am definitely of the opinion that the State Government was bound to give a notice to the petitioner of its intention to cancel the contract of collecting "Ratanjot" seeds from the Udaipur forest division, and was bound to afford the petitioner a reasonable opportunity of having his say in the matter,

"before proceeding to pass the order dated August 8, 1974. It may also be observed in this connection that the State Government at no stage indicated to the petitioner that in case the amount of Rs. 8,500 towards the balance of the yearly lease amount was not paid within 15 days, the contract was liable to be cancelled. Much after the letter of May 22 1974 (Ex. 10), the Divisional Forest Officer himself wrote to the petitioner on June 7. 1974 vide his letter Ex. 14 that he should deposit the amount of Rs. 8,500 "at the earliest" so that proceedings for delivery of possession may be taken and in case any delay caused by the petitioner then the responsibility for not handing over possession would lie on him. Thus even from the letter Ex. 14 it did not appear that in case the petitioner failed to deposit the balance of the yearly instalment of lease amount within specified time, the State Government intended to cancel the sanction granted in favour of the petitioner but it only indicated that the delivery of possession would in that event be delayed. Even the order Ex. R/2 dated August 8, 1974, which I have reproduced above, does not disclose the reason which prompted the State Government to cancel the grant of a lease in favour of the petitioner. As a matter of fact it is not disputed that the petitioner was neither given any notice nor he was afforded an opportunity of hearing before the impugned order dated August 8. 1974 was passed by the State Government.

13. Learned Additional Government Advocate relied upon a decision of this Court in State of Rajasthan Vs. Raghunath Singh, It may be stated here that the aforesaid decision is clearly distinguishable for the simple reason that it was given in appeal arising out of a suit wherein the plaintiff had desired to enforce a contract and it was held that such a suit was not maintainable in view of the fact that no contract in accordance with the provisions of Article 299 of the Constitution had come into existence. In the Anglo Afghan Agencies" case and the Century Spinning & Manufacturing Company"s case their Lordships of the Supreme Court have definitely laid down that this Court in its extraordinary jurisdiction under Article 226 of the Constitution is empowered to enforce the equity arising in favour of the petitioner out of the representations amounting to a promise made to him by the Government or a public body and as a result of which the petitioner altered his position to his prejudice, even though a contract as envisaged by the relevant provisions had not come into existence.

14. Learned Additional Government Advocate also relied upon the decision in B.K. Sinha Vs. State of Bihar and Others, wherein their Lordships of the Patna High Court held that a writ of mandamus cannot be issued to compel the authorities to remedy a breach of contract pure and simple. In that case the decisions of their Lordships of the Supreme Court in Anglo Afghan Agencies" case and Century Spinning and Manufacturing Company"s case were distinguished on the ground that the doctrine of estoppel was not applicable to the facts of the case before their Lordships. It was observed in the aforesaid case by their Lordships of the Patna High Court:

"There is no question of the petitioner changing his position because of some

representations of the governmental authorities. The principle decided in Century Spinning and Manufacturing Co."s case cannot be invoked and applied in the present case."

However, in the present case, as I have observed above, the petitioner certainly changed his position to his disadvantage on the representations of the State Government and had invested considerable v amount in setting up an industry, besides making a deposit with the State Government of the amount of Rs. 25,000 and a further amount of Rs. 8,500. Moreover, the question in the present case is that the salutary principles of natural justice were not followed by the State Government while passing the order dated August 8, 1974 and I am fortified in the view that I have taken on this aspect of the matter by the decisions of their Lordships of the Supreme Court in D.F.O. South Kheri"s case and Erusian Equipment & Chemical Ltd."s case.

15. In view of the aforesaid discussion, the writ petition is allowed. The order of the State Government dated August 8, 1974 and the consequent order of the Divisional Forest Officer, Udaipur dated August 21, 1974 are set aside. The respondents are directed to act in furtherance of the order of the State Government dated January 22, 1973 (Ex. 3). unless and until the same is cancelled in accordance with law and after observing the principles of natural justice. The petitioner is entitled to get his costs of these proceedings from the State Government.