

(1983) 07 OHC CK 0016

In the Orissa High Court

Case No : Original Jurn. Case No. 2032 of 1981

Raghunath Behera

APPELLANT

Vs

Revenue Divisional Commissioner (Southern Division) and
Others

RESPONDENT

Date of Decision : 06-07-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1), 226, 227

Citation : AIR 1983 Ori 281 : (1983) 56 CLT 209

Hon'ble Judges : J.K. Mohanty, J;B.K. Behera, J

Bench : Division Bench

Advocate : B.B. Ratho, P.K. Bhuyan and M. Misra, for the Appellant; Govt. Advocate for Nos. 1 to 3 and S.K. Das, for No. 4, for the Respondent

Final Decision : Dismissed

Judgement

Beheka, J.—The petitioner Raghunath Behera, "Keuta" (fisherman) by caste and a fisherman by profession, who claims himself to be a member of the Manikeswar Fishermen Co-operative Society, Berhampur, of which there is no supporting material and which has been denied by the opposite parties, calls in question and prays for quashing of Annexure-8, the order dt. 25-8-1981, conferring fishery rights on the opposite party No. 4 Jalandhar Behera, a retired Fishery Extension Officer, with knowledge and experience in pisciculture and a member of the Scheduled Castes and in addition, a fisherman by caste, in respect of "Dhoba-bandho" fishery sairat in village Shan-karpur under the Berhampur Tahsil for a period of five years on an annual lease value of Rs. 3,000/- as being arbitrary, illegal and violative of the rules contained in the Manual of Tehsil Accounts and instructions issued by the Government, as per Annexures 1 and 2, for giving preference to the co-operative societies or where no viable or genuine co-operative society of fishermen exists, to settle the fishery rights by open public auction and he wants the issuance of an appropriate writ by this Court directing the opposite parties 1 to 3 to settle the fishery rights

in respect of the aforesaid tank in his favour for a term of five years commencing from the year 1981-82 at the rate of Rs. 3,000/- per year for which on an application (Annexure-3) made by him, his case had been recommended by the Tahsildar, as per Annexure-4, to the Additional District Magistrate, Ganjam, Chatrapur, forwarding a copy thereof to him on 2-5-1981 directing him to deposit an amount of Rs. 3,000/- with the Revenue inspector. Berhampur, by 5-7-1981 which the petitioner claims to have received on 10-7-1981 an assertion denied by the opposite parties 1 to 4 according to whom the petitioner had received the notice in time and for a further direction to prevent the opposite party No. 4 from interfering with the use and enjoyment by the petitioner of the fishery rights conferred on him.

2. According to the opposite parties, the fishery rights for a period of five years commencing from the year 1975-76 had been settled with the opposite party No. 4 who had incurred some loss owing to heavy rains and flood and for this, on an application made by him in June, 1979 (Annexure-D/1), a recommendation was made by the Collector, Ganjam, for settlement of the fishery rights with him for a further period of five years. The Revenue Divisional Commissioner wanted to know as to whether any co-operative society of small/marginal farmers or of landless agricultural labourers was interested for intensive pisciculture in which case the tank should be leased out to it on a long term basis at the rate of Rupees 2,000/- per year. On enquiry, the Tahsildar reported that no such co-operative society was interested and the Collector, as per Annexure-7, recommended to the Revenue Divisional Commissioner (opposite party No. 1), who was the sanctioning authority, for extension of the lease in favour of the opposite party No. 4 for a further period of five years on an annual lease value of Rs. 3,000/- and the opposite party No. 1, as per Annexure D/7, granted lease of the fishery rights in favour of the opposite party No. 4 for a further period of five years. The opposite party No. 4 deposited the lease value for the current year on 29-8-1981 and was allowed to operate the fishery. According to the opposite parties, the proposed settlement of the fishery rights with the petitioner by the Tahsildar was not in accordance with the rules and instructions as the Tahsildar had no authority in a case of this nature to conduct or confirm the sale of fishery rights and could not, in anticipation of the sanction by the Revenue Divisional Commissioner, direct the petitioner to deposit the lease amount for a period of one year and as the contract had not been completed and was not in accordance with law, the petitioner had not acquired any right and in any view of the matter, the dispute arising out of a contractual obligation cannot be the subject-matter of a writ application. According to them, the settlement of the fishery rights in favour of the opposite party No. 4 was legal, valid and operative and none of the Revenue authorities had been influenced by the opposite party No. 4, as falsely asserted by the petitioner.

3. As has been submitted by the learned Government Advocate for the opposite parties 1 to 3 and Mr. Das for the opposite party No. 4, the rules contained in the Manual of Tehsil Accounts and the directions in Annexures 1 and 2, referred to

above, are in the nature of administrative instructions without any statutory force and such rules confer no right of any kind. Executive instructions confer no right and cannot be enforced. (See *State of Assam and Another Vs. Ajit Kumar Sharma and Others*, . In (1971) 1 CWR 77, *Kanhu Charan Misra v. State of Orissa*, this Court has observed as follows:

"No civil right is created or extinguished, nor is an obligation imposed affecting civil rights by this letter containing executive instructions to the Director of Public Instruction in the matter of allotment."

The Supreme Court in the case of *R. Abdulla Rowther v. State Transport Appellate Tribunal, Madras*, reported in AIR 1959 SC 896 observed as follows:

"It is not and cannot be seriously disputed that if the Government order contains merely executive or administrative directions, their breach, even if patent, would not justify the issue of a writ of certiorari. The executive order properly so-called do not confer any legal enforceable rights on any person and impose no legal obligations on the subordinate authorities for whose guidance they are issued; that is not to say that the directions are not valid and should not be followed by the said authorities; the said authorities are undoubtedly expected to follow the said directions, and their breach may expose them to disciplinary or other appropriate action."

Again the Supreme Court has said in the case of *Raman and Raman Ltd. Vs. The State of Madras and Others*, relied on in *State of Assam and Another Vs. Ajit Kumar Sharma and Others*, , to the following effect:

"Administrative orders or executive instructions do not have the status of law regulating the rights of the parties. No right could arise out of such orders or instructions, much less a vested right, and any change in them would not affect any vested right. Any writ petition is not maintainable for enforcement or non-enforcement of such administrative orders or executive instructions."

Rule 53 of the Manual of Tehsil Accounts contemplates that settlement of fishery rights (Sairat source) can be made otherwise than by public auction as it provides that the settlement of such rights should ordinarily be made by public auction in the locality.

4. As asserted by the opposite parties, the petitioner, in spite of service of notice on him in time on 3-7-1981, with a direction to deposit Rs. 3,000/-by 5-7-1981 did not do so. It was then that the competent authority settled the fishery rights with the opposite party No. 4, who was not a stranger and whose case had been recommended by the Collector, for a period of five years commencing from the year 1981-82. Even if there has been an auction sale by the Government, an order rejecting the bid is not violative of Arts. 14 and 19(1)(g) of the Constitution nor is such an order subject to judicial review and settlement by private negotiation is not invalid. In this connection, reference may be made to the principles laid down in *State of Orissa and Others Vs. Harinarayan Jaiswal*

and Others, ; State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, and ILR (1974) 615 : AIR 1975 Ori 33 Nilgiri Contractors" Society v. State of Orissa.

5. The petitioner has no fundamental right to insist that the Government must enter into a contract with him in terms of the rules contained in the Manual of Tehsil Accounts and the administrative instructions referred to above. No person has a vested right to get any lease although he does have a right to get his application for lease disposed of fairly and not arbitrarily. (See Shri Raghunandan Panda Vs. State of Orissa and Others,) It may be stated at the cost of, repetition that the Tahsildar had no authority to settle any fishery right with the petitioner. The Collector is competent to conduct the auction when the annual lease value is Rs. 3,000/- as per Rule 55 (iv) of the Manual of Tehsil Accounts and the Revenue Divisional Commissioner is the competent authority to confirm the sale and to grant such right. The petitioner had not acquired any statutory or contractual right by the proposed action of the Tahsildar, He had failed to deposit the amount as directed by the Tahsildar in time. The proposal of the Tahsildar for settlement of the fishery right with the petitioner had not been ratified or accepted by the appropriate authority. A writ application to enforce right as the highest bidder before its ratification by the Government or its confirmation by the competent authority cannot be maintained. (See AIR 1975 Ori 33 Nilgiri Contractors" Society v. State of Orissa and Abdul Yakub Vs. State of Orissa and Others,), A writ application would be competent when there is a legally enforceable right. (Vide AIR 1962 SC 1044 Cal Gas Company (Proprietary) Ltd. v. State of West Bengal and The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others,).

6. It may also be kept in mind that a writ application is not an appropriate remedy for impeaching the validity of contractual obligations. (Vide Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others,). A writ of mandamus can be granted in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on his part to discharge the statutory obligation and in the instant case, there was no such breach by any public authority. The chief function of a writ is to compel performance of public duties prescribed by a statute and to keep subordinate tribunals and offices exercising public functions within the limits of their jurisdiction, it follows that in order that a mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. A writ of mandamus cannot be granted to enforce an obligation flowing from a contract. (See The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others,).

7. As laid down by the Supreme Court in Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another,) when the State acts to the prejudice of a person, it has to be supported by legality. In an earlier decision of the Supreme Court in AIR 1968 SC 718, Union of India v. Anglo Afghan Agencies, it has been

laid down that no person may be deprived of his right or liberty except in due course of and by authority of, law. If a member of the Executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law--common or statute--the courts will be competent to and indeed, would be bound to protect the rights of the aggrieved citizen. In the instant case, however, there is no such infringement by any public authority and the petitioner has not been deprived of any right conferred on him. No illegal act has been committed to the prejudice of the petitioner.

The facts and circumstances of this case would show that the concerned authorities had not been actuated by mala fides and they had not been influenced by extraneous considerations, as sought to be shown by the petitioner. The burden of establishing mala fides is heavy on the person alleging it. Such allegations are more easily made than proved. Circumstances creating a suspicion are not enough. The proof needed in this regard is of a high degree and mere flinging charges of oblique conduct would not be sufficient to establish mala fides. The public authorities had duly considered the case of the petitioner and that of the opposite party No. 4 and for the reasons aforesaid, settled the fishery rights with the opposite party No. 4.

8. As has been laid down in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , that unlike a private individual, the State cannot act as it pleases in the matter of giving largess, such as, awarding a contract or selling or leasing out its property and every activity of the Government has a public element in it and it must, therefore, be informed with reason and guided by public interest. Their Lordships of the Supreme Court have observed and held (Para 21):

"....."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 non-discriminatory: it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as, philosophically an essential element of equality, or non-arbitrariness is projected by Article 14 and it must characterize 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....."

In *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, , their Lordships of the Supreme , Court have laid down (at pp. 2000-1);

".....there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a

total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Govt. is reasonable and in public interest. But one basic principle which must guide the Court in arriving at its determination on this question is that there is always a presumption that the governmental action is reasonable and in public interest and it is for the party challenging its validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The Court cannot lightly assume that the action taken by the Government is unreasonable or without public interest because, as we said above, there are a large number of policy considerations which must necessarily weigh with the Government in taking action and therefore the Court would not strike down governmental action as invalid on this ground, unless it is clearly satisfied that the action is unreasonable or not in public interest. But where it is so satisfied, it would be the plainest duty of the Court under the Constitution to invalidate the governmental action. This is one of the most important functions of the Court and also one of the most essential for preservation of the rule of law....."

9. In the instant case, as we have indicated above, after a careful consideration of the case of the petitioner and that of the opposite party No. 4 and having failed to get the consent of any co-operative society to take up the lease in respect of the fishery rights, the appropriate authorities conferred such rights on the opposite party No. 4 for a valuable consideration which has not been and cannot be challenged as inadequate and the petitioner has failed to discharge the onus of establishing mala fides on the part of any of the public authorities and in particular, of the sanctioning authority, viz., the Revenue Divisional Commissioner (opposite party No. 1).

10. As has been laid down in *State of Rajasthan Vs. Mohan Lal Vyas*, (Para 6):

".....Article 19 (6) of the Constitution provides a rea-sonble restriction on the fundamental rights of citizens as contained in Article 19 (1) (g). If the State obtained a monopoly it would be defensible as a reasonable restriction on the rights of citizens to carry on any business or trade and to ply buses. On the other hand, if the State conferred any monopoly right on a citizen it would be indefensible and impermissible and would be an infraction of the inviolable provision of the Constitution."

This principle has been followed by this Court in *Hrudananda Patra and Another Vs. Revenue Divisional Commissioner Central Division and Others*, .

This case is, however, not one where a monopoly right has been conferred on the opposite party No. 4. The fishery rights were conferred on a citizen who was a previous lessee and had experience behind him having served as a Fishery Extension Officer and who had sustained loss during the previous period of lease, after due consideration and this the public authorities could legally do.

11. The facts placed before us do not show that it is a case of equals being treated unequally and unequals being treated equally. In our view, there has been no infringement either of Article 14 or of Article 19 of the Constitution of India. The petitioner has not been deprived of any right or liberty derived from the law of the land and as earlier indicated by us, he had obtained no statutory or even contractual right which had allegedly been contravened. The act of the appropriate authorities was not in excess of the power granted nor had there been an abuse of the exercise of the power conferred on them.

12. Mr. Ratho has invited our attention to the observations made in *Yadav Medical Store, Allahabad Vs. The State of Uttar Pradesh and Others*, , that since the functions of the State have multiplied enormously, the ambit of rule of law has also been enlarged. Even in the realm of administrative action, some safeguards and restrictions have been evolved by the courts and infringement of the same has been construed as rendering the action void. The Supreme Court, in the case of *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, , has observed and held (at pp. 1476-77):

"..... .Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically dis-advantaged position should not go unnoticed and unredressed. That would be destructive of the Rule of Law which forms one of the essential elements of public interest in any democratic form of government. The Rule of Law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights....."

13. In the instant case, the settlement of the fishery rights in question for a reasonable value with the opposite party No. 4 had been done legally and reasonably and was neither arbitrary nor discriminatory nor was it against public interest. The petitioner seeks "self-interest" for conferment of the fishery right on him and not "public interest".

14. For the aforesaid reasons, we are of the view that no case has been made out by the petitioner for any interference by this Court in its extraordinary jurisdiction while considering a writ application. The application, according to us, is devoid of merits and none of the reliefs claimed and prayed for can be granted.

15. In the result, we would dismiss the writ application, but in the circumstances of the case, make no order as to costs.

J.K. Mohanty, J.

16. I agree.