

M/S Radhakrishna Agarwal and Others

Vs

State of Bihar and Others

Civil Appeal Nos. 227 and 228 of 1976

(CJI M. H. Beg, A C. Gupta, P. S. Kailasam JJ)

17.03.1977

JUDGMENT

BEG, C.J. –

1. These appeals are before us after certification of the cases, raising identical questions of law as fit for appeal to this Court, dealt with by one judgment and orders of a Division Bench of the Patna High Court on two writ petitions. The petitions were directed against orders of the State Government passed in 1974 revising the rate of royalty payable by the petitioners-appellants under a lease of 1970, and, after that, cancelling the lease by a letter of March 15, 1975. The petitioners for the lease to collect and exploit sal seeds from the forest area was illegal during the subsistence of the lease, and, thereafter, cancellation of the lease itself was illegal for various reasons.

2. Primarily, the case of the petitioners is that of a breach of contract for which the State would be liable ordinarily to pay damages if it had broken it. If the petitioner could establish some right, either contractual or equitable, to continue in possession, the State could be prevented, by appropriate proceedings, from ousting the petitioners from the forest land from which the petitioners have been gathering sal seeds. The petitioners had also set up mala fides on the part of the Conservator of Forests, in enhancing the royalty unreasonably and then cancelling the lease, allegedly acting under the influence of friends and associates of the Forest Minister of Bihar.

3. The relevant cause relating to revision of royalty in the written contract reads as follows :

The rate to royalty will be revised every three years cycle in consultation with the lessee and the decision will be binding on the lessee.

4. Apparently, there is no restriction, under the terms of the contract, upon the amount by which the royalty could be increased by a revision after a three years' cycle under this clause. The lessee is only entitled, under the contract, to be consulted before a revision. But, the decision of the Governmental authorities to enhance is binding upon him after that. Hence, if this was the only term of the contract on this question, the petitioners could not complain of unreasonable enhancement in the revised rate of royalty.

5. Under Clause 4 of the lease, the lessee had to establish a factory within the State of Bihar for processing of sal seeds and extraction of oil therefrom within a period of five years from the date of the agreement, failing which the agreement itself was to terminate. The questions which apparently arose appertained to action alleged by the State to fall within the terms of the agreement between the parties regulated by the duly signed contract which was presumably executed in compliance with the

provisions of Article 299 of the Constitution. Prima facie, therefore, the appellants can only get their remedies if they can obtain any at all, through ordinary suits for damages or for injunctions to restrain breaches of contract provided they could show how the contracts were broken or were going to be broken.

6. The writ petitions, however, raise questions relating not only to action lying within the sphere regulated by the law of contract, but, according to the petitioners, by constitutional provisions relating to the exercise of the executive powers of the State Government contained in Article 298 which reads as follows :

298. The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose :

Provided that -

(a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.

7. It is urged vehemently by Dr. L. M. Singhvi, appearing on behalf of the petitioners-appellants, that the State, acting in its executive capacity through its Government or its officers, even in the contractual field, cannot escape the obligations imposed upon it by Part III of the Constitution. The only article, however, in Part III of the Constitution relied upon by Dr. Singhvi is Article 14 which says :

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

8. It can be and has been urged on behalf of the State that Governmental authorities when acting in the contractual field, could not be controlled by Article 14 of Constitution at all. When the State had entered into contracts with citizens who carry on their trade and pay the royalties, in accordance with the agreements reached between the State and citizens, it does not exercise any special Governmental or statutory powers. In such cases, the State as well as the citizen with whom it contracts are both equally subjected to the law of contract. It has been urged on behalf of the respondent State that there has been no breach of contract in the cases before us. The State is, according to the learned Solicitor General, appearing for the State of Bihar, not claiming to be above the law of contract governing all parties which subject themselves to the law of contract. The dispute whether there is or there is not a breach of contract should, according to the contention on behalf of the State, be determined by ordinary civil courts as in every case between ordinary litigants who cannot invoke the powers of the High Courts under Article 226 of the Constitution simply because there is a dispute whether an agreement has been broken or not. Equal subjection of all parties, including the State, to the same procedural requirements, when such disputes are to be adjudicated upon, means that the State should be placed on the same footing as an ordinary litigant. It should neither enjoy special benefits and privileges, nor be subjected to special burdens and

disadvantages. This should, it is urged, follow from a strict application of Article 14 if the State were to be, as a party to a contract and a litigant, placed on the same footing as other parties who enter into such contracts. It is true that the special provisions of Article 299 of the Constitution are there to protect public interest so that the contracts by or on behalf of the Government have to comply with the special requirements of form. But, once the State enters into the contractual sphere after the requirements of form, contained in Article 299, have been complied with, does it have to take its place, in the eye of law, side by side with ordinary parties and litigants or has it any special obligations or privileges attached to it even when it acts within this field?

9. Dr. Singhvi's argument that the State Government had some special obligations attached to it would have appeared more plausible if it could be shown that the State or its officers or agents had practiced some discrimination against the petitioners-appellants at the very threshold or at the time of entry into the field of contract so as to exclude them from consideration when compared with others on any unreasonable or unsustainable ground struck by Article 14 of the Constitution. It is true that Article 14 of the Constitution imports a limitation or imposes an obligation upon the State's executive power under Article 198 of the Constitution. All constitutional powers carry corresponding obligations with them. This is the rule of law which regulates the operation of organs of Government functioning under a Constitution. And, this is exactly what was meant to be laid down by this Court in *Erusian Equipment and Chemicals Ltd. v. State of West Bengal* (1975) SCR 674,677 : (1975) 1 SCC 70,74 on which learned Counsel for the appellants sought to rely strongly. It was held there (at p. 677) (SCC p. 74, para 12) :

Under Article 298 of the Constitution the Executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The state has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the state acts to the prejudice of a person it has to be supported by legality.

10. It is thus clear that the *Erusian Equipment & Chemicals Ltd.*'s case (*supra*) involved discrimination at the very threshold or at the time of entry into the field of consideration of persons with whom the Government could contract at all. At this stage, no doubt, the State acts purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. But, after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties *inter se*. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract.

11. In the cases before us the contracts do not contain any statutory terms or obligations and no statutory power or obligation which could attract the application of Article 14 of the Constitution is involved here. Even in cases where the question is of choice or consideration of competing claims before an entry into the field of contract facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. Such proceedings are summary proceedings reserved for extraordinary cases where the exceptional and what are described as, perhaps not quite accurately, "prerogative" powers of the Court are invoked. We are certain that the cases before us are not such in which powers under Article 226 of the Constitution could be invoked.

12. The Patna High Court had, very rightly, divided the types of cases in which breaches of alleged obligation by the State or its agents can be set up into three types. These were stated as follows :

(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;

(ii) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.

13. It rightly held that the cases such as *Union of India v. M/s Anglo-Afgan Agencies* (AIR 1968 SC 718 : (1968) 2 SCR 366 : (1968) 2 SCJ 889) and *Century Spinning & Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council* (1970) 1 SCC 582 : (1970) 3 SCR 854) and *Robertson v. Minister of Pensions* (1949) 1 King's Bench 227), belong to the first category where it could be held that public bodies or the State are as much bound as private individuals are to carry out obligations incurred by them because parties seeking to bind the authorities have altered their position to their disadvantage or have acted to their detriment on the strength of the representations made by these authorities. The High Court thought that in such cases the obligation could sometimes be appropriately enforced on a Writ petition even though the obligation was equitable only. We do not propose to express an opinion here on the question whether such an obligation could be enforced in proceedings under Article 226 of the Constitution now. It is enough to observe that the cases before us do not belong to this category.

14. The Patna High Court also distinguished cases which belong to the second category, such as *K. N. Guruswamy v. The State of Mysore* (1955) 1 SCR 305 : AIR 1954 SC 592); *D. F. O. South Kehri v. Ram Sanehi Singh* (1971) 3 SCC 864) and *M/s Shri Krishna Gyanoday Sugar Ltd. v. The State of Bihar* (AIR 1975 Pat 123 : 1975 BLJR 192), where the breach complained of was of a statutory obligation. It correctly pointed out that the cases before us do not belong to this class either.

15. It then, very, rightly, held that the cases now before us should be placed in the third category where questions of pure alleged breaches of contract are involved. It held, upon the strength of *Umakant Saran v. The State of Bihar* (1973) 1 SCC 485 : (1972) 2 LLJ 580) and *Lekhraj Satramdas v. Deputy Custodian-cum-Managing Officer* (AIR 1966 SC 334 : (1966) 1 SCR 120) and *B. K. Sinha v. State v. State of Bihar* (AIR 1974 Pat 230 : 1973 BLJR 657), that no writ or order can issue under Article 226 of the Constitution in such cases "to compel the authorities to remedy a breach of contract pure and simple".

16. Learned Counsel for the appellants has, however relied upon a passage from *Lekhraj Satrandas's* case where this Court (Ed : The passage quoted is however from the judgment of the Patna High Court, AIR 1974 Pat 230, 231) observed (at p. 231) :

-until and unless in the breach is involved violation of certain legal and public duties or violation of statutory duties to the remedy of which the petitioner is entitled by issuance of a writ of mandamus, more breach of contract cannot be remedied by the Court in exercises of its powers under Article 226 of the Constitution.

17. Learned Counsel contends that in the cases before us breaches of public duty are involved. The submission made before us is that, whenever a State or its agents or officers deal with the citizen, either when making a transaction or, after making it, acting in exercise of powers under the terms of a contract between the parties, there is a dealing between the State and the citizen which involves performance of "certain legal and public duties". If we were to accept this very wide proposition every case of a breach of contract by the State or its agents or its officers would call for interference under Article 226 of the Constitution. We do not consider this to be a sound proposition at all.

18. Learned Counsel for the appellants cited certain authorities in an attempt to support his submission that the State and its officers are clothed with special Constitutional obligations, including those under Article 14 of the Constitution, in all their dealings with the public even when a contract is there to regulate such dealings. The authorities cited were : *D. F. Sought Kheri v. Ram Sanahi Singh* (supra) where all that was decided, relying upon *K. N. Guruswamy v. The State of Mysore* (supra), was that, where the source of a right was contractual but the action complained of was the purported exercise of a statutory powers, relief could be claimed under Article 226; and, *Calcutta Gas Co. (Proprietary) Ltd. v. State of West Bengal* (AIR 1962 SC 1044 : 1962 Supp 3 SCR 1 : (1963) 1 SCJ 106), where the real question considered was whether the petition had a locus standi to question the validity of an enactment; *Basheshar Nath v. The C. I. T.* (1959 Suppl 1 SCR 528,51 : AIR 1959 SC 149 : (1959) 35 ITR 190) which has nothing to do with any breach of contract but only lays down that "Article 14 protects us from both legislative and administrative tyranny of discrimination"; *State of M. P. v. Thakur Bharat Singh* (196) 2 SCR 454 : AIR 1967 SC 1170 : (1968) 1 SCJ 173), which lays that even executive action must not be exercised arbitrarily but must have the authority of law to support it; *S. S. Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi* (1967) 3 SCR 525 : AIR 1967 SC 1836 : (198) 1 SCJ 178), which repeats requirements of action which satisfy Articles 14 and 21 of the Constitution where compliance with these provisions is obligatory.

19. We do not think that any of these cases could assist the appellants or is at all relevant. None of these cases lays down that, when the State or its officers purport to operate within the contractual field and the only grievance of the citizen could be that the contract between the parties is broken by the action complained of, the appropriate remedy is by way of a petition under Article 226 of the Constitution and not an ordinary suit. There is a formidable array of authority against any such a

proposition. In *Lekhraj Satramdas Lalvani v. N. M. Shah*, Deputy Custodian-cum-Managing Officer, Bombay (supra) this Court said (at p. 337) :

In our opinion, any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Article 226 of the Constitution.

In *Banchhanidhi Rath v. The State of Orissa* (AIR 1972 SC 843 : (1972) 4 SCC 781), this Court declared (at p. 845) (scc p. 783, para 8) :

In a right is claimed in terms of a contract such a right cannot be enforced in a writ petition.

In *Har Shankar v. The Deputy Excise & Taxation Commissioner* (1975) 3 SCR 254, 265 : (1975) 1 SCC 737), a Constitution Bench of this Court observe (at p. 265) (scc p. 747, para 21) :

The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations.

20. Learned Solicitor General, appearing for the State, Contended that there could be no aspect of Article 14 of the Constitution involved in a case where no comparison of the fact and circumstances of a particular petitioner's case with those of other persons said to be similarly situated is involved. In such a case, he submitted, there was no possibility of inferring a discrimination. In reply, learned Counsel for the appellants sought to direct our attention towards some allegations showing that there was discrimination between appellants and other parties governed by similar contracts in other areas. We doubt very much whether the doctrine of discrimination can be at all availed of against the State's action purporting to be taken solely within the contractual field when no aspect of any statutory or constitutional obligation appears either from incontrovertible facts or applicable legal provisions. Indeed, it has been held in *C. K. Achuthan v. State of Kerala* (1959 Suppl 1 SCR 787 : AIR 1959 SC 490 : 1959 SCJ 465), that no question of a violation of Article 14 arises even where one out of the several persons is selected by the State for a particular contractual transaction. Learned Counsel for the appellants submitted that here was a conflict between what was laid down here and the law declared by this Court in *Erusian Equipment & Chemicals Ltd.'s* (supra). We think that the two cases are distinguishable on facts. The propositions of law laid down in the two cases must be read in the context of facts established in each case. In any event, the cases, before us do not raise any question of discrimination alleged at the stage of entry into the contractual area which could attract the application of Article 14.

21. In the cases before us, allegations on which a violation of Article 14 could be based are neither properly made nor established. Before any adjudication on the question whether Article 14 of the Constitution could possibly be said to have been violated, as between persons governed by similar contracts, they must be properly put in issue and established. Even if the appellants could be said to have raised any aspect of Article 14 of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been argued before the High Court. And, in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed evaluation of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its officers, has discriminated between parties identically situated. On the

allegations and affidavit evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us.

22. The real object of the appellants seems to be to hold up any adjudication on the cases before us by taking shelter behind Article 14 so that the stay orders obtained by them, presumably on representations made to this Court that no aspect of enforcement of Article 14 of the Constitution was involved may continue. We think that to accede to the prayer on behalf of the appellants to adjourn the hearing of the case until after the Emergency is lifted and yet to continue the stay orders is to permit a circumvention of the Constitutional mandate contained in Article 359 and to countenance a gross abuse of the processes of the Court.

23. A rather desperate argument which has been addressed to us on behalf of the appellants is that they were entitled to an opportunity to show cause against the cancellation of the leases. It was urged, on the strength of *A. K. Kraipak v. Union of India* (1970) 1 SCR 457 : (1969) 2 SCC 262), that the distinction made between an administrative and quasi-judicial action is thin and a vanishing one. This argument appears to us to be wholly irrelevant inasmuch as a question of the distinction between an administrative and quasi-judicial decision can only arise in the exercise of powers under statutory provisions. Rules of natural justice are attached to the performance of certain functions regulated by statutes or rules made thereunder involving decisions affecting rights of parties. When a contract is sought to be terminated by the officers of the State, purporting to act under the terms of an agreement between parties, such action is not taken in purported exercise of a statutory power at all.

24. In *Additional District Magistrate, Jobalpur v. Shivakant Shukla* (AIR 1976 SC 1207 : (1976) 2 SCC 521), it was pointed out at p. 1288) (scc p. 604, para 186) :

The principles of natural justice which are so implied must always hang, if one may so put it, on pegs of statutory provisions or necessarily follow from them. They can also be said sometimes to be implied as necessary parts of the protection of equality and equal protection of laws conferred by Article 14 of the Constitution where one of the pillars of Dicey's principles of the Rule of Law is found embodied. Sometimes, they may be implied and read into legislation dealing with rights protected by Article 19 of the Constitution. They could at times, be so implied because restrictions on rights conferred by Article 19 of the Constitution have to be reasonable.

25. The limitations imposed by rules of natural justice cannot operate upon powers which are governed by the terms of an agreement exclusively. The only question which normally arises in such cases is whether the action complained of is or is not in consonance with the terms of the agreement. As already pointed out by us, even if by some stretch of imagination some case of unequal or discriminatory treatment by the officers of the State of persons governed by similar contracts is sought to be made out, a satisfactory adjudication upon the unusual facts of such a case would necessitate proper pleadings supported by acceptable evidence. In that case, the interim stay order or injunction could not be justified at all because so long as a Presidential Order under Article 359 of the Constitution, is operative, the enforcement of fundamental rights falling under Article 14 is suspended. In such cases even if a petition or suit is entertained and kept pending no stay order could be passed because that would amount to indirectly enforcing the fundamental rights conferred by article 14 of the Constitution. It is only here a prima facie case for an injunction or stay can be made out, quite apart from a right covered by Article 14 of the Constitution or by any other

fundamental right whose enforcement may have been suspended, a that an injunction or stay could be granted at all on suitable terms. As we have already said it was on such an assumption that this Court had, apparently, ranted the interim stay which must now be discharged.

26. Consequently, we dismiss these appeals with costs throughout, and discharge the stay orders.

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