
(1976) 01 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No"s. 1053 and 1054 of 1975

Radha Krishna Agrawal and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-01-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 298, 299, 352, 359

Citation : AIR 1977 Patna 65

Hon'ble Judges : Sarwar Ali, J;Nagendra Prasad Singh, J

Bench : Division Bench

Advocate : M.L. Singhvi, B.P. Rajgarhia, S.K. Sharan, N.K. Agrawal, R.C.P. Shah, K.K. Jhunjhunwala and O.P. Agrawal, for the Appellant; Kameshwari Nandan Singh, Standing Counsel No. 4, G.P. Jaiswal and M.N. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Prasad Singh, J.—Civil Writ Jurisdiction Case No. 1053 of 1975 has been filed by the petitioners for quashing an order of the State Government, dated the 22nd October, 1974, enhancing the rate of royalty payable by the petitioners in respect of the right granted to them for collection and exploitation of Sal seeds from the forest area belonging to the State Govt., a copy of which is Annexure "8" to the writ application. The said order was communicated to the petitioners by a letter, dated the 2nd November, 1974, under the signature of the Chief Conservator of Forests. A copy of this letter is Annexure "7" to the writ application. According to the petitioners, the revision of the rate of royalty by the respondent State during the subsistence of the lease in question was without any authority in law.

2. Civil Writ Jurisdiction Case No. 1054 of 1975 has been filed by the same set of petitioners for quashing the decision of the State Government cancelling the aforesaid lease itself for contravention of the terms thereof. The said decision was communicated to the Chief Conservator of Forests under a letter, dated the 15th March, 1975, with a copy to the petitioner No. 1. A copy of the said letter is

Annexure "6" to the writ application.

3. As common questions of law and fact are involved in these two writ applications, with the consent of the parties, they have been heard together and are being disposed of by this common judgment.

4. C. W. J. C. No. 1054 of 1975 has been taken up as the main case and will hereinafter referred to as the "writ petition". Petitioner No. 1 is a partnership firm and the other petitioners are its partners,

5. Petitioner No. 1 (hereinafter referred to as the "petitioner") carries on its business at Chakradharpur in the District of Singhbhum. The petitioners approached the State Government for grant of a lease in favour of the petitioner for collection and exploitation of Sal seeds, a forest produce. After negotiations, an agreement was executed by and between the petitioners and the State on the 14th May, 1970, incorporating the terms and conditions. A copy of the said agreement is Annexure "1" to the writ petition. Under the terms of the said deed of lease, it was agreed by the respondent State to grant to the petitioner the right to exploit Sal seeds over the areas fully specified in Schedule A to the said deed for a period of 15 years commencing from the 14th May, 1970 and ending on the 31st December, 1984, in respect of forest divisions of Western and Kazaribagh Circles, and for a period of 13 years commencing from the 1st January, 1972, and ending on the 31st December, 1984, in respect of the forest division Southern Circle, with an option of renewal for a period of another 15 years for all the three circles.

6. The salient terms of the agreement were these. In Clause 2 of the agreement it was stipulated that the annual royalty in respect of Hazaribagh and Western Circles would be Rs. 18,200/- each and in respect of the Southern Circle it would be Rs. 44,300.33 paise. The relevant clause regarding revision of the rate of royalty was as follows:--

"3. The rate of royalty will be revised after every three years cycle in consultation with the lessee and the decision will be binding on the lessee." According to Clause 4, the petitioner lessee had to establish a factory within the State of Bihar for processing of Sal seedg and extraction of oil therefrom within a period of five years from the date of the agreement, failing which the agreement itself was to stand terminated. The other clauses of the deed make provision for other conditions which had to be performed and fulfilled by the petitioner. Clause 25 of the agreement provided, that, in case of breach by the petitioner of any of the terms and conditions therein contained, it will be lawful for the State Government at any time, by notice in "writing to the lessee, to determine the agreement and thereupon the lessee shall forfeit its security deposit and all its rights under the said agreement. It further provided that in such contingency all forest produce, whether exploited or not, shall become the property of the Government. Clause 30, which is the last clause of the agreement, lays down that it had been mutually agreed between the parties to the said agreement that,

in the event of "any dispute or question arising whether during the continuance or after the termination hereof with regard to the terms of these presents or the construction or meaning hereof or of any part of provision hereof or as to the performance of any act hereby required to be done or as to any other matter or thing in connection herewith the decision of the Chief Conservator of Forest, Bihar, upon the matter of such dispute or question shall be final and binding on the parties hereto."

7. The case of the petitioner is that the rate of royalty which the petitioner had agreed to pay was a rate higher than the prevalent rate in the other States. In spite of that, it received a letter, dated the 26th December, 1975, from the Chief Conservator of Forests asking it to appear before the Royalty Revision Committee on the 3rd January, 1974. In pursuance of the said notice, the representative of the petitioner appeared before the said Committee and pointed out that the rate of Royalty which the petitioner was paying was much higher than the rate prevalent in the neighbouring States, and as such, there was no occasion for revision of the rate of royalty. In spite of cause being shown, by a letter, dated the 22nd October, 1974, the State Government revised the rate of royalty and fixed the royalty at Rupees 1,50,000/- annually for the Hazaribagh and Western Circles, retrospectively with effect from the 1st January, 1973. A copy of the said decision is annexure "8" to C. W. J. C. No. 1053 of 1975. The petitioners have averred that the said revision was the result of mala fide offers made by one Gauri Shankar oi Ranchi and one Kaluram Kulkeria of Simdega, who were close associates of the then Forest Ministers. A direction was issued or realisation of royalty at the faid rate by the 30th November, 1974. Further case of the petitioner is that a notice, dated the 6th November, 1974, (Annexure "4" to the writ application) was issued to the petitioner asking it to show cause as to why the lease in question be not terminated for violation of the terms of the said lease.

8. The petitioner filed its show cause (Annexure "5") in pursuance of the said notice on the 4th January, 1975. in which it was pointed out that the grounds mentioned in the said notice were, irrelevant and unfounded and that the petitioner had not violated any terms or conditions of the said lease, and, as such no cause had accrued for termination of the lease. Ultimately, without proper consideration of the materials placed by the petitioner and in breach of the principles of natural justice the lease in favour of the petitioner was terminated and the decision was communicated by the aforesaid letter, dated the 15th March, 1975, addressed to the Chief Conservator of Forests, with a copy to the petitioner (Annexure "6"). In the writ petition the petitioners have set out the different clauses of the deed and have tried to justify that the petitioner has not contravened any of the terms o? the lease and, as such, the action of the State Government in terminating the lease in question is arbitrary and without there being any sanction in law.

9. Counter-affidavits have been filed on behalf of the State Government and the

Chief Conservator of Forests justifying their action, that is, the revision of the rate of royalty and later the termination of the lease in question. In the said counter-affidavits it has been pointed out that the lease in respect of Hazaribagh and Western Circles was for a period of 15 years commencing from the 14th May, 1970 and ending on the 31st December, 1984; as such, the first cycle of three years came to an end on the 31st December, 1972. Under Clause 3 of the agreement of lease, the parties had specifically agreed that it will be open to the respondent State to revise the rate of royalty after every three years" cycle in consultation with the lessee and the said decision was to be binding on the lessee. Before revision, the petitioner was consulted and on the basis of higher offers made for the said two circles the amount of royalty payable by the petitioner was enhanced. It is said that for the same area there were offers of Rs. 3,15,000/-annual; nonetheless the rate of royalty payable by the petitioner was fixed at Rs. 1,50,000.00 only. It was further pointed out that, although the petitioner had agreed to install a plant within a period of five years, no step whatsoever had been taken for the same, in spite of the fact that the period was about to expire. Different breaches of the terms of the agreement have also been pointed out in the said counter-affidavits and it has been stated that the petitioner was given ample opportunity to show cause in respect of the said breaches; and its explanation having been found to be not satisfactory, the lease itself was terminated after a careful consideration of the matter by the State Government. The allegation of mala fides have been denied. A statement showing the offers made by different intending candidates has been annexed marked Annexure "A" in justification of the rate of royalty fixed by the State Government. Regarding the grievance of the petitioner fixing the enhanced rate of royalty retrospectively, it was pointed out on behalf of the respondent that the first cycle of three years came to an end on the 31st December, 1972 and according to the terms of the agreement the rate could have been revised at any time after that date. As such, the revised rates had to be made applicable with effect from the 1st January, 1973.

10. This Court, while admitting the two writ applications on the 22nd April, 1975, passed an order that "There will be a stay of the realisation of the royalty at the increased rate for the period up to October, 1974. There will be no stay for the dues of royalty at the increased rate for the period from the 1st of November, 1974." (Vide Order No. 2 in C. W. J. C. No. 1053 of 1975). This Court also stayed the operation of the order of termination of" the lease contained in Annexure "6" pending the hearing of the application in C. W. J. C No. 1054 of 1975. .

11. Dr. M. L. Singhvi, learned counsel appearing for the petitioner, first, submitted that in view of the proclamation of Emergency, in accordance with Article 352 of the Constitution and issuance of the Presidential Order. Under Article 359, the right to move any Court for the enforcement of rights conferred by Part III of the Constitution and "all proceedings pending in any Court for enforcement of the rights so mentioned" are to remain suspended for the period during which the proclamation has to remain in force. Learned counsel submitted

that the result is that the two writ applications filed on behalf of the petitioners, in which the said rights are involved, will be deemed to have been suspended for the period during which the proclamation remains in force, and, as such, this court has no jurisdiction to hear or pass any orders in respect of these writ applications at present. In this connection he pointed out the petitioner has made a grievance about discrimination which amounts to enforcement of a right under Article 14 of the Constitution. When the learned counsel was called upon by the Court to take a clear stand on the point as to whether the writ applications are only for the enforcement of any of the rights conferred by Part III of the Constitution, or on other grounds, learned counsel said that the case of the petitioners has been put forward on alternative grounds: Firstly, the petitioners seek the enforcement of the rights guaranteed to them under Article 14 of the Constitution, and, in the alternative, they are questioning the validity of the impugned orders and decision, bereft of the rights guaranteed under Part III of the Constitution. According to learned counsel, because of the Presidential Order, when all such proceedings pending in any Court for enforcement of the rights so mentioned are to remain suspended, it will not mean suspension of the effect of the orders of stay passed by this court at the time of admission and it will be in force.

12. On this plea being taken on behalf of the petitioners, applications have been filed on behalf of the respondent State making a prayer that this court should either hold, that in view of the aforesaid provision under Article 359 of the Constitution, the orders of stay passed by this court in these two writ applications are also under suspension and of no effect, or, if this court is of the view that they are in force, then, in view of the changed circumstances under which the writ applications cannot be heard and disposed of, this Court should vacate the orders of stay passed at the time of admission.

13. Relevant portion of Article 359 of the Constitution reads as follows:--

"359 (1) Where a Proclamation of Emergency is in force the President may by order declare that the right to move any Court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the proclamation is in force or for such shorter period as may be specified in the order."

On issuance of the Presidential Proclamation in terms of the aforesaid article, the rights of every citizen under Part III of the Constitution has to remain under suspension and so will be the fate of the proceedings pending in any Court of Law in respect of enforcement of the said rights. This article was considered by the Supreme Court in the case of Makhan Singh Vs. State of Punjab (and connected appeals), , wherein it was pointed out in the majority judgment of Gajendra-gadkar, J. (as he then was) as follows:--

"13. Since the object of Article 359(1) is to suspend the rights of the citizens to

move any court, the consequence of the Presidential Order may be that any proceeding which may be pending at the date of the order remains suspended during the time that the order is in operation and may be revived when the said Order ceases to be operative; and fresh proceedings cannot be taken by a citizen after the order has been issued, because the Order takes away the right to move any court and during the operation of the Order, the said right cannot be exercised by instituting a fresh proceeding contrary to the Order. If a fresh proceeding falling within the mischief of Article 359(1) and the Presidential Order issued under it is instituted after the Order has been issued, it will have to be dismissed as being incompetent. In other words Article 359(1) and the Presidential "Order issued under it may constitute a sort of moratorium or a blanket ban against the institution or continuance of any legal action subject to two important conditions. The first condition relates to the character of the legal action and requires that the said action must seek to obtain a relief on the ground that the claimant's fundamental rights specified in the Presidential Order have been contravened and the second condition relates to the period during which this ban is to operate."

14. From the aforesaid observations, it is obvious that the blanket ban against the institution or continuance of any legal action is subject to two conditions, that is, the legal action must seek to obtain a relief on the ground that the petitioner's fundamental rights specified in the Presidential Order have been contravened and such legal action is being pursued during the period the ban is in operation. In my opinion, it is up to the petitioners to press their applications on grounds other than infringement of the rights which have been suspended, and, in that case and to that extent, the writ application can be heard and disposed of. The grievances of the petitioners in the present writ applications are not primarily for or against infringement of their rights under Article 14 of the Constitution; but they are challenging the legality of the impugned orders and decision on the ground that they are arbitrary and in contravention of the terms of the agreement. To me it appears that this argument on the basis of the Presidential Orders has been raised on behalf of the petitioners to avail of the orders of stay passed by this Court which authorise them to collect and exploit sal seeds during the pendency of the writ application in spite of their lease having been terminated by the Government.

15. Article 359 of the Constitution speaks of suspension of such proceedings. If the proceedings pending before this Court themselves are suspended the effect in the eye of law will be that no proceeding is pending for the time being. In that view of the matter, it is difficult to hold that during this period, when the proceedings themselves are suspended, the orders of stay passed in the said proceedings will be deemed to be in force. When during the course of hearing this was indicated by the Court, learned counsel for the petitioners proceeded with his alternative case, that is, that the revision of the rate of royalty and the termination of the lease unwarranted, illegal and without any authority in law. It is open to the petitioners to challenge those orders in these writ applications on

grounds other than infringement of the rights which have been suspended. This aspect of the matter has been considered in several judgments of the Supreme Court where it was pointed out that the executive actions of the State Government which are invalid on grounds other than interference with the fundamental rights which are under suspension are not immune from attack merely because a Proclamation of Emergency is in operation. Reference in this connection may be made to the cases of *The District Collector of Hyderabad and Others Vs. Ibrahim and Co., etc.,* ; *Shree Meenakshi Mills Ltd. Vs. Union of India (UOI),* ; *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others,* and *State of Madhya Pradesh v. Thakur Bharat Singh* AIR 1967 SC 1170 .

16. Learned Counsel then referred to different communications in connection with the revision of the rate of royalty and the termination of the lease in question, and submitted that the actions of the respondent State are per se arbitrary and against the principles of natural justice calling for interference by this Court. Learned Counsel submitted that the revision of the rate of royalty is not sanctioned by the terms of the agreement and is mala fide based on no material. It was further submitted that the notice of show cause, dated the 6th November, 1974, as to why the lease of the petitioner should not be terminated was itself very vague and as such against the principles of natural justice. In support of his contention that the revision of the rate of royalty and termination of the lease, without a proper opportunity to show cause amounts to breach of the principles of natural justice, learned counsel relied on, amongst others, the cases of *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others,* ; *State of Madhya Pradesh v. Bharat Singh* AIR 1967 SC 1170 and *The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others,* .

17. There cannot be a dispute that, if the rate of royalty has been revised and the lease has been terminated in breach of the principles of natural justice, then the person aggrieved can legitimately move this Court for redress of his grievances. But, in the instant case, the rights and liabilities of the parties are governed by the terms of the agreement as incorporated in the deed of lease (Annexure "1"). On behalf of the State it has been asserted that the actions covered by the terms of the agreement and before revising the rate of royalty and before terminating the lease, the petitioner was given- notices to show cause. The petitioner did file separate show cause objecting to the version of the rate of royalty and repudiating the allegations of contravention of the terms of the agreement. The representative of the petitioner even appeared before the Royalty Revision Committee to place his own view points on the subject and, as such, in my opinion, there is no question of violation of the principles of natural justice. Even if the impugned decision be incorrect on one ground or the other, it is at the most a case of breach of the terms of the agreement. The impugned action can be held to be invalid if a court comes to the conclusion that the actions are not sanctioned by the terms of the agreement.

18. Learned counsel appearing on behalf of the petitioners submitted that, on the facts and in the circumstances of the case, there has been no contravention of the terms of the agreement by the petitioner and as such the order of termination of the lease is void. Now the question is as to whether the allegation regarding the breach of the terms of the agreement, either by the petitioner or by the respondent State can be examined by this Court in exercise of its writ jurisdiction. According to the learned counsel appearing for the petitioners the impugned actions are in exercise of executive powers by the State under Article 298 of the Constitution, which are amenable to the jurisdiction of this court. Whether under the writ jurisdiction such dispute can be agitated and decided has been the subject-matter of controversy. Such disputes can be put under three groups for the purpose of answering the question:

(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases wherein assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.

19. So far as the cases under categories (i) and (ii) are concerned, it is almost settled that the person aggrieved can invoke the writ jurisdiction of this Court. In *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, and Robertson v. Minister of Pensions (1949) 1 KB 227*, it was pointed out that 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 and in such cases even if the contract has not been embodied in the form prescribed, it can be enforced by a writ in appropriate cases in equity. Similarly, in *K.N. Guruswamy Vs. The State of Mysore and Others, The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh, and Shree Krishna Gyanoday Sugar Ltd. and Another Vs. The State of Bihar and Another*, it has been held that, even if the right to relief arose not of an alleged breach of contract, but the action of the authority which was being challenged was of a public authority vested with statutory power, this court, in exercise of its writ jurisdiction, can grant relief to the aggrieved person. On the other hand, in case falling under category (iii), where there is no question of exercise of any statutory power and the rights of the parties flow from mere terms of the contract entered into by the authorities of the State, a party to such agreement should not be allowed to invoke the writ

jurisdiction of this Court for the purpose of finding out as to whether there has been a breach of contract on the part of the State or on the part of such person. It is apparent that in such cases there cannot be adjudication without evidence on the point. There is no question of infraction of any rules or statutes. Courts have always called upon such petitioners to seek their remedy in the Civil Court. In this connection reference can be made to a Bench decision of this Court in B.K. Sinha Vs. State of Bihar and Others, , where Untwalia, C. J. (as he then was) after making a reference to the Supreme Court in Dr. Umakant Saran Vs. State of Bihar and Others, : and Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, observed;

"Here in the very nature of the contract in question the petitioner had no right to claim its specific performance. The Statute did not impose any legal duty on the authorities concerned that if they thought that the petitioner should not be allowed to complete the work, even assuming they thought so wrongly --they could not stop the work.A writ of mandamus cannot issue to compel the authorities to remedy a breach of contract pure and simple."

In the same case at page 231 it was further observed:--

"I am, therefore, definitely of the view that until and unless in the breach is involved violation of certain legal and public duties or violation of statutory duties to the remedy of which the petitioner is entitled by issuance of a writ of mandamus, mere breach of contract cannot be remedied by this Court in exercise of its powers under Article 226 of the Constitution."

20. Learned counsel for the petitioner could not urge that the lease for collection and exploitation of Sal seeds had been granted to the petitioner in exercise of any statutory power; it was a contract pure and simple. Clause 25 of the contract under consideration made a provision for determination of the agreement by the State at any time by a notice In writing to the petitioner, if there had been any breach of any of the terms and conditions of the lease per se, there was a right to terminate the lease under certain conditions being not fulfilled Clause 30 made a provision similar to arbitration clause where the decision of the chief conservator of Forests over any dispute in connection with the said agreement was to be final. The petitioners can get a declaration that there has been no breach of any of the terms and conditions of the lease and, as such, the termination itself was unlawful; but the forum for that is not the writ jurisdiction of this Court. I am supported in this view by a decision of the Full Bench of the Allahabad High Court in Shitla Prasad Vs. M. Saidullah and Others, , the observations of the Supreme Court in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, and the case of Parbananda Das Vs. Executive Engineer, Relif and Rehabilitation, Engineering Division and Others . Learned Counsel for the petitioners, however, submitted that the effect of the aforesaid judgments has been eroded by the decision of the Supreme Court in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, . In that case the person who had moved for a writ for mandamus was on the approved

list of the Director General, Supplies and Disposals. But, later, some reports regarding shortage of timber were made and the department put his name on the black list. It was held by the Supreme Court that this order of black listing had the effect of depriving the person of equality of opportunity in matter of public contract and in such cases when the State acts to the prejudice of a person it has to be supported by legality. In that case the Supreme Court was of the opinion that the order of black listing not only involved civil consequences, but it also cast a slur and had created a barrier between the person black-listed and the Government in the matter of transactions. In that case there was no question of breach of the terms of a contract, In my opinion, the Supreme Court never purported to lay down that breaches of contracts irrespective of their nature will be amenable to the jurisdiction of this court merely because one of the parties to such contracts is the State.

21. Learned counsel also submitted that the termination of the lease was the result of mala fides on the part of the then Forest Ministers. Those allegations have been controverted by the Ministers concerned by filing counter-affidavits and I am of the view, that, on the materials on record, it is difficult to hold that the order of termination of the lease or revision of the rate of royalty was the result of any malice on the part of the State or any of its authorities.

22. In my opinion, there is no merit in these two writ applications. They are, accordingly dismissed. In the circumstances, there will be no order as to costs.

Sarwar Ali, J.

I agree and would add a few observations.

2. Learned counsel for the petitioners contended that even in cases of exercise of contractual right of termination of a lease principles of natural justice are attracted. I do not think that it is a correct legal proposition. No case was brought to our notice either of the Supreme Court or any of the High Courts in India which has taken the view that before exercising the right or option to terminate an agreement or lease in terms thereof contracting party must be given an opportunity to have his say in the matter. Even on principle I do not think that it is possible to accept the contention. Although it is true, as observed by Lord Denning, M, R. in *Gaming Board for Great Britain ex parte Benaim* (1971) 1 AE. RH 1148 that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply", yet cases firmly establish that the circumstances in which or the occasion where the action under challenge has been taken, determines the applicability of the rules of natural justice. It has been held by A. N. Ray J. (as he then was) speaking for the Court in *Daud Ahmad Vs. The District Magistrate, Allahabad and Others*, .

"It is the nature of power and the circumstance and conditions under which it is exercised that will occasion the invocation of the principles of natural justice."

I may also usefully refer to what was said by the Privy Council in *Durayappan, v.*

Fernando (1967) 2 A. C. 337. Giving the opinion of the Board Lord Upjohn said "In their Lordships" opinion there are three matters which must always be borne in mind when considering whether the principle should be applied or not. These matters are Secondly, in what circumstances or upon what occasion is the person claiming to be entitled to exercise the measure of control entitled to intervene." To put the same matter tersely borrowing the phrase of Lord Denning. "Every thing depends on the subject matter". In my view, unless the Court is of the opinion that the occasion or circumstances for the exercise of power is such, that it would be unfair or unjust to the party affected by action taken, to be visited by the consequences thereof, unless it had been given an opportunity to have his say in the matter, the principles of natural justice are not attracted. In my view the exercise of contractual right is not such an occasion. There is nothing unjust or unfair in a party terminating a contract, even without giving the other party an opportunity to have his say in the matter, on the basis of the express right conferred by the contract itself. The very nature and occasion of the exercise of right flowing as it does from the contract, is such as to exclude the applicability of the rules of natural justice. Further it is to be observed that when a right to terminate a lease, on the ground of the existence of conditions which give a right of termination, has been exercised, it is open to the party exercising the option to justify the action taken, if properly challenged, not only on the grounds which were under contemplation when the action was taken, but also on other grounds which are available in law to the contracting party in terms of the agreement. This is an additional reason as to why rules of natural justice cannot be held to be attracted in cases where a lease has been terminated in terms of the contract itself.

23. Learned counsel for the petitioners contended that even in cases of breach of contractual rights it is open to this court to give relief to an aggrieved party in exercise of its writ jurisdiction. My learned brother has dealt with this aspect and the cases relating thereto. The cases illustrate that except for occasions where breach of some statutory provision is also involved in relation to contracts Courts have consistently refused to interfere. Even if it be accepted that in cases of pure contract there is power to interfere in the exercise of writ jurisdiction, the power, in my view, must be confined to cases where the action under challenge is mala fide or so arbitrary as to shock the conscience of the Court. Such cannot be said to be the case here. The allegation of mala fide, as my learned brother has pointed out, has failed. The action taken cannot, in the circumstances, be said to be arbitrary. The respondents claimed to have the right to terminate the lease, which is a bona fide claim. On the basis of the said claim the lease has been terminated. Even, if the action taken be not legal, about which I am not expressing any opinion the remedy of the petitioners does not lie by inviting this Court to exercise its writ jurisdiction.