

The D.F.O., South Kheri and Others

Vs

Ram Sanehi Singh

Civil Appeal No. 1638 of 1969

(J. C. Shah, K. S. Hegde JJ)

15.01.1970

JUDGMENT

SHAH, J. -

1. At an auction held by the Forest Officer, Ram Sanehi Singh - respondent in this appeal - purchased the right to cut timber for the period November 1, 1965 to October 31, 1966 from forest lots in the Mailani and Gola Ranges of South Kheri. On January 10, 1967, the Divisional Forest Officer, South Kheri Division, passed an order that the sleepers "against the tally" dated October 29, 1966, in the allotment of 1965-66 season being "wrong" since they were cut in the month of November 1966, do stand cancelled and that the sleepers be "passed against" the tally after getting the hammer-marks cancelled and be re-inspected against the allotment for 1966-67 season". By that order the timber which the respondent claims was actually removed by him with the sanction of the forest authorities under the tally, dated October 29, 1966, was to be treated as if it was removed in November, 1966.

2. The respondent moved a petition in the High Court of Allahabad for a writ restraining the Divisional Forest Officer, South Kheri Division, Sub-Divisional Officer, Gola Forest Division and Conservator of Forests (Central Circle) Lakhimpur Kheti, from giving effect to the order cancelling his "sleeper tally" pursuant to the order, dated January 10, 1967 and for a writ of certiorari quashing that order and for incidental reliefs. The petition was dismissed by a single Judge of the Allahabad High Court holding that the Divisional Forest Officer had acted in exercise of authority conferred upon him by the terms of the contract, and that remedy of the respondent was to claim relief in a regular suit for enforcement of the agreement or for damages and not in a petition under Article 226 of the Constitution. The learned Judge also held that the petition raised questions of fact which could be tried not in a writ petition under Article 226 of the Constitution but in a suit. He further held that there was no evidence in support of the plea that the authorities acted mala fide.

3. In appeal against the order dismissing the petition, a Division Bench of the High Court of Allahabad reversed the order holding, following the judgment of this Court in *K. N. Guruswamy v. The State of Mysore and Others*, ((1955) 1 SCR 305.) that where a party interested in a contract claims that he has not received the same treatment and he has not been given the same chance as any body else he is entitled to move a petition under Article 226 of the Constitution. The High Court held that the order made by the Divisional Forest Officer in exercise of the statutory authority was liable to be quashed, because it was made on "irrelevant considerations". The Court also observed that since a competent officer duly authorized had already "passed the railway sleepers" and the decision had been given effect to, it was not open to the Divisional Forest Officer to rescind the order. The High Court did not consider the plea that the Divisional Forest Officer acted mala fide.

With certificate granted by the High Court this appeal is filed by the Forest Authorities.

4. Counsel for the appellants contends that since the dispute arose out of the terms of the contract and the Divisional Forest Officer under the terms of the contract had authority to modify any action taken by a subordinate forest authority, the remedy of the respondent was not maintainable. But in the present case the order is passed by a public authority modifying the order or proceeding of subordinate forest authority. By that order he had deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in *K. N. Guruswamy's case* (supra), there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power.

5. It is unnecessary to consider whether the order of the Divisional Forest Officer is made on "irrelevant grounds" because it is clear that before passing the order the Divisional Forest Officer did not call for any explanation of the respondent, and gave him no hearing before passing the order. It is averred in Paragraph 22(i) of the petition that the "cancellation order is in violation of the principles of natural justice having been done at a very late stage without affording any opportunity to the petition (respondent) to say anything against the action cancelling his tallies". To that averment, no reply was made by the forest authorities against whom the petition was filed. Granting that the order was administrative and not quasi-judicial, the order had still to be made in a manner consonant with the rules of natural justice when it affected the respondent's rights to property. This Court in the case of *State of Orissa v. Miss Binapani Dei (Dr.), and Others*, ((1967) 2 SCR 625 : AIR 1967 SC 1269 : (1967) 2 SCJ 339.) held in dealing with an administrative order that "the rule that a party to whose prejudice the order is intended to be passed is entitled to a hearing applied alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officer". The Divisional Forest Officer in the present case set aside the proceeding of a subordinate authority and passed an order which involved the respondent in considerable loss. The order involved civil consequences. Without considering whether the order of the Divisional Forest Officer was vitiated because of irrelevant considerations, the order must be set aside on the simple ground that it was passed contrary to the basis rules of natural justice.

6. Counsel for the appellants contended that this object was not raised before the High Court either in the Court of First Instance or before the Division Bench. But the objection was prominently mentioned in the petition and there is no reply to it. We are unable to hold that because the High Court has not considered the question, the respondent will not be allowed to rely upon this contention in support of the order. If the plea raised by respondent in his petition is true, and we see no reason to hold that it is not the order challenged by him is plainly illegal and is liable to be set aside.

7. We express no opinion on the correctness of the view expressed by the High Court on the two questions decided by them, nor on the question that the action of Divisional Forest Officer was mala fide. If hereafter any order is passed by the Forest Authorities, the validity of the order will be determined uninfluenced by the findings recorded by the High Court in appeal.

8. The appeal is therefore dismissed with costs.

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