

(1983) 07 OHC CK 0023

In the Orissa High Court

Case No : Original Jur. Cases No's. 1359, 1786 of 1982 and 67 of 1983

Royaka Mangulu and

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-07-1983

Acts Referred:

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

Citation : AIR 1985 Ori 1

Hon'ble Judges : P.K. Mohanti, Acting C.J.; B.K. Behera, J

Bench : Division Bench

Advocate : C.V. Murty, C.A. Rao and C.M.K. Murty, for the Appellant; Govt. Advocate (for Nos. 1 to 3), D.P. Mohapatra and Debabrata Das, (for No. 4), for the Respondent

Final Decision : Dismissed

Judgement

B.K. Behera, J.—The three writ applications under Articles 226 and 227 of the Constitution have been heard analogously as agreed to by the parties and will be governed by this common judgment. Challenge is to the decision of the State Government vesting the right of collection of the tamarind and tamarind seeds from the Government forests in the Rayagada Forest Range in the district of Koraput, in the opposite party No. 4 Shri Doki China Guruvulu Son and Company, a partnership firm represented by its Managing Partner, namely, Doki Satyanarayana, for utilization in its industry for a period of three years with effect from Oct. 1, 1981 in accordance with the State Government's Industrial Policy Resolution. The petitioners impugn this decision and the consequent orders passed for its implementation as per Annexures 3 to 5 in O. J. C. No. 67 of 1983 and Annexures 2 to 4 in the other writ applications, as illegal, invalid and inoperative in law, being in violation of Articles 14 and 19 of the Constitution affecting adversely the right of trade of petitioners in O. J. C. Nos. 1359 and 1786 of 1982 who are said to be collectors of tamarind and also of the petitioners in O. J. C. No. 67 of 1983 who are said to be traders purchasing

tamarind from the lessees of the Government forests and selling the same in the markets within and outside the State. In the former two cases, the petitioners assert that the impugned decision has deprived them of getting a competitive price for the stocks collected by them and thus putting them to financial loss. In the other case, the petitioners allege that they have not been given an opportunity for collecting tamarind and tamarind seeds from the Government forests and thereby their trade has adversely been affected. The petitioners assert that a monopoly right, which could not be, had illegally been vested in the opposite party No. 4 and this had been done under the influence of Mr. Ramachandra Ulaka, a Minister of the Cabinet rank in the State, with whom the Managing Partner of the opposite party No. 4 was said to be hands-in-glove. It has been asserted by them that the stand taken by the State that the right has been vested in the opposite party No. 4 to foster its industry set up in the same division in accordance with the Industrial Policy Resolution of the State Government was a fake one and an eye-wash.

2. The decision of the State Government which is under challenge is in the following terms :

"File No. 5FC-97/81 No. 34022/FFAH

Dated 22-12-81

To The Chief Conservator of Forests, Orissa. Sub : Lease of Tamarind to M/s Doki Chinaguruvulu Son & Co.

Sir,

I am directed to say that in accordance with Industrial Policy of the State, Government after careful consideration of the petition dt. 10-9-81 of M/s Doki Chinaguruvulu Son & Co (copy enclosed) and recommendation of the District Industrial Centre, Koraput, Jeypore, have been pleased to grant lease for collection of tamarind and tamarind seeds in Rayagada Range of Rayagada Forest Division for utilisation in their industry for a period of three years with effect from 1-10-81, pending finalisation of the terms and conditions and the rate of royalty for such lease that would be decided by Government in due course. An undertaking from the Industrial Unit concerned may be obtained to the effect that they would abide by the terms and conditions and agree to pay the rate of royalty to be decided later by Government, before work order is issued in their favour.

It has, further, been ordered that the Divisional Forest Officer, Rayagada Forest Division may be asked to exercise strict vigilance and supervision on this industry so that there is no possibility for smuggling of raw materials by the party to the detriment of all concerned.

You are requested to submit your proposal regarding terms and conditions and the rate of royalty relating to this lease to this Department immediately.

C. F., Koraput Circle/DFO Rayagada may kindly be informed suitably.

Sd/- Illegible, 21.12 Asst. Secretary to Government."

In pursuances of this decision, the Chief Conservator of Forests, Orissa, directed the Conservator of Forests Koraput Circle, to implement the Government order after obtaining the requisite undertaking and to furnish the terms and conditions of the lease including the royalty to be paid for transmission to the State Government. The Conservator of Forests intimated the Divisional Forest Officer that the opposite party No. 4 had deposited Rs. 60,000/- towards the royalty and that it would be depositing Rs. 12,000/- towards the lease amount and a direction had been given to allow it to export tamarind without seeds for the amount already paid. These annexures are sought to be quashed in the writ applications.

3. In their counter-affidavits, the opposite parties have controverted the assertions made by the petitioners and their case is that after due consideration of the representation made by the opposite party No. 4 and keeping in mind that it runs an industry, the State Government has taken a legal and reasonable decision in its favour by granting the lease to it, in accordance with the Industrial Policy Resolution of the State Government, to foster its industry and not with a view to allowing undue profits to the opposite party No. 4, as stated by the petitioners. It was not a monopoly right given to the opposite party No. 4 and in the absence of statutory rules or executive instructions governing the grant of such lease, it was open to the State Government to deal with its property in the manner it had done and no public interest had been affected by the impugned transaction. It is contended by the opposite parties that the decision was neither actuated by mala fides nor had been taken as a result of influence by Mr. R. C. Ulaka, a Minister of Cabinet rank, as falsely alleged by the petitioners. According to the opposite parties, the State has not incurred loss nor has the opposite party No. 4 gained undue advantage by the impugned lease granted in its favour.

4. There is no material in support of the contention raised by the petitioners that the decision of the State Government had been actuated by mala fides or that Mr. R. C. Ulaka, a Minister of Cabinet rank, had influenced this decision. As a matter of fact, Mr. Ulaka is not a party to these proceedings. No one should be condemned unheard. That apart, as has been submitted at the Bar, Mr. Ulaka is not the Minister for Forests. Even assuming that this Minister and the Managing Partner of the opposite party No. 4 had been found sitting together at Bhubaneswar or elsewhere, as stated by the petitioners, it cannot be said on the materials placed before us that he had, in any manner, influenced the decision in favour of the opposite party No. 4. There is also no material that the public officers, who are opposite parties to these proceedings, had acted maliciously or with an ulterior motive in favour of the opposite party No. 4 and against the petitioners, while implementing the impugned decision of the State Government. The burden of establishing mala fides is heavy on the person alleging it. Such allegations are easily made without supporting materials. The proof to establish

mala fides or malice should be of a high degree and merely flinging charges would not suffice.

5. On a due consideration of the representation made by the opposite party No. 4 dated Sept. 10, 1981 (Annex.-2 in O. J. C. No. 67 of 1983 and Annex-1 in O. J. C. Nos. 1359 and 1786 of ,1982), the State Government granted lease for collection of tamarind and tamarind seeds in the Rayagada Forest Range for utilization in the industry set up by the opposite party No. 4 for a period of three years, pending finalisation of the terms and conditions and the royalty for such lease and this decision had been taken in furtherance of the Industrial Policy Resolution of the State Government.

6. It has been submitted before us that the petitioner No. 1 in O. J. C. No. 67 of 1983 had, in his representation (Annex.-7), specifically stated that he had been running a cottage industry and had mentioned in Annex.-8 that he was agreeable to pay more towards royalty than the opposite party No. 4 and had also undertaken to supply the seeds to any lessee. The representation (Annex.-7) was dt. Sept. 6, 1982. Thus, it had been made nearly a year after the lease had been granted in favour of the opposite party No. 4. On the materials placed before us, it cannot be said that the terms and conditions were unduly favourable to the opposite party No. 4 or that less royalty was being paid by it than what was being paid by the previous lessees. As can be seen from the counter-affidavit put in by the opposite party No. 4, the State Government has set up a District Price Fixation Committee under the Chairmanship of the Collector of the District for fixing the minimum price for minor forest products including tamarind and that committee has fixed Rs. 80/- per quintal as the price for seeded tamarind. But as per the report of the Divisional Forest Officer, the opposite party No. 4 has been purchasing seeded tamarind in the Rayagada Forest Range paying higher price than fixed by the committee. According to the opposite party No. 4, the price paid by it for seeded tamarind ranges between Rs. 100/- and Rs. 110/- per quintal and it has been paying Rs. 200/- to Rs. 210/- per quintal for deseeded tamarind, while the Tribal Development Co-operative Corporation of Orissa Ltd. (a Government of Orissa Undertaking), had been paying Rs. 160/- per quintal. The proposed amount of royalty was more than what had been fixed by the District Price Fixation Committee. If the State Government had intended to unduly favour the opposite party No. 4, it could as well grant lease in its favour in respect of the entire Rayagada Forest Division. Instead, it was given lease only in respect of the Rayagada Forest Range in the Division in which it runs its industry.

7. The petitioners have no fundamental right to insist that the State Government must enter into a contract with them. There are no statutory rules or executive instructions for the grant of such lease and the State Government had the power to grant lease in favour of the opposite party No. 4 on reasonable terms without affecting its revenue and public interest. No person has a vested right to get any lease although he has a right to get an application made for lease disposed of

fairly. (See *Shri Raghunandan Panda Vs. State of Orissa and Others*, . Even if any of the petitioners was prepared to pay more royalty for which he had made a representations, the State Government was not bound to accept such terms merely because a higher royalty was offered to be paid.

8. We are at one with Mr. Murty that in a case of this nature, the State action should be actuated by reason and should not be against public interest. As laid down by the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . Unlike a private individual, the State, in the matter of awarding a contract or leasing out its property, cannot act as it pleases and every such activity of the State Government has a public interest in it and it must, therefore, be informed with reason and guided by public interest. The Supreme Court, in the case of *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, has held :

".....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 promote and vindicate public interest which demands large number of people who are poor, ignorant or in a socially or economically disadvantaged 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....."

9. Relying on the principles laid down in *AIR 1981 SC 344 Fertilizer Corporation Kamagar Union (Regd) Sindri v. Union of India*. It has been submitted by Mr. Murty that the petitioners have locus to file the writ applications. In that case, the Supreme Court has observed that in an appropriate case, it may become necessary in the changing awareness of the legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding. If the public property is dissipated, it would require a strong argument to convince a Court that representative segments of the public or at least a Section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. In an earlier case, reported in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, referring to the principles laid down in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , the Supreme Court has observed and held at P. 20011 :

"The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, that the Government is not

free, like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The government action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14. The Court referred to the activist magnitude of Article 14 as evolved in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and observed that it must follow "as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with anyone, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground". This decision has re-affirmed the principle of reasonableness and non-arbitrariness in governmental action which lies at the core of our entire constitutional scheme and structure."

The Supreme Court has observed therein 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 and unless it is clearly satisfied that the action is unreasonable or not in public interest, the Court would not strike down the governmental action.

10. Equality before the law or equal protection of the laws within the meaning of Article 14 of the Constitution would mean absence of arbitrary discrimination. No undue favour to one or hostile discrimination to another should be shown, as observed by the Supreme Court in *Om Prakash Sud and Others Vs. State of Jammu & Kashmir and Others*, .

11. In the instant case, however, we notice that to foster its industry set up in the same forest range, lease had been granted in favour of the opposite party

No. 4 in respect of the forest products in question in the Rayagada Forest Range. It was not a case where persons equally placed had been treated unequally. The impugned decision had been taken in accordance with the Industrial Policy Resolution of the State after consideration of the representation made by the opposite party No. 4 and on the recommendation of the District Industries Centre, Koraput.

12. Relying on the observations made in *Rashbihari Panda etc. Vs. State of Orissa*, *Hrudananda Patra and Another Vs. Revenue Divisional Commissioner Central Division and Others*, and *Raja Industries and Another Vs. The General Manager, District Industries Centre, Ernakulam and Another*, it has been submitted before us that the lease granted to the opposite party No. 4 was, in fact, a monopoly granted to it and the State Government could not confer a monopoly right. For the reasons already given by us, it cannot be said in the instant case that a monopoly right has been conferred on the opposite party No. 4. In the case reported in *Rashbihari Panda etc. Vs. State of Orissa*, the governmental action in inviting offers for advance purchase of Kendu leaves only from purchasers during the previous year who had carried out their obligations to the satisfaction of the government in preference to open competition was struck down as being violative of Articles 14 and 19 of the Constitution and being not in compliance of the statutory provision in Section 10 of the Orissa Kendu Leaves (Control of Trade) Act (28 of 1961). In *Hrudananda Patra and Another Vs. Revenue Divisional Commissioner Central Division and Others*, it has been held that a monopoly cannot be created by an administrative order. In that case, the highest bidders in public auction of two quarries who had deposited 50 per cent of the lease amount were denied the grant of lease which was granted in favour of a cooperative society under the shelter of Government instruction contained in a letter from the Revenue Secretary to grant such leases only to co-operative societies and the highest bidders had been excluded from the threshold from carrying on trade with the Government. In such circumstances, it was held that the governmental action was discriminatory and was in violation of Article 19(1) (g) read with Article 14 of the Constitution. In view of the facts and circumstances of that case distinguishable from the facts before us, it has been held by the Kerala High Court in *Raja Industries and Another Vs. The General Manager, District Industries Centre, Ernakulam and Another*, that the policy evolved by the softwood Committee in relation to the distribution of softwood to industrial units is ultra vires Article 14 to the extent that it denies allotment of quota to an industrial unit in respect of a produce manufactured by it only for the reason that the specified end-product had not been included in the certificate of registration prior to 18-6-1976, the date on which the Standing Raw Material Committee met to assess the situation relating to availability of softwood and consider the question whether new units based on softwood should be given registration.

13. As earlier indicated by us, the opposite party No. 4 having an industry of its own in the same forest range, was granted the lease in respect of the forest

products in question and no discriminatory treatment had been made in its favour or against anyone else similarly placed. The lease had been settled in accordance with the Industrial Policy Resolution of the State and it had not been done arbitrarily or capriciously to favour the opposite party No. 4, but had been done on the recommendation of the District Industries Centre and after due consideration. Merely because the terms and conditions including the amount of royalty to be paid had not been settled before the opposite party No. 4 was allowed to work out, it could not be said that the opposite party No. 4 had unduly been favoured, especially in the absence of materials to indicate that the royalty being paid by the opposite party No. 4 was lower than the royalty being paid by the previous lessees. None of the petitioners has set up any industry requiring tamarind or tamarind seeds for its raw materials as has been done by the opposite party No. 4 and the petitioners had not been discriminated against.

14. The petitioners in O. J. C. Nos. 1359 and 1786 of 1982 are in no way concerned with the appointment of the lessee or licensee to collect tamarind from the Government forests as on their own showing, they are to sell the stocks collected by them to the lessee or licensee. The contention raised on their behalf that by the impugned decision, they are not able to get a competitive price cannot be accepted. As has been submitted by the learned Government Advocate and the learned counsel for the opposite party No. 4, the practice prevalent in the State is to lease out the Government forests for collection of tamarind and the question of getting competitive price for the collectors does not arise as the exclusive right to purchase the stock is vested in the lessee. In view of what we have stated above, the petitioners in the other writ application (O. J. C. No. 67 of 1983) have no legal or constitutional right to trade in Government property. The transaction in question is contractual in nature as envisaged in Article 298 of the Constitution and the decision has been taken in favour of the opposite party No. 4 which has set up an industry requiring tamarind and tamarind seeds for its raw materials within the Rayagada Forest Range engaging a large number of workmen during the peak season mostly drawn from the Adibasi and Harijan residents of the locality, as submitted before us on behalf of the opposite party No. 4 and the impugned decision has been taken in the larger interest of the State and the public.

15. Mr. Murty for the petitioners has strenuously urged that the opposite party No. 4 has not been feeding its industry by the raw materials for which the impugned lease has been granted, but has been exporting the raw materials outside the State for large profits. This assertion has been controverted by the opposite party No. 4 in its counter-affidavit. As would appear from it, a total quantity of 38,062.84 quintals of tamarind had been procured by the opposite party No. 4 during 1981-82. The entire stock was processed in the industry set up by it and it produced 30,000 quintals of deseeded tamarind and 7,154.49 quintals of tamarind seeds. The opposite party No. 4 has been allowed to export tamarind with seeds weighing 500 quintals purchased by it from the Project Manager (R & D) of the Similipal Forest Development Corporation, as per the

terms, details of which have been given in para 14 of the counter-affidavit filed in O. J. C. No. 67 of 1983. This assertion made by the petitioners against the opposite party No. 4 cannot be sustained.

16. In our view, the assertions made by the petitioners and the contentions raised on their behalf have no substance and cannot prevail. The chief function of a writ is to compel the performance of public duties prescribed by a statute and in order that a mandamus is issued compelling the parties to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has legal right under the statute to enforce its performance. In the instant case, in view of what has been stated by us, the petitioners have no statutory or legal right to be enforced. They have not been discriminated against in the matter of trade. The impugned decision granting lease is not against public interest. The materials placed before us do not indicate that the State has lost its revenue by granting the impugned lease. The royalty so far paid cannot be said to be inadequate on the basis of the materials placed before us. As has been submitted on behalf of the opposite party No. 4 the royalty tentatively proposed is Rs. 1,42,500/- up to 20,000 quintals of seeded tamarind and for the stock in excess of 20,000 quintals at the rate of Rs. 7.50 for seeded tamarind and Rs. 11.45 per quintal for deseeded tamarind. The report of the Divisional Forest Officer would indicate that up to Sept., 1982, the opposite party No. 4 had paid Rs. 3,44,000/- towards royalty for the year 1981-82 and an undertaking had been taken from it to the effect that it would abide by the terms and conditions and pay the royalty as would be fixed by the State Government. Over and above this, a provisional security deposit of Rs. 15,000/- has been realised by the Divisional Forest Officer, Rayagada, from the lessee. It cannot, therefore, be said, for the aforesaid reasons recorded by us, that the opposite party No. 4 has been given an undue advantage by being permitted to collect the forest products from the Rayagada Forest Range before the fixation of the royalty to be paid by it.

17. We thus find that the writ applications are devoid of merits and are liable to be dismissed.

18. In the result, the three writ applications are dismissed. In the circumstances of the case, we would make no order as to costs.

P.K. Mohanti, Ag. C.J.

19. I agree.