
(1996) 03 MP CK 0030
In the Madhya Pradesh High Court
Case No : M.A. No. 1000 of 1995

Telecom District Engineer and Another	APPELLANT
Vs	
Pramesh Agrawal and Another	RESPONDENT

Date of Decision : 26-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2(2)
Specific Relief Act, 1963 — Section 38, 41

Citation : (1997) 1 MPLJ 173

Hon'ble Judges : P.N.S. Chauhan, J

Bench : Single Bench

Advocate : O.P. Namdeo and U. Awasthy, for the Appellant; V.K. Tankha, for the Respondent

Final Decision : Allowed

Judgement

D.P.S. Chauhan, J.

On 30-1-1996, this Court directed to show the Government Order under which a private counsel could be engaged by the appellants.

Shri Upendra Awasthy, the learned counsel for the appellants stated that he has filed the Government order along with an application. It is not necessary to consider this aspect of the matter as the Union of India, which was earlier respondent, has been transposed by order of this Court, as an appellant. At the time of the filing of the appeal, the learned counsel for the Union of India was in difficulty to speak for the appellant where the Union of India was arrayed as respondent. Since, now the Union of India has been transposed as appellant, Shri O. P. Namdeo has acquired the authority to address the Court on behalf of the appellant.

This Court, on 7-12-1995 admitted the appeal and also stayed the operation of the order in so far as it related to the District Bastar but for the Districts of Durg and Rajnandgaon, notices were issued and no exparte order was granted. On

15-3-1996, the Court passed the order that at the request of the counsel for the parties, the case is listed for final disposal in motion hearing on 26th March, 1996. On this basis, the appeal is finally disposed of after hearing the learned counsel for the parties.

Shri Pramesh Agrawal was the person who was granted by appellant No. 1, contract for the purpose of digging and laying down the telephone cable in the three Districts - Durg, Bastar and Rajnandgaon. The contract-work was only for six months, though the period was one year. Admittedly, after expiry of six months, fresh tender was invited by the department. Against this, the plaintiff-respondent approached the Civil Court by means of a civil suit No. 33-A/95 and obtained injunction, which is the subject-matter of the present appeal.

The Civil Court granted the following interim order :-

It is submitted that in the plaint itself, the respondent-plaintiff made a claim regarding the damages to the tune of Rs. 65,000/-. According to the plaintiff himself, he can be compensated in terms of damages for breach of contract if any.

In view of the provisions of Madhya Pradesh amendment in Rule 2 of Order 39 vide M. P. Act No. 29 of 1984, the following proviso has been inserted in sub-rule (2) of Rule 2 of Order XXXIX -

"Provided that no such injunction shall be granted :-

(a) Where no perpetual injunction could be granted in view of the provisions of section 38 and section 41 of the Specific Relief Act, 1963 (No. 47 of 1963); or

(b) to stay, the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any person appointed to public service and post in connection with the affairs of the State including any employee of any Company or Corporation owned or controlled by the State Government; or

(c) to stay, any disciplinary proceeding, pending or intended or, the effect of any adverse entry against any person appointed to public service and post in connection with the affairs of the State including any employee of the Company owned or controlled by the State Government; or

(d) to restrain any election; or

(e) to restrain any auction intended to be made or, to restrain the effect of any auction made by the Government; or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished;

and any order for injunction granted in contravention of these provisions shall be void."

In the present case, the injunction is to restrain the auction intended to be made, which, in view of the said provision, could not have been granted and any

such injunction granted in contravention of the provisions of the aforesaid proviso, is statutorily required to be declared void.

Learned counsel for the appellants submitted that clause (e) of the aforesaid proviso subjects the grant of injunction order by requirement of adequate security. The learned counsel for the respondent on the other side submitted that clause (e) contains three parts and the requirement of furnishing of adequate security qualifies the third part which relates to proceedings for recovery of any dues recoverable as land revenue and not the earlier two parts.

In view of the fact that in between the 1st part i.e. "to restrain any auction intended to be made or," and the 2nd part i.e. "to restrain the effect of any auction made by the Government;" there is comma, after the word or, but subsequent to the second part i.e. restrain the effect of any auction made by the Government, there is a semi-colon, the effect of which is disjunctive to the third part. Thus, the requirement of furnishing of adequate security relates to the third part. In view of this, the argument of the learned counsel for the appellant is sans substance and is rejected.

In view of the aforesaid provisions in the proviso and also in view of the fact that the respondent can be indemnified by damages as he himself has made claim of damages to the tune of Rs. 65,000/-, I find that the order appealed against cannot be allowed to be maintained.

The appeal is allowed and the order appealed against is set aside. In the circumstances of the case, I make no order as to costs.