

(1978) 04 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 826 of 1977

R.S. Bhatia

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-04-1978

Acts Referred:

Constitution of India, 1950 — Article 163(3), 166, 226
Forest Contract Rules — Rule 37

Citation : (1978) 46 CLT 38

Hon'ble Judges : S.K. Ray, C.J;N.K. Das, J

Bench : Division Bench

Advocate : G. Rath, R.K. Rath and N.C. Panigrahi, for the Appellant; L. Rath, B.S. Misra and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. This dispute arises out of auction sale of lot No. 76 of Dudhiani forest coupe of Karanjia Forest Division for the year 1975-76. Petitioner was the highest bidder in the auction sale and his bid was accepted and ratified by Government, the period of contract being from 29-11-1975 to 30-6-1977. The bid amount was to be deposited in four equal installments. The Petitioner deposited the security money. As he could not pay the installments, the Chief Conservator of Forests, opposite party No. 3, terminated the contract. The Chief Conservator in his order of termination indicated that if the Petitioner would pay the Government dues along with renewal fees within a month, the order of termination was to be treated as cancelled. As against the aforesaid order of termination of the contract, the Petitioner moved the Government of Orissa for setting aside the same. The State Government by letter dated 7-9-1977 informed the Chief Conservator that the Petitioner would work out the coupe for the full working period on payment of the required fees along with the first and second instalment dues within fifteen days from the date of receipt of the order. This letter was addressed to the Chief Conservator and he was directed by Government to inform the Petitioner accordingly. The Petitioner was also

informed by the State Government that necessary orders had already been communicated to the Chief Conservator. During pendency of his representation before the State Government, the forest coupe in question was re-sold in auction on 25-8-1977 and the matter was referred to Government for ratification. By order dated 30-9-1977 the State Government ratified the subsequent auction in favour of opposite party No. 4 and the order dated 7-9-1977 in favour of the Petitioner was withdrawn. The Petitioner challenges the aforesaid order as illegal and mala fide. It is contended that certain rights had already accrued to the Petitioner by the order dated 7-9-1977 and those rights could not be annulled unilaterally without notice to the Petitioner and the rules of natural justice have been grossly violated.

2. Two separate returns have been filed - one by opposite parties 1 to 3, namely, the State Government, the Divisional Forest Officer of Karanjia Division and the Chief Conservator of Forest; and another by opposite party No. 4 who is the highest bidder in the subsequent auction sale. The contents of both the counter affidavits are almost similar. It is contended by the opposite parties that the writ petition is not maintainable as it is based on a contract with Government. The contract with the Petitioner was rightly cancelled according to the terms of the agreement as the Petitioner failed to comply with the stipulation of payment of installments. The so-called appeal or representation made to Government was time-barred according to the Forest Contract Rules which is not a statutory rule, but a part of the contract. The forest coupe is to be put to auction every year. In the subsequent auction sale, the Petitioner was one of the bidders in respect of other lots, but not the lot in question and one of his partners was also bidder in respect of the lot which is the subject-matter of this Petitioner. The Petitioner was aware of the second auction sale and he took part in the same. The order allowing the representation of the Petitioner was not communicated to him and as such, it cannot be said to be a final order and no right can accrue in favour of the Petitioner by virtue of the said order. The State Government had the right to withdraw that order. The ratification in favour of opposite party No. 4 was legal and Government had jurisdiction to accept the same and withdraw the order dated 7-9-1977. In other words the order dated 30-9-1977 is a valid and legal order.

3. Following facts are not disputed, as would appear from the writ petition the counter affidavits and the rejoinders filed in this Case. There was an auction sale in respect of the lot in question and the Petitioner was the highest bidder. This was for the year 1975-76. The sale in favour of the Petitioner was ratified and an agreement was executed. The Petitioner defaulted in payment of the first and the second installments. The stipulation in the contract was that the Chief Conservator of Forest had the right to cancel the contract in favour of the Petitioner if there was default in payment of installments. The Chief Conservator of Forests also cancelled the contract. The Petitioner made a representation to the State Government. The Forest Contract Rules is not a statutory rule, but was made a part of the contract, which is invariably done in such forest auction sales.

The State Government allowed the representation of the Petitioner and intimated the same to the Chief Conservator of Forests directing him to intimate the Petitioner. A letter was also written by the State Government to the Petitioner that necessary order had been passed and the same was sent to the Chief Conservator. During pendency of the representation of the Petitioner before the State Government, the forest coupe in question was put to re-auction sale twice. In the first auction sale there was no bidder and in the second time opposite party No. 4 was the highest bidder. By order dated 30-9-1977 the State Government withdrew the order dated 7-9-1977 allowing the representation of the Petitioner and ratified the sale in favour of opposite party No. 4. Mean while the Petitioner wrote to the Treasury Officer as well as the concerned D. F. O. to withdraw some amount from the deposit of one account and to deposit the same towards Petitioner's dues relating to auction sale of the coupe In question and the same was deposited on that account as a suspense deposit.

4. It is not disputed that the agreement was terminated by the Chief Conservator of Forests by virtue of Annexure-2. In clause-4 of Annexure-2, it is stated that if the contractor pays up all Government dues with renewal fees within one month from the date of receipt of the order, the determination order may be treated as cancelled. This is dated 13-9-1976 and the Petitioner contends that this was communicated to him by memo dated 21-9-1976 It is also not disputed that a representation was filed by the Petitioner before the State Government, a few days after expiry of thirty days from the date of communication of the order. It is contended by the opposite parties that this appeal or representation having been filed beyond thirty days was not maintainable. But, in fact, the State Government entertained it and passed order after considering the representation made by the Petitioner. The period of thirty days is not a statutory period, but a term which was a part of the contract, inasmuch as the Forest Contract Rules was made a part of the contract as the same was not statutory rule. The rule does not amount to be mandatory in nature. The State Government entertained the representation, considered the same and passed order. Petitioner has not been prejudiced in any way by such action of the State Government. It is also not disputed that Annexure-5 is the order passed by Government. This is admitted in the affidavit in return filed by opposite parties 1, 2 and 3. Annexure-4 is the intimation by which the State Government intimated the Petitioner that necessary order has been passed on his representation and he could approach the authorities concerned to know the order passed. Annexure-3 is the representation made by the Petitioner. From the contents of Annexure-5, it appears that the order passed by the Government was to the effect that the Petitioner was allowed to work the coupe with full working period as he had not worked the lot at all and the contractor should pay the renewal fee, extension fee and interest as per rules, should pay the first and second installments within fifteen days from the receipt of the order and the date of the third and fourth Installments should be suitably fixed by the Conservator of Forests, Angul Circle. It was also mentioned therein that the contractor might be informed accordingly.

The contents of Annexure-5 would show that the time was extended by the State Government. We have already held that the rule is not mandatory and Government having entertained the appeal and having passed order on the same, the objection as to limitation has no force. This fact also finds support from the return filed by the D. F. I., opposite party No. 2, who has sworn the affidavit on behalf of the State Government as well as the Chief Conservator. At one place, he has mentioned that the representation cannot be called an appeal, but however the Government entertained it and passed order on 7-9-1977 vide Annexure-5. This would clearly show that Government entertained the appeal or the representation and passed necessary order on the same. It is also admitted by opposite party No. 2 that Annexure-5 is the order passed on 7-9-1977. It is no longer open to Government or any of its subordinate officers to say that as the representation was filed beyond thirty days, there was no proper representation before Government. .

... On behalf of the opposite parties, it is contended that the appeal preferred by the Petitioner was under Rule 37(a) of the Forest Contract Rules. This contention is not tenable. Rule 37(a) of the aforesaid Rules relate to the power of the State Government to consider any representation against the decision of the Chief Conservator of Forest in any appeal relating to forest contract. The present matter is not a case where the Chief Conservator of Forest had made a decision in an appeal preferred to him by the contractor. Therefore, the provisions of Rule 37(a) are not applicable to the present case.

5. The opposite parties contend that the order Annexure-5 was not communicated to the Petitioner: Therefore, the order was not final and no right accrued to the Petitioner. Annexure.4 is admittedly an intimation sent to the Petitioner by the State Government which runs as follows:

The undersigned is directed to say that necessary orders have Since been communicated to Chief Conservator of Forests, Orissa with copy to Conservator of Forests, Angul Circle/Divisional Forest Officer. Karanjia Division whom he may contract.

The reference in this latter is "His petition dated 25-11-1976".

6. From Annexure-5, it would appear that the Chief Conservator of Forests, the Conservator and the Divisional Forest Officer were directed to inform the contractor about the order passed by Government. There was no direction either to the Chief Conservator or the Conservator or the Divisional Forest Officer to issue a written communication to the Petitioner. In Annexure-A it is clearly mentioned that the order had been communicated to the aforesaid officers" who were to be contacted. The Petitioner contends that the final disposal of the representation was duly communicated to him. The Petitioner has also quoted the order Annexure-5 in the writ petition first presented to the Court.

7. From the affidavit of the Petitioner, it appears that he asserts that on receipt of Government order dated 7-9-1977 (meaning Annexure-A), he duly contacted

the Divisional Forest Officer, Karanjia Division and he was shown a Copy of the Government order received by the Divisional Forest Officer and was permitted to take a copy thereof. The D. F. O. in his affidavit states that after being intimated that Government had passed order on the representation of the petition on the Petitioner contacted him for communication of the order and this contact was made verbally in the office of the D. F. O. The D. F. O. told the Petitioner that no communication of the order could be made at that stage because certain clarifications regarding sale of coupe to opposite party No. 4 were to be sought for from Government and the Petitioner might obtain a copy through some unofficial source not known to the Government or opposite party No. 2. In another affidavit, he has stated that when the order of Government was received, he raised some points and the Conservator of Forests, Angul Circle was requested for certain clarifications. This letter was sent by him on 17-9-1977. Considering the aforesaid facts, it appears that after receipt of the order, the D. F. O. was contacted by the Petitioner verbally and he was intimated by the D. F. O. that order had been received. In any case, the fact that the Petitioner contacted the D. F. O. is admitted and that he was informed that order had already been passed is also admitted. The D. F. O. says that he did not communicate the order; whereas the Petitioner says that the order was shown to him. In view of these affidavits, it cannot be said that the assertions of the Petitioner are baseless an the other hand, it can be reasonably inferred that the Petitioner knew about the order. The aforesaid contention of the Petitioner also finds support from another circumstance. It is contended by him that in pursuance of the order of Government, he requested the D. F. O. for withdrawing some money due under some of his bills and to deposit the same towards arrear dues of the auction sale on question of the particular coupe. The chalan and the certificate of the Treasury officer, Annexures-6 and 6/a, have been produced to show that certain amount was deposited towards arrear lease amount for sale of the particular forest coupe for 1975-76. It is contended on behalf of the opposite parties that this was deposited in suspense account by the D. F. O., as requested by the Petitioner. Curiously enough the letters addressed by the Petitioner to the D. F. O. have been produced by the opposite party No. 4, but not by the D. F. O., opposite party No. 2. From Annexures L/4 and M/-1, it appears that the Petitioner requested that the amount might be kept with the D. F. O. as suspense until decision and the amount would be adjusted towards the payment of instalment dues for the coupe for the auction sale of 1975-76. In reply to that letter, the D. F. O. wrote to the Petitioner that he had deposited the amount in suspense deposit and the amount would be adjusted towards the arrear dues later. This would show that the Petitioner was aware of the order passed by Government and also of the fact that the matter of ratification of re-sale in favour of opposite party No. 4 was pending before the State Government.

The Petitioner, accordingly, offered the amount to the D. F. O. and there was no occasion for the D. F. O. to intimate him that the amount towards instalment dues would be adjusted lateron. The Petitioner in his affidavit dated 6-12-1977

has stated that on 18th September, 1977 the Conservator of Forests wrote to the State Government recommending that the sale in favour of Udayanath Sahoo (opposite party No. 4) might not be ratified. This fact has not been denied by Government or the Conservator. The Petitioner, therefore, asserts that on 29th of September, 1977 he wrote to the D. F. O. to withdraw the money under his bill for sleepers and deposit the same towards the dues of the particular auction sale of 1975-76. All the aforesaid circumstances clearly speak in favour of the Petitioner which amount to communication of the decision.

Relying on the decision *Bishnu Charan Mohanty v. State of Orissa and Ors.* ILR 1973 Cutt 319 it is contended that as the order of Government had not been communicated, it cannot be said to be a final order and until such an order reaches the person concerned, it does not attain finality. This was a case in which there was exercise of power by Government under Articles 163(3) and 166 of the Constitution of India relating to final decision as to promotion and seniority of certain incumbents in a department of Government had not been communicated, it was held that the order did not reach finality. But in the instant case, it is to be noted that the State Government extended the time for payment of the dues by the Petitioner and intimated him by Annexure-A that necessary order had been already communicated to the D. F. O. and he was to contact them to know the order. It is admitted that there was verbal contact and the Petitioner asserts that he knew the order. Nowhere it is mentioned that the order was to be communicated in writing. From the facts and circumstances of the case and from Annexure-A and the affidavits, it can reasonably be concluded that the Petitioner was informed about the order Annexure-5 and this amounts, in the circumstances of the case as discussed above, to communication. Therefore, the aforesaid decision is of no help to the opposite parties.

Therefore, we hold that the order Annexure-5 was communicated to the Petitioner and the said order was final.

8. If the order (Annexure-5) reaches finality, it is not disputed that right accrues to the Petitioner by virtue of that order.

The opposite parties have urged that according to the provisions of Rule 37(a) of the Forest Contract Rules, the State Government shall have the power to consider any representation against the decision of the Chief Conservator of Forests in any appeal relating to a forest contract at any time before the forest materials, which are the subject-matter of the contract, are settled on a re-sale by the Divisional Forest Officer. The State Government have no power to consider the representation of the Petitioner as the coupe in question was settled on a re-sale by the Divisional Forest Officer in favour of opposite party No. 4. We have already held that the provisions of Rule 37(a) are not applicable to the present case, inasmuch as the representation was not against the order of the Chief Conservator in an appeal. Therefore, the aforesaid contention has no force. Much argument was advanced by both sides relating to interpretation of the expression settled on a re-sale by the D. F. O. As the rule is not applicable to the present

case, we do not feel any necessity to record a finding on this question.

The opposite parties further urge that the forest coupe in question was put to re-sale twice. On the first occasion there was no bidder and on the second occasion opposite party No. 4 was the highest bidder and he had deposited the required money on different counts and entered into an agreement and also started working. It is contended that in that re-sale the Petitioner was a bidder in respect of another lot and a partner of the Petitioner in respect of a firm took part in the bid as a contestant of opposite party No. 4 for the coupe in question. In this connection, it is urged that the Petitioner did not obtain any special order from the State Government and, as such, he cannot raise the questions asserted by him in this writ petition. It is an admitted fact that the representation of the Petitioner was pending before the State Government and during that period this re-sale took place. As this re-sale cannot reach any finality unless it is ratified, no final order had been passed by the State Government either allowing or rejecting the representation of the Petitioner. In such circumstances, it cannot be said that because the Petitioner took part in the auction sale relating to another lot and one of his partners contested in the bid relating to the coupe in question, the Petitioner is debarred from challenging the order dated 30-9-1977 cancelling the previous order of Government dated 7-9-1977 allowing the appeal or representation of the Petitioner. In other words, when the appeal/representation of the Petitioner was pending before the State Government, the question of ratification of the sale in favour of opposite party No. 4 is also to be considered by the State Government. It is a fact that on 7-9-1977 the appeals representation of the Petitioner was allowed, but by that time the sale in favour of opposite party No. 4 had been ratified. Accordingly, no right had accrued to opposite party No. 4 and by virtue of the order dated 7-9-1977 right had already accrued to the Petitioner by the time the ratification of the sale in favour of opposite party No. 4 was made on 30-9-1977. This contention of the opposite parties therefore, is without any force.

9. Petitioner has urged that the action of the State Government withdrawing or cancelling the order dated 7-9-1977 (Annexure-5) by order dated 30-9-1977 (Annexure-I/4) is vitiated by non-observance of the rules of natural justice. By one order dated 30-9-1977, the State Government cancelled the order dated 7-9-1977, withdrew the extension time granted in favour of the Petitioner and ratified the sale in favour of opposite party No. 4. Admittedly, no opportunity was given to the Petitioner before cancelling the order dated 7-9-1977 and withdrawing the extension of time allowed in favour of the Petitioner. We have already held that right had already accrued in favour of the Petitioner by Annexure-5, which was final. Therefore, it was the duty of the State Government to give an opportunity to the Petitioner before passing the order dated 30-9-1977. The opposite parties contend that the right claimed by the Petitioner emanates out of a contract and, as such, the said right cannot be enforced under Article 226 of the Constitution of India.

10. The Petitioner has prayed for a direction to quash the order dated 30-9-1977 whereby the State Government cancelled its earlier order which was in his favour. The order dated 30-9-1977 (Annexure-I/4) is not founded on the contract. In the. Forest Contract Rules, which was admittedly a part of the contract, there is no provision to reconsider or review the order passed under Rule 37 and the rescind the same subsequently. Therefore, it cannot be said that the order dated 30-9-1977 emanates out of the contract. The sale question for consideration would be whether the Petitioner has a right which is sought to be infringed out of a contract or statute or otherwise and such right is infringed by a public authority illegally . We have already held that the order dated 30.9.1977 cancelling the previous order has not been passed in pursuance of any of the conditions or stipulations in the contract or according to the provisions of the Forest Contract Rules. Undisputedly, the property right which accrued to the Petitioner is affected by the administrative order of the State Government without following the principles of natural justice.

In the case of *The D.F.O., South Kheri and Others Vs. Ram Sanehi Singh*, it has been observed that even if the right to relief arises out of a breach of contract, the writ petition would be maintainable, if the action of the public authority is illegal. Even if the order is an administrative order, it has to be passed in consonance with the rules of natural justice. In the case of *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , the order impugned was not passed according to any statute. The Supreme Court found that the order was administrative in character and held that as the order affected the civil right, was illegal inasmuch as the same was passed in violation of the rules of natural justice. So also in the case of *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, the Supreme Court held that if the statute expressly regulates the exercise of power, the question of following the principles of natural justice does not arise, but the principle of natural justice is applicable when the statute is silent. The aim of the rules of natural justice is to secure justice and to prevent miscarriage of justice. It operates principles only ill areas which are not covered by any law. In the case of *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , it was observed that these rules do not supplant any law, but supplement. In that case, it has been held that if the purpose of the rules of natural justice is to prevent miscarriage of justice there is no reason why those rules should be made inapplicable to administrative enquiries. Therefore, administrative orders affecting civil rights passed in violation of rules of natural justice are also illegal. Reliance has been placed by the opposite parties on the case of *B. K. Sinha v. State of Bihar and Ors.* AIR 1974 Pat 239 and *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, . In the Patna case, the applicant could not work out the contract as there was litigation started at the instance of the villagers. There was no termination of the contract by the Government outside the provisions of the agreement. The contract expired by efflux of time and there was subsequently a change of design etc. The work which was abated to Respondents 6 and 7 in that case was of a different kind. The applicant moved

the High Court for quashing the entrustment of the new project to Respondents 6 and 7. The action of the Government terminating the contract was within the ambit of the agreement and as much, the High Court held that the provisions of Article 226 of the Constitution of India cannot be invoked in such a case. In the Supreme Court case, there were conditions in the lease deed which enabled the Government to revise the royalty payable and revision of royalty was made in pursuance of this clause. The contract was terminated as the Petitioner" failed to comply with the stipulations made in the deed of lease. In that case, the Government did not act outside the provisions of the contract. Therefore, the principles laid down in that case are not applicable to the facts and circumstances of the present case. In the Instant case, the order dated 30.9.1977 was not authorised either under any rule or under any clause of the agreement. By this order, which was an administrative order, the rights conferred on the Petitioner by Annexure-5 were taken away and the same is illegal, inasmuch as the rules of natural justice have been violated.

11. The appeal/representation of the Petitioner was sent to the State Government through the authorities of the department concerned. The order dated 7-9-1977 passed by the State Government was also intimated to those authorities. When the representation of the Petitioner was pending before the State Government, the coupe in question was put to re-auction. Thereafter, the order dated 7-9-1977 allowing the representation of the Petitioner and extending the time as aforesaid was received by the authorities. On 18-9-1977, the Conservator also wrote to Government that the sale in favour of opposite party No. 4 might not be ratified. While this was the position, the State Government ratified the sale in favour of opposite party No. 4 and cancelled the order dated 7-9-1977. The action of the Government does not amount to fair play in cancelling the previous order without any opportunity of being heard when rights had already accrued in favour of a party and ratifying a sale overriding the order dated 7-9-1977.

12. On the aforesaid analysis, we hold that the Petitioner has acquired a right by virtue of Annexure-5 dated 7-9-1977 and the order dated 30-9-1977 ratifying the sale in favour of opposite party No. 4 and cancelling the order dated 7-9-1977 extending time to the Petitioner is illegal and, therefore, is liable to be quashed.

13. In the result, the writ application is allowed and the order dated 30-9-1977 passed by the State Government (Annexure-I/4) is hereby quashed. In the Circumstances of the case, it is ordered that parties should bear their own costs.

S.K. Ray, C.J.

I agree.

Appeal allowed.