
(2013) 08 MP CK 0391

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3928 of 1999

P.S. Baraskar (Dr.)

APPELLANT

Vs

Director, Department of Wastelands Developments and
Others

RESPONDENT

Date of Decision : 13-08-2013

Acts Referred:

Citation : (2013) 5 MPHT 495 : (2013) 4 MPLJ 390

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Sanjay Agrawal, for the Appellant; Vikram Singh for Respondent No. 1 and H.C. Kohli for Respondent Nos. 2 and 3, for the Respondent

Judgement

A.K. Shrivastava, J.—By this petition under Articles 226 and 227 of the Constitution of India the petitioner is seeking following reliefs:-- (i) That, this Hon''ble Court may kindly be pleased to issue a writ in the nature of mandamus directing the respondent No. 1 to immediately release the subsidy to the petitioner in accordance with their Scheme Annexure P/1.

(ii) That, this Hon''ble Court may kindly be pleased to issue a writ in the nature of mandamus directing the respondent No. 1 to adequately compensate the petitioner for the loss having been incurred by him due to the non-release of subsidy.

(iii) It is, therefore, prayed that the respondent No. 1 be directed to reimburse the petitioner for the extra amount of interest which the petitioner has been required to pay to the financial institution due to no release of the subsidy.

(iv) Any other relief which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case may also be awarded in favour of the petitioner together with cost of the petition.

The Department of Wastelands Development, Ministry of Rural Areas and

Employment, New Delhi (hereinafter referred to as the "first respondent") promulgated a scheme namely "Central Sector Investment Promotional Scheme for Development of Non-forest Wastelands" and for this purpose constituted the National Wasteland Development Board of Department. The Scheme has been annexed as Annexure P/1. The Scheme was framed with an object of facilitating/attracting/channelizing/mobilizing resources from all financial Institution, corporate bodies including Industries and other entrepreneurs for development of Wastelands in non-forest areas belonging to the Government local bodies or private individuals and for facilitating and production and flow of additional Bio-mass and forestry products used as raw materials for different type of Industries as well as generation of employment through such activities.

2. Further the case of the petitioner is that the aforesaid Scheme provides for making available by way of Central Assistance Promotional Grant/promotional subsidy to the extent of Rs. 25, 00,000/- or 25% of the total cost of the project, whichever is less. The Scheme would be sanctioned on the basis of its techno-economic feasibility and its financial viability affirmed by financial Institutions/Banks.

3. The petitioner applied under the said Scheme and undertook the development of wastelands and floated a scheme in respect of Khasra No. 528, area 9 hectares of Village Ghat Biroli, Tahsil Multai, District Betul which is totally un-irrigated hilly wasteland. The project proposed undertaking of Eucalyptus plantation on the said land and which could not only resulted in reclaiming the abovementioned wasteland resulting in forestation as well as conservation of soil and water but also facilitate production and flow of additional Bio-mass for the purposes of use as raw material in the paper Industries in the vicinity. The project report of the petitioner is Annexure P/2.

4. The project of the petitioner was submitted for sanction to respondent No. 2-Central Bank of India, Ghat Biroli, District Betul which was duly forwarded to the Regional Office of the Bank who accorded its sanction to the project on 4-5-1996 Annexure P/3. The said project involved a total investment of Rs. 6,78,350/- spread over a period of six years with first year initial requirement of Rs. 3,71,950/-. In accordance with the project, a term loan of Rs. 5,08,765/- was sanctioned after deducting the petitioner/promoter contribution of Rs. 1,69,585/- and out of the abovementioned sanctioned amount an initial amount of Rs. 3,39,180/- was released as term loan to the petitioner. As per the Scheme (Annexure P/1) of the respondent No. 1, the subsidy equal to the promoter contributor i.e. 25% of the project cost amounting to Rs. 1,69,585/- was to be paid by the first respondent.

5. It is also the case of the petitioner that petitioner submitted his proposal along with the letter to the respondent No. 2 sanctioning the loan on 10-6-1996 by registered AD which was duly received in the office of respondent No. 1 on 12-6-1996 (Annexure P/4). The registered postal receipt and the acknowledgment due are part of Annexure P/4. Not only this, the second

respondent-Central Bank of India, Branch Betul also wrote a letter to the first respondent on 30-7-1996 for the purpose of releasing the subsidy for the development and construction work as taken up by the petitioner for implementing the project. But, the first respondent failed to sanction the subsidy to the Central Bank-respondent No. 2.

6. Further it has been averred by the petitioner in the petition that he had already completed the construction of check/stop dams, installation of pipe lines, construction of the barbed wire fence, chowkidar/servant's quarters, digging of the cattle preventive trench and installation of a 10 H.P. diesel pump and solar lights as well as water storage tank etc. That apart, he has also planted more than 15,000 Eucalyptus plants out of which 12000 are in healthy condition and have grown to a considerable height. The petitioner has also developed his own nursery for the purposes of substituting and replenishing the Eucalyptus sapling. Several photographs have been filed and collectively they are marked as Annexure P/5. The petitioner sent several reminders and has personally contacted the Director and Joint Secretary of the first respondent. The representations were sent by the petitioner on 14-11-1996, 21-11-1996, 16-12-1996, 21-1-1997, 25-2-1997, 13-3-1997, 30-5-1997, 7-9-1997, 21-6-1998 and 12-8-1998 requesting the first respondent to sanction and release the subsidy. Some of the representations are filed as Annexure P/6 collectively. The second respondent also wrote letter to respondent No. 1 to release the subsidy on 27-4-1998 (Annexure P/7) and also certified and stated in the letter that progress of the project is satisfactory. But in spite of repeated representations/requests and personal meeting of the petitioner and letters of second respondent, the first respondent did not release the subsidy. Hence, this petition has been filed by the petitioner praying for the aforesaid reliefs.

7. The contention of Shri Sanjay Agrawal, learned counsel for the petitioner is that looking to the averments made in the memorandum of writ petition and the annexures filed along with the petition the clear case of the petitioner is that he is entitled for the subsidy but on account of slackness of the first respondent they are not releasing it. Learned counsel by placing reliance upon the doctrine of principle of "promissory estoppel" has submitted that the first respondent is backing upon to perform his part by releasing the subsidy and not only this no reply of any letter sent by the petitioner or by second respondent has been sent although the first respondent was legally obliged to release the subsidy.

8. By inviting my attention to the return filed on behalf of respondent No. 1 it has been submitted by learned counsel for the petitioner that nowhere in the return the denial has been made by respondent No. 1 that correspondence of the petitioner or the Bank was not received although they have admitted in the return that the project report of the petitioner was received. Learned counsel further submits that in the return para 2 although it has been averred by the first respondent that under the said Scheme four projects were sanctioned in the State of Tamil Nadu during 1994-95 and 1995-96 and no projects were

sanctioned under the Scheme during 1996-97 and 1997-98 since the Scheme was restructured on the advice of the Ministry of Finance, Planning Commission and Standing Committee of Parliament for Urban and Rural Development. But there is only a bald statement and nothing has been brought on record in order to substantiate the said averment and the stand taken by the first respondent. Hence it has been prayed that this petition be allowed.

9. Per contra, Shri Vikram Singh, learned counsel for the first respondent submitted that although the project of the petitioner under the said Scheme was received but it was never accepted by the Scrutiny Committee constituted under Clause 6 of the said Scheme and, therefore, the petitioner has no case. Further it has been submitted by him that because the Scheme was being restructured and, therefore, it was not given effect to and no project was sanctioned during the period 1996-97 and 1997-98. By inviting my attention to the averments made in paras 4 and 5 of the return it has been submitted that the petitioner submitted the project proposal in June 1996 as per the format of old guidelines of IPS. The Central Bank of India financed the project on 4-5-1996 and the petitioner is claiming subsidy on the basis of old guidelines. But although the Scheme Annexure P/1 was launched during 1994-95, however it was kept in abeyance during the period 1996-97 and 1997-98 since it was being restructured and the petitioner was informed from time to time accordingly. It has also been put forth by learned counsel for the first respondent that the last correspondence made by the petitioner with the first respondent was in September, 1997. The guidelines of the Scheme was revised and circulated to all concerned in August, 1998 but the petitioner/promoter did not make any correspondence with the first respondent, therefore, his case could not be proceeded for grant of subsidy. Learned counsel further submits that had the petitioner approached to the Department after August, 1998 the project would have been reviewed and considered at that time but petitioner failed to do so. It is also propounded that the project period has already been over in 2001-02 and no action can be taken at this stage and further revised scheme has also been discontinued from 1-4-2003.

10. It has been further contended by learned counsel for respondent No. 1 that the project of the petitioner was never sanctioned by the Committee, therefore, the grant of subsidy does not arise and in this regard my attention has been drawn to Annexure R/3 which is a letter dated 25-6-1997 written by the first respondent to the petitioner. Thus, it has been contended that this petition be dismissed.

11. Shri Kohli, learned counsel for respondents No. 2 and 3/Bank submitted that the Bank has approved the project of the petitioner and accordingly sanctioned the term loan on the basis of the Scheme which was floated by the first respondent. The Bank is also supporting the case of the petitioner that he is entitled for the subsidy because the petitioner had already incurred marginal money and accordingly the Bank has sanctioned the term loan in favour of the

petitioner. However, learned counsel submits that since no relief has been claimed by the petitioner against the Bank, no writ can be issued against the Bank because all the reliefs have been claimed against the first respondent. Learned counsel further submits that if this petition is allowed and the subsidy is released by the respondent No. 1, it may be adjusted in the term loan account of the petitioner.

12. Having heard learned counsel for the parties, I am of the view that this petition deserves to be allowed.

13. The purpose of quoting the facts of the case in detail hereinabove is that upon the assurance given by the first respondent through the Scheme, the first respondent intentionally caused and permitted the petitioner to believe that if the project is floated by the petitioner according to the norms of the said Scheme he will be entitled for the subsidy and, therefore, according to me, the respondent No. 1 now cannot back upon their stand that petitioner is not entitled for the subsidy.

14. The factum of receiving the project of the petitioner duly approved by the Bank (respondent No. 2) in June 1996 has been admitted by the first respondent in para 5 of the return. Admittedly, in June 1996 the Scheme Annexure P/1 was in its full force and it never somersaulted. The Bank also financed the said project on 4-5-1996 and this has also been admitted in the return. The only stand which has been taken by the first respondent in the return is that during 1996-97 and 1997-98, for two years the Scheme (Annexure P/1) was kept in abeyance as the Scheme was being restructured on the advice of the Planning Commission, Ministry of Finance and Standing Committee of Parliament for Urban and Rural Development. However, there is no material to materialize this stand. The first respondent has not filed even a single document in order to justify their stand. In civil cases the parties (plaintiffs and defendants) are required to plead the facts and not the law but in the writ petition filed under Article 226 of the Constitution of India, the writ petitioner is obliged not only to plead but to file the evidence and, therefore, the documents are being annexed. In the present case, although the pleading is very much there in the return of the first respondent but in order to substantiate it by evidence in the shape of documents which were required to be filed in order to materialize the stand, are not filed. In this regard, I may profitably place reliance on the decision of Supreme Court *Bharat Singh and Others Vs. State of Haryana and Others*, . In this decision it has been categorically held by their Lordships of the Supreme Court that if the evidence in support of the pleading and facts are not annexed to the petition or the counter affidavit as the case may be, the Court will not entertain the point. Further it has been held by the Supreme Court that there is a distinction between a hearing under the CPC and a writ petition or a counter-affidavit i.e. return. While in a pleading in civil case i.e. plaint or written-statement the facts and not the evidence are required to be pleaded, while in a writ petition or in the counter affidavit (return), not only the facts but also the

evidence in proof of such facts have to be pleaded and annexed to it. This principle has also been followed in Rajasthan Pradesh V.S. Sardarshahar and Another Vs. Union of India (UOI) and Others, .

15. According to me, in order to determine the right of the parties, in the particular case in regard to first respondent as to whether it was obliging on its part to pay subsidy or not, mere pleading would not be sufficient to resolve the controversy, but, the evidence should also be annexed. Hence, I am of the view that although the pleading in the return is very much there that how the petitioner is not entitled for any subsidy but no evidence has been annexed in order to substantiate the same. Therefore, without any substance, bald statement in the return cannot be accepted particularly when it has been specifically controverted by the petitioner by filing a rejoinder. That apart, there is no averment in the return that the Scrutiny Committee ever rejected the Scheme of the petitioner or kept the project in abeyance to consider it later on since restructuring of the Scheme was under process. Since there is nothing on record in that regard, according to me, the respondent No. 1 cannot back out from their part by not providing subsidy to the petitioner.

16. Even if for a moment the stand taken by the respondent No. 1 in para 5 of the return is taken to be true that the project of the petitioner was received by respondent No. 1 under the Scheme prevailing in the year 1996 (Annexure P/1) and as per respondent No. 1 own showing the Scheme was being restructured. But there is nothing on record either in the return nor any material has been filed by first respondent that any fresh Scheme has been launched and further whether the project of the petitioner which was received by them in June 1996 is not coming within the parameter and the yardstick of the alleged restructured Scheme. Much reliance has been placed by learned counsel for the first respondent on the letter dated 25-6-1997 (Annexure R/3) but in the said letter also nothing has been indicated that the Scheme Annexure P/1 is kept in abeyance for a period of two years.

17. On bare perusal of aforesaid letter (Annexure R/3) only this much is gathered that the Scheme is under restructuring and will take another two months or so for its implementation during the 9th Plan period. There is nothing in this letter that the Scheme of respondent No. 1 (Annexure P/1) is now no more in existence. To me, because the Scheme Annexure P/1 was in existence during relevant time and the petitioner submitted requisite project under the said Scheme, unless and until contrary is there, the petitioner is entitled for the subsidy because it was fulfilling the requirement and then only the Bank allowed and granted term loan to the petitioner. In this document Annexure R/3 it has been specifically mentioned that the matter will be reviewed and intimation will be sent to the petitioner but whether the case of the petitioner was ever considered, there is nothing on record and no document has been filed in this regard. That apart, by which mode said letter has been sent, there is nothing on record. In the rejoinder the petitioner has denied the factum of receiving this

letter (Annexure R/3).

18. According to me, vide Annexure P/1 the first respondent floated a Scheme namely "Investing Promotional Scheme for development of Non-forest wastelands". Pursuant to the said Scheme and relying upon it the petitioner floated a project according to the norms of the Scheme and also incurred huge amount in pursuance to the said Scheme. The respondent No. 2 also sanctioned the term loan in favour of the petitioner and deposited the same in the term loan account of the petitioner. Not only this, the petitioner also incurred huge money apart from the margin money of Rs. 1,69,585/- and, therefore, according to me, since the first respondent is backing out from their part the doctrine of "Promissory Estoppel" would be applicable against the first respondent. The decision of Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., relied upon by learned counsel for the petitioner is squarely applicable in the present case. In that case also the Gujarat State Financial Corporation entered into a solemn agreement in performance of its statutory duty to advance loan of Rs. 30 lakhs to the respondent of that case. Acting on the solemn undertaking the respondent of that case proceeded to undertake and execute the project of setting up a 4 Star Hotel. The agreement to advance the loan was entered into in performance of statutory duty cast on the said Corporation by the statute under which it was created and set up. On the solemn promise of the Corporation the respondent incurred huge expenses, suffered liabilities to set up a hotel and in these facts and circumstances it was held by the Apex Court that incontrovertible fact situation the principle of promissory estoppel would come into play. In the present case also, the first respondent is the instrumentality of the State because the said Scheme has been floated by the Ministry of Rural Areas and Employment, New Delhi. On the basis of the said Scheme which was floated by the first respondent the petitioner submitted project report and upon satisfying with the said report, the respondent No. 2 sanctioned the term loan of Rs. 5,08,765/- and also credited the first year initial requirement of Rs. 3,71,950/- after deducting 25% of the subsidy amount. The petitioner constructed stop dams for the purpose of providing irrigation facility, he also laid pipe lines, constructed water storage tanks, he has also taken preventive measures like installation of barbed wire fencing, digging of cattle preventive trench, construction of chowkidar/servant's quarters and to install solar pumps etc. for providing lighting facilities as electricity is not available in the area where the project is being undertaken. All these facts have been highlighted in the project report Annexure P/2 and thus the petitioner as well as the Bank incurred huge amount to promote the project and hence the first respondent cannot back out from their part. For the reasons stated hereinabove, this petition succeeds and is hereby allowed with costs. The respondent No. 1 shall release the subsidy in terms of the Scheme which was floated in the year 1994 (Annexure P/1). The amount of subsidy would be paid to the petitioner through respondent No. 2 Bank. Since the petitioner fought the matter for years together firstly before the Department and found that nothing is paid to him by respondent No. 1, he

ultimately filed this petition in the year 1999, therefore, he is also entitled for the interest @ 6% p.a. from the date of filing of this petition which is 25-8-1999 till it is deposited in the Bank (respondent No. 2) by the respondents. It is however made clear that if the term loan has not been satisfied by the petitioner, the Bank shall be free to realize it in accordance with law.