



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.06.2021

PRONOUNCED ON : 23.06.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P(MD)No.5485 of 2014

A.S.Marimuthu

.. Petitioner

Vs.

1.The Ministry of Telecommunications,
Government of India,
No.20, Sanchar Bhawan,
Ashoka Road,
New Delhi-110 001.

2.The Chairman,
Bharat Sanchar Nigam Limited(BSNL),
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath,
New Delhi- 110 110.

3.The Divisional Engineer,
(Rural),
Bharat Sanchar Nigam Limited,
Rajapalayam-626 117,
Virudhunagar District.

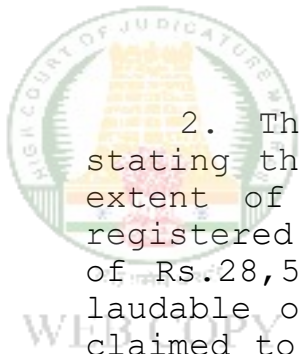
.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to consider the representation dated 10.10.2013 made by the petitioner through his counsel by requesting the respondents to get the sale deed 6.9.2001 registered as Document No.3110 of 2001 on the file of the Sub Registrar of Rajapalayam, either by getting it cancelled, or to reconvey the same to the petitioner either by any release deed or grant and deliver back symbolically to the possession of the vacant land bearing Survey No.74/1B4 (Hectare 0.31.5) area 59 cents out of 78 cents situated in Samusigapuram Village, Rajapalayam Taluk, Virudhunagar District, within a time frame as may be fixed by this Court.

For Petitioner	:	Mrs.P.Jessi Jeeva Priya
For Respondent No.1	:	Mr.M.Rajendran
For Respondent No.2	:	Mr.S.Balakrishnan

ORDER

This writ petition is a text book as to how the instrumentality of a State has attempted to unjustly enrich itself and had thereby virtually grabbed the property belonging to the petitioner measuring an extent of 59 cents by paying a paltry sum of just Rupee one.



2. The petitioner has knocked the doors of this Court by stating that he is the owner of the subject property measuring an extent of 59 cents, which was purchased by him by virtue of a registered sale deed dated 12.4.1999 by paying a sale consideration of Rs.28,520/-. The petitioner had purchased this property with a laudable object of constructing a memorial for his father, who is claimed to be a philanthropist and a successful businessman and who was very popular in the locality. During the year 2001, the third respondent was in search of a suitable land for constructing a telephone exchange for Bharat Sanchar Nigam Limited (BSNL). The third respondent had approached the petitioner and the petitioner had informed the third respondent that he will give the property free of cost to BSNL provided that the building in which the telephone exchange will operate should be named after the father of the petitioner.

3. The further case of the petitioner is that the third respondent informed him that the property cannot be taken as a gift as per the policy of the Government. The petitioner had informed the third respondent that he will pay a token consideration of Rupee one for conveying the property and that the petitioner is more interested in the building being named after his illustrious father.

4. A sale deed ultimately came to be executed in favour of BSNL by a registered sale deed dated 06.09.2001. A careful reading of the sale deed shows that the petitioner had received only a token consideration of Rupee one. Of course, the stamp duty and registration charges were paid on the basis of the guideline value.

5. The grievance of the petitioner is that no construction came up in the property and whenever the petitioner approached the respondents, he was informed that the administrative sanction must be accorded for putting up the construction. There was absolutely no development for nearly 13 years and left with no other alternative, the present writ petition was filed in the year 2014 seeking for the cancellation/reconveyance of the property in favour of the petitioner.

6. A counter affidavit has been filed on behalf of the respondents. A categorical stand has been taken in the counter affidavit to the effect that the construction of the telephone exchange did not go through due to procedural formalities and administrative difficulties. It is also stated that even if a building is constructed, it will not be named after the father of the petitioner. A vague averment has been made to the effect that there is still a proposal to construct the telephone exchange.

7. When the matter came up for final hearing on 16.04.2021, this Court was shocked on hearing the facts of the case wherein a property of an extent of 59 cents has been knocked off by paying



Rupee one to the petitioner. This Court therefore passed the following order:

" It is seen from records that the sale deed has been executed by the petitioner in favour of the third respondent by just receiving Rupee one. What has been conveyed to the third respondent is an extent of 59 cents. Obviously the land has been conveyed to the respondents for some purpose. Therefore, the respondents being a responsible Department must come before this Court and specifically take a stand as to what they intend to do in the land that was sold in their favour by the petitioner.

2.The learned Standing Counsel appearing on behalf of the respondents sought for some time to get instructions in this regard.

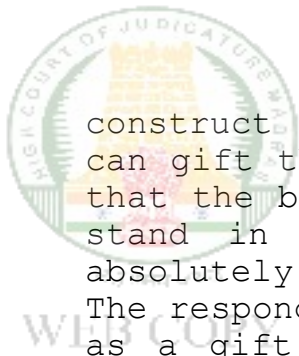
3.Post this case under the caption 'for orders' on 09.06.2021"

8. When the matter came up for hearing on 18.06.2021, the Central Government Standing Counsel reiterated the very same stand of BSNL that was taken in the counter affidavit and submitted that the property belongs to BSNL and the petitioner does not have any right to seek reconveyance. Surprisingly even in the year 2021, no building has been put up by the respondents and it continues to remain at the stage of proposal for the last 20 years.

9. Heard the learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the respondents 1 and 2.

10. There are no disputes on the facts involved in the present writ petition. Admittedly, the property had been conveyed by the petitioner in the year 2001 in favour of BSNL by receiving a token consideration of Rupee one. The extent of property that was conveyed was admittedly 59 cents. There are some cases where just by hearing the facts of the case, it will shock the conscience of the Court. The Court has to put itself in the place of an ordinarily prudent man, who is possessed of a normal intelligence or reason. If the facts of the present case are put to any such ordinarily prudent man, he will be shocked and bemused and he will never be able to consider this transaction to be reasonable. A man with a normal intelligence will not convey a land measuring 59 cents for pittance by receiving Rupee one, unless there was a purpose behind such conveyance.

11. In the present case, the petitioner has come up with a honest version by stating that he wanted to construct a memorial in the property in the name of his illustrious father and at that point of time, the third respondent was looking for a property to

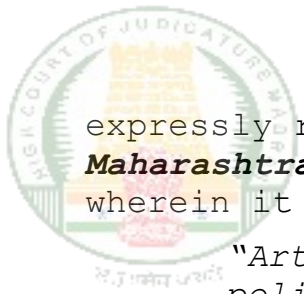


construct a telephone exchange and the petitioner thought that he can gift this property to BSNL free of cost with the only condition that the building in which the telephone exchange is operated, will stand in the name of the father of the petitioner. There is absolutely no ground to doubt this stand taken by the petitioner. The respondents have taken a stand that they cannot get the property as a gift or settlement and therefore insisted that a sale deed should be executed by receiving a token consideration. The petitioner conceded even for this request made by BSNL. To the shock of the petitioner, no building was constructed for more than 13 years and the petitioner found that the purpose of conveying the property for almost free of cost, has been defeated and therefore left with no other option, the present writ petition has been filed before this Court.

12. In a petition under Article 226, a writ court is under a constitutional obligation to probe and satisfy its conscience that the action of the State or instrumentality of the State is fair and not arbitrary. The fact that the issue falls within the realm of what would conventionally be termed as a contractual dispute cannot be a bar to exercise powers under Article 226. An authoritative re-statement of this legal position is contained in the recent decision of the Supreme Court in **Unitech Limited v. TSIIC (2021 SCC Online SC 99)** where Chandrachud, J opined thus:

"Therefore, while exercising its jurisdiction under Article 226, the Court is entitled to enquire into whether the action of the State or its instrumentalities is arbitrary or unfair and in consequence, in violation of Article 14. The jurisdiction under Article 226 is a valuable constitutional safeguard against an arbitrary exercise of state power or a misuse of authority. In determining as to whether the jurisdiction should be exercised in a contractual dispute, the Court must, undoubtedly eschew, disputed questions of fact which would depend upon an evidentiary determination requiring a trial. But equally, it is well-settled that the jurisdiction under Article 226 cannot be ousted only on the basis that the dispute pertains to the contractual arena. This is for the simple reason that the State and its instrumentalities are not exempt from the duty to act fairly merely because in their business dealings they have entered into the realm of contract."

13. BSNL being an instrumentality of the State is bound to act reasonably and fairly in its dealings with citizens. It is settled law that a greater degree of probity and fairness is expected from state agencies since any act which fails to satisfy the test of reasonableness would be violative of Article 14. This principle was



expressly reiterated by the Supreme Court in **Reliance Energy Ltd. v. Maharashtra State Road Development Corpn. Ltd.**, [(2007) 8 SCC 1], wherein it was observed thus:

"Article 14 applies to government policies and if the policy or act of the Government, even in contractual matters, fails to satisfy the test of "reasonableness", then such an act or

decision would be unconstitutional."

14. In the case on hand, the BSNL has entered into a contract with a citizen paying him a handsome Rupee one as consideration, and promising to put up a building in the premises. Having induced the petitioner to part with his property on these terms, the BSNL reneged on its promise to put up a building. The net result is that the petitioner suffered a double whammy. He has lost his property, and the building that was promised has not come up for the past 20 years, although the BSNL says (and is still saying) that it intends to put up a superstructure. With BSNL playing cloak and dagger, the petitioner has been deprived of a valuable property of 59 cents for just Rupee one.

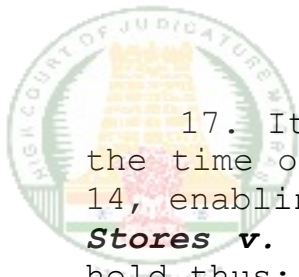
15. The question, therefore, is what is the power of the Court under Article 226 to annul what it considers a wholly unfair, arbitrary and unreasonable contract involving a state agency. The principles in this regard were elegantly set out by Madon, J., in **Central Inland Water Transport Corpn. v. Brojo Nath Ganguly**, [(1986) 3 SCC 156], wherein it was observed thus:

"Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14.



This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

16. On facts, the aforesaid principles would apply on all fours since it is impossible to contend, with any degree of seriousness, that the bargaining power of the petitioner and BSNL were on terms that could be said to be equal. The very fact that the petitioner was induced to part with his property for a ridiculous sum of Rupee one makes such a contention wholly improbable.



17. It is also well settled that where arbitrariness exists at the time of entering into a contract, the same would offend Article 14, enabling the writ Court to annul such an action. In **Mahabir Auto Stores v. Indian Oil Corpn.**, reported in (1990) 3 SCC 752, it was held thus:

"12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in *Radha Krishna Agarwal v. State of Bihar* [(1977) 3 SCC 457] . It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See *Radha Krishna Agarwal v. State of Bihar* [(1977) 3 SCC 457] at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly



dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to *E.P. Royappa v. State of Tamil Nadu* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165] , *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] , *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] , *R.D. Shetty v. International Airport Authority of India* [(1979) 3 SCC 489] and also *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay* [(1989) 3 SCC 293] . It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."

18. The sale in question is opposed to all norms of fairness, good conscience and equity with the result that it is clearly opposed to public policy as well. In ***Board of Control for Cricket in India v. Cricket Association of Bihar***, [(2015) 3 SCC 251], the Supreme Court explained the concept of public policy in the context of non-arbitrariness by State agencies, and observed thus:

"96. To sum up: public policy is not a static concept. It varies with times and from generation to generation. But what is in public good and public interest cannot be opposed to public policy and vice versa. Fundamental Policy of Law would also constitute a facet of public policy. This would imply that all those principles of law that ensure justice, fair play and bring transparency and objectivity and promote probity in the discharge of public functions would also constitute public policy. Conversely, any deviation, abrogation, frustration or negation of the salutary principles of justice, fairness, good conscience, equity and objectivity will be opposed to public policy. It follows that any rule, contract or arrangement that actually defeats or tends to defeat the high ideals of fairness and objectivity in the

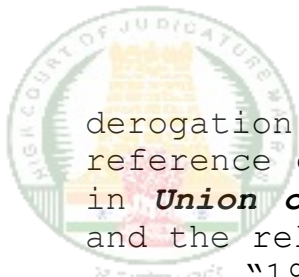


discharge of public functions no matter by a private non-governmental body will be opposed to public policy."

19. Even when the State or its instrumentalities enter into a private contract, it is expected that they maintain a higher degree of fairness and reasonableness and it should not be assessed from the point of view of a private individual who may be driven with the only aim of making a personal gain out of the transaction. Therefore as stated supra Article 14 will come into play even in contractual matters where there is an apparent illegality and arbitrariness. Useful reference can be made to the judgment of **Shrilekha Vidyarthi (Kumari) v. State of U.P.**, reported in **(1991) 1 SCC 212 : 1991 SCC (L&S) 742 at page 237** and the relevant portion is extracted hereunder:

"24. The State cannot be attributed the split personality of Dr Jekyll and Mr Hyde in the contractual field so as to impress on it all the characteristics of the State at the threshold while making a contract requiring it to fulfil the obligation of Article 14 of the Constitution and thereafter permitting it to cast off its garb of State to adorn the new robe of a private body during the subsistence of the contract enabling it to act arbitrarily subject only to the contractual obligations and remedies flowing from it. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. There is a basic difference between the acts of the State which must invariably be in public interest and those of a private individual, engaged in similar activities, being primarily for personal gain, which may or may not promote public interest. Viewed in this manner, in which we find no conceptual difficulty or anachronism, we find no reason why the requirement of Article 14 should not extend even in the sphere of contractual matters for regulating the conduct of the State activity."

20. The attitude of unjust enrichment is frowned upon by Courts and it is not encouraged even when it comes to transactions involving to private individuals. When it comes to a State or its instrumentalities, it is completely forbidden since it will be in



derogation of the constitutional scheme and public policy. Useful reference can be made to the judgment of the Hon'ble Supreme Court in **Union of India vs. Dhanwanti Devi**, reported in (1996) 6 SCC 44 and the relevant portion is extracted hereunder:

"19. The concept of unjust enrichment by the State is alien to and in derogation of the constitutional scheme and public policy. The general principle is that one should not be permitted to unjustly enrich himself at the expense of others. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belongs to another. Three elements must be established in order to sustain a claim based on unjust enrichment, the benefit conferred upon the defendant by the plaintiff; appreciation of knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without payment of its value."

21. Every citizen of this country has been vested with a constitutional right under Article 300 A of the Constitution of India which guarantees right to property. The State or its instrumentalities cannot expropriate the property of a citizen. The facts of the present case virtually takes away the property right of the petitioner which is guaranteed under the constitution.

22. In view of the above discussion, this Court has absolutely no hesitation in coming to a conclusion that the contract entered into between the petitioner and BSNL by virtue of the sale deed dated 06.09.2001 is totally unfair, arbitrary and unreasonable. Therefore, this Court has a constitutional obligation to interfere with the same by exercising its jurisdiction under Article 226 of the Constitution of India.

23. In the result, there shall be a direction to the respondents to pay the market value of the property as it stood on the date of execution of the sale deed that is on 06.09.2001 along with interest at the rate of 9% per annum from 06.09.2001 till the date of the payment of the market value of the property to the petitioner or in the alternative, it is also open to the respondents to reconvey the property to the petitioner if there is no proposal to construct any telephone exchange in the property. In either case, the respondents are directed to comply with this direction within a period of eight weeks from the date of receipt of a copy of this order.



24. This writ petition is accordingly allowed. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

WEB COPY

/ /2021

Sub Assistant Registrar(CS)

PJL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Ministry of Telecommunications,
Government of India,
No.20, Sanchar Bhawan,
Ashoka Road,
New Delhi-110 001.

2.The Chairman,
Bharat Sanchar Nigam Limited(BSNL),
Bharat Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath,
New Delhi- 110 110.

3.The Divisional Engineer,
(Rural),
Bharat Sanchar Nigam Limited,
Rajapalayam-626 117,
Virudhunagar District.

+1 CC to M/s.M.RAJENDRAN, Advocate (SR-19731[F] dated 21/06/2021)

+1 CC to M/s.P.JESSI JEEVA PRIYA, Advocate (SR-19989[F] dated 23/06/2021)

+1 CC to M/s.M.RAJENDRAN, Advocate (SR-20233[F] dated 25/06/2021)
W.P(MD)No.5485 of 2014
23.06.2021

KB(30.06.2021) 11P 6C