
(1989) 09 MAD CK 0004
In the Madras High Court
Case No : Writ Petition No. 605 of 1983

R. Kaliaperumal	Vs	APPELLANT
The Municipality Tiruchirapalli		RESPONDENT

Date of Decision : 15-09-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1989) 09 MAD CK 0004

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : G. Subramaniam for K.A. Ravindran, for the Appellant; P.M. Baskaran for 1st Respondent and Mr. B. Devadoss, Addl. Govt. Pleader for 2 and 3rd Respondent, for the Respondent

Judgement

Bakthavatsalam, J.—This petition is directed against the order of the second respondent rejecting the petitioner's representation for the

grant of remission of Rs.73,000 which was paid to the first respondent as lease rights for collection of fees in a fuel depot for the year 1971-72.

The first respondent leased out the collection of fees in a fuel depot within the municipal limits for the year 1971-72. The right of collection of fees

empowered the lessee to collect fees for the vehicles unloading the fire wood, hay etc., for sale outside pettai also. The petitioner's mother was the

highest bidder, her bid being Rs.1,60,000 and her bid was accepted.

2. It is the case of the second respondent that the petitioner's mother could not exercise her right of collection of fees from lorries outside the

depot as per condition No. 13 of the sale because of the filing of a suit by a third party on the file of Subordinate Judge, Tiruchirapalli and the

injunction order obtained by them. The petitioner therefore requested to grant

remission of Rs.73,000 being the loss sustained by his mother due to the injunction order passed by the Civil Court. It seems that the suit was not pressed and it was dismissed as withdrawn on 30-6-1972. It may be stated that the period of lease was from 1-4-1971 to 31-3-1972. The first respondent municipality passed a resolution on 22-5-1974, recommending the case of the petitioner to the Government. It was rejected by the second respondent on 1-3-1976 and the petitioner's mother was informed of the same on 9-6-1976 by the first respondent. It seems that the petitioner had again preferred a petition before the second respondent. The second respondent called for remarks from the first respondent. A detailed report was sent by the municipality to the Inspector of Municipalities, Madras, after perusing all the account books of the petitioner. The municipality state that the conditions are specified in the lease notifications and therefore it need not necessarily be specified in the agreement once again, as the notification attached with the agreement forms part and parcel of the agreement. The municipality further brought to the notice of the Government with regard to a similar remission made for the year 1970-71 and stated that on the same analogy, the petitioner is also entitled for remission towards the loss sustained by his mother. By the impugned order, the second respondent rejected the request of the petitioner on the ground that there is no reference in the lease notification and in the lease agreement that the conditions specified in the lease notification would form part and parcel of the lease agreement. The impugned order has been passed on the assumption that the special condition No.13 of the lease agreement permitting the licensee to collect fees from vehicles outside the depot will not form part and parcel of the lease agreement and it will not bind the municipality.

3. The petitioner challenges the impugned order on various grounds. One of the grounds is that in a similar case for the year 1970-71, when the municipality recommended the remission, the Government granted it. It is also stated in the affidavit that this is not a matter arising on mere contract or contractual obligations and when the municipality admits their liability and have recommended the loss to be compensated, the impugned order of the Government cannot be sustained as it is arbitrary. The case of the petitioner is that the municipality has passed a resolution in 1974

recommending the remission and again recommended the grant of the amount to him by its memo dated 27-7-1978.

4. The first respondent has filed a counter-affidavit in which facts are not disputed. The stand taken by the Government in the counter is that the authority who had issued the final orders in the matter is the Government and that since the special condition No.13 of the sale notification was not incorporated as part of the agreement executed by the lessee, the impugned order came to be passed by the Government. It is further stated in the counter that the petitioner cannot take shelter under the resolution of the municipal council, which can only recommend his request to the Government. The Government distinguished the case of similar remission granted for the previous year 1970-71 and that therefore the plea of the petitioner that remission was granted by Government in a similar case is not correct.

5. Mr. G. Subramanian, learned counsel for the petitioner submits that when the facts are not disputed and when the municipality has recommended the case of the petitioner for remission the impugned order has been passed by the Government arbitrarily and it offends Art.14 of the Constitution of India. Learned counsel further contends that though the remission may arise out of a contract entered into between the petitioner and the municipality, the issue raised in this writ petition could not be said to have arisen purely on the realm of contract. Learned counsel strenuously contends that the facts are not in dispute. On the principles of unjust enrichment a public authority like the municipality is bound to grant remission. Learned counsel further contends that when the municipality has recommended the case of the petitioner for remission, the impugned order ought not to have been passed.

6. Learned Additional Government Pleader contends that the writ is not maintainable in view of the judgments of the supreme Court and of this Court and in view of the fact that the question arises out of breach of contract. Learned Government Pleader relies upon a decision of the Supreme Court in Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, wherein it was held that where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by terms of the contract, no

writ can be issued under Art.226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple. It is

also submitted by the Learned Government Pleader that in this sphere, the parties can only claim rights conferred upon them by the contract in the

absence of any statutory obligations on the part of the authority in the said contractual obligations.

7. After considering the arguments of the learned counsel for the petitioner and of the learned Government Pleader I am of the opinion that the

impugned order passed by the Government is not sustainable in law. I may also state immediately that the matter does not arise out of breach of

contract. Since the period of contract is already over, the question of breach of contract does not arise It is only a remission which has been asked

for by the aggrieved petitioner in the lease amount due to certain events which had happened beyond his or his mother's control, as the order of

injunction was passed by the Civil Court during the period of lease. As has been stated already the period of lease was between 1-4-1971 and

31-3-1972, the order of injunction had been in existence till 30-6-1972. As such I am of the view that when the authority who had forwarded the

request of the petitioner for remission with their recommendation, it is not correct on the part of the Government to have rejected it on a flimsy

ground. It is very clear that the municipality was convinced that the petitioner is entitled for remission. In the case reported in Ramana Dayaram

Shetty Vs. International Airport Authority of India and Others, the Supreme Court has observed as follows :

Every action of the executive Government must be informed with reason and should be free from arbitrariness That is the very essence of the rule

of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power invokes

affectation of some right or denial of some privilege.

In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , the Supreme Court has observed as follows:

...Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary

but must be based on some rational and relevant principle which is not discriminatory it must not be guided by any extraneous or irrelevant

consideration, because that would be denial of quality. The principle of reasonableness and nationality which is legal as well as philosophically an

essential element of equality or non arbitrariness is projected by Art. 14 and it must characterise every state action whether it be under authority of

law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or

otherwise with a third party but its action must conform to some standard or norm which is rational and non discriminatory...

8. Taking into consideration the earlier order passed by the Government in a similar case for the previous year granting remission to another

person. I am of opinion that the petitioner in this case is also entitled for remission as asked for Every activity of the Government has a public

element in it and if must therefore be informed with reason and guided by public interest.

9. I am not able to find any valid reason for rejecting the request of the petitioner on the facts of this case, especially when the municipality being

the contractual party has recommended the case for remission. It is not correct to state that the conditions of sale is not incorporated in the

agreement. As rightly pointed out by the municipality in its report that the conditions of sale forms part and parcel of the agreement and as such the

petitioner is entitled for the remission. It is well settled that every administrative decision taken by a public authority must have the reason in support

of its decision and if reasons are not disclosed then they are wholly unsustainable in law. In the judicial scrutiny of such a decision, the exercise of

writ jurisdiction cannot be shut out merely on the ground that there is power on the part of the Government or on the public authority to reject the

claim of the petitioner or disapprove the recommendations made by the municipality. In view of this, the impugned order is set aside and this writ

petition is allowed. No costs.