
(2008) 05 PAT CK 0074
In the Patna High Court
Case No : CWJC No. 8236 of 2008

Sonu Malik

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226, 299

Citation : (2008) 3 PLJR 489

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard Counsel for the petitioner and the State. In this writ application, the petitioner has assailed the correctness of the order, dated 10.5.2008 passed by the Nazareth Deputy Collector, Begusarai cancelling the allotment of land in favour of the petitioner and also directing him to pay Rs. 65,000/-.

2. Counsel for the petitioner with reference to the terms and conditions as contained in Annexure-2 submits that he had not violated any of the twelve conditions and, therefore, the cancellation of the contract is not permissible in view of Clause 13 and that too without any notice and/or opportunity of hearing to the petitioner.

3. He further points out to the impugned order also does not record a finding that the petitioner had violated any of the terms and conditions of the contract rather it appears that such cancellation was the result of some protest and demonstration by the District Cricket Association, Begusarai.

4. Counsel appearing on behalf of the State had sought to justify the impugned order on the ground that the land of the Stadium was basically meant to be used as a playground and if the Collector of Begusarai district was satisfied that it is being used by the petitioner for the purposes of exhibition and/or would affect

the condition of the Stadium and/or its playground on the protest and demonstration made by the District Cricket Association, Begusarai, this Court should not interfere in the matter as such a decision was taken by the Collector within his executive powers and in public interest.

5. Having considered the rival contention at the bar, this Court is of the view that, the decision of the Collector of Begusarai district to cancel the allotment of land of Gandhi Stadium in favour of the petitioner cannot be sustained both on account of violation of principle of natural justice as also on account of terms & conditions of agreement of the land of Gandhi Stadium to the petitioner.

6. It is not in doubt that the petitioner was given permission to hold exhibition and fair on his application dated 28.11.2007 for a period of 45 days commencing from 27.4.2008 to 21.6.2008 on payment of rent of Rs. 5,000/- per day and in the order issued by the Nazareth Deputy Collector, Begusarai under the order of the Collector of the Begusarai district, 13 conditions were incorporated which for sake of clarity is quoted hereinbelow:-

7. Apparently, the cancellation of such allotment of land to the petitioner could have been cancelled for violation of any of the terms & conditions incorporated in the order, dated 15.3.2008 (Annexure-2). In the impugned order which came to be passed on 10.5.2008 the only ground mentioned for cancellation of the allotment of the land of Gandhi Stadium to the petitioner is the protest, demonstration and dharna of District Cricket Association, Begusarai. Such ground could not have been taken for cancellation by the Collector of Begusarai district as they were not one within the 13 of the aforementioned terms & conditions.

8. Counsel for the State in that view of the matter is not justified in submitting that as the Collector of Begusarai district was facing some protest from the office bearers of the District Cricket Association, Begusarai he had rightly cancelled the allotment of land in favour of the petitioner by treating such protest to be in the public interest. The Collector of the Begusarai district was well aware of the requirement of the petitioner and use of land of Gandhi Stadium for holding exhibition and fair by the petitioner. As a matter of fact it has come on record that even earlier also such exhibition and fair were held in Gandhi Stadium under the orders of the district administration of Begusarai. This Court accordingly is of the view that the impugned order passed by the Collector of Begusarai district and communicated by the Nazareth Deputy Collector is wholly without jurisdiction and de hors the terms of the contract.

9. The gravity of such impugned order which in effect transgresses the fundamental right of the petitioner under Articles 14 and 19(1)(g) of the Constitution of India is further multiplied when it is realized that the petitioner who had made quite a heavy investment was deprived of his settlement of land and was also saddled with fine of a sum of Rs. 65,000/-only on the ground that the petitioner had unloaded the articles and necessary infrastructure on the land of Gandhi Stadium for holding the exhibition and fair. The petitioner in tact was

required to be informed of the reasons for such cancellation also entailing imposition of fine on him before passing of the impugned order by the Collector of Begusarai district and to that extent issuance of a notice and/or opportunity of hearing was a condition precedent before passing of the impugned order. The Collector of the Begusarai district is not a monarch of all the surveys within his district and has to act strictly in accordance with law.

10. Such cancellation of contract, de hors the terms of the contract has been held to be arbitrary and thus violative of Article 14 of the Constitution of India in the Full Bench judgment of this Court in the case of Pancham Singh Vs. The State of Bihar and Others wherein paragraph nos. 9 and 23 the law in this regard has been laid down in the following words:-

9. From time to time the Courts have been defining the extent and the limit of the High Court while exercising power under Article 226 of the Constitution in respect of contractual obligations between a citizen and the State. In some cases, it was discovered that persons have acted on the basis of assurances given by the authorities of the State, before formal agreements in accordance with Article 299 of the Constitution could be executed. But later the authorities repudiated such contracts. In other cases, in exercise of statutory power leases or licenses had been issued which were later cancelled. Yet another category of dispute came before Courts where even after execution of formal agreements under Article 299 of the Constitution, State purported to terminate such contracts on the ground of alleged breach of the terms of the contracts. These aspects were examined by the Supreme Court in the case of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, . In respect of different types of contracts, in connection with the exercise of power under Article 226 of the Constitution it was said as follows:-

"The Patna High Court had, very rightly divided the types of case in which breaches of alleged obligation by the State or its agents can be set up into three types. These were stated as follows:-

(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on 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 Art. 299 of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory 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 nonstatutory 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."

This Court had held that so far cases coming under categories (i) and (ii) were concerned, a writ application under Article 226 of the Constitution was

maintainable. So far a case falling in category (iii) is concerned, i.e. where the contract entered into between the State and the person aggrieved is nonstatutory and purely contractual and the petitioner complains about the breach of such contract by the State, no application invoking jurisdiction of this Court under Article 226 of the Constitution was maintainable. After referring to cases falling under category (iii) it was said by the Supreme Court as follows:-

"It then, very rightly, held that the cases now before u/s should be placed in the third category where questions of pure alleged breaches of contract are involved. It held, upon the strength of *Dr. Umakant Saran Vs. State of Bihar and Others*, and *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, and *B.K. Sinha Vs. State of Bihar and Others*, that no writ or order can issue under Art. 226 of the Constitution in such cases "to compel the authorities to remedy a breach of contract pure and simple".

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23. The judgment of the Supreme Court referred to above have repeatedly impressed that every action of the executive Government must be informed with reason which is part of the rule of law and its bare minimal requirement. In the present case the work order and the agreement in favour of the petitioner has been cancelled without assigning any reason, on a ground which did not exist on the date the impugned order was issued. The step for the cancellation of the contract is said to have been taken with an object to save the Public Exchequer. But rule of law as interpreted by courts required the State Government to inform the petitioner that the drawing, "design and the estimated cost were likely to be changed on the basis of fresh datas to be received. As such, it has to be held that action of the State does not satisfy the test of reasonableness and fair play. In my view, apart from three categories mentioned by the Supreme Court in the judgment of *Radhakrishna Agarwal (supra)*, under the changed circumstances, there should be a fourth category of cases:-

"Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual but such contract has been cancelled on a ground, de hors any of the terms of the contract, and which is per se violative of Article 14 of the Constitution."

Even in such cases applications under Article 226 of the Constitution are maintainable.

11. Applying the aforementioned test laid by this Court in the case of *M/s Pancham Singh (supra)*, this Court in the facts of the present case has no hesitation in holding that the cancellation of allotment of land of Gandhi Stadium by the Collector of Begusarai district was de hors of the terms of the contract and as such his action leading to the impugned order was per se violative of Article 14 of the Constitution.

12. In the result, this application is allowed. The impugned order dated 10.5.2008 as contained in Annexure-5 is hereby quashed and the Collector of Begusarai district is directed to ensure that the petitioner is allowed to hold exhibition and fair in Gandhi Stadium, Begusarai for a period of 45 days and/or for a lesser period in case the petitioner does not want to continue to hold exhibition and fair beyond 10.6.2008. The petitioner, however, would be under obligation to fulfill each and every terms & conditions of the order of the allotment of land dated 15.3.2008 and in the event of failure of anyone of them, it will be open for the Collector of the district to take appropriate action against the petitioner but only after complying the principles of natural justice. With the aforementioned observations and directions, this writ application is allowed.