

Dinesh Kumar Vs. State of U.P. and ors.

Dinesh Kumar Vs. State of U.P. and ors.

SooperKanoon Citation : sooperkanoon.com/486321

Court : Allahabad

Decided On : Feb-07-2005

Reported in : 2005(3)AWC2647; 2005(3)ESC1720

Judge : Arun Tandon, J.

Acts : [Constitution of India](#) - Articles 14 and 226

Appeal No. : C.M.W.P. No. 17493 of 2004

Appellant : Dinesh Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : Kalp Nath Bind, Adv. and ;S.C.

Advocate for Pet/Ap. : H.N. Shukla, Adv.

Disposition : Petition dismissed

Judgement :

Arun Tandon, J.

1. Heard Sri H.N. Shukla, learned Counsel for the petitioner, Sri Kalp Nath Bind, learned Counsel for the respondent No. 4 and learned Standing Counsel for the respondent Nos. 1 to 3.

2. Respondent No. 4, Manik Chand was appointed as Fair Price Shop Agent in respect of Gaon Sabha Chhechhna, Tehsil Machhalishahr, District Jaunpur. Certain complaints were received with regard to the distribution of essential commodities by the said Fair Price Shop Agent. On the receipt of complaints, an enquiry into the allegations made against the respondent No. 4, as Fair Price Shop Agent was conducted. On the basis of the report of the Tehsildar as also on the basis of certain other materials as have been noticed by the Sub-Divisional Magistrate, Machhalishahr, he passed an order dated 8th September, 1998 cancelling the appointment of the respondent No. 4 as Fair Price Shop Agent. In the order reference has also been made to the resolution of the Gaon Sabha dated 5th July, 1998.

3. A day prior to the cancellation of appointment of petitioner, there is an order of Sub Divisional Magistrate, Machhalishahr dated 7th September, 1998 appointing the present petitioner as Fair Price Shop Agent in pursuance of the resolution of the Gaon Sabha on the same day i.e. 5th July, 1998, a copy of the said appointment order has been filed as Annexure 3 to the writ petition. Feeling aggrieved by the aforesaid order of the Sub Divisional Magistrate, Machhalishahr dated 8th September, 1998 cancelling the appointment of the respondent No. 4 as Fair Price Shop Agent, the respondent No. 4 preferred an appeal, which was numbered as Appeal No. 114 of 1998. The Commissioner, Varanasi Division, Varanasi by means of the order dated 3rd March, 2004 has allowed the appeal after recording a categorical finding that the order cancelling the appointment of the respondent No. 4 as Fair Price Shop Agent has been passed without notice for opportunity of hearing to the petitioner. Accordingly, the Commissioner set aside the order of the Sub Divisional Magistrate dated 8th September, 1998 and remanded the matter to the Sub Divisional Magistrate, Machhalishahr for deciding the dispute with regard to the continuance of the respondent No. 4 afresh in the light of the observations made in the said order.

4. The petitioner who had been appointed as Fair Price Shop Agent under order dated 7th September, 1998 has approached this Court by means of the present writ petition against the aforesaid order of the Commissioner, Varanasi Region, Varanasi dated 3rd March, 2004.

5. On behalf of the petitioner it is contended that under Government Order dated 3rd July, 1990 there is no provision of any appointee of the Fair Price Shop Agent to be afforded opportunity, whose appointment is cancelled under the resolution of the Gaon Sabha. Learned Counsel for the petitioner contends that the appointment of Fair Price Shop Agent is made under a resolution of the Gaon Sabha, and it is the decision of the Gaon Sabha, which becomes final with regard to his removal also. On behalf of the petitioner it is further contended that the Tehsildar, who was appointed as Enquiry Officer afforded opportunity of hearing to the respondent No. 4, but the respondent did not avail the same and therefore the Tehsildar submitted a report after making a spot enquiry. The order of cancellation on the basis of the report of the Tehsildar as also on the basis of other materials as were available before him on the date cannot be questioned.

6. On behalf of the respondent No. 4 it is contended that the order passed by the Sub-Divisional Magistrate is a non-speaking order, it contains absolutely no reasons. It is further contended that the order cancelling the appointment of the respondent No. 4 as Fair Price Shop Agent visits the said respondent, with evil civil consequences and, as such, could not have been passed without affording opportunity of hearing to the said respondent. It is further contended that opportunity of hearing is necessarily to be read in Clause 7 of the Government Order dated 3rd July, 1990 read with Government Order dated 3rd February, 2001. Therefore, the order of Commissioner calls for no interference.

7. I have heard learned Counsel for the parties and have gone through the records of the present writ petition.

8. From the record of the present writ petition, the following acts emerge. The Gaon Sabha passed a resolution for cancellation of the Fair Price Shop licence of the respondent No. 4 in its meeting dated 5th July, 1998, in the same meeting it is alleged that the petitioner was selected for being appointed as a Fair Price Shop Agent in place of respondent No. 4. Under the Government Order dated 3rd July, 1990 read with Government Order dated 3rd February, 2001 both the resolutions are required to be transmitted to the District Magistrate/ Sub Divisional Magistrate, for necessary orders. The Sub Divisional Magistrate, Jaunpur proceeded to pass

an order appointing the petitioner as Fair Price Shop Agent on 7th September, 1998 i.e. even prior to date of passing of the order of cancellation of appointment of the respondent No. 4 as Fair Price Shop Agent of the shop in question. The date of cancellation of the appointment of respondent No. 4 as Fair Price Shop Agent is 8th September, 1998.

9. The order passed by the Sub Divisional Magistrate dated 8th September, 1998 does not disclose sufficient reasons, further no opportunity of hearing was afforded to the respondent No. 4 before passing the cancellation order. It is further apparent that the Sub Divisional Magistrate has not even cared to mention irregularities or the illegalities, which have been found proved against the respondent No. 4 in respect of distribution of essential commodities in the said order. He has not recorded a satisfaction that the allegations stood proved and they are so serious so as to warrant cancellation of the appointment of the respondent No. 4 as Fair Price Shop Agent.

10. In the opinion of the Court such an order passed by the Sub Divisional Magistrate is wholly unjustified and does not satisfy the requirement.

11. So far as the contention raised by the petitioner to the effect that no opportunity of hearing is contemplated under the Government Order dated 3rd July, 1990 read with Government Order dated 3rd February, 2001 before passing the order of cancellation of the appointment of the respondent No. 4 as Fair Price Shop Agent is concerned, suffice it to point out that Clause 4.4 to Clause 4.12 of the said Government Order relied upon by the learned Counsel for the petitioner, relate to the appointment of Fair Price Shop Agent and therefore, the discretion vested in the Gaon Sabha for passing the resolution in that regard cannot be relevant for cancellation of appointment of the Fair Price Shop Agent. The provisions contained in Clause 4.1 to Clause 4.12 of the said Government Order have no application, so far as the cancellation of the appointment of Fair Price Shop Agent is concerned. The main clause dealing with cancellation is the Clause 7 of the said Government Order, which reads as follows :

^7- ;fnfdlh nqdkunkj }kjk vuqlwfp r oLrqvksa ds mBku ;k forj.k esa xM+cM+h dh tkrh gSrks Loizsj.kk] f'kdk;r ;k xkao IHkk ds izLrko ij ftykf/kdkjh mudh nqdku

fuyfEcr@fujLrdj ldrs gSaA

7-2- nqdkuds fuyEcu@ fujLrhbj.k ds vkns'k dh izfr xzke iz/kku ,oa mi iz/kku dks vfuok;Z :ils nh tk;sxh rFkk xzke IHkk dh vkjs ls lkexzh mBkus dh rkRdkfyd oSdfYid O;oLFkkdjus dks dgk tk;sxk rFkk ,d ekg ds vUnj izLrko ikfjr dj nwljs nqdkunkj dhfu;qfDr dj nh tk;sa**

12. A bare reading of the aforesaid Clause 7 would establish that if the power of cancellation of Fair Price Shop Agent has been conferred upon the District Magistrate/Sub Divisional Magistrate, such an order can be passed suo moto on complaints or with reference to a resolution being made by the Gaon Sabha. The aforesaid Clause 7 makes it clear that the discretion of the District Magistrate/ Sub Divisional Magistrate to pass the order is not certified in any manner merely because a resolution has been passed by the Gaon Sabha. The resolution of the Gaon Sabha is only one of the facts which may result in cancellation of the appointment of an agent after the allegations made are found to be corrected by the District Magistrate/Sub Divisional Magistrate while passing an order under Clause 7.

13. It cannot be disputed that an order of cancellation of the appointment of the Fair Price Shop Agent visits the person concerned with evil civil consequences and such an order has necessary to be passed in accordance with the principles of natural justice failing which the provision for cancellation of appointment of the Fair Price Shop Agent would at self be liable to be struck down itself being violative of Article 14 of the [Constitution of India](#).

14. Administrative bodies while passing orders affecting civil rights of a person are also bound to act justly and fairly, which may bringing the requirement of natural justice. When a power is conferred upon a public official to destroy, defeat or prejudice a person's rights, interests or legitimate expectations, the rules of natural justice regulate the exercise of that power unless they are excluded by plain words or necessary intendment. Further, in India the State and every public authority or instrumentality of the State must act reasonably in public interest and fairly for these requirements have also been spelled out of Article 14 and the concept of rule of law. Article 14 is said to be the constitutional guardian of principles of

natural justice. Unless the statute provides otherwise, the implication of natural justice will require absence of bias in and predecisional hearing by the adjudicating authority; and any omission by the adjudicating authority to hear the person concerned is not cured by a prior hearing given to him by the investigating authority or by a post-decisional hearing given in appeal. The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary. [Reference Institute of Chartered Accountants of India v. L.K. Ratna, (1986) 4 SCC 537 (Para 16); K.L. Shephard v. Union of India, AIR 1988 SC 686 (Paras 12, 13, 15 and 16)]¹. The Hon'ble Supreme Court has held, 'Briefly stated 'natural justice means fairplay in action' and requirements of natural justice depend upon the facts of each case. Therefore, in judging the validity of an order when the complaint is about non-compliance with the principles of natural justice, in cases where the attack is not on ground of bias, a distinction has to be drawn between cases of 'no notice' or 'no hearing' and cases of 'no fair hearing' or 'no adequate hearing'. If the defect is of the former category, it may automatically make the order invalid but if the defect is of the latter category, it will have to be further examined whether the defect has resulted in prejudice and failure of justice and it is only when such a conclusion is reached that the order may be declared invalid. [Reference State Bank of Patiala v. S.K. Sharma, AIR 1996 SC 1669 ; Union of India v. Mustafa and Najibai Trading Co., AIR 1998 SC 2526].

15. Therefore, in Clause 7, the provision of opportunity of hearing being afforded to a person concerned against whom an order is proposed to be passed must necessarily be read, so as to make the same in conformity with the requirement of principles of natural justice. Clause 7 does not exclude the applicability of principles of natural justice. The contention raised on behalf of the petitioner that no notice/opportunity of hearing is required to be afforded to a person, whose appointment of Fair Price Shop Agent is to be cancelled merely because a resolution by the Gaon Sabha has been passed on certain irregularities, cannot be legally accepted.

16. In view of the aforesaid the order passed by the Commissioner dated 3rd March, 2004 calls for no interference under Article 226 of the [Constitution of India](#).

The writ petition is devoid of merits and is accordingly dismissed with no order as to cost. Interim order, if any, stands discharged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com