

Vijay Jaiswal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Dec-01-2005

Reported in : AIR2006MP65; 2007(2)CTLJ351(MP); 2006(2)MPLJ196

Judge : A.K. Shrivastava, J.

Acts : Madhya Pradesh Municipal Corporation Act, 1956 - Sections 421, 421(1), 421(2), 421(3) and 421(4); [Constitution of India](#) - Articles 226 and 227; Madhya Pradesh Nagar Tatha Gramin Nivesh Adhiniyam, 1973 - Sections 73

Appeal No. : W.P. No. 2273 of 1994

Appellant : Vijay Jaiswal

Respondent : State of M.P.

Advocate for Def. : V.P. Nema, Govt. Adv. (for No. 1) and ;Aditya Sanghi, Adv. (for No. 2)

Advocate for Pet/Ap. : Ravish Agrawal, Sr. Counsel and ;Pranay Verma, Adv.

Disposition : Petition allowed

Judgement :

ORDER

A.K. Shrivastava, J.

1. By this petition under Articles 226 and 227 of the [Constitution of India](#), the petitioner has sought quashment of Annexure P/17 dated 2-6-1994, issued by Chief Executive Officer of Jabalpur Development, Authority.

2. This Court vide order dated 30-6-1994 while admitting the petition directed the parties to maintain status quo and it was specifically directed that petitioner shall not be dispossessed and that interim order is still continuing.

3. Before I deal with the merit of this petition, it would be appropriate to mention that the petitioner's bid was accepted by respondent No. 2 and the bid of respondent No. 3 was rejected. Respondent No. 3 assailed the action of petitioner No. 2 by filing W.P. No. 3726/1993 before this Court which was dismissed in default on 26-4-2004. The stand of Jabalpur Development Authority (respondent No. 2) in the petition of respondent No. 3 is that the bid of the present petitioner has been validly accepted and that of respondent No. 3 has been rightly rejected.

4. It has been submitted by Shri Sanghi, learned Counsel appearing for respondent No. 2 as well as Shri Nema learned Govt. Advocate that this petition has rendered infructuous for the simple reason that the bid of petitioner was accepted and the agreement was executed in between the petitioner and the Jabalpur Development Authority for a period of 10 years and that period has expired on 30-9-2003.

5. The contention of Shri Ravish Agrawal, learned senior counsel for petitioner is that the Supreme Court in the case of Beg Raj Singh v. State U.P. (2003) 1 SCC 726 : AIR 2003 SC 833 in para 6 has categorically held that if the plaintiff or petitioner having been found entitled to a right to a relief, the Court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. Thus, this petition be disposed of on its own merit, because as per the learned senior counsel for no fault of petitioner he was not allowed to work.

6. The unfolded facts are that on 9th and 10th June 1993 notice inviting tender was issued by respondent No. 2 The petitioner as well as respondent No. 3 and some other persons submitted their applications. The date of application of

petitioner is 6-7-1993 (Annexure P/2). The applications which were received by the respondent No. 2 were closely scrutinized by the Advisory Committee. The minutes of the said Committee meeting dated 24-8-1993 has been placed on record as Annexure P/4. Since the bid of the petitioner was found to be the lowest, vide annexure P/5 dated 3-9-1993 a letter of acceptance was issued in favour of petitioner. Thereafter, on 30-9/1-10-1993 the agreement was executed between respondent No. 2 and the petitioner for 10 years which has been placed on record as Annexures P/7. Thereafter possession was delivered in pursuance to the agreement vide Annexure P/8 and P/9 dated 13-10-1993. After the possession was delivered to the petitioner, he started the work under the contract. On 5-4-1994 (Annexure P/12) he received a letter from respondent No. 2 to immediately stop the work at the site. No reason has been assigned in the said letter. Later on, vide Annexure P/17 dated 2-6-1994 which is the impugned order in this petition, it was intimated by the respondent No. 2 that in terms of the order and directions given by the State Government dated 1-6-1994 the letter of acceptance dated 3-9-1993 (Annexure P/5) and the work order is hereby cancelled.

7. The contention of learned senior counsel is that once having accepted the bid offered by the petitioner and after having executed the agreement, the nature of which is statutory, a right has been conferred in the petitioner and if that is the position, in all fairness, if the acceptance of the bid and the work order was required to be cancelled, the petitioner ought to have been heard. Since there is a clear violation of principles of natural justice, the impugned order Annexure P/17 which is based on the order of the State Government dated 1-6-1994 be set aside. It has been canvassed by learned senior counsel that if the State Government had received some anonymous complaint lodged by Acchelal Sonker, Rammurthy Mishra and respondent No. 3 in regard to the wrong acceptance of the tender in favour of the petitioner, a notice ought to have been issued to the petitioner so that he could satisfy the State Government that the tender has been rightly accepted in his favour. learned Counsel has invited my attention to the comments of the Jabalpur Development Authority Annexure R/8 dated 9th April, 1994 addressed to the State Government justifying the action in which it has also been submitted that the complaint made by Shri Sonkar and Mishra be rejected and the order which has been passed by the State Government to stop the work at the site may be

recalled. These comments were sent by the Commissioner/Chairman of the Jabalpur Development Authority. Learned senior counsel has placed reliance on the Division Bench decision of this Court in *Moolchand v. Indore Municipal Corporation*, : AIR 1973 MP245 .

8. On the other hand Shri Nema learned Government Advocate has submitted that by exercising powers conferred under Section 73 of the M.P. Nagar Tatha Gramin Nivesh Adhiniyam, 1973 (in short 'Adhiniyam'), the State Government, since it was found that there were irregularities in accepting the bid, the tender was wrongly accepted in favour of the present petitioner and therefore the order Annexure R/9 dated 1-6-1994 has been rightly issued.

9. After having heard learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

10. There is no quarrel to the proposition and the facts which I have mentioned in paragraph 6 of this Court. Admittedly, the offer of the petitioner was accepted and an agreement was executed in between the petitioner and respondent No. 2 on 30-9/1-10-1993 (Annexure P/7). Thereafter the possession was also given to the petitioner on 13-10-1993 vide Annexures P/8 and P/9. Since the agreement has been executed in terms of the Adhiniyam, a statutory right is conferred on the petitioner. If for some reason or the other the agreement is required to be cancelled, an opportunity of hearing ought to have been given to the petitioner. It be seen that the petitioner was required to be heard, moreso because the complaint was made by aforesaid two persons, namely, Acchelal Sonker and Rammurthy Mishra and on that basis the agreement was cancelled. Thus the action of the State Government directing respondent No. 2 to cancel the statutory agreement executed in favour of the petitioner runs de hors to the maxim *audi alteram partem*. At this juncture, I may profitably rely the Division Bench decision of this Court in the case of *Moolchand* : AIR 1973 MP245 (*supra*) wherein the Division Bench while explaining the ambit and scope of Section 421 of the M.P. Municipal Corporation Act, 1956 in para 10 has clearly laid down the law that any order infringing the right of any private individual it is expected to hear him. It would be condign to quote para 10 of the said decision which reads thus :

10. The scheme of Section 421 of the Act indicates that on reference or otherwise if the State Government forms an opinion that the execution of any resolution or order is not in conformity with law or rules or byelaws, it can suspend the execution of such a resolution, and a copy of such an order of the Government will be sent to the Corporation by the Government as provided for in Sub-section (2) of Section 421 of the Act. Sub-section (3) contemplates that after the receipt of this order if the Corporation wants to represent, it can submit a representation to the Government against such an order, Sub-section (4) provides that it is only after the consideration of such representation that the Government may either cancel, modify or confirm the order already passed under Sub-section (1) or take such action in the matter as may be considered fit in circumstances of the case. The scheme of Section 421 clearly indicates that in the first place the Government can only pass an order suspending the execution of an order or resolution. Thereafter it can pass a final order only after affording an opportunity to the Corporation to file a representation. This clearly goes to show that no order against the Corporation can be passed by the State Government without affording an opportunity to Corporation. Apparently, therefore, when the State Government acts under Section 421 of the Act, it is expected to follow the principles of natural justice. In view of this scheme of the section, it cannot be contended that when the matter refers to a private individual whose rights are involved, the Government is expected to act under Section 421 of the Act without affording him any opportunity of representation or hearing. In that case as well, the State Government is expected to follow the principles of natural justice. Consequently when the Government exercises jurisdiction under Section 421 of the Act, it is bound to act in accordance with the provisions of natural justice, and therefore, before passing a final order it is expected to afford an opportunity to the person concerned to make a representation and also the opportunity of hearing. Admittedly, in the present case, before passing the final order setting aside the order of the Appeal Committee giving sanction to the petitioners for construction of galleries, the State Government had afforded no opportunity to the petitioners either of hearing or of making a representation. Consequently the order passed by the State Government setting aside order of the Appeal Committee cannot be maintained and so the order of the Commissioner dated the 30th August 1969 informing the petitioner

that the order of the Appeal Committee cannot be complied with, cannot also be allowed to stand. Similarly the notice dated 28th April, 1970 saying that the reference made to the Government has been accepted, and, therefore, calling upon the petitioner to remove the galleries cannot also be allowed to stand.

Thus, by placing reliance on the Division Bench decision Moolchand (supra), the view of this Court is that the action of respondent No. 1 is contrary to principles of natural justice. The petitioner had executed the work from 13-10-1993 up to 5-4-1994 when the impugned order Annexure P/12 was issued by respondent No. 2 to stop the work. The stand of respondent No. 2 is that the bid of the petitioner has been rightly accepted.

11. The Supreme Court in the case of Beg Raj Singh AIR 2003 SC 833 (supra) has held that the relief to which the petitioner is entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. But, the petitioner having been found entitled to a right to relief, the Court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. I have already held hereinabove that after the execution of statutory agreement between the petitioner and Jabalpur Development Authority certain rights are vested in the petitioner and those rights cannot be snatched all of a sudden by stroke of pen by issuing the impugned order. By placing reliance on the decision of Beg Raj Singh (supra), it is hereby directed to respondent No. 2 to consider the case of petitioner to allow him to work of the period for which he had not worked on account of cancellation of the agreement (Annexure P/7). In that regard necessary orders may be passed. However, this Court would like to mention that for no fault of the petitioner his agreement was cancelled. The respondent No. 2 is hereby directed to reconsider the case of the petitioner and may issue necessary orders by following para 7 of the decision of Beg Raj Singh (supra) in its stricto sensu.

12. Ab judicatio, this petition is hereby allowed to the extent indicated hereinabove with no order as to costs.

