

K. Sreedhara Reddy

Vs

The Conservator of Forests and Others

Civil Appeals Nos. 814 and 815 of 1968

(V.R. Krishna Iyer, A.C. Gupta, Syed M. Fazal Ali JJ)

12.09.1975

JUDGMENT

KRISHNA IYER, J. -

1. A forest contractor - The appellant - Who had allegedly excess-felled trees beyond the permitted number under two contracts entered into by him with the State of Andhra Pradesh, was directed by the Conservator of Forests - The first respondent - to suffer two levies. One item represented the loss sustained by the State on account of the illicit cutting and the other was a penalty imposed under Rule 29 of the Forest Contract Rules (for short, the Rules) issued in exercise of the powers conferred under Sections 44 and 79 of the Hyderabad Forest Act, 1355 F (for short, the Act).

2. The factual story out of which the legal controversy springs may be narrated in simple terms. Admittedly, the appellant was granted two forest contracts to fell and remove a specific number of trees from government forest, in accordance with the Act and the Rules. The contracts were of two years' duration ending with December 31, 1960. It was found by the Forest Officers that the appellant contractor had felled more trees and so he was given a notice calling for his explanation about this detected breach of condition.

3. In C. A. No. 814 of 1968 such notice was issued on June 25, 1960 but no explanation was forthcoming. So the Conservator determined the amount representing the loss caused by the unauthorised cutting of trees. On July 22, 1960 the District Forest Officer informed the appellant that the Conservator of Forests, who is the appropriate authority under the Rules, had fixed Rs. 11,426 as representing the loss sustained by Government and Rs. 11,250 as penalty under Rule 29. The contractor thereupon prayed for re-enumeration of the trees cut from the forest by his application, dated July 30, 1960. He was informed by the forest authorities, by communication dated August 24, 1960 to check the stumps in the coupe as desired by the petitioner before September 15, 1960. This opportunity was also not availed of by the appellant. Consequently, the Conservator levied a penalty, as earlier proposed. Thus there were two items (i) the loss caused by illicit cutting; (ii) the penalty imposed under the Rules for breach of conditions of the contract. There were three small amounts of fine also, all together resulting in a sum of Rs. 23,088.00. Eventually, the contract was terminated on December 28, 1960 under Rule 30 of the Rules. Long later, in January 1962, the amount stated above was sought to be realised by revenue recovery process by the Tahsildar, by his attachment order, dated January 8, 1962. Thereupon a writ petition was filed by the appellant challenging the demand. He succeeded before the learned Single Judge but a Division Bench, in appeal carried by the State, reversed this order and the appellant has invoked the jurisdiction of this Court under Article 133 (1)(a) and (b) of the Constitution.

4. In C. A. No. 815 of 1968 a similar excess-felling by the same contractor was detected by the concerned officials and notice was issued to the appellant to explain how he had felled 255 trees in excess of the contractual figure. The appellant denied the illicit felling whereupon a date was fixed for checking the coupe in his presence, as requested by him. The contractor however did not avail himself of the opportunity so afforded despite a second date for inspection being fixed to suit his convenience. Eventually the Conservator of Forests fixed the loss sustained by Government on account of the illicit felling of trees and also the penalty for breach of the conditions of the contract. This was done on October 16, 1960 and the appellant was asked to pay the sum by notice dated October 28, 1960. On the same date, the lease was also terminated.

5. Long later, on January 9, 1962 proceedings for realisation of the amounts were initiated by the Tahsildar. This step drove the contractor to move a writ petition, which shared the fate, at the Single Judge's level and in appeal, of the sister writ petition already adverted to. In the same manner he has moved this Court in appeal, by certificate.

6. Two points were urged by Mr. R. V. Pillai, learned Counsel for the appellant, one relating to the loss assessed and sought to be realised by the State under the two contracts on account of excess-felling, the other relating to the imposition of penalty under Rule 29 and its validity. The first point does not survive because in both the writ petitions which were disposed of together by a common judgment the learned Single Judge rejected the contention with the observation :

I find no substance in the arguments advanced in this behalf .... No provision was brought to my notice which disentitles the Government to collect those items.

If the appellant had been aggrieved by the negation of his plea under this head he should have challenged it in appeal which he did not. Thus the matter has become final and he cannot, in this Court, revive it at all. There is only a single question that therefore deserves our consideration.

7. Was the penalty in the two cases imposed validly ? The learned Single Judge held, on a study of Rules 29 and 31 that the impost was illegal for reasons which we find difficult to accept. The Division Bench, in appeal, disagreed with the learned Single Judge for reasons which are unclear although our conclusion concurs with theirs. The rules regulating the consequence of a breach of the conditions of forest contracts were originally promulgated in Urdu in the Hyderabad State but we have been handed up the Manual of Civil Laws, Andhra Pradesh, which contains those rules in English. Rule 29 (3) reads slightly obscurely but, in the absence of the original Urdu rules, we have to make - do with the English version.

8. There are two types of penalties which we may conveniently designate as 'major' and 'minor', in the contemplation of the Forest Rules. Rule 29 deals with the major penalties while Rule 31 relates to minor penalties. Where the breach of the conditions of the contract committed by the forest contractor is serious, the contract itself is to be terminated and a substantial penalty is to be imposed which 'shall not exceed one quarter of the total consideration paid by the contractor'. If the breach is of lesser significance, then the authority may not propose to terminate the contract on account thereof but may recover a portion of the 'whole penalty provided for in Rule 29' not exceeding Rs. 100. In short, if the contravention is grave, the contract is cancelled and a heavy penalty imposed but if the breach is inconsequential the contract continues but a lighter penalty is imposed. In the present case it is apparent that the authorities terminated the contract and it is equally clear that the breach was serious. Rule 31 which deals with trivial breaches and lighter penalties is inapplicable.

The only question then is whether the exercise of the power to impose a penalty under Rule 29 has been (a) in fulfillment of the conditioned precedent for the exercise of the power. The facts we have set out earlier make it clear that an opportunity had been afforded in the case of both the contracts before finally quantifying the penalty to be levied but the contractor did not avail himself of the opportunity. While it is clear that in the absence of a statutory exclusion of natural justice any exercise of power prejudicially affecting another must be in conformity with the rules of natural justice, we are satisfied that in the present case there is no foundation for the grievance of the petitioner on this score.

9. The substantial issue is as to whether the termination of the contract for breach of conditions should precede the imposition of penalty. According to Shri Pillai, that is the meaning of Rule 29 read in the light of Rule 30 (3). There is seeming verbal support for this contention but a closer scrutiny pricks the bubble. Rule 29 may well be read at this stage :

29. (1) Penalty on termination of a contract for breach of conditions :- Every forest contract shall be in writing in the form annexed hereto and shall contain a provision whereby the forest contractor binds himself to do all the duties and acts required to be done by or under the contract, and covenants that he and his servants and agents shall abstain from all the acts forbidden by or under such contract.

(2) The sums to be mentioned in a forest contract as payable in case of a breach of any such stipulation shall not exceed one-quarter of the total consideration to be paid by the contractor, and shall be recoverable in accordance with the provisions of the Hyderabad Forest Act 1355 F and of this rule :

Provided that where such consideration is not an ascertained amount the forest officer executing the contract shall make an estimate of the total amount that would be payable if the contract were fully complied with, and such estimate shall be deemed to be, for the purpose of this sub-rule, the total consideration to be paid by the contractor.

(3) This sum shall be realised from the contractor if the contract has been duly terminated in accordance with the provisions of Rule 30, and then only under the written order of the forest officer executing the contract.

Shri Ram Reddy, for the respondent, urges that ascertaining the amount which is to be levied as a penalty need not be preceded by the termination of the contract. Indeed, according to him, it is only if there is an investigation of the nature of the breach, the quantum of loss inflicted on the State and other circumstances that a decision as to whether the contract should be terminated or not can be taken. If it is found that the breach of condition be wilful and the damage substantial, the penalty will be imposed under Rule 29 and a decision will be taken for termination of the contract. However, the sum fixed as penalty shall not be realised from the contractor until the contract has been duly terminated in accordance with the provision of Rule 30. This is because you cannot keep a contract alive and claim that a grave breach of conditions has been committed. That would be too inconsistent a stance for the State to adopt. It is true that the termination of the contract under Rule 30 is a condition precedent to realisation of the penalty from the contractor but realisation is different from imposition. The forest authorities quantify and impose the penalty. The revenue

authorities as well as the forest authorities adopt the various steps prescribed in Rule 30 (3) for realisation of the sum. In the present case it was the Tahsildar who sought to realise the penalty and he did this after the contract was terminated. Indeed, Rule 30 (3) uses the expression 'recover' which is in consonance with 'realise' in Rule 29 (3).

10. We think that the true meaning of Rules 29 and 30, read together, is that the forest authorities must move from stage to stage in the following manner. Once they detect a breach, they must investigate to understand and estimate the nature and degree of damage caused by the breach. If it is serious, they must proceed to ascertain the sum to be fixed as penalty. In doing this, a reasonable opportunity must be given to the affected party. After that the penalty shall be quantified and the contract shall be terminated, in the event of the authorities coming to the decision that the breach is grave enough for that drastic step. Once the contract is terminated, the last procedure is realisation which can in no case be before the termination of the contract. The realisation of the penalty may be in one or other of the ways set out for recovery under Rule 30. Of course, if the breach is of a venial nature, Rule 31 is attached, the contract is continued and only a small portion of the penalty envisaged in Rule 29 is collected.

11. The view we have taken of the scheme of the rules leaves us in no doubt that the order or penalty is right and the judgment of the Division Bench is correct in the conclusion and the appeals, in the result, must fail. The circumstances are such that the litigation is purely induced by the obscure translation of Rule 29 from Urdu to English with an obvious omission of 'not'. This and the other attendant features of the case persuade us to direct that the parties shall bear their costs throughout.

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