Chief Conservator Of Forests And Ors vs Rattan Singh on 7 April, 1966

Equivalent citations: 1967 AIR 166, 1966 SCR (1) 58, AIR 1967 SUPREME COURT 166, 1966 2 SCWR 372, 1966 MAH LJ 905, 1966 MPLJ 937, 1966 JABLJ 1106, 1967 2 SCJ 201

Author: J.C. Shah

Bench: J.C. Shah, K.N. Wanchoo, S.M. Sikri

PETITIONER:
CHIEF CONSERVATOR OF FORESTS AND ORS.

Vs.

RESPONDENT:
RATTAN SINGH

DATE OF JUDGMENT:
07/04/1966

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
WANCHOO, K.N.
SIKRI, S.M.

CITATION:
1967 AIR 166 1966 SCR (1) 58
CITATOR INFO :
R 1981 SC 479 (6,7)

ACT:
Central Provinces and Berar Forest Contract Rules-Rule 15(1)--Scope of.

HEADNOTE:
Under r. 15(1) of the Central Provinces and Berar Forest Contract Rules a forest contractor is responsible for any damage done in a reserved forest by himself or his servants or agents and compensation for such damage is to be assessed by the Divisional Forest Officer. The respondent was, under a contract, granted a right to the forest produce. By cl. 9 of the Contract any doubt or dispute arising between the

parties as to the performance or breach of any of the conditions of the contract had to be referred to the Chief Conservator of Forests for decision. The Divisional Forest Officer, acting under r. 15(1), held that the contractor committed a breach of the contract and assessed the compensation for damages.
HELD:Rule 15(1) does not invest the Divisional Forest Officer with authority to determine whether the contractor, his servants or his agents have committed a breach of the contract. When a dispute arises between the contractor and the forest authorities relating to the performance or breach of the contract, there has to be, under the terms of cl. 9, a reference to the officer denominated in the contract. After liability is determined, there may have to be an assessment, by the Divisional Forest Officer,, of compensation payable by the contractor to the State, There is no inconsistency between cl. 9 of the Contract and r. 15 [161 F-H; 162 E-F].

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 255 of 1964.] Appeal by special leave from the judgment and order dated November 14, 1960 of the Madhya Pradesh High Court in Misc. Petition No. 273 of 1959.

B. Sen, R. P. Kapur and 1. N. Shroff, for the appellants. S. P. Sinha, and S. Shaukat Hussain, for the respondent. The Judgment of the Court was delivered by Shah, J. Under a contract dated October 14. 1956, the respondent was granted a right to the forest produce from Coupe No. 9, Lendara in the Saiura Borgain Reserved Forest in the Kanker Forest Division of Bastar District of Madhya Pradesh, for the period October 14, 1956 to March 31, 1958. The Divisional Forest Officer held an enquiry in respect of certain breaches committed by the respondent of the terms of the contract, and by order dated January 30, 1958 directed the respondent in exercise of the authority under r. 15(1) of the Forest Contract Rules framed by the Government of Cenytral Provinces & Berar, to pay Rs. 8,500 as compensation assessed by him for damage done in the reserved forest and Rs. 500 as penalty under r. 30(1) of the Forest Contract Rules. An appeal against the order to the Conservator of Forests, and a revision petition to the Chief Conservator of Forests, Madhya Pradesh, were unsuccessful. The respondent then moved the High Court of Madhya Pradesh by a petition under Art. 226 of the Constitution for a writ quashing the order dated January 30, 1958 directing payment of compensation and penalty and restraining enforcement of the order. The High Court granted the petition and restrained the State and the forest authorities from recovering Rs. 9,000, ordered on January 30, 1958, from the respondent.

In this appeal, the appellants contended in the first instance that the High Court was in error in holding that by r. 15 of the Forest Contract Rules the Divisional Forest Officer was not authorized to direct the contractor to pay compensation for damage done by him or his agents or servants, because the coupe was not in "a reserved forest". Such a case, it was said, was never pleaded by the

contractor in his petition, and the High Court in granting relief to the respondent made out a case which the appellants had no opportunity to meet. In support of their case that the coupe is a part of the reserved forest, the appellants have annexed to their petition for special leave a "true copy" of a notification issued under S. 20 of the Indian Forest Act, 1927, as applied to the Central Provinces, declaring that the State forests of the Bastar District in Tahsil Kanker Sainmura-Borgaon specified in the Schedule shall be reserved forests.

We agree with the appellants that the High Court has without any plea or evidence assumed that compensation under r. 15(1) could not be directed to be paid by the contractor for damage done in the coupe, for which he was given a contract, because the coupe was not included in a. reserved forest. The plea which appealed to the High Court was not raised in the petition, nor in the objections to the Divisional Forest Officer in reply to the notice to show cause, nor in the memorandum of appeal before the Conservator of Forests, nor in the petition invoking the revisional jurisdiction of the Chief Conservator of Forests. The High Court assumed that because the forest authorities charged the contractor with "illegal fellings in the coupe" granted to him, the "fellings could not be in a reserved forest". For this assumption there is no warrant. The High Court was therefore in error in setting up the ground that the impugned order was not authorised by the terms of r. 15(1). But the appeal filed by the appellants must still fail on the grounds to be presently set out.

The following are the relevant terms of the contract:

> "1. The Governor hereby agrees to sell to the forest contractor, and the forest contractor agrees to purchase the forest produce described in the First Schedule hereunder 160 .....situated in the area specified in the said Schedule..... on the conditions hereinafter stated." The First Schedule describes the area of the forestand sets out the forest produce sold under the contract. "6. The forest contractor shall be subject to the Forest Contract Rules as amended from time to time (a copy of which has been furnished to the forest contractor, the receipt of which the forest contractor hereby acknowledges) and the Rules shall be deemed to De part of this contract in so far as they are applicable thereto:
>
> Provided that the said Rules shall be deemed to be modified to tile extent and in the manner laid down in the Second Schedule hereunder."
>
> "7. The forest contractor hereby binds himself to perform all acts and duties required, and to abstain by himself and his servants or agents from performing any act forbidden by the Indian Forest Act, 1927, by the Forest Contract Rules and by this contract. "9. In the event of any doubt or dispute arising between the parties as to the interpretation of any of the conditions of this contract or as to the performance or breach thereof, the matter shall be referred to the Chief Conservator of Forests, Madhya Pradesh, Nagpur, whose decision shall be final and binding on the parties hereto."

By cl. 6 of the contract, the Forest Contract Rules framed by the local Government are made part of the contract. The material clauses of the Rules read as follows:

> "2. All contracts whereby Government sells forest produces to a purchaser shall be subject to the following rules, in so far as they are applicable, and these rules, in so far as they are applicable, shall be deemed to be binding on every forest contractor not only as rules made under the Forest Act, but also as conditions of his forest contract:
>
> Provided that the forest officer executing a forest contract shall have power to vary these rules by express provision in such contract, and where these rules are in conflict with such an express provision, such express provision shall prevail:Provided further
> "15(1) A forest contractor shall be responsible for any damage that may be done in a reserved forest by himself or his servants and agents. The compensation for such damage shall be assessed by the Divisional Forest Officer, whose decision shall be deemed to be that of an arbitrator and shall be final and binding on the parties, except to the extent that it shall be subject to an appeal to the Conservator of Forests. Explanation.....
>
> (2) Any sum assessed as damages under this rule shall be recoverable as arrears of land revenue.....
>
> "30(1) Where the forest contractor commits a breach of any of the conditions of his contract but it is not proposed to terminate his contract on account thereof, the whole penalty provided for in rule 28 shall not be recovered from him, but the Divisional Forest Officer shall have power to recover a portion thereof, not exceeding five hundred rupees, in accordance with the provisions of section 85 of the Act.
>
> (2) An order of the Divisional Forest Officer under this rule shall be subject to appeal to the Conservator of Forests if the amount levied exceeds two hundred rupees, but shall otherwise be final.
>
> (3)The payment of a sum assessed under this rule shall absolve the forest contractor from all further liabilities under his contract in respect of such breach, except his liability under rule 15 for damage done in a reserved forest."

On behalf of the respondent it was urged before the High Court, as also before this Court, that where a dispute arose between the Divisional Forest Officer and the contractor, whether the contractor, his servants or agents had caused damage in a reserved forest, the question could be decided in the manner appointed in cl. 9 of the contract alone, i.e., by arbitration of the officer denominated, and not by the Divisional Forest Officer. In dealing with the validity of the order imposing penalty upon the contractor the High Court upheld that argument. Rule 15 in the first instance declares that the forest contractor shall be responsible for any damage done either by himself, or his servants or agents: it then proceeds to state that compensation shall be assessed by the Divisional Forest Officer

whose decision shall be deemed to be that of an arbitrator subject to an appeal to the Conservator of Forests. The rule does not confer upon the Divisional Forest Officer authority to determine, when a dispute is raised, whether damage has been caused in a reserved forest by the contractor, his agents or his servants. The rule only declares that for damage that may be done, by the contractor, his servants or agents, in the forest, the contractor shall be liable: the rule also invites the Divisional Forest Officer with authority to determine the amount of compensation payable by the contractor, but not to determine whether the contractor, his servants or his agents have committed breach of the contract. Clause 9 of the contract confers authority upon the Chief Conservator of Forests to adjudicate upon disputes, inter alia, as to the performance or breach of the contractor. By. cl. I read with the Schedule to the contract "the contractor had to fell or uproot trees marked with a geru band or to fell trees on coupes and section lines which bear a marking hammer impression on the stump buttends and all Karra over 9" at B.H. whether marked or not".It was the case of the Divisional Forest Officer that the contractor had, contrary to the terms of the contract, cut trees not marked with the geru band. Plainly, the Divisional Forest Officer claimed that the contractor had committed a breach of the terms of the contract, and when the contractor denied the breach, a dispute arose between the parties as to the performance or breach of the terms of the contract, and it had to be referred to the Chief Conservator of Forests. It is conceded, and in our judgment counsel is right in so conceding, that the expression "shall be referred to" means "shall be referred to the Officer denominated" as an arbitrator to decide the dispute.

It was argued however that by virtue of cl. 6 of the contract, the Forest Contract Rules were made part of the contract, and the Divisional Forest Officer was invested with authority not only to determine the amount of compensation which may be payable by the contractor for damage done in a reserved forest, but also to determine whether the contractor or his agents or servants had been responsible for causing the damage. This, for reasons already stated, we are unable to accept.

There is no inconsistency between cl. 9 of the contract and r. 15. It is unnecessary, therefore, to consider whether in case of inconsistency, the terms of the contract expressly setting out a certain covenant may supersede the terms of the rule. Under r. 15 the liability for damage done in a reserved forest is declared against the contractor. He is also declared liable to pay compensation as may be assessed by the Divisional Forest Officer. But the Divisional Forest Officer is not invested with authority to determine whether the damage was done by the contractor, his agents or servants. That is a matter which must be determined in a reference under cl. 9 of the contract.

It was urged by the appellants that it could not have been intended by the rule-making authority, who had also prescribed the form as part of the rules in which the contract was required to be executed, to set Lip a complicated and clumsy procedure for determination of a dispute about the breach of contract, if the language of the rules were ambiguous, this may be a relevant consideration. When a dispute arises between the contractor and the forest authorities relating to the performance or breach of the contract, there has, under the terms of cl. 9, to be a reference to the Officer denominated in the contract. After liability is determined, there may have to be an assessment by the Divisional Forest Officer of compensation payable by the contractor to the State.

That would necessitate another inquiry. The procedure is apparently clumsy and likely to be dilatory. But we are unable to ignore the plain terms of the contract and the rules, and to hold that in respect of the determination of responsibility for damage done in a reserved forest, there need be no reference under cl. 9 of the terms of the contract.

It was then urged that in any event a decision was in fact given by the Chief Conservator of Forests in this case, and that decision complied with the requirements of cl. 9 of the contract. But as already stated, the Divisional Forest Officer passed an order holding the respondent liable to pay compensation for damage done in a reserved forest and assessing the compensation at Rs. 8,500 and penalty at Rs.

500. That order was confirmed in appeal by the Conservator of Forests, and in exercise of his revisional jurisdiction the Chief Conservator of Forests upheld the order of the Conservator of Forests. The Chief Conservator of Forests did not even purport to act as an arbitrator: he recorded no evidence, and expressly held that the Divisional Forest Officer was not obliged to refer the case for arbitration under cl. 9 of the contract, The trial was not of a proceeding in arbitration, but of a proceeding in exercise of supervisory or revisional jurisdiction. If in truth the dispute had to be referred for adjudication to the Chief Conservator of Forests, his decision that he found no reason to interfere with the "findings of the Divisional Forest Officer" who was one of the parties to the dispute, cannot conceivably be regarded as an award between two contesting parties. It must therefore be held that the order passed by the Divisional Forest Officer imposing liability for compensation for damage done by illegal fellings cannot be sustained.

The second part of the order imposing penalty under r. 30(1) also suffers from the same infirmity. It is true that under the rule the Divisional Forest Officer had power to impose penalty in a sum not exceeding Rs. 500. But exercise of that power is conditioned by the existence of a breach by the forest contractor of any of the terms of the contract. Where a, dispute arises whether there has been a breach of any of the terms of the contract, it is, for reasons already stated, to be determined by the Chief Conservator of Forests. That has admittedly not been done. The order imposing penalty under r. 30(1) must also be set aside. The appeal therefore fails and is dismissed with costs. Appeal dismissed.