
(1992) 01 OHC CK 0015

In the Orissa High Court

Case No : Original Jurn. Case No. 5735 of 1991

Prince International

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-01-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 29B

Citation : AIR 1992 Ori 208 : (1992) 73 CLT 652 : (1992) 2 OLR 285

Hon'ble Judges : B.L. Hansaria, C.J.;B.N. Dash, J

Bench : Division Bench

Advocate : G. Rath, B.P. Das and S. Das, for the Appellant; S.K. Das, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Hansaria, C.J.—The petitioner entered into a contract with the Governor of Orissa on 4-12-1989 for supply of approximately 155 M.T. of iron fortified salt per month to be delivered at the district godowns of Koraput, Sundargarh and Phulbani. The period of the contract was 3 years to be counted from the date of execution of the agreement. What has led him to approach this Court is the direction contained in Annexure 7 dated 28-5-1991 issued by the Government to the District Social Welfare Officers of the concerned districts not to place any more requisition for iron fortified salt with the petitioner nor to accept delivery of any stock from 15-6-1991. The assertion of the petitioner is that this direction is against the mandate of the Constitution, and the principle of promissory estoppel would also not allow the Government to issue such a direction. It is, therefore, prayed to quash the same.

2. As the petitioner is seeking to enforce its contractual right through a writ of this Court, it has to be first seen whether the petition is maintainable in view of a number of decisions of the apex Court that no writ lies to enforce a right which is found purely on a contract. (See, inter alia, Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, , Banchhanidhi Rath Vs.

The State of Orissa and Others, , Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd.,).

3. Shri Rath has, however, referred to The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh, and seeks to place reliance on the following observations finding place in paragraph 4 of the judgment :--

".....We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority, he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in K.N. Guruswamy Vs. The State of Mysore and Others, there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power."

4. After holding as above, the impugned order of the Divisional Forest Officer was set aside on the ground that it was passed contrary to the basic rules of natural justice. Shri Rath contends that in the present case also, before issuing the impugned direction, no notice had been issued to the petitioner and as the direction has resulted in considerable loss to it, the impugned order involves civil consequences which required compliance with the rules of natural justice because of the view taken in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, which was referred with approval in the aforesaid case while coming to the conclusion that the order of the Divisional Forest Officer having involved considerable loss to the respondent, compliance with the rules of natural justice was necessary.

5. According to us, the decision rendered in the aforesaid case or, for that matter, in K.N. Guruswamy Vs. The State of Mysore and Others, to which reference was made in paragraph 4 quoted above, cannot assist the petitioner in view of the later decision of the apex Court itself in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, In that case, the two aforesaid decisions were duly noted and it was held that those dealt with breach of statutory obligation (see paragraph 14). This type of obligation was distinguished from contracts which are non-statutory and where rights and liabilities of the parties are governed by the terms of the contract and the petitioner complains about breach of contract by the State, which type of contracts fall in the third category mentioned in paragraph 12 of the judgment. As to these categories of contracts, it was stated in paragraph 15 that no writ or order could issue under Article 226 of the Constitution to compel the authorities to remedy the breach of a contract, pure and simple. According to us, the case at hand falls within the third category referred in paragraph 12 of the judgment, and, as such, on the ratio of this decision, we would have held that the writ petition is not maintainable.

6. But then, the recent decision in Mahabir Auto Stores and others Vs. Indian Oil

Corporation and others, has changed the complexion. That case dealt with the grievance of a firm relating to sudden stoppage of supply of lubricants by the Indian Oil Corporation. Before stopping supply, no intimation had been given, no query or clarification was sought for and there was no adjudication as such. Though the Indian Oil Corporation had not issued any letter appointing the firm as lube distributor, from the nature of the business carried on by the firm, the Court felt satisfied that the business of lubricants could be carried on by the firm only as the supplier from the Indian Oil Corporation. It was thus clear that the relationship between the firm and the Indian Oil Corporation was founded merely on long business dealings extending over a period of more than 18 years having no statutory backing.

7. Despite the above, the apex Court took the view that the decision of the State/public authority can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution on any of the grounds available in public law field. It was pointed out that if a governmental action even in the matters of entering and not entering into contracts fails to satisfy the tests of reasonableness, the same would be unreasonable and liable to be quashed by a writ Court for violation of Article 14 of the Constitution. In this connection, the following observations made in paragraph 12 are pertinent:--

"....It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."

8. A close reading of what has been stated above, after referring, inter alia, to *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, may indicate that the observations were meant to apply to a decision relating to "entering or not entering into a contract", which are in tune with what was stated in *Ramana Dayaram*, wherein it was opined that the test of reasonableness has to be applied to judge the validity of an action relating to entering into a contract, though the post-contractual dealings would not come within the fold of Article 14. Despite this, as in the aforesaid case the question posed before the Court did not relate to "entering or not entering into a contract" and was, in fact, relatable to cancellation of the contract, we are of the view that in a proper case, a writ Court can also be approached making a grievance about cancellation or suspensions of a contract if the same be unreasonable and as such violative of Article 14 of the Constitution, or be hit by the principles of natural justice.

9. In support of his submission that the approach to this Court is not prohibited, *Shri Rath* as also placed reliance on *Gujarat State Financial Corporation Vs. Lotus*

Hotels Pvt. Ltd., inasmuch as according to the learned counsel the impugned direction given in the present case was in violation of the principle of promissory estoppel. In the aforesaid case, the Court has been approached on the failure of the appellant to discharge its obligation to advance loan to the respondent. A point was canvassed that a writ Court could not be approached for specific performance of the agreement and to seek a writ of mandamus against the appellant to carry out its obligation visualised by the agreement. The Court, however, observed as below in paragraph 8 :--

"It is too late in the day to contend that the instrumentality of the State, which would mean "other authority" under Article 12 of the Constitution, can commit breach of a solemn undertaking on which the other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract".

Being of the aforesaid view and being satisfied that the respondent before the Court had acted on the promise of the appellant and had suffered liabilities to set up a hotel to finance which agreement had been reached with the appellant, the Court upheld the issuance of the writ of mandamus against the appellant to perform its duty as, according to it, the principle of promissory estoppel had come into play.

10. As to the applicability of the aforesaid decision to the present case, we are not fully satisfied, because writ of mandamus was issued in the case on the Court being satisfied that in entering into the contract in question, the Corporation was performing a statutory duty, about which reference was made at two places in the judgment -- one in paragraph 8 and then in paragraph 12. Though Shri Rath has contended in this connection that the Court observed about "performance of statutory duty" by the appellant as it had been set up by a statute, we do not, however, think if reference about performance of statutory duty had been made only because of the fact of creation of the appellant by a statute. We are inclined to think that the agreement reached between the two parties in the aforesaid case was of the second category, of which reference has been made in Radhakrishna Agrawal (supra), as the same has to be taken to be an exercise of a statutory power conferred by the Act under which the appellant had been created. In so far as the present case is concerned, the agreement is not referable to any statute, but is an instance of exercise of executive power conferred by Article 298 of the Constitution.

11. Despite the non-applicability of the decision in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., , we are not holding that the petition is not maintainable, because of the view taken in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, and because of the case of the petitioner that issuance of the impugned direction was in violation of Article 14 of the Constitution and the principles of natural justice. While stating that because of the allegation of violation of the principles of natural justice the petition cannot be rejected at the threshold, we are conscious of the decision in Radhakrishna

Agarwal and Others Vs. State of Bihar and Others, , wherein it was held that the limitations imposed by the rules of natural justice cannot operate upon powers which are governed by the terms of an agreement exclusively. The further observation made in this regard in paragraph 25 of the judgment is that the only question which normally arises in such cases is whether the complained of is or is not in consonance with the terms of the agreement. While taking this view, due note was taken of the argument based on the decision of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, that the distinction between administrative and quasi-judicial action is thin and a vanishing one. As to this argument, it was observed in paragraph 23 that the same appeared wholly irrelevant inasmuch as the question of distinction between an administrative and a quasi-judicial decision can only arise in the exercise of powers under statutory provisions. It was then observed:--

"Rules of natural justice are attached to the performance of certain functions regulated by states or rules made thereunder involving decisions affecting the rights of parties. When a contract is sought to be terminated by the officers of the State, purporting to act under the terms of an agreement between the parties, such action is not taken in purported exercise of a statutory power at all."

12. It is because of the above view that, according to us, the decision rendered in The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh, , which was relied upon by Shri Rath to contend that if an order is passed involving civil consequences, the same must be set aside, if it be contrary to the basic rules of natural justice even if the right affected be contractual, has no application. We have said so far the reason that the aforesaid case dealt with an order passed by the Divisional Forest Officer in exercise of statutory power. This would be apparent from what has been stated in the concluding part of paragraph 4 of that judgment and the observations made about that judgment in Radhakrishna Agrawal (AIR (977 SC 1496) (supra), which have already been noted. Despite this being the position, we would agree with Shri Rath that in case there is a violation of the principles of natural justice in terminating a contract, approach to this Court under Article 226 of the Constitution is not barred because of what has been recently stated in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , in which it was observed in paragraph 12 that even though the rights of citizens be in the nature of contractual rights, the same are subject to judicial review, inter alia, on the touchstone of natural justice, Though this observation was made relating to a decision of "entering or not entering into a contract", but, as we have already noted, the case of Mahabir Auto Stores was relatable to cancellation of the contract and, as such, we would think that the observations noted above would apply not only to making of initial contract but to post-contractual dealings also.

13. Being of the view that the petition is maintainable, let us see whether there is merit in the case of the petitioner. The first point which we propose to examine in this regard is relating to the grievance of violation of the principles of natural

justice in issuing the impugned direction. As to this, the submission of Shri Das, learned Additional Government Advocate, is that the present is really not a case of cancellation of any contract but of refusal to place any more requisition for the supply of iron fortified salt, which was in consonance with what has been stated in paragraph 10 of the agreement. It is urged that according to what has been stated in that paragraph, the supply was to be made "on requisition"; and so it is submitted that if it was felt by the authorities that there was no need for further supply, they were within their rights not to place further requisition.

14. The aforesaid contention of Shri Das is met by Shri Rath by drawing our attention to another term of the agreement incorporated in paragraph 2, which states that the petitioner "shall supply approximately 155 M.T. of iron fortified salt per month in total (subject to three months notice for variation as per actual requirement)". By referring to this condition, it is urged by Shri Rath that an obligation had been cast on the petitioner to supply approximately 155 M.T. of iron fortified salt per month, which quantity could be varied by giving three months notice "as per actual requirement". The quoted words undoubtedly refer, according to us to the requirement of the concerned District Social Welfare Officers on whose requisition the supply was to be made. We do not think if these words have reference to the requirement of the supplier as contended by Shri Das. It was the requirement of the District Social Welfare Officers for the commodity in question which had led to the signing of the agreement, and so, the reference to actual requirement in paragraph 2 has to mean the requirement of the District Social Welfare Officers.

15. We are, therefore, of the opinion that the direction of the Government to the concerned District Social Welfare Officers to stop placing of requisition with the petitioner without giving any notice was not in accordance with the terms of the agreement. As the impugned direction had apparently been issued without affording a reasonable opportunity of hearing to the petitioner and as the same has undoubtedly caused great loss to him, we are of the view that natural justice did not permit it to be so done.

16. We would now examine the reasonableness of the action taken by the Government. As to this, the contention of Shri Rath is that the ground which had led to the impugned direction, the same, *inter alia*, being the decision of the Government to "undertake a survey regarding impact of iron fortified salt for iron deficiency anaemia to expectant and nursing mothers" as stated in Annexure 7, is not reasonable. It is urged that another reason or the impugned acting being accumulation of huge stock of iron fortified salt with the concerned District Social Welfare Officers is also unreasonable.

17. In so far as the first ground is concerned, the background is that the need for the survey in question was felt because of the supply of Iron Golfer tablets (which also contain iron) under the National Nutrition Anaemia Prophylaxis Programme, and so, the Director of Health Services felt that if the same beneficiaries also receive iron fortified salt over a long period, there is remote

possibility of iron toxicity, as stated in Annexure A dated 6-5-1991. As to this opinion of the Director of Health Services, the petitioner's contention is that the apprehension of the Director is belied by the report submitted by the National Institute of Nutrition dated 6-9-1991 as at Annexure 9, which was submitted after making a survey at the request of the State Government, according to which the programme of iron fortified salt distribution in the districts of Phulbani, Sundargarh and Koraput "should continue without interruption" if the desired results are to be achieved. Our attention is also invited in this connection to the views expressed by the Director of Family Welfare, Orissa, as at Annexure 10 dated 1-10-1991, to the effect that the question of iron toxicity does not arise by the use of iron fortified salt with its minimum contents of iron if used for several years. According to the Director, therefore, there would be no harm if both the programmes (supply of iron fortified salt and National Anaemia Prophylaxis Programme) are continued together. Finally, we are referred to a communication dated 5-12-1991 as at Annexure 17 to Misc. Case No. 6752/ 91 emanating from the Director of Women & Child Development, Ministry of Human Resources Development, Government of India, addressed to the Director of Social Welfare, Government of Orissa, stating that as anaemia is wide-spread in the districts of Phulbani and Sundargarh, of which mention has been made in the report of the National Institute of Nutrition submitted after undertaking a survey in those districts from 12th to 24th August, 1991, and because of the extent and magnitude of the problem of anaemia, the programme of iron fortified salt distribution should continue without interruption. The aforesaid Department, therefore, desired that the State Government may continue to supply iron fortified salt input in the wheat-based nutrition programme. Shri Rath urges that as the distribution in question had been undertaken at the behest of the Central Government, for which purpose that Government had approved to pay a sum of Rs. 3 crores as grant-in-aid to the Director, Panchayati-Raj Department, Government of Orissa, as would appear from Annexure 14, and as full central assistance was made available for the purpose as would appear from Annexure 17, the State Government was not at all justified in directing the concerned District Social Welfare Officers to stop placing of further requisition and in not withdrawing Annexure 7 on the face of the letter of the Government of India as at Annexure 17.

18. The case of the opposite parties in this regard, however, is that after the receipt of the survey report from the national Institute of Nutrition, the same was referred to the Director of Health and Family Welfare and Director of Health Services, Orissa for their opinion, and the latter officer in his letter dated 4-11-1991 (Annexure B) made an observation whether in the presence of adequate supply of Iron Folfer tablets "Will it be worthwhile to duplicate distribution of iron salt amongst beneficiaries?" The counter affidavit of the opposite parties further states in this regard in paragraph 10 that the reports of the aforesaid Institute and the Director of Health Services are under active consideration of the Government and that a decision will be taken at the earliest.

19. These being the facts, we do not think if we would be justified in holding that the first ground which had impelled the Government to issue Annexure-7 can be said to be unreasonable though the State Government ought to have ordered for resumption of requisition on the basis of what has been stated in Annexure 17. As, however, that Annexure is dated 5-12-1991 and as this petition was filed on 19-11-1991, it may be that the State Government did not get proper time to apply mind to what has been stated in Annexure 17.

20. This leaves for consideration the second ground leading to issuance of Annexure 7. The same is accumulation of huge stock of iron fortified salt with the concerned Social Welfare Officers. The contention of Shri Rath in this context is that the accumulation had taken place because of "irrational diversion programme" undertaken by the authorities, as opined by the Collector, Sundargarh, in his letter dated 8-11-1990 (Annexure C). A perusal of this annexure shows that the Collector regarded the accumulation owing to "irrational diversion programme" as 390 quintals of salt which were required to be diverted to blocks had not been so diverted. It is also urged by Shri Rath that the accumulated stock can well be diverted to blocks to be used as "take home" and distributed in the villages through Anganwadi workers, as suggested in the aforesaid letter, which suggestion was approved by the Director of Social Welfare-cum-Additional Secretary to Government, Panchayati Raj Department by his letter dated 14-11-1990 (Annexure 18). The final submission in this regard is that the accumulation was not so huge as to call for stoppage of further requisition. This contention has been advanced because in Annexure-C it has been stated at one place that there was excess accumulation of 100 quintals till 31-10-1990 which had happened, inter alia, because the petitioner continued to supply 400 quintals of salt every month as against the agreed quantity of 390 quintals. The learned counsel submits that even if the accumulation was due to increased supply by the petitioner, the same being only of 100 quintals, the accumulated stock was enough to take care of only about 8 days' requirement inasmuch as the monthly requirement for this district was specified in the agreement at 390 quintals. A perusal of Annexure-C, however, shows that the accumulated stock as on 31-10-1990 was quantified also as 2032 quintals, which was regarded as "alarming" by the Director, Social Welfare, in the aforesaid letter of 14-11-1990.

21. If the stock of iron fortified salt had accumulated due to irrational diversion programme, as mentioned in Annexure-C, it is apparent that the petitioner cannot be blamed for the same. But then, if the alarming accumulation, whatever be its reason, led the Government to issue the direction in question, we do not think if the steps taken can really be regarded as arbitrary or unreasonable.

22. This takes us to the last contention of Shri Rath which is based on the principle of promissory estoppel. We are, however, not fully satisfied regarding the applicability of this principle to the case at hand. We have said so because a

reference to the observation made in para 7 of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, which is the leading decision on the subject, shows that this doctrine does not appertain to the realm of contract. It comes into operation where a promise is made knowing or intending that it would be acted on by the promisee and, if in fact the promisee acting in reliance on it, alters his position, then the promisee, notwithstanding that promise has not been recorded, in the form of formal contract, as stated in the aforesaid case which was cited with approval in para 11 of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.,

23. For the sake of completeness it may, however, be stated that if this doctrine were to apply, benefit of the same could undoubtedly be taken by the petitioner inasmuch as he having stocked huge quantity of iron fortified salt because of the promise held out in para 2 of the agreement which has already been noted, the promisor could not refuse to accept the specified quantity without giving notice of required period.

24. Time has come to conclude the lengthy discussion, and we do so by stating that though there might have been some justification for the issuance of Annexure 7, the same cannot be allowed further operation in view of what has been stated in Annexure 17 dated 5-12-1991, and because no fault can be found with the petitioner for accumulation of stock and he cannot be allowed to suffer huge loss as his action is in conformity with the terms of the contract, and because Annexure 7 was issued without giving the petitioner required notice and without hearing him in the matter. The petition is, therefore, allowed by quashing Annexure 7 and by directing the opposite parties to act in accordance with the terms of the contract.

B.N. Dash, J.

25. I agree.