

THE INDIAN LAW REPORTS

PUNJAB SERIES

CIVIL WRIT.

Before Kapur, J.

SHRI CHATTAR SINGH,—*Petitioner.*

versus

1953

April, 24th

THE STATE OF PUNJAB AND THE DISTRICT FOOD AND
CIVIL SUPPLIES CONTROLLER, SIMLA,—*Respondents.*

Civil Writ No. 37 of 1953.

Constitution of India—Article 226—Mandamus—Whether can issue for purposes of enforcement of a contract or to prevent a breach of contract—Clause in the contract giving right to the State to put an end to the contract at any time without being liable for any compensation—Whether offends Article 14 of the Constitution.

A contract was entered into between the State and the petitioner after tenders had been called and the petitioner's tender was accepted. Clause 7 of the contract gave to the Government the right to cancel the contract at any moment without assigning any reason and without their being liable for any compensation. The contract was for one year but the Government cancelled it after it had run for about three months. The petitioner filed a petition for a writ of mandamus restraining the Government from giving effect to the cancellation order on the ground that Clause 7 of the contract was discriminatory and infringed the fundamental right of the petitioner under Article 14 of the Constitution.

Held, that the provisions of Article 226 of the Constitution cannot be used for the purposes of enforcement of a contract or to prevent a breach of contract.

Held also, that no kind of discrimination was introduced by the mere fact of there being a clause authorising the State to put an end to the contract between the State and the petitioner at any time and it did not infringe Article 14 of the Constitution.

Ex parte Pering (1), *Dubar Goala v. Union of India* (2), *B. B. Light Railway Co., Ltd. v. State of Bihar* (3), and *Naubat Rai's Case* (4), relied on; *Barbier v. Connolly* (5), and *Shelley v. Kraemer* (6), distinguished and held not applicable.

Petition under Articles 226 and 227 of the Constitution of India, praying as under :

1. That this Hon'ble Court may be pleased to declare that the termination of the contract of the petitioner referred to in the petition in the midst of its satisfactory performance by the petitioner is based on no reason whatever and has been done for considerations which are wholly extraneous to the purposes of the contract and mala fide and constitutes a violation of the petitioner's fundamental right under Article 14 of the Constitution.
2. That the respondents may be restrained from enforcing the order complained of by the issuance of a writ of mandamus and or prohibition or any other writ or order as this Hon'ble Court may be pleased to deem proper in the facts and circumstances of this case.
3. That pending the final disposal of this petition, the respondent State may be restrained from giving effect to the above order from the afternoon of 28th of February, 1953, as contemplated in the said order or from entering into any formal contract with the said Labour Co-operative Multipurposes Society, Ltd., Simla, or any other person.

D. D. KHANNA, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondents.

ORDER

J.L. Kapur, J.

J. L. KAPUR, J. This is a rule directed against the State Government under Article 226 to show cause why a writ of mandamus should not be issued in regard to the contract entered into between the petitioner and the State.

The contract which is complained of was made on the 12th of December, 1952, and was to begin from the 4th of December, 1952, and was to continue up to the 3rd of December, 1953. In this

(1) 111 E.R. 1040
 (2) A.I.R. 1952 Cal. 496
 (3) A.I.R. 1951 Pat. 231
 (4) I.L.R. 1953 Punj. 472
 (5) 113 U.S. 27
 (6) 334 U.S. 1

agreement there is a clause (clause 7) which gives to the Government the right to cancel the contract without assigning any reason and without their being liable for any compensation and this could be done at any moment. The submission of the petitioner is that his contract was put an end to "as a result of executive action which was capriciously taken and the action of the Government is *mala fide*" and that it has resulted in a breach of his fundamental right which he claims under Article 14 of the Constitution.

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Article 14 provides for equality before the law and is in the following terms:—

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

According to the petitioner, the breach of fundamental right lies in this that clause 7 is discriminatory and the provision contained therein deprives him of the right to go to a Court of law to enforce a suit for compensation and undue favour has been done to the person in whose favour the contract has now been made.

By way of preliminary objection the learned Advocate-General has submitted that Article 226 is not meant to enforce contracts or to prevent the breach of those contracts. There is no provision in the Contract Act which prohibits contracting out by the State and in this particular case there is no discrimination of any kind whatsoever. In support of his submission that in its supervisory jurisdiction this Court should not issue any order for the enforcement of a contract, he relies on an English judgment *Ex parte Pering* (1). This was a suit in which the petitioner wanted to enforce his right under a patent and Littledale, J., said:—

"The claim seems to be in the nature of a *quantum meruit* for the use of the patent. We cannot grant the *mandamus*."

Shri Chattar Petteson, J., observed:—

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“The claim, if valid, must be founded on a contract. But we cannot grant a mandamus to a public board, ordering them to carry a contract into effect.”

And Coleridge, J., concurred.

Mr. Justice Bose in *Dubar Goala v. Union of India* (1), said at page 498 :—

“It is an elementary proposition that a mandamus does not lie to enforce or restrain the performance of a contractual obligation (*P. K. Banerjee v. Simonds*, (2). Further it is inappropriate to grant a declaration in an application under Art. 226 that a particular contract is illegal and therefore unenforceable because it contains a provision for *begar* or forced labour. The petitioners have voluntarily entered into the contract. There is no suggestion that at the initial stage when they first came into contact with the Railway Contractor (opposite party No. 4) they were compelled to enter into the agreement under threat or duress. Even if the agreement had in fact been entered into under duress the remedy would be by an action and not under Art. 226 of the Constitution. It is because the porters offered to undertake the work of a porter on the terms and conditions of a contract applicable to all porters of the same class that they have rendered themselves liable to do this work of two hours a day for the Railway. It is open to the petitioners to give up the work of railway porters and remove themselves from the jurisdiction of the railway administration or to cancel their obligation with the railway contractor. The very idea of a contract or agreement

(1) A.I.R. 1952 Cal. 496

(2) A.I.R. (34) 1947 Cal. 307 at pp. 314-15

negatives any suggestion of forced labour." Shri Chattar Singh

The Patna High Court in *B. B. Light Rly. Co., Ltd. v. State of Bihar* (1), seemed to be of the same opinion. Das, J., said at page 241:—

"None of those decisions are any authority for the proposition that a party who has entered into an agreement with another party can ask a superior Court for a writ of mandamus under Article 226 when illegally dispossessed by the latter party in breach of the agreement, instead of going to the ordinary Civil Court of competent jurisdiction for the necessary reliefs. I have great doubt if Article 226 of the Constitution can be invoked in a case of this nature. The aggrieved party in this case can get an effectual and adequate remedy by an ordinary action in the Civil Court—for enforcement of the agreement, for recovery of possession and damages, if any. The power to issue writs under Article 226 of the Constitution is an extraordinary power, and in several recent decisions of this Court it has been held that where there is an alternative adequate remedy, this Court will be reluctant to exercise its powers under Article 226."

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What counsel for the petitioner wishes me to do is that I should first embark on an inquiry and find out whether there is a breach of contract and then enforce it in my supervisory jurisdiction by directing the State not to break that contract and the chief ground that he gives for this is that thereby a breach of his fundamental right would be prevented. I cannot see what fundamental right arises in the case of a contract such as this. The contract was entered into between the State and the petitioner after tenders had been called and the petitioner's tender was accepted. I do not see that there is any kind of discrimination

(1) A.I.R. 1951 Pat. 231

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introduced in this case by the mere fact of there being a clause authorising the State to put an end to the contract between the State and the petitioner and making the contract with somebody else. Two judgments have been relied upon by Mr. D. D. Khanna. One is *Barbier v. Connolly*, (1). That was a case of a laundry and the order made by the Municipal authorities was that no laundry should work between the hours of 10 in the night and 6 in the morning. This was upheld on the ground that this was within the police powers of the State. I cannot see how the observation of Mr. Justice Field help the petitioner in this case. The other case relied upon by Mr. D. D. Khanna was from the district of Columbia, *Shelley v. Kraemer* (2). That was a case where a contract had been entered into between two private parties and one of the restrictions in the contract was that the transferee shall be debarred from transferring the property to any Negro. This was held to be against public policy of the United States and therefore the Court refused to enforce this part of the contract. There is no such thing in the present case.

In this Court we have held in *Naubat Rai's* case (3), decided on 15th September, 1952, that provisions of Article 226 do not apply for getting a declaration. I cannot see how the provisions of that Article can be used for purposes of enforcement of a contract or to prevent a breach of contract. I am, therefore, of the opinion that this petition should be dismissed and I would therefore discharge the rule with costs. Counsel fee Rs. 75.

(1) 113 U.S. 27

(2) 334 U.S. 1

(3) C.W. 279 of 1951=I.L.R. 1953 Punjab 472