
(2004) 08 JH CK 0077

In the Jharkhand High Court

Case No : Letters Patent Appeal No. 476 of 2004

Udayanchal Seva Santhan

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 4 JCR 107

Hon'ble Judges : P.K. Balasubramanyan, C.J.; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : S.B. Gagodia, Sumeet Gagodia and A.K. Choudhary, for the Appellant; Sheila Prasad, GP-IV, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—This appeal by the petitioner in WP (G) No. 3076 of 2004 challenges the dismissal of the writ petition by the learned single Judge mainly on the basis that the dispute arose out of a contract and the dispute cannot be settled satisfactorily in a proceeding under Article 226 of the Constitution of India, The petitioner in the writ petition (hereinafter referred to as the appellant) is a Society registered under the Societies Registration Act, 1860. On 13.1.1988, the Special Officer, Deoghar Municipality issued a letter to the appellant informing it that six Sulabh Sauchalayas were being handed over to the appellant for its control and management and that a rent of Rs. 25,000/- had been fixed annually and on terms and conditions set out. Pursuant to that letter, the appellant was carrying on the maintenance of the Sulabh Sauchalayas. This arrangement was being continued by letters issued annually to the appellant. The appellant took charge of the maintenance of seven Sulabh Sauchalayas for the period 1.4.2001 to 31.3.2002 on a rental of Rs. 32,500/-. The arrangement was again continued on the same terms for the period 1.4.2002 to 31.3.2003. According to the appellant, a sum of Rs. 33,250/- was paid by it for the same right for the period 1.4.2003 to 30.3.2004. On 30.3.2004. the appellant paid a

sum of Rs. 36,000/- to the Special Officer, Deoghar Municipality (the municipality having been superseded and Special Officer having been appointed in terms of Section 381 of the Bihar and Orissa Municipal Act, 1922) apparently for the period 1.4.2004 to 31.3.2005. The case of the appellant is that while the appellant was performing its obligations under the arrangement, an advertisement was issued calling for tenders for the purpose of maintaining the Sulabh Sauchalayas in Deoghar referred to in that notification. It was challenging that notification that the appellant filed the writ petition. According to the appellant, there was an attempt to breach the contract by respondent No. 4 who was apparently acting at the behest of the Deputy Commissioner, Deoghar and hence the action was improper, the advertisement was liable to be quashed and a direction was liable to be issued to the respondents to permit the appellant to carry on its operations. It was this writ petition that was dismissed by the learned single Judge after hearing the parties on the ground that the dispute sprang out of a contract and it was not appropriate for this Court to enter into an adjudication. The Court also noticed that this being the month of Shrawan during which the Temple at Deoghar has special importance and it attracts lakhs of pilgrims, it would be inappropriate to interfere with an attempt to settle the maintenance of the Sulabh Sauchalayas for the benefit of the pilgrims.

2. The decision of the learned single Judge is challenged by the appellant on the ground that the contract between the appellant and the Municipality was subsisting and the said contract cannot be terminated unilaterally by the Municipality and that too, without an independent assessment by the Municipality but on the basis of certain Instructions issued by an outside authority, namely the Deputy Commissioner. The principles of the decision in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , was relied on. It was also contended that the learned single Judge could have seen that the practical aspects involved made it necessary for the Court to Interfere so as to enable the appellant to continue the work since the stopping of the work of maintaining the Sulabh Sauchalayas would cause serious inconvenience to the pilgrims during the month of Shrawan and any Interference with the working of the contract by the appellant would result in serious prejudice to the public. It was also contended that before issuing the notification impugned in the writ petition, there was not even a termination of the running contract with the appellant. It was also pointed out that having accepted the rent for the year 2003-2004, the Municipality was bound to permit the appellant to carry on its operations at least for the current year and could not have thought of awarding the work to any other person.

3. On behalf of the Deputy Commissioner and the State of Jharkhand, it was pointed out that there was a termination of the contract between the Municipality and the appellant and a notice had been issued in that behalf. There was controversy whether such a notice of termination was issued, A copy of the notice said to have been issued by the Municipality to the appellant was produced along with a register shown to the Court purporting to show that a letter to the appellant was dispatched. Reply was filed on behalf of the appellant

submitting that no such communication had been received by the appellant and that the communication produced and shown to the Court was a fraudulent subsequent concoction and the entry in the register shown was also a fraudulent subsequent insertion and that there had been no attempt to terminate the subsisting contract with the appellant. It was thus submitted that the order of termination was never served. It was reiterated that there was no notice issued to the appellant either of the alleged inspection by some authority said to have been deputed by the Deputy Commissioner or of the cancellation. The contention that the cancellation was not done by the authority who was entitled to do so, but it was at the instance of the Deputy Development Commissioner was reiterated. It was also contended that even though it was claimed that the contract had been awarded to another person not agreement as such had been executed with the person and that person could not start the work in terms of the notice inviting tenders unless and until a formal agreement was entered into in that behalf. On behalf of respondents 1 to 3. it was contended that the contract conferred a power on the Special Officer of the Municipality to cancel agreement and when the officer cancels and agreement based on a power derived from the contract, there was no question of violation of any natural justice and no case can be built on the fact that no notice was given to the inspection of the Sulabh Sauchalayas to ascertain whether they were being maintained properly or not. The decision of the Supreme Court in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, was relied on in support and paragraph 23 thereof was emphasised.

4. On behalf of the Municipality, it was submitted that even assuming that the appellant had any right conferred by the contract in his favour, the remedy of the appellant lay elsewhere and especially in the context of the learned single Judge declining to interfere, there is no reason for this Court to interfere in appeal. Two persons claiming to have been allowed right to maintain some of the sauchalayas sought to intervene. On their behalf, it was contended that the original grant in favour of the appellant was without following and procedure and it was an illegal grant. Now, a proper procedure has been followed and tenders have been invited and the highest bidders chosen. There was no bar on the appellant participating in the tender. It was submitted that what was done now was in consonance with the principle settled in the Airport Authority of India case.

5. We do not think that the disputes raised by the appellant can be appropriately decided in this proceeding under Article 226 of the Constitution of India. Whether a letter was issued to the appellant terminating the contract with him, legally or illegally, is a question of fact which can be decided only after evidence is adduced and that can be done satisfactorily only in a Civil Court. Similarly, whether the Municipality had breached the contract with the appellant is also a matter that can be adjudicated on properly only by the Civil Court. Whether the appellant had a valid subsisting contract had also to be decided. The question whether the appellant is entitled to any damages and if so, what has to be the quantum are again questions that can be adjudicated properly only in a suit. Thus, on the

whole, we find that this is not an appropriate case where this Court should try to decide whether there was a termination of the contract with the appellant as claimed by the respondents whether such termination was valid; whether the appellant had a legally subsisting contract at the time of the alleged termination and whether the termination was proper and was by the Authority who was competent. Those questions can be satisfactorily decided only in a Civil Court. There is also the aspect that if power was exercised by the Authority as conferred by the contract, it would be difficult to entertain the challenge by the appellant in a writ petition. On the whole we think that the learned single Judge was justified in not interfering at the instance of the appellant at that stage. Maybe; as counsel for the appellant pointed out, if the Municipality wanted to interfere with the carrying on of the maintenance of such Sulabh Sauchalayas by the appellant, it could have chosen a different time other than the month of Shrawan when lakhs of pilgrims assemble at Deoghar. But on that basis alone, we do not think that it will be proper for us to interfere in this dispute centered around a contract. We thus, decline to interfere and affirming the decision of the learned single Judge, dismiss this appeal leaving it open to the appellant to agitate its claim before the appropriate Civil Court and making it clear that we have not pronounced on merits on any of the aspects that may arise for decision.