

(2013) 08 MP CK 0396

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1765 of 1992

Raj Kumar Jain

APPELLANT

Vs

M.P. State Minor Forest Produce (Trading and Development)
Co-operative Federation Ltd. and Others

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2014) 1 MPHT 192 : (2013) 4 MPLJ 163

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

Bench : Single Bench

Advocate : Sanjay K. Agrawal, for the Appellant; Vivek Agrawal, Govt. Advocate for the Respondent Nos. 2, 3 and 4, for the Respondent

Judgement

A.K. Shrivastava, J.—Today is the auspicious day because after 21 years, the fate of this petition is being decided. In the year 1993, the then Hon"ble Chief Justice Shri U.L. Bhatt directed the Registry to register the Writ Petition under the head of "Writ Petition". Earlier these petitions were registered as "Miscellaneous Petition". Thus, the Court became very much anxious as soon as Reader called the case by mentioning Miscellaneous Petition eventually straightway impression carved out in my mind that the matter is quite old and must be earlier to 1993. True, this petition is to be heard for the second time since earlier on 24-6-1992, this Court dismissed the petition upholding the blacklisting of the petitioner. However, the order passed by this Court was assailed by the petitioner by filing Civil Appeal No. 3410/1993 in the Supreme Court. The Apex Court although upheld the order of this Court by which the action of the respondent blacklisting the petitioner was affirmed, however, remanded the case to this Court to pass a fresh decision permitting the petitioner to carry out appropriate amendments in the memorandum of writ petition highlighting two grievances in terms of the order of the Supreme Court. Firstly, regarding alleged illegal termination of contracts and the claim of the petitioner for compensation and also in connection with the alleged non-supply of goods for which instalments were duly deposited; and secondly, about his claim for refund of security deposits which according to

the petitioner have been wrongfully forfeited. In this manner, the matter has been received by this Court. Thus, this Court has to decide this petition in the light of the aforesaid two points which the Supreme Court had framed.

2. The facts necessary for disposal of this petition are very limited because the fate of this petition is to be decided only upon the two grounds, which I have already mentioned hereinabove framed by the Supreme Court. However, for ready reference it would be condign to say that on 17-6-1991 the first respondent namely, M.P. State Minor Forest Produce (Trading and Development) Co-operative Federation (in short "the Federation") issued notice for inviting tender of Tendu Patta for Narsinghpur and Hanumatpur (i.e., North Panna). The tender was accepted in favour of the petitioner and two separate agreements dated 19-8-1991 were executed. However, the life of these two agreements of North Panna was upto 31-3-1992 while that of Narsinghpur upto 30-4-1992. In terms of the said agreement executed between the petitioner and first respondent 5% earnest money was deposited at the time of submission of the tender and after his tender was accepted the petitioner deposited 5% of the security amount. Thereafter, the aforesaid two agreements were executed. According to these agreements, the petitioner was required to deposit the entire amount of the tender in four instalments. On bare perusal of the return of the first respondent and by paying heed to Para 9, it is gathered that for Lot No. 492 Hanumatpur (i.e., North Panna), the petitioner deposited all the four instalments. Thus, the petitioner was totally exonerated on his part of the contract as soon as he deposited all the four instalments. Eventually, he was required to uplift the Tendu Patta of all the instalments, which he deposited. However, the delivery of the same was not made to the petitioner because it was discovered by the first respondent that the door of adjacent godown in which the Tendu Patta was stored was broken and, therefore, delivery was stayed till the verification of Tendu Patta in respect of Lot No. 492.

3. The contention of Shri Sanjay K. Agrawal, learned Counsel for the petitioner is that as per the own showing of the Federation in their return all the instalments, which the petitioner were required to be deposited were deposited by him. But for the Lot No. 492 Hanumatpur (i.e., North Panna) he was not permitted to uplift the Tendu Patta because the locks of the adjacent godown were found to be broken and inter se enquiry of the department of the Federation was going on. In the meantime, the period of the agreement expired but according to the learned Counsel, the petitioner vide his application dated 12-4-1992 informed the Federation that he is not willing to lift the Tendu Patta and the balance amount of payment in respect of this Lot, which is due upon the petitioner roughly comes to Rs. 4,80,000/- be adjusted and deposited towards the instalment of Lot of Narsinghpur Division.

4. Learned Counsel for the petitioner submits that first respondent (Federation) is a statutory and Semi-Government body and hence it would come within the purview of "State" as defined under Article 12 of the Constitution of India,

hence, its action should be fair and not like an ordinary litigant and, therefore, the Federation was obliged to adjust the said amount towards the payment which the petitioner was required to make for the Narsinghpur contract. Hence, learned Counsel submits that the action of the first respondent (Federation) is not only arbitrary but is in contravention to the fundamental rights vested in the petitioner enshrined under Articles 21 and 19(1)(g) of the Constitution of India. On this premise submissions, it has been prayed by the learned Counsel for the petitioner that this petition be allowed and the refund of the amount of Rs. 4,80,000/- along with security amount and the earnest money be paid to the petitioner by holding that agreement was erroneously terminated.

5. In the present case, nobody is appearing for the respondent No. 1. The other respondents are formal parties because impugned agreements were executed between the petitioner and the Federation (first respondent).

6. Having heard learned Counsel for the parties and after going through the averments made in the petition and in the return as well as the relevant documents along with the order of the Supreme Court, I am of the view that this petition deserves to be allowed in part.

7. It has been rightly submitted by the learned Counsel for the petitioner by inviting my attention to Para 9 of the return of the first respondent that Federation itself has admitted the factum of deposition of all the four instalments by the petitioner so far as it relates to Hanumatpur (i.e., North Panna). On bare perusal of the very material document (Annexure A-8), which is a letter dated 31-3-1992 written by the petitioner to first respondent that all the four instalments of Lot No. 492 of Hanumatpur (i.e., North Panna) had been deposited prior to 15-9-91. Indeed the factum of deposition of all the four instalments has been admitted by the first respondent in its return Para 9. Hence, according to me, the Federation was legally obliged and in all fairness it should have permitted the petitioner to uplift the Tendu Patta according to the terms of the contract. Admittedly, this was not permitted to be done by the Federation. To me, unless and until transit passes are issued to the petitioner, he cannot uplift the Tendu Patta and in the absence of those passes, if he uplifts the Tendu Patta, it will be an offence under the Forest Act. Further, the petitioner has nothing to do if the lock of the adjacent godown of the Federation was broken and some inter se departmental enquiry was going on in that regard. According to me, entitlement to uplift the Tendu Patta vested in the petitioner as soon as he had deposited the third and the fourth instalments. Since the petitioner was not permitted to uplift the Tendu Patta before the period of agreement expired on 31-3-1992, therefore, the Federation was obliged to return back the amount which petitioner deposited along with interest because after deposition of instalments the bail had gone in the Court of Federation and if upon their defaults the petitioner could not carry out the business by uplifting the Tendu Patta, which he was otherwise entitled, he cannot be blamed.

8. I am not at all impressed with the stand taken by the Federation in its return

that the petitioner was permitted to uplift the Tendu Patta even after the expiry of the agreement for the simple reason that there is no stipulation in this regard in the agreement. Had there been any condition in the said agreement dated 19-8-1992 the matter would have been different since the period of contract already expired on 31-3-1992, according to me, in all fairness the Federation ought to have been returned back the entire amount including the earnest money and security deposit along with the interest so far as it relates to Lot No. 492 of Hanumatpur (i.e., North Panna). Having failed to do so, I am of the view that the petitioner is entitled to receive the said amount. What is the actual amount of third and fourth instalments it is not certain, because learned Counsel for the petitioner submits that it is roughly Rs. 4,80,000/- and the exact figure is also not disclosed by the first respondent in its return. Hence, the first respondent would calculate the exact amount and would make necessary payment to the petitioner along with interest at the rate of 6% per annum from 1-4-1992. The petitioner may file a representation on or before 31-8-2013 before the Federation disclosing the exact amount of third and fourth instalment as well as the figure of earnest money and security deposit, which the Federation was obliged to return him. The Federation may also compute the said amount and make necessary payment to the petitioner on or before 30-9-2013.

9. I am not at all impressed and convinced by the submission of the learned Counsel for the petitioner that amount which according to him is roughly Rs. 4,80,000/- should have been adjusted in the instalment, which the petitioner was liable to deposit in the office of the Federation for the contract of Narsinghpur, for the simple reason that the two agreements cannot be inter linked with each other. True, parties are the same but the agreements are separate and for altogether different locality. It was for the Federation to take decision to accept the prayer of the petitioner, but the said authority was not legally obliged to adjust that amount for Narsinghpur contract, nor there is any stipulation in that regard in the agreement. Therefore, according to me, the Federation was not obliged to accept the offer of the petitioner in that regard. Hence, the terms and conditions of the agreement of Narsinghpur have been violated by the petitioner and, therefore, rightly the amount of contract of Narsinghpur has been terminated by the Federation. But for the contract of Hanumatpur (i.e., North Panna), the petitioner cannot be blamed and on account of default on the part of the Federation, the petitioner had starved. Thus, this petition so far as it relates to agreement of Narsinghpur stands dismissed, but it is allowed so far as it relates to the agreement of Hanumatpur (i.e., North Panna). Let a writ of mandamus be issued against the Federation. No costs.