Vikram Kumar Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-21-1998

Reported in : AIR1998Raj325; 1999(1)WLC235

Judge : B.S. Chauhan, J.

Acts : Constitution of India - Articles 14 and 226

Appeal No. : Civil Writ Petn. No. 902 of 1995

Appellant : Vikram Kumar

Respondent : State of Rajasthan and ors.

Advocate for Def. : Ravi Bhansali, Adv.

Advocate for Pet/Ap. : L.R. Kalla, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

B.S. Chauhan, J.

1. The instant case is an example which reveals the magnitude to which a litigant can abuse the process of the Court. The petitioner has entered into an agreement (contract) with the respondent No. 2 for a period of three years to run a canteen on

making certain amount of payment and after exploiting most of it, he has challenged the validity of the said agreement and prayed that the said judgment dated 5-6-93, contained in Annexure-1 to this petition, be quashed.

2. An auction was held on 10-5-92 to award a contract of the canteen by the respondent No. 2 in the area of Krishi Upaj Mandi Samiti, Mandore Road, Jodhpur. The petitioner was the highest bidder as he made a bid of Rs. 1,70,700/- for a period of three years. An agreement to the said effect was entered into between the parties on 5-7-92 (sic). After having an agreement, the petitioner was delivered the possession of the canteen and he made the payment of the amount on various dates and on 11-7-94 the dues remained only to the tune of Rs. 56,900/-. The respondent No. 2 asked the petitioner to deposit the said amount, the instant writ petition has been filed challenging the validity of the said agreement after acting upon it and deriving benefits of it for two years.

3. The only ground, on which it has been assailed is that a large number of persons, who had been in possession of the canteens or shops and dealing in eatables since 1975 and 1982 in the premises, were paying a very low premium as monthly licence-fee and the petitioner has been asked, in the auction, to deposit the huge amount and, thus, it was discreminatory and violative of Article 14 of the Constitution of India.

4. Heard Mr. L. R. Kalla, learned counsel for the petitioner and Mr. Ravi Bhansali, learned counsel for the respondents.

5. The issue of discrimination is not involved at all for the simple reason that the persons, whose details have been given in para No. 12 of the petition, had been running the shops and selling eatables from 17-7-75, 16-4-80 and 1-10-82. They had been given the premises on monthly licence-fee. The petitioner had been given the contract on 5-6-93. Not only that, there are various other persons who had also taken the canteen on contract and paid huge amounts as is evident from the contents of para No. 12 itself. The respondent No. 2 had taken a specific plea in the writ petition that the petitioner had given the bid with open mind and open eyes and there was no assurance of any kind, oral or in writing, that the other persons who are running the shops and selling the eatables by paying licence-fee,

would be evicted or their licences would not be renewed. It was further been clarified that earlier me Government had taken a policy-decision to allot the shops on licence and subsequently as the policy was changed, the shops had been allotted by auction. It is not averred by the petitioner that subsequent to the agreement with the petitioner respondent No. 2 has granted a licence to any person on the basis of monthly licence-fee. In view of these specific facts and circumstances the petitioner cannot claim that he has been given a hostile discrimination or the action of the respondent No. 2 is arbitrary. As such the submission made by the learned counsel for the petitioner is preposterous.

6. There is another aspect of the matter. The petitioner had made the bid voluntarily knowing the contents of the contract and a person, after securing a contract, and taking into account its terms and conditions, cannot, later, be allowed to assail the validity of the contract on any ground by invoking the writ jurisdiction of this Court. In Har Shanker v. Deputy Excise and Taxation Commissioner, AIR 1975 SC 1121, the Apex Court has held as under (at p. 1126 of AIR) :--

'The writ jurisdiction of the High Court under Article 226 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred.'

7. Similarly, in Yasar Shafi v. State of Jammu and Kashmir, (1966) 5 SCC 740, the Apex Court has observed as under :

'A person who enters into certain contractual obligation with his eyes open and works the entire contract, cannot be allowed to turn round. .... and question the validity of these obligations or the validity of the Rules which constitute the terms of contract. The extraordinary jurisdiction of the High Court under Article 226, which is of a discretionary nature and is exercised only to advance the interest of justice, cannot certainly be employed in aid of such persons. Neither justice nor equity is in their favour.'

8. Moreover, a party cannot be permitted to dispute the contractual obligations by invoking the extraordinary writ jurisdiction. In Bareilly Development Authority v. Ajay Pal Singh, AIR 1989 SC 1076, a similar contention was raised. The Apex Court considered a catena of judgments, particularly, Radha Krishna Agarwal v.

State of Bihar, AIR 1977 SC 1496; Premji Bhai Parmar v. Delhi Development Authority, AIR 1980 SC 738 and Divisional Forest Officer v. Vishwanath Tea Company Ltd., AIR 1981 SC 1368, and arrived at the conclusion that where the contract entered into between the State and the persons agreed is non-statutory and purely contractual and the rights are governed only by the terms of the contract, writ petition under Article 226 of the Constitution of India is not maintainable. Similar view has been taken in State of Gujarat v. Meghji Pethraj Shah Charitable Trust, (1994) 3 SCC 552 : (1994 AIR SCW 2584) and Noida Entreprenuers Association v. U.P. Financial Corporation, 1994 Supp (2) SCC 108.

9. However, in Indore Development Authority v. Smt. Sadhna Agarwal, (1995) 3 SCC 1 : (1995 AIR SCW 1613), the Supreme Court affirmed and approved the view taken by the Apex Court in Bareilly Development Authority (AIR 1989 SC 1076) (supra), but it further observed that the High Court, while exercising its extraordinary jurisdiction under Article 226 of the Constitution, may satisfy itself on the materials on record that the State has not acted in an arbitrary or erratic manner. A similar view has been taken by the Supreme Court in Union of India v. Graphic Industries Company, (1994) 5 SCC 398 : (1994 AIR SCW 4617). In the said judgment the Apex Court referred to its earlier judgments, particularly, in Kumari Srilekha Vidyarthi v. State of U.P., (199l) 1 SCC 212: (AIR 1991 SC 537), Mahavir Auto Stores v. Indian Oil Corporation, (1990) 3 SCC 752 : (AIR 1990 SC 1031); Dwarka Das Marfatia v. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293 : (AIR 1989 SC 1642) and observed that even in contractual matters public authorities have to act fairly and if the State or its instrumentalities have failed to do so, then writ jurisdiction of the High Court under Article 226 of the Constitution can be resorted to because acting unfairly would amount to flagrant violation of Article 14 of the Constitution.

10. Thus, it is settled proposition of law that if the matter is governed by a contract, the writ is not maintainable since it is a public law remedy and is not available in private field, e.g., where the matter is governed by a non-statutory contract and, thus, in the instant case the petitioner cannot be permitted to dispute the contractual obligations entered into by him under the ordinary law particularly in view of the fact as explained above that because of the change of policy, new

contracts have to be awarded by auction and on payment of monthly licence-fee.

11. As this Court has granted the interim relief vide order dated 16-5-96 and the terms of the contract came to an end on 4-6-96 and the petitioner is continuing on the strength of the interim order, it is the solemn duty of the Court to compensate the respondent No. 2. A Division Bench of this Court (to which I was a Member) has considered this aspect while deciding D. B. Civil Special Appeal No. 1270/1997, Smt. Aqeela v. State of Rajasthan, decided on 17-1-98, wherein it was held that:--

'There can be no quarrel on the legal proposition that no party can suffer by the action of the Court and when the High Court is exercising its powers under Article 226 of the Constitution of India, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised. The institution of litigation by a party should not be permitted to confer an unfair advantage on the party responsible for it. (Vide: Grindlays Bank Limited v. Income-tax Officer, AIR 1980 SC 656; Ram Kishan Verma v. State of Uttar Pradesh, AIR 1992 SC 1888; State of Madhya Pradesh v. M. V. Vyasaya & Company (AIR 1997 SC 993) (supra) and Smt. Rampati Jayaswal v. State of Uttar Pradesh, AIR 1997 All 170).

It is, also, settled law that no litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot he allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately devoid of any merit, shows that a frivolous writ petition had been filed. The maxim 'Actus Curiae Neminem Gravabit' is applicable in such a case, which means that the act of the Court shall prejudice no-one. In such a situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. (Vide Dr. A. K. Sircar v. State of Uttar Pradesh, 1993 Suppl

(2) SCC 734; Shiv Shanker v. Board of Directors, Uttar Pradesh State Road Transport Corporation, 1995 Suppl (2) SCC 726; Kanoriya Chemicals and Industries Ltd. v. U.P. Electricity Board, AIR 1994 All 273 and Ugam Singh v. State of Rajasthan, (1997) 3 Raj LW 1517 : (1997 Lab IC 3438).'

12. In the instant case the petitioner had been the beneficiary of the interim order by retaining the possession of the premises even after expiry of the contract and the respondents suffered a huge loss as they could not give the canteen further on contract to any other person, the petitioner is directed to pay the balance amount, if any, with interest @ 15% per annum and the contract money for the period subsequent to the expiry of the contract on the same rate and with same rate of interest.