

Mithoolal Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-13-1981

Reported in : 1981WLN(UC)443

Judge : S.K. Mal Lodha and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Civil Special Appeal No. 385 of 1971

Appellant : Mithoolal

Respondent : The State of Rajasthan

Advocate for Pet/Ap. : Mr. M. Mridul

Disposition : Appeal allowed

Judgement :

S.K. Mal Lodha, J.

1 By this appeal under Section 18 of the Rajasthan High Court Ordinance, 1949, the petitioner-appellant has questioned the correctness of the order dated July 30, 1971 of a Learned Single Judge of this Court, by which, he declined to entertain the writ petition under Article 226 of the Constitution and dismissed it summarily. The facts leading to this appeal any briefly be noticed.

2. The petitioner-appellant (hereinafter referred to as 'the petitioner') held the post of Agriculture Extension Officer in the Agriculture Department. While holding that post, he was sent on deputation to the Development Department as Vikas Adhikari. By order (Ex. 12) dated April 2, 1971 of the State Government, he was transferred as Vikas Adhikari, Ahore, with immediate effect. He did not join that post. Subsequently, by order (Ex. 17) dated June 15, 1971 in supersession of the order (Ex. 12) dated April 2, 1971, the petitioner was reverted to the Agriculture Department with immediate effect. On receipt of the order (Ex. 17) dated June 15, 1971, the Director of the Agriculture Department by his order (Ex. 18) dated July 12, 1971 posted him as Agriculture Extension Officer with immediate effect. Thereafter, the petitioner filed the writ petition on July 27, 1971 and prayed for the following reliefs.

a) That by an appropriate writ, order or direction, Order dated 15-6-71 (Ex. 17) passed by the Dy. Secretary to the Govt. cancelling the order of deputation of the Petitioner and the Order dt. 12-7-71 (Ex. 18) posting him as Agriculture Extension Officer, Shahpura, may be quashed;

b) That by an appropriate writ, order or direction. Respondents may be directed to immediately make the payment of the salary of the petitioner due upto date;

c) Further by an appropriate writ, order or direction, the Order of transfer of the petitioner dated 2-4-71 (Ex. 12) may be quashed and the Respondents may be restrained from giving effect to the same qua the petitioner. If for any reason, the transfer has been given effect to during this period, the Order itself may be recalled and the Respondents may be directed to repost the petitioner as Vikas Adhikari, Panchayat Samiti, Nimbahera;

d) Further by an appropriate writ, order or direction, the Respondents may be directed to re-fix the salary of the petitioner by taking into account from the Order of confirmation dt. 22-4-71 with effect from 7-2-62, confirming the petitioner as Agriculture Extension Officer;

e) Any other appropriate writ, order or direction to which the petitioner may be entitled to may be granted ;

f) Costs of this writ petition may be awarded to the petitioner.

The learned single Judge by his order dated July 30, 1971 declined to entertain the writ petition and dismissed it summarily holding that it was not shown that the petitioner had made a demand for justice and it was met with refusal. Hence this appeal by the petitioner as aforesaid.

3. We have heard Mr. M. Mridul, learned Counsel for the appellant and Mr. H.N. Calla, learned Additional Government Advocate.

4. Mr. M. Mridul. learned Counsel for the appellant has raised the following contentions before us:

(1) that it is factually wrong that there was no demand for just ice and that a demand for justice was made as is clear from the representations dated 2-7-1971 & 14-7-1971 which have been reproduced with writ petition. In the facts and circumstances of the case, the representations and requests were equivalent to the making of a demand for the reliefs ; and

(2) that the petitioner has not claimed purely a writ of mandamus, for which, the demand for justice is necessary and having regard to reliefs asked for by him, no demand for justice was at all necessary.

On the other had, Mr. H.N. Calla., learned Additional Government Advocate has supported the order under appeal. The argument of M. H.M, Calla, learned Additional Government Advocate is that the representation dated July 14, 1971 was sent to the Director, Panchayat & Development Department, Rajasthan, Jaipur and not to the Director Agriculture Department, Rajasthan, Jaipur and as no demand for justice was made by the petitioner to the parent department and as he has made a demand for justice to the Director, Panchayat and Development Department where he was on deputation, it was not a demand for justice in the eye of law.

5. We have carefully considered the rival contentions raised by the learned Counsel for the parties.

6. The petitioner, after the receipt of the order (Ex. 17) dated June 15, 1971 made a representation dated July 2, 1971 to the Director, Community Development and Panchayat Department, Rajasthan Jaipur. The copy of this representation was endorsed to the Director, Agriculture praying inter-alia that the Development Department may be asked to appoint him afresh as Development Officer, Panchayat Samiti, Nimbahera, or according to his seniority, he may be appointed as Bhoo Sanrakshan Adhikari' or to an equivalent post. in the endorsement, it has also been stated by him that he has been working as a Development Officer continuously since September 9, 1967 Another, representation dated July 14, 1971 was sent to the Director, Panchayat and Development Department, Rajasthan Jaipur. Copies of this representation were sent, amongst others, to the Development Minister, Rajasthan, Jaipur, the Development Commissioner, Rajasthan, Jaipur, the Agriculture Secretary, Rajasthan, Jaipur and the Director, Agriculture, Rajasthan, Jaipur. The petitioner did not receive any reply. After the order of reversion was made, the Director of Agriculture, by his letter dated July 14, 1971 wrote) the Panchayat and Development that according to seniority, the petitioner is sentuled to be posted as Vikas Adhikari. It is. therefore, clear that the petitioner made representations dated July 2, 1971 and July 14, 1971. The first representation was addressed to the Director, Community Development and Panchayat Department Rajasthan and the copy was endorsed to the Director, Agriculture, Rajasthan, Jaipur and the second representation was made to the Director Panchayat and Community Development. Rajasthan Jaipur and copies thereof were endorsed to the Agriculture Minister, the Agriculture Secretary and the Director, Agriculture Department. The learned single Judge was of the opinion that the representation dated July 2, 1971 could not be said to be a demand for justice in regard to the order (Ex. 18) dated July 12, 1971-the more so when no decision had been taken till then regarding the actual posting of the petitioner in the sericulture Department. He was also of the view that if the petitioner wanted his appointment on one of these posts which fell within the purview of the State Government, the proper course for him was to make a demand for justice from the Government. The representation dated July 14, 1971 was held by the learned Judge to be not a demand for justice in respect of the Director's (c) order (Ex. 18) dated July 12, 1971, for, it was addressed to the Director, panchayat and

Development Department and the prior made in the presentation was for his promotion to class II posts and for his appointment as Vikas Adhikari, Nimahera. In these circumstances, the first question is whether the representations dated July 2, 1971 and July 14, 1971 were sufficient so as to constitute sufficient camphene of canard for justice.

7. The material portion of Article 226 of the Constitution of India, leads as under:

226. Power of High Courts to issue certain writs.--(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs including writs, in the nature of habeas corpus, mandamus, prohibition, in warranto and certiorari, or any of that, for the enforcement of any of the rights conferred, by Part III and for any other purpose.

(1A) The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not, within these territories,

(2) The power conferred on a High Court by Clause (1) or Clause (1A) shall not be in derogation of the power conferred on the Supreme Court by Clause (2) of Article 32.

The nature and scope of the jurisdiction of the High Court under Article 226 of the Constitution was considered in *Dwarka Nath v. I.T. Officer* : [1965]57ITR349(SC) . It was observed therein as follows:

This Article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustices wherever it is found,. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be

exercised It can issue writs in the nature of prerogative writs as understood in England; but the scope of these writs also is widened by the use of the expression 'nature' for the said expression does not equate the writs that can be issued in India with those in England, but only, draws as analogy from them. That apart, High Courts can also, issue directions, orders or writs other than the prerogative writs. It enables the High Court to mould the reliefs to meet the peculiar and complicated requirements of this, country. Any attempt to equate the scope of the power of the of this High Court under Article 226 of the Constitution with that of the English Court to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself. To say this, is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels.

A Division Bench of this Court in *Madangopal Kabra v. Union of India* observed as follows:

Under Article 226 Const. Ind., power is conferred upon the H.C. to issue not only writs in the nature of various categories specified in that article but those writs themselves as also directions & orders & they may be issued not only for the enforcement of fundamental rights but for any other purpose.

It is thus clear that the High Court can issue writs in the nature of prerogative writs as understood in England. The word 'nature' is very significant and as observed by their Lordships of the Supreme Court, it does not equate the writs that can be issued in India but those writs themselves as also directions & orders. Under Article 226 of the Constitution, the High Court can issue directions & orders.

8. In *Halsbury's Laws of England*, (Halisham Edition), Vol-9, page-77, the law is stated as follows on this point:

As a general rule the writ will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering

whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that such demand was met by a refusal. (See now Simonds Edition, Vol.11 page-106 where the word 'order' is used in the place of 'writ').

In *R.V. Hartley Revising Barrisrer* (1912) 3 K.B. 518 it was held that the requirement that before the Court will issue a mandamus there must be a demand to perform the act sought to be enforced and a refusal to perform, it cannot be applicable in all possible cases and does not apply where a person has by inadvertence omitted to do some act which he was under a duty to do, and where the time within which he can do it has passed. Similarly, it was held in *R.V. Breaknock and Abergavenny Canal Co.* (1935) 3 Ad. & El. 217 that it is not necessary that there should have been a refusal in so many words. All that is necessary is that the party complained of had made up his mind not to do what is his duty to do.

9. Agarwala, J., who was one of the member of the Full Bench of the Allshabad High Court in *Motital v. Uttar Pradesh Govt.* AIR 1951 All 25 has observed as follows:

The condition that there ought to be a demand and refusal before as application for mandamus is made, ought not to be considered a an absolute legal bar so as to deprive an applicant of the redress to which he is otherwise entitled.

In *Ramphal Singh v. State of Bihar* : [1952]1SCR135 , it was held that in the special facts of that case, the absence of such formal demand and refusal does not affect the competence of the application for a writ of mandamus. While holding this, the Division Bench relied on *Commissioner of Police Bombay v. Gordhandas Bhanji* : AIR1954 Pat235 , wherein, it was observed as under:

an evasion or shelving of a demand for justice is sufficient to operate as a denial within the meaning of s. 46, Special Relief Act.

In *Gadedhar v. State of West Bangal* : AIR1963 Cal565 , it was observed as follows:

As a general rule an application for a writ of Mandamus will not be granted unless it is shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that the demand was met with a refusal. But this general rule can not be applicable in all cases and does not apply where a person has by inadvertence omitted to do some act which he was under a duty to do and where the time within which he can do it has passed. So also a demand for justice by somebody also cannot be relied upon by the petitioner for a writ of mandamus. The demand for justice is a matter of substance and not a mere form. No demand need be made when the opposite party has placed himself in a position when he could not have complied with the demand or that he was determined to pursue it as of set purpose and such demand would be a mere idle ceremony.

The principles laid down in the aforesaid cases are to be applied to the facts of the case in hand.

10. After the receipt of the order (Ex. 17) dated June 15, 1971, the petitioner made a representation which has been referred to in para 3 of the writ petition. The representation was, of course, addressed to the Director, Community Project and Panchayat Department, copy of this representation was endorsed to the Director of Agriculture. It has specifically been mentioned as is clear from the representation produced in para 3 of the writ petition that he made a specific request to the Director that either he may be posted as a Vikas Adhikari or he may be posted on class f[posts in the Agriculture Department, for, the persons who were junior to him had been promoted while he was on deputation as Vikas Adhikari, The order (Ex. 18) dated July 12, 1971 is a consequential order which was issued in pursuance of the order (Ex. 17) dated June 15, 1971. The petitioner had made a representation dated July 14, 1971 which has been reproduced in para 5 of the writ petition. That representation was also addressed to the Director of Panchayat and Development Department. Its copy was endorsed to the Minister, Agriculture and Director, Agriculture Department. In that representation, specific prayer was made that the petitioner may be posted in the Agriculture Department on Class If posts on the basis of his seniority and 4hat until any arrangements, he may be appointed as Development Officer, Nimbahara. Item No.

8 of the endorsement made on the representation shows that its copy was sent to the Director, Agriculture Department, Rajasthan. Jaipur. In that endorsement, reference has been made to the petitioner's letter dated July 11, 1971. The case of the petitioner in this regard is that July 11, 1971 was mentioned by mistake as in fact it is July 12, 1971. In para 6 of the writ petition, the petitioner has stated that after the order of reversion was made, the Director of Agriculture by his letter dated 14-7-1971 intimated to the Director, Panchayat and Development Department that according to seniority, the petitioner is entitled to be posted as Vikas Adhikari. Having considered the order (Ex. 18) and the representation dated July 14, 1971 copies of which were endorsed to the Agriculture Minister, the Agriculture Secretary and the Director Agriculture Department, we find ourselves unable to agree with the learned Single Judge that the representation cannot be said to be a demand for justice in respect of the order (Ex. 18) dated July 12, 1971. The representation dated July 14, 1971 when it was endorsed to the Agriculture Minister, the Agriculture Secretary and the Director, Agriculture Department was equivalent to the making of a demand for the reliefs. The concerned non-pensioners No. 1,3 and 4 were made aware of the grievance of the petitioner and they were given an opportunity for rectifying the default and, therefore, the learned single Judge was not right in not entertaining the writ petition on the ground that it was not shown that the petitioner had made a demand for justice and it was met with refusal.

11. For the reasons aforesaid, the order dated July 30, 1971 of the learned single Judge is not sustainable.

12. The result is that the appeal is allowed and the order dated July 30, 1971 of learned single Judge is set aside. The writ petition shall be re-admitted to its original number and it is sent back to the single Bench for hearing and disposal according to law after issuing the rule to the non-petitioners. Costs of this appeal will be the costs in the petition.