

C. K. Achuthan

Vs

The State of Kerala and Others

Petition No. 103 of 1958

(CJI S. R. Dass, S. K. Das, P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

11.12.1958

JUDGMENT

HIDAYATULLAH, J. -

This is a petition under Article 32 of the Constitution by one C. K. Achuthan, who claims to have held a contract for the supply of milk and other articles of diet for the year 1958-1959 but whose contract for supply of milk is said to have been cancelled by the District Medical Officer (second respondent herein). The contract for the supply of milk has now been given to the third respondent, the Co-operative Milk Supplies Society, Cannanore.

From the petition, it appears that the petitioner held contracts for the supply of milk to the Government Hospital at Cannanore (Kerala State) ever since 1946, and that previous to this, his brother in the same business held similar contracts from 1936.

In 1957, a "uniform procedure for fixing up contracts" was adopted, and by a notification, conditions for acceptance of tender were laid down. The petitioner as well as the third respondent submitted their respective tenders, which were to be opened by the Superintendent of the Hospital in the presence of interested parties. We need to refer to all the conditions under which tenders were to be accepted, except those which have a bearing upon this matter. It was stated in the conditions that no tender marked at "current market rates" would be accepted, and further that in the supply of milk, preference would be given to approved Co-operative Milk Supply Unions and Societies, if their tender was within a margin of 5 per cent. over the market rate or the lowest tendered rate, whichever was less. All persons making tender for the contract had to produce a certificate of solvency and tax clearance certificates, and to make a deposit with the tender.

On January 20, 1958, the tenders which were submitted were scrutinised and the tender of the petitioner for the supply of milk was accepted and that of the third respondent rejected. It appears that the Superintendent (respondent No. 2) communicated to the Director of Public Health, her reasons for accepting the tender of the petitioner and not accepting that of the third respondent. Certain correspondence then ensued between the Director of Health Services and the second respondent, as a result of which the petitioner was informed that the contract for the supply of milk given to him was cancelled. He was informed that it was the policy of Government that in the matter of supply to Government medical institutions in Cannanore District the Co-operative Milk Supplies Union was to be given contracts on the basis of prices fixed by the Revenue Department. It appears that some more correspondence between the Director of Health Services and the second respondent ensued, and it was pointed out to the second respondent that action should have been taken under Clause. 20 of the conditions of the tender and the contract only cancelled after giving a

month's notice to the petitioner. In furtherance of these instructions, the second respondent issued a notice in terms of Clause 20 of the tender, and cancelled the contract after the notice period.

The present petition has been filed to question the several orders referred to above. It may be pointed out that previous to this, the petitioner had applied under Article 226 of the Constitution to the High Court of Kerala, but his petition (O.P. No. 201 of 1958) was rejected by Raman Nayar, J., on June 6, 1958. A Letters Patent Appeal was also dismissed by Koshi, C.J., and Vaidialingam, J. (A.S. No. 354 of 1958 decided on July 7, 1958). The High Court held that the present matter was no more than a breach, if any, of the contract by the State Government, and that the appropriate remedy was to file a civil suit and not to proceed under Article 226.

It appears that no special leave to appeal was sought from this Court against the above orders, and the matter has been brought for adjudication, not by way of appeal but directly under Article 32 of the Constitution as an infringement of the fundamental right of the petitioner. The contention of the petitioner in this behalf is that he is entitled to an equal treatment in the eye of law, and that there has been discrimination against him vis-a-vis, the third respondent. He claims protection under Articles 14, 16(1), 19(1)(g) and 31 of the Constitution. In our opinion, none of these Articles can be made applicable to the facts of the present case.

No doubt the petitioner claims to have succeeded in obtaining the contract from the Government, and the third respondent failed to do so. But even if he held the contract, the petitioner did not acquire an absolute right to be continued in that contract, because power was reserved by the Government under Clause 20 to terminate the contract after giving a month's notice. Whether the exercise of that power in the present case was regular or legal, is not a matter on which we are called upon to pronounce, because adjudication of such dispute can appropriately take place only before the ordinary Civil Courts, where evidence can be gone into and examined at length.

The gist of the present matter is the breach, if any, of the contract said to have been given to the petitioner which has been cancelled either for good or for bad reasons. There is no discrimination, because it is perfectly open to the Government, even as it is to a private party, to choose a person to their liking, to fulfil contracts which they wish to be performed. When one person is chosen rather than another, the aggrieved party cannot claim the protection of Article 14, because the choice of the person to fulfil a particular contract must be left to the Government. Similarly, a contract which is held from Government stands on no different footing from a contract held from a private party. The breach of the contract, if any, may entitle the person aggrieved to sue for damages or in appropriate cases, even specific performance, but he cannot complain that there has been a deprivation of the right to practise any profession or to carry on any occupation, trade or business, such as is contemplated by Article 19(1)(g). Nor has it been shown how Article 31 of the Constitution may be invoked to prevent cancellation of a contract in exercise of powers conferred by one of the terms of the contract itself.

The main contention of the petitioner before us was thus under Article 16(1) of the Constitution, and he claimed equal opportunity of employment under the State. To being with, a contract for the supply of goods is not a contract of employment in the sense in which that word has been used in the Article. The petitioner was not to be employed as a servant to fetch milk on behalf of the institution, but was a contractor for supplying the articles on payment of price. He claimed to have been given a contract for supply of milk, and did not claim to be an employee of the State. Article 16(1) of the Constitution, both in its terms and in the collocation of the words, indicates that it is confined to "employment" by the State, and has reference to employment in service rather than as contractors.

Of course, there may be cases in which the contract may include within itself an element of service. In the present case, however, such a consideration does not arise, and it is therefore not necessary for us to examine whether those cases are covered by the said Article. But it is clear that every person whose offer to perform a contract of supply is refused or whose contract for such supply is breached cannot be said to have been denied equal opportunity of employment, and it is to this matter that this case is confined.

Looking to the facts of the case, it is manifest that the petitioner was supplying, or in other words, selling milk and other articles of diet to the State for the use of hospitals and similar institutions. He was in no sense a servant, and no question of employment qua servant arose. In these circumstances, it is plain that Article 16(1) of the Constitution is not attracted to the facts.

In our opinion, the petition under Article 32 of the Constitution is wholly misconceived. No fundamental right is involved. At best, it is a right to take the matter to the Civil Court, if so advised, and to claim damages for breach of contract, if any.

The petition accordingly fails, and is dismissed with costs.

Petition dismissed.

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