

Hindustan Petroleum Corpn. Ltd.

Vs

Yashwant Gajanan Joshi and Others

C.A. No.5916 of 1990 with S.L.P. (C) No.16085 of 1990

(S. Ranganathan, N.M. Kasliwal, S.C. Agarwal JJ)

05.12.1990

JUDGMENT

KASLIWAL J

1. Special leave granted in S.L.P. (Civil) No. 10124 of 1989. This appeal by special leave has been filed by Hindustan Petroleum Corporation Limited (herein referred to as the Corporation) against the judgment of the Bombay High Court dated 6th July, 1989. The Corporation took steps under the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 (hereinafter referred to as 'the Act') for laying down pipelines for a project called the Bombay-Pune pipeline project. One Mrs. A. R. Gadre, Special Land Officer in the office of Competent Authority was appointed as competent authority by the Government of India vide Notification No. P-32115/2/87 dated 6-6-1988. Shri Yashwant Gajanan Joshi, respondent No. 1 filed a petition u /Art. 226 of the Constitution of India in the Bombay High Court for removal of Mrs. Gadre as competent authority on the ground that she was an employee of the corporation and was biased against him. The Bombay High Court held that in the instant case the proprietary rights of the petitioner (Shri Yashwant Gajanan) were affected by laying down of pipes by the Corporation. The petitioner was claiming compensation and such compensation has to be determined judicially in which principle of natural justice must be followed. Principles of natural justice require a feeling in both the parties that justice will be done as between them. The High Court thus took the view that it was not proper to appoint Mrs. Gadre a competent authority as she was an employee of one of the contesting parties. The High Court in these circumstances allowed the writ petition and directed the Union of India to appoint another competent authority. It was further directed that any suitable person may be appointed as a competent authority but he shall not be an employee of the corporation. The High Court further directed that names of certain retired District Judges were discussed which according to the High Court were quite suitable for the purpose. However, it was left to the Union of India to do the needful expeditiously and in any case not later than 31 st July, 1989, During the course of arguments we were informed that this time was got extended at the request of the Union of India. S. L. P. (C) No. 10124 of 1989 has been filed by the Corporation while S.L.P. (Civil) No. 16035 of 1990 was filed by the Union of India. We may mention at this stage that the Special Leave Petition filed by the Union of India was barred by limitation by 90 days and we are not satisfied with the grounds mentioned in the application for condonation of delay filed by the Union of India. The Special Leave Petition filed by the, Union of India stands dismissed as barred by limitation.

2. So far as the Special Leave Petition filed by the Corporation is concerned, an objection was raised on behalf of the learned counsel for the respondent No. 1 that Union of India alone was the

interested party and could have challenged the impugned order of the High Court in as much as the competent authority is appointed by the Union of India. It was thus contended that the special Leave Petition filed by the corporation is not maintainable specially when the Special Leave Petition filed by the Union of India stands dismissed by this Hon'ble Court. We find no force in this objection. In view of the fact that the High Court has removed Mrs. Gadre from acting as competent authority on the ground that she was an employee of the corporation and further gave the direction that any suitable person may be appointed as competent authority but he shall not be an employee of the corporation, there is an independent cause of grievance to the corporation and the Special Leave Petition can be filed by the corporation. The preliminary objection thus raised on behalf of the respondent No. 1 is rejected.

3. In order to appreciate the controversy it would be proper to consider some relevant provisions of the Act. S. 2(a) of the Act defines competent authority as under:

(a) "Competent Authority" means any person or authority authorised by the Central Government, by notification in the official gazette, to perform the functions of the Competent Authority under this Act;

(i) and different persons or authorities may be authorised to perform all or any of the functions of the Competent Authority under this Act in the same area or different area specified in the notification.

4. According to the above definition any person or authority can be appointed by the Central Government by Notification in the Official Gazette to perform the functions of the competent authority under this Act. It has also been made clear that different persons or authorities may be authorised to perform all or any of the functions of the competent authority under the Act. So far as this definition is concerned there is no restriction on the power of the Central Government to appoint any employee of the Corporation as the competent authority. S. 3 provides for publication of notification for acquisition. S. 4 provides for power to enter upon and survey the land through which pipelines have to be laid for transporting petroleum or any mineral. S. 5 provides for filing any objections by the persons interested in the land and for hearing of such objections by the competent authority. S. 6 provides for a declaration of acquisition of right of user. S. 7 provides for the Central Government or State Government or Corporation to lay pipelines. S. 8 provides for power to enter over the land for inspection etc. S. 9 provides for restrictions regarding the use of land. S. 10 deals with compensation with which we are directly concerned in the present case.

5. S. 10 reads as under:-

Compensation:-

(1) Where in the exercise of the powers conferred by S. 4, S. 7, or S. 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline proposed to be, or is being, or has been laid, the Central Government, the State Government or the Corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the Competent Authority in the first instance.

(2) If the amount of compensation determined by the Competent Authority under

sub-s. (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge.

(3) The competent Authority or the District Judge while determining the compensation u/ sub-sec. (1) or sub-sec. (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of -

(i) the removal of trees or standing crops, if any, on the land while exercising the powers u/ S. 4, S. 7 or S. 8;

(ii) the temporary severance of the land under which the pipeline has been laid from other lands belonging to, or in the occupation of, such person; or

(iii) any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner;

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification u/sub-sec. (i) of S. 3.

(4) Where the right of user of any land has vested in the Central Government, the State Government or the Corporation, as the case may be, shall, in addition to the compensation; if any, payable u/sub-s. (1), be liable to pay to the owner and to pay any other person whose right or enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent of the market value of that land on the date of the notification u/sub-s. (1) of S. 3.

(5) The market value of the land on the said date shall be determined by the competent Authority and if the value so determined by that authority is not acceptable to either of the parties, it shall on application by either of the parties to the District Judge referred to in sub-s. (2), be determined by that District Judge.

(6) The decision of the District Judge u / sub-s. (5) shall be final.

6. According to the above provision compensation shall be determined by the Competent Authority in the first instance. U/sub-s. (2) of S. 10 if the amount of compensation determined by the Competent Authority u/sub-s. (1) is not acceptable to either of the parties, an application by either of the parties may be filed to the District Judge and then the amount of compensation would be determined by the District Judge. Sub-sec. (3) of S. 10 lays down certain guidelines for determining the compensation taking note of the damage or loss sustained by any person interested in the land. S. 11 provides for deposit and payment of compensation. S. 12 provides that the competent authority shall have for the purposes of this Act all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely

(a) summoning and enforcing the attendance of any person and examining him on oath;

- (b) requiring the discovery and production of any document;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office;
- (e) issuing commission for examination of witnesses.

Under S. 17 of the Act the Central Government is authorised to make rules for carrying out the provisions of this Act.

7. Mr. Shanti Bhushan, learned Senior Advocate appearing for the Corporation contended that there was no question of the violation of any principle of natural justice nor there was any question of bias in case any employee of the Corporation is appointed as competent authority under the Act. It was submitted that under the provisions of the Co-operative Societies Act the Registrar is appointed as Arbitrator to decide the claim. Under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, the fact that the Estate Officer issues a notice and conducts the proceedings himself will not by itself be violative of principles of natural justice. Such Officer cannot be said to be a judge in his own cause. No one shall be a judge in his own cause only means that he should not have personal interest in the cause he has to adjudicate. It does not mean that an officer discharging official functions must not start proceedings in the matter in which he is under the law competent to adjudicate upon. It was also contended by Mr. Shanti Bhushan that there was no personal interest of the Competent Authority in the subject matter of the litigation, namely in the determination of compensation and as such the principle that no person can be a judge in his own cause is not applicable in the present case. It was also argued that the determination of compensation by the Competent Authority in the first instance u/sub-s. (1) of S. 10 of the Act is purely an administrative act by which the rights of the parties are not determined by the competent authority. Sub-s. (2) of S. 10 of the Act clearly provided that if the amount of compensation determined by the competent authority was not acceptable to either of the parties, an application could be filed before the District Judge who would then determine the compensation. It was also argued that if we examine the matter with a practical view point no other officer is easily available for such appointment and the Corporation would be unnecessarily put to great inconvenience and subject to heavy expenses if an officer other than its own employee is appointed as competent authority. Learned counsel contended that the provisions in this Act are analogous to those under the Land Acquisition Act, 1894 in which the amount of compensation payable by the Government is, in the first instance, determined by the officer of the Government itself.

8. On the other hand it was submitted by Mr. Dholakia learned Senior Advocate appearing for respondent No. 1 that the determination of compensation by the competent authority was a quasijudicial act. Mrs. Gadre had filed the writ petition No. 3606 of 1989 in the Bombay High Court against Shri Yashwant Gajanan Joshi and others in which in para No. 9 itself it was admitted as under:-

"The petitioner herein is a quasi-judicial authority under the provision of such Act and as stated above the petitioner was notified to act as competent authority by virtue of Notification of the Government of India referred to hereinabove."

9. It was also argued by Mr. Dholakia that the competent authority is given the powers of a Civil Court as contemplated u/ S. 12 of the Act and the determination of compensation by him is a quasi-

judicial act and not an administrative act. It was further submitted that the persons or authorities appointed under the various other Acts like Co-operative Societies Act, Land Acquisition Act, Income-tax Act are appointed as authorities by virtue of holding some office or post and their orders are appealable to the higher authorities. In the present case different competent authorities can be appointed for discharging different duties under the Act and it is left to the discretion of the Central Government to appoint any person or authority as competent authority for determining the compensation u/ S. 10 of the Act. It has been argued that where such discretion is given to the Central Government for appointing the competent authority then such discretion should not be exercised by appointing a person or authority who may be in the employment of the body or authority for whose benefit the pipelines are laid. In other words his contention is that if the pipelines are laid for corporation then no employee of the corporation should be appointed as a competent authority but some employee of the State Government or Central Government should be appointed as competent authority. Mr. Dholakia placed reliance on the following observations made in Metropolitan Properties Co. Ltd. v. Lannon, (1983 (3) All Eng. Reports 304 at p. 310):

"The Court looks at the impression which would be given to other people. Even if he (the Chairman of the tribunal in that case) was as impartial as could be nevertheless, if rightminded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand..... The Court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: "The Judge was biased".

10. It was also contended that under the Land Acquisition Act the award given by the Collector is only an offer and does not determine any rights of the parties. Any person interested who does not accept the award may move, an application to the Collector for making a reference to the Court u/ S. 18 of the Land Acquisition Act, 1894. After the judgment of the Court in reference an appeal could lie to the High Court u/ S. 54 of the Land Acquisition Act. It was thus submitted by Mr. Dholakia that there was a remedy of appeal under the Land Acquisition Act but so far as the provisions of the present Act are concerned there is no right of appeal against the determination of compensation by the District Judge. It was also submitted that it was a well established principle that justice should not only be done but seen to be done. In the present case apart from the legal aspect of the matter there was a clear bias so far as Mrs. A. R. Gadre is concerned and she was not a fit person to be appointed as a competent authority in order to determine the compensation payable to the respondent. It was further contended that while determining the question of bias the test is not whether in fact bias has affected the judgment but the test always is and must be whether a litigant could reasonably apprehend that a bias might operate against him in the decision of the subject matter of the dispute. Reliance is placed on the following observation made in G. Sarana v. University of Lucknow (1977 1 SCR 64) : (AIR 1976 SC 2428) at page 68, (1977) 1 SCR:

"It is needless to emphasise that the principles of natural justice which are meant to prevent miscarriage of justice are also applicable to domestic enquiries and administrative proceedings. (See A. K. Karipak v. Union of India). It cannot also be disputed that one of the fundamental principles of natural justice is that in case of quasi-judicial proceedings, the authority empowered to decide the dispute between opposite parties must be one without bias by which is meant an operative prejudice, whether conscious or unconscious towards one side or the other in the dispute. (See Nageswara Rao v. A. P. State Road Transport Corporation and Gullapalli Nageshwar

Rao v. State of A.P.")

11. Mr. Lahiri, learned Senior Advocate appearing on behalf of the Union of India submitted that from 1963 to 1967 liaison officers of the corporation have been appointed as competent authority under the Act and no objection whatsoever was ever made by any person. He further submitted that it is not enough that some party to the proceedings has a mere apprehension that the authority is biased or is likely to decide against the party. There must be a real likelihood of bias and not mere suspicion of bias before the proceedings can be quashed on the ground that the person conducting the proceedings is disqualified by interest. The apprehension must be judged from a healthy, reasonable and average point of view and not on mere apprehension and vague suspicions of whimsical, capricious and unreasonable people. Reliance in respect of above contention is placed on *International Airports Authority of India v. K. D.* (1988 (2) SCC 360) : (AI R 1988 SC 1099).

12. We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the record. There is no provision in the Act prohibiting the Central Government to make an appointment of an employee of the Corporation as competent authority. Apart from determining the compensation, many other functions are assigned to the competent authority and there may be one competent authority for all the above purposes or different persons or authorities may be authorised to perform all or any of the functions of the competent authority under the Act. The scheme of the Act shows that a competent authority has to discharge various and diverse duties under the Act. He has to attend survey of land required for pipeline, verification of land revenue records of the surveyed area, drawing up of panchanama for land, crop, plantation, trees or any other agricultural or non-agricultural activity carried on in the surveyed land or the pipeline, issue of notification u/ S. 3(1) of the Act, receipt of claims/ objections for assessment of damages, disputes etc., issue of clearance to concerned oil company and deciding all the disputes arising out of the authorised persons power to enter notified lands and various other duties. Thus such person becomes a better qualified and experienced person equipped with a proper background to decide the amount of compensation also. We cannot accept the contention of Mr. Dholakia that merely because a person is an employee of the corporation, he would have a bias in deciding the compensation u/S. 10(1) of the Act.

13. It may also be pertinent to note that the Legislature has used the words "the amount of which shall be determined by the competent authority in the first instance" (emphasis supplied) in sub-s. (1) of S. 10 of the Act. This clearly shows that in the first instance it has to be decided by the competent authority and such determination shall not attain any finality. Then u/sub-s. (2) of S. 10 itself it has been provided that if the compensation is not acceptable to either of the parties then an application can be filed before the District Judge. No doubt there is a marked difference in this regard between the provisions of this Act and the provisions contained in the Land Acquisition Act 1894 but in our view u/S. 10(1) the compensation is to be determined by the Competent authority only in the first instance. A party is entitled to raise the ground of bias against an appointment of an individual officer as competent authority on sufficient material placed on record in this regard, but not merely because such competent authority is an employee of the corporation. It cannot be a ground for any disability or disqualification in appointing such person as competent authority. If we take the matter to its logical conclusion the result would be that no employee of the State Government or the Central Government as the case may be will be appointed as competent authority where petroleum and minerals pipelines are to be laid for a project initiated by the State Government or the Central Government respectively. It would be too broad a proposition to extend the theory of bias to exclude persons only because such person draws the salary from the bodies like public corporation, State Government or Central Government. It would altogether be a different

case if it was a case of a private employer and his employee .We cannot equate the case of a person in private employment with that of a person in public employment. The authorities mentioned .above and relied upon by Mr. Dholakia are clearly distinguishable.

14. Now we shall consider the question of the appointment of Mrs. A. R. Gadre as competent authority in the present case. There is a clear averment in the affidavit in reply filed by the respondent No. 1 in this regard that after the retirement of the competent authority Mr. G. S. Parte, Mrs. A. R. Gadre who was special land officer in the office of competent authority was appointed as competent authority vide Notification dated 6-6-1988. Compensation case was decided by the Additional District Judge in favour of the respondent. Mrs. A. R. Gadre in her own name filed a writ petition No. 3606 of 1989 challenging the legality of the award passed by the Additional District Judge. In the said petition she had also prayed for the stay of the further acquisition proceedings. The grievance of the present respondent was that some interim orders of stay were also obtained in the aforesaid writ petition behind the back of the respondent. Even contempt proceedings have also been initiated the respondent against Mrs. A. R. Gadre and which are still pending before the Bombay, High Court. The High Court by the impugned order had removed Mrs. Gadre to function as competent authority and thereafter the Union of India accepted the above position and sought further time to comply with the directions of the High Court. We have already dismissed the Special leave Petition filed by the Union of India. Thus taking in view the entire facts and circumstances of the case we are inclined to take the view that the respondent was right in contending that Mrs. A. R. Gadre may have bias while determining the amount of compensation as she herself is a litigating party in this very matter in the High Court against the respondent. An apprehension thus in the mind of the respondent is well founded and on this ground we do not find any justification to interfere with the order of the Bombay High Court holding that the appointment of Mrs. Gadre was not valid. We however wish to make it clear that we do not agree with the general proposition of the High Court that an officer of the corporation cannot be appointed as a 'competent authority' because he may be biased in favour of the corporation by reason of his employment. In the result we find no force in this appeal and it is accordingly dismissed with no order as to costs.

Order accordingly.

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