A

K. SREEDHARA REDDY

v.

THE CONSERVATOR OF FORESTS AND ORS.

September 12, 1975

[V. R. KRISHNA IYER, A. C. GUPTA AND S. MURTAZA FAZAL ALI, JJ.]

B

Hyderabad Forest Act—Forest Contract rules—Rule 29-30-31—*Whether termination of contract to precede imposition of penalty—Natural Justice.*

The appellant & Forest Contractor felled trees in excess of the permitted number authorised by the contract entered into by him with the State of Andhra Pradesh. Certain penalty was imposed on the appellant under rule 29 of he Forest Contract Rules framed in exercise of the powers conferred by Hyderabad Forest Act. The Forest Officer found that the appellant felled more trees and, therefore, gave a show cause notice to the appellant. The appellant prayed for re-enumeration of the trees given from the forest. He was given an opportunity which was not availed by him to check the stumps in the coupe as desired by him. Consequently, a penalty was levied. Thereafter, the contract was terminated. After the termination of the contract the process for recovery of the penalty was started. Rule 29 reads as under :

C

(1) Penalty on termination of a contract for breach of conditions :—

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Every forest contract shall be in writing in the form annexed hereto and shall contain a provision whereby the forest contractor binds himself to do all the duties and acts required to be done by or under the contract, and convenants that he and his servants and agents shall abstain from all the acts forbidden by or under such contract.

(2) The sums to be mentioned in a forest contract as payable in case of a breach of any such stipulation shall not exceed one-quarter of the total consideration to be paid by the contractor, and shall be recoverable in accordance with the provisions of the Hyderabad Forest Act 1355 F and of this rule.

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Provided that where such consideration is not an ascertained amount the forest officer executing the contract shall make an estimate of the total amount that would be payable if the contract were fully complied with, and such estimate shall be deemed to be for the purpose of this sub-rule, the total consideration to be paid by the contractor.

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(3) This sum shall be realized from the contractor if the contract has been duly terminated in accordance with the provisions of rule 30, and then only under the written order of the forest officer executing the contract."

The appellant filed a Writ Petition in the High Court challenging the validity of the imposition of the penalty. The learned Single Judge allowed the Writ Petition but the Division Bench allowed the appeal filed by the State.

G

In an appeal by certificate, it was contended by the appellant before this Court that the termination of the contract for breach of conditions mentioned in rule 29 should precede the impost of penalty. It was further contended that the principles of natural justice were violated. The respondent contended that ascertaining the amount which is to be levied as a penalty need not be preceded by the termination of the contract.

Dismissing the appeal,

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HELD : 1. It is clear that in the absence of a statutory exclusion of natural justice any exercise of power prejudicially affecting another must be in conformity with the rules of natural justice. In the present case, we are satisfied

A that there is no foundation for the grievance of the appellant on the score of natural justice since an opportunity was afforded to the appellant before finally quantifying the penalty to be levied but the appellant did not avail himself of the opportunity. [773-E-F]

2. On a true construction of rule 29 once a Forest Authority detects a breach it must investigate the extent and estimate, the nature and degree of damage caused by the breach. If it is serious they must proceed to ascertain B the sum to be fixed as penalty. In doing this, a reasonable opportunity must be given to the affected party. After that, the penalty shall be quantified and the contract shall be terminated in the event the authorities come to the conclusion that the breach is grave enough for that drastic step. Once the contract is terminated the last procedure is realisation which can in no case be before the termination of the contract. [774H, 775 A-B.]

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 814-815 C of 1968.

From the Judgment and Order dated 7th September, 1966 of the Andhra Pradesh High Court in Writ Appeal Nos. 71 and 72 of 1964 respectively.

R. V. Pillai, for the appellant.

D *P. Ram Reddy* and *G. N. Rao*, for the respondents.

The Judgment of the Court was delivered by

KRISHNA IYER, J. A forest contractor—the appellant—who had allegedly excess felled trees beyond the permitted number under two contracts entered into by him with the State of Andhra Pradesh, was E directed by the Conservator of Forests—the first respondent—to suffer two levies. One item represented the loss sustained by the State on account of the illicit cutting and the other was a penalty imposed under r. 29 of the Forest Contract Rules (for short, the Rules) issued in exercise of the powers conferred under ss. 44 and 79 of the Hyderabad Forest Act, 1355F (for short, the Act).

F The factual story out of which the legal controversy springs may be narrated in simple terms. Admittedly, the appellant was granted two forest contracts to fell and remove a specific number of trees from government forest, in accordance with the Act and the Rules. The Contracts were of two years' duration ending with 31st December 1960. It was found by the Forest Officers that the appellant contrac- G tor had felled more trees and so he was given a notice calling for his explanation about this detected breach of condition.

In C.A. 814 of 1968 such notice was issued on June 25, 1960 but no explanation was forthcoming. So the Conservator determined the amount representing the loss caused by the unauthorised cutting of trees. On July 22, 1960 the District Forest Officer informed the H appellant that the Conservator of Forest, who is the appropriate authority under the Rules, had fixed Rs. 11,426/- as representing the loss sustained by Government and Rs. 11,250/- as penalty under r. 29. The contractor, thereupon, prayed for re-enumeration of the

trees cut from the forest by his application, dated July 30, 1960. He was informed by the forest authorities, by communication dated August 24, 1960 to check the stumps in the coupe as desired by the petitioner before September 15, 1960. This opportunity was also not availed of by the appellant. Consequently, the Conservator levied a penalty, as earlier proposed. Thus there were two items (i) the loss caused by illicit cutting; (ii) the penalty imposed under the rules for breach of conditions of the contract. There were three small amounts of fine also, all together resulting in a sum of Rs. 23,088.00. Eventually, the contract was terminated on December 28, 1960 under r. 30 of the Rules. Long later, in January 1962, the amount stated above was sought to be realised by revenue recovery process by the Tahsildar, by his attachment order, dated January 8, 1962. Thereupon a writ petition was filed by the appellant challenging the demand. He succeeded before the learned Single Judge but a Division Bench, in appeal carried by the State, reversed this order and the appellant has invoked the jurisdiction of this Court under Art. 133(I) (a) and (b) of the Constitution.

In C.A. 815 of 1968 a similar excess felling by the same contractor was detected by the concerned officials and notice was issued to the appellant to explain how he had felled 255 trees in excess of the contractual figure. The appellant denied the illicit felling whereupon a date was fixed for checking the coupe in his presence, as requested by him. The contractor however did not avail himself of the opportunity so afforded despite a second date for inspection being fixed to suit his convenience. Eventually the Conservator of Forests fixed the loss sustained by government on account of the illicit felling of trees and also the penalty for breach of the conditions of the contract. This was done on October 16, 1960 and the appellant was asked to pay the sum by notice dated October 28, 1960. On the same date, the lease was also terminated.

Long later, on January 9, 1962 proceedings for realisation of the amounts were initiated by the Tahsildar. This step drove the contractor to move a writ petition, which shared the fate, at the single Judge's level and in appeal, of the sister writ petition already adverted to. In the same manner he has moved this Court in appeal, by certificate.

Two points were urged by Mr. R. V. Pillai, learned counsel for the appellant, one relating to the loss assessed and sought to be realised by the State under the two contracts on account of excess felling, the other relating to the imposition of penalty under r. 29 and its validity. The first point does not survive because in both the writ petitions which were disposed of together by a common judgment the learned Single Judge rejected the contention with the observation 'I find no substance in the arguments advanced in this behalf ... No provision was brought to my notice which disentitles the government to collect those items'. If the appellant had been aggrieved by the negation of his plea under this head he should have challenged it in appeal which he did not. Thus the matter has become final and he cannot, in this Court, revive it at all. There is only a single question that therefore deserves our consideration.

A Was the penalty in the two cases imposed validly? The learned Single Judge held, on a study of rr. 29 and 31 that the impost was illegal for reasons which we find difficult to accept. The Division Bench, in appeal, disagreed with the learned Single Judge for reasons which are unclear although our conclusion concurs with theirs. The rules regulating the consequence of a breach of the conditions of forest contracts were originally promulgated in Urdu in the Hyderabad State B but we have been handed up the Manual of Civil Laws, Andhra Pradesh, which contains those rules in English. Rule 29(3) reads slightly obscurely but, in the absence of the original Urdu rules, we have to make-do with the English version.

There are two types of penalties which we may conveniently designate as 'major' and 'minor', in the contemplation of the Forest C Rules. Rule 29 deals with the major penalties while r. 31 relates to minor penalties. Where the breach of the conditions of the contract committed by the forest contractor is serious, the contract itself is to be terminated and a substantial penalty is to be imposed which 'shall not exceed one quarter of the total consideration paid by the contractor'. If the breach is of lesser significance, then the authority may not propose to terminate the contract on account thereof but may D recover a portion of the 'whole penalty provided for in r. 29' not exceeding Rs. 100/-. In short, if the contravention is grave, the contract is cancelled and a heavy penalty imposed but if the breach is inconsequential the contract continues but a lighter penalty is imposed. In the present case it is apparent that the authorities terminated the contract and it is equally clear that the breach was serious. Rule 31 which deals with trivial breaches and lighter penalties is E inapplicable. The only question then is whether the exercise of the power to impose a penalty under r. 29 has been (a) in compliance with natural justice; and (b) in fulfilment of the conditions precedent for the exercise of the power. The facts we have set out earlier make it clear that an opportunity had been afforded in the case of both the contracts before finally quantifying the penalty to be levied but the contractor did not avail himself of the opportunity. While it F is clear that in the absence of a statutory exclusion of natural justice any exercise of power prejudicially affecting another must be in conformity with the rules of natural justice, we are satisfied that in the present case there is no foundation for the grievance of the petitioner on this score.

The substantial issue is as to whether the termination of the con- G tract for breach of conditions should precede the impost of penalty. According to Shri Pillai, that is the meaning of r. 29 read in the light of r. 30(3). There is seeming varbal support for this contention but a closer scrutiny pricks the bubble. Rule 29 may well be read at this stage :

"29. (1) Penalty on termination of a contract for breach of H conditions.—

Every forest contract shall be in writing in the form annexed hereto and shall contain a provision whereby the

forest contractor binds himself to do all the duties and acts required to be done by or under the contract, and covenants that he and his servants and agents shall abstain from all the acts forbidden by or under such contract.

(2) The sums to be mentioned in a forest contract as payable in case of a breach of any such stipulation shall not exceed one-quarter of the total consideration to be paid by the contractor, and shall be recoverable in accordance with the provisions of the Hyderabad Forest Act 1355 F and of this rule :

Provided that where such consideration is not an ascertained amount the forest officer executing the contract shall make an estimate of the total amount that would be payable if the contract were fully complied with, and such estimate shall be deemed to be, for the purpose of this sub-rule, the total consideration to be paid by the contractor.

(3) This sum shall be realized from the contractor if the contract has been duly terminated in accordance with the provisions of rule 30, and then only under the written order of the forest officer executing the contract."

Shri Ram Reddy, for the respondent, urges that ascertaining the amount which is to be levied as a penalty need not be preceded by the termination of the contract. Indeed, according to him, it is only if there is an investigation of the nature of the breach, the quantum of loss inflicted on the State and other circumstances that a decision as to whether the contract should be terminated or not can be taken. If it is found that the breach of condition be wilful and the damage substantial, the penalty will be imposed under r. 29 and a decision will be taken for termination of the contract. However, the sum fixed as penalty shall not be realised from the contractor until the contract has been duly terminated in accordance with the provisions of r. 30. This is because you cannot keep a contract alive and claim that a grave breach of conditions has been committed. That would be too inconsistent a stance for the State to adopt. It is true that the termination of the contract under r. 30 is a condition precedent to *realisation* of the penalty from the contractor but realisation is different from imposition. The forest authorities quantify and impose the penalty. The revenue authorities as well as the forest authorities adopt the various steps prescribed in r. 30(3) for realisation of the sum. In the present case it was the Tehsildar who sought to realise the penalty and he did this after the contract was terminated. Indeed, r. 30(3) uses the expression 'recover' which is in consonance with 'realise' in r. 29(3).

We think that the true meaning of rr. 29 and 30, read together, is that the forest authorities must move from stage to stage in the following manner. Once they detect a breach, they must investigate to understand and estimate, the nature and degree of damage caused by the breach. If it is serious, they must proceed to ascertain the

A sum to be fixed as penalty. In doing this, a reasonable opportunity must be given to the affected party. After that the penalty shall be quantified and the contract shall be terminated, in the event of the authorities coming to the decision that the breach is grave enough for that drastic step. Once the contract is terminated, the last procedure is realisation which can in no case be before the termination of the contract. The realisation of the penalty may be in one or other of B the ways set out for recovery under r. 30. Of course, if the breach is of a venial nature, r. 31 is attracted, the contract is continued and only a small portion of the penalty envisaged in r. 29 is collected.

The view we have taken of the scheme of the rules leaves us in no doubt that the order of penalty is right and the judgment of the Division Bench is correct in the conclusion and the appeals, in the C result, must fail. The circumstances are such that the litigation is purely induced by the obscure official translation of r. 29 from Urdu to English with an obvious omission of 'not'. This and the other attendant features of the case persuade us to direct that the parties shall bear their costs throughout.

V.M.K. *Appeals dismissed.*