

SUPREME COURT OF INDIA

Bashir Ahmed

Vs.

Government of A.P.

C.A.No.1159 of 1967

(S. M. Sikri and G. K. Mitter, JJ.)

19.11.1969

JUDGEMENT

SIKRI, J.:-

1. This appeal by certificate granted by the High Court of Andhra Pradesh is directed against its judgment and decree setting aside the decree passed by the Trial Court and dismissing the suit filed by the plaintiff, Hakim Mir Anwar Ahmed, now deceased. The appeal is by the plaintiff's legal representatives.

2. The plaintiff filed a suit for the recovery of O. S. Rs. 1,40,000 on the allegation that the defendant, the Hyderabad State Government had agreed to take over a concern being run by the plaintiff and a book of prescriptions named "Tohfa-e-Osmania", and in pursuance of that agreement Rs. 50,000 had been paid to the plaintiff but the balance had remained outstanding. He further claimed arrears outstanding. He further claimed arrears of allowance which was due to him under the agreement.

The State Government made a counter-claim and prayed for a decree for O. S. Rs. 50,000, the money which had been already paid in pursuance of the alleged agreement.

3. The Trial Court passed a decree for a sum of O. S. Rs. 70,000 and dismissed the counter-claim preferred by the defendant. The High Court, as mentioned earlier, dismissed the plaintiff's suit in toto and decreed the counter-claim of the defendant.

4. The Trial Court had framed a number of issues but we are only concerned with issues 6, 7 and 8, which are to the following effect:

"6. Was there a completed and concluded contract enforceable under law and has the Plaintiff any cause of action? What is the effect on this case of payment of a lump sum of Rs. 50,000 and a salary of Rs. 500 per month to Anwar Ahmad by the Government?

7. Is the defendant Government entitled to receive the amounts paid to the Plaintiff. If so to what extent?

8. Is the Plaintiff entitled to any amounts or damages and if so to what extent?"

5. The relevant facts for the determination of these issues are as follows. It is common case that H. E. H. the Nizam visited Delhi in or about 1936 and there he happened to meet the plaintiff and invited him to Hyderabad. The plaintiff had been working with the late famous Hakim Ajmal Khan Saheb. The idea of H. E. H. the Nizam was that the plaintiff would be a great asset in the field of Unani medicine in the State of Hyderabad. The plaintiff accordingly went to Hyderabad and started his Dawakhana. On 1st Safar 1355 H, the Chief Secretary wrote to the plaintiff that H. E. H. the Nizam would inaugurate the plaintiff's factory to be called

"Mukzanul Advia Majeediya". It appears that H. E. H. the Nizam's grand-son was known as Majeedi Pasha. H. E. H. the Nizam also promised to give sufficient grant to the Dawakhana when the question of reorganisation of Dawakhana was decided. Arrangements were made for the inauguration and the list of persons to be invited settled.

6. On 26th II Jami 1361 H, H. E. H. the Nizam issued an order suggesting that something be done

for Hakeem Anwar Ahmed who had suffered loss on account of dearness of articles etc. H. E. H. finally concluded:

"Finally I think it necessary to say some thing more that is, this person is an expert in the art of medicine from the period of the late Hakim Ajmal Khan who had full confidence in his work and no doubt the medicines prepared by him are rare and unavailable in our days which were prepared in specified medical way."

In this order H. E. H. the Nizam also suggested that a Committee be appointed constituting one member of the Finance Department, the other from the Military Department and the third from the Nazim Medical Service and this Committee be ordered to submit its report within one month to the concerned department in the Council considering all the aspects how to save this Makhasan from the devastations of time.

7. In pursuance of this directive the Committee met on July 29, 1942, and suggested a certain scheme. These suggestions were further modified in a meeting dated July 31, 1942. The suggestions were conveyed to the plaintiff and he was asked to submit his own proposals for the consideration of the Committee. In a meeting on August 19, 1942, the Committee decided that a company should be floated and the name of the proposed company would be "Magzen Majeedia Advia Limited."

We may reproduce para 2 of this proposal:

"The issued capital of the concern shall be rupees two lakhs, out of which the Government shall purchase 55% of the shares and the remaining 45% of the shares shall be earmarked for the public and out of latter shares for Rs. 10,000 shall be allotted to Moulvi Anwar Ahmed Saheb which shall be deemed to be the compensation for the technical services which he may render and he shall give all his medical formulas to the company." We need not mention the other details regarding the management. It was also suggested that the samans (articles) present in the Dawakhana of the plaintiff would be taken into possession after ascertaining their value and the shares of the same value would be allotted to him which shall be in addition to the shares of Rs. 10,000. It was also provided that the plaintiff would get a sum of Rs. 375 per mensem towards his remuneration.

8. The plaintiff agreed to these proposals but suggested that experts be consulted in connection with the scheme, and he expressed preference for the Makhasan being nationalised. A memorandum was submitted to H. E. H. the Nizam and he was pleased to issue the following order in September, 1943:

"In view of the opinion of the council the proposals submitted by the committee appointed for the purpose of receiving the Makzam Advia Majeedia which is part and parcel of the Sadar Shafakhana Nizamia from the "Dusthburd Zamana" (i.e. from the vicissitudes of time) are hereby approved. Action may be taken accordingly. It is further ordered that the said Dawakhana (Makzan Advia Majeedia Limited) should always be run on commercial lines under the supervision of the Government. Arrangements may be made for the purchase of the medicines prepared by the said Dawakhana, not only by the Government Hospitals but also by the public both in the State and outside the State and all the formulas of Hakim Anwar Ahmed should be obtained for the said Limited Company and I may be informed of the compensation to be paid to the said Hakim Ahmed for the same and the case may be completed after the end of Ramzan because it is highly necessary that this matter be decided during the lifetime of the said Anwar Ahmed since he has been of infirm health most of these days."

9. In compliance with the above orders a committee was appointed for determining the compensation for goodwill, compensation for the formulas and an assessment of the value of the existing assets of the Factory. The Committee, considering that the prescriptions were being purchased for a company, fixed the compensation at Rs. 1,20,000. This compensation was computed by considering the profits which used to be derived annually. The total compensation determined was two lakhs and the method of payment was recommended as follows:

"Out of this amount Hakim Meer Anwar Ahmed will be paid in cash a sum of rupees forty thousand as per the orders of the H. E. H. the Nizam and the balance of rupees one lakh and sixty thousand will be paid to him in the shape of shares in the proposed company. In view of the circumstances stated above the new company i. e. Magzan Advia Majeedia (Limited) will be started with a proposed capital of rupees ten lakhs. Out of which the issued capital will be rupees five lakhs and out of the same shares worth rupees one lakh and sixty thousand shall be allotted to Hakim Meer Anwar Ahmed and the shares for the balance of the capital shall be allotted to the public."

The Finance Minister remarked that all the payments to Hakim Anwar Ahmed should be made in cash except those representing the purchase price of stock for which shares of the same value will be allotted to him out of the company's share capital. The Council of Ministers suggested that the Government should purchase one-third of the issued capital shares of the proposed company. All these proposals were submitted to H. E. H. the Nizam for orders. H. E. H. the Nizam issued the following Firman, on July 2, 1945:

"In this matter the proposals of the council submitted in the regard are appropriate. Action may be taken accordingly. However Hakeem Anwar Ahmed shall be paid Rs. 500 instead of Rs. 400 per month (from 1st of Sharawar) subject to the condition proposed and out of the compensation agreed to be paid to him a sum of rupees fifty thousand in cash instead of rupees forty thousand may be paid to him and a receipt obtained. The remaining sum of rupees one and half lakh should be invested on his behalf in the capital of the company.

In any way all the matters should be settled within two weeks and the result should be intimated to me. Now-a-days Hakeem Anwar Ahmed is bed-ridden with heart trouble. Hence it is highly necessary to decide these matters in his lifetime since this matter has been pending for a long time."

10. In obedience to this Firman, on August 1, 1945, a cheque for Rs. 50,000 was sent to the plaintiff and he was asked to send the book "Tohfa-e-Osmania". On August 3, 1945, the plaintiff sent the book in a sealed cover. However, nothing further happened regarding the floating of the company.

11. On April 6, 1948, the plaintiff wrote to the Secretary to the Government, Medical Department, suggesting that the cash compensation which was to be paid to him be increased. He also wanted the compensation for the medicines and the goodwill to be revised. He suggested that the entire compensation may be paid in cash. In the course of this letter he said:

"Thus there are some practical difficulties in the way of the business of "Makhzan" which it is impossible to overcome in the near future. Apart from this there is no likelihood of the availability of capital. I had, on the basis of the promises made by my friends assured that at least shares of the value of (5) lakhs would be sold through me and as such I had filed a list of the expected purchasers but I regret to say "That cup is broken and that cup bearer is no more."

12. It is on this passage that the defendant rests his alternative case that the whole contract fell through because the plaintiff was not able to fulfill his part of the contract.

13. On June 15, 1948, the Secretary to Government, Medical Department, submitted an Arazdasht to H. E. H. the Nizam for information. In this he submitted that the conditions were not favourable for converting the Magzan Advia Majeedia into a limited factory and the matter may be postponed for the present and the status quo maintained. It appears that one Syed Ahmed Mohiuddin was appointed Managing Director of the proposed limited company and in this Arazdasht it was suggested that he be relieved of the post.

14. On June 15, 1948, the plaintiff wrote saying that Moulvi Syed Ahmed Mohiuddin, Managing Director, Maksan Adviya Majeedia (Limited) had not obtained any formal charge because the Company had not taken any separate existence till then.

15. The defendant continued to pay the allowance of Rs. 500 to the plaintiff till 1953. On June 25,

1953, the Secretary to Government, Medical and Health Department, directed that (1) steps to recover the sum of Rs. 50,000 paid to Hakeem Anwar Ahmed may be dropped; (2) the book of prescriptions and other papers received from him in consideration of the amount of Rs. 1,20,000 proposed to be paid to him may also be returned; and (3) the payment of an allowance of Rs. 500 per month which is now being made may be stopped forthwith. On July 6, 1953, the book was returned to the plaintiff but the plaintiff refused to receive it.

16. The learned counsel for the appellant, Mr. Danial Latifi, contends that there was an outright sale of the book and the defendant could not unilaterally return the book after the property in the goods had vested in the defendant.

17. The learned counsel for the respondent, Mr. Reddy, contends that (1) there was no contract between the plaintiff and the Government; (2) assuming that there was a contract it was a contingent contract, the contingency being the formation of the company; and (3) the contract was a package deal and the integrated scheme provided for compensation for the book, goodwill and stock on the condition that it would be the business of the plaintiff to float the company and as he failed to sell shares of the company to the extent of Rs. 5 lakhs, the scheme fell through due to plaintiff's default.

18. It seems to us that the Government definitely entered into an agreement with the plaintiff. The terms of the agreement are contained in the proposals as modified by H. E. H. the Nizam in the Firman dated July 2, 1945. In short, the agreement was that the Government would buy the book of prescriptions (Tohfa-e-Osmania), goodwill and existing assets of the factory for Rs.2 lakhs for a company to be floated by it. It was not a part of the agreement that the plaintiff had to float the company. The Government had in pursuance of the scheme appointed a Managing Director of the proposed company. Further the Government in pursuance of the agreement purchased the book (Tohfa-e-Osmania) and the property in it passed to the Government. It is true that the book was bought for the company to be floated, but we are unable to appreciate how this makes the contract contingent. It is no doubt true that the contract was at one stage a package deal but the Government chose to carry out the contract piecemeal and proceeded to buy the book and make an advance of Rs. 50,000. The balance of Rs. 1,50,000, according to the Firman dated July 2, 1945, had to be "invested on his behalf in the capital of the company". But if the company could for some reason not be floated the plaintiff did not lose his right to enforce the contract. We are not concerned with the value of goodwill and other assets in this case now, but as far as the book "Tohfa-e-Osmania" is concerned it is clear that the Government in part performance of the agreement took delivery of the book and accordingly must pay the price mentioned in the agreement.

19. Regarding the third point urged on behalf of the respondent, there is no material to show that the statement contained in plaintiff's letter dated April 6, 1948, that he had assured that he would sell shares for Rs. 5 lakhs was part and parcel of the original agreement. He may have stated this in order to speed up the formation of the company, but it in no way can be said to form part of the agreement which had nearly three years earlier been partly performed.

20. In the result the appeal is allowed, the decree of the High Court set aside and the decree of the Trial Court restored. The appellants will have their costs in this Court but the parties will bear their own costs in the High Court.

Appeal allowed.