

Paramhans Traders Vs. Collector and ors.

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Court : Orissa

Decided On : Mar-23-1987

Reported in : 63(1987)CLT606; 1988CriLJ506

Judge : R.C. Patnaik and ;S.C. Mohapatra, JJ.

Appellant : Paramhans Traders

Respondent : Collector and ors.

Judgement :

R.C. Patnaik, J.

1. The question that arises for consideration in this writ application filed by a licensee under the Orissa Pulses, Edible Oil Seeds and Edible Oils Dealers (Licensing) Order, 1977 to carry on business at Bhasakosh Lane in the town of Cuttack but alleged to have been carrying on business in essential commodities in a premises located at Mal Godown, Cuttack, is if the direction given by the Collector under Section 6A(2) of the Essential Commodities Act, 1955, for disposal of the commodities seized pending finalisation of the confiscation proceeding is invalid being a colourable exercise of power and in violation of the principles of natural justice.

2. The commodities were seized on 27-2-87 on allegations that the petitioner was carrying on business by storing the commodities at a place other than the place

mentioned in the licence.

3. By the impugned order dated 6-3-87 the Collector directed disposal of the commodities seized on the ground that the commodities were subject to speedy and natural decay and their disposal was expedient in public interest.

4. The learned Counsel for the petitioner challenged the validity of the order on two grounds : first, the direction for disposal was a colourable exercise of power and, secondly, the petitioner not having been heard in the matter, the direction for disposal offended the principles of natural justice.

5. On a motion by the counsel for the petitioner, we had called for the file in which the impugned order was passed by the Collector and on perusal we found that the disposal was directed by the Collector on the sole ground that the commodities were subject to speedy and natural decay. He did not advert to the other ground and, therefore, had not directed disposal on the ground that it was expedient in public interest. The impugned order Annexure-2 issued by the Civil Supplies Officer (opposite party No. 2) surprisingly incorporates the expression 'expedient in public interest' which is absent in the order passed by the prescribed authority, i.e., the Collector. The interpolation, therefore, is unauthorised and was unbecoming of the Civil Supplies Officer. He should not have transgressed the bounds of his jurisdiction or authority. He is not an instrumentality under Section 6A. Therefore, his action was not only unauthorised but fraudulent and we strongly condemn the same. Had not the record been called for, this interpolation would not have come to light and we would have gone by Annexure-2 as an authentic reproduction of the decision of the Collector. On this defilement alone, Annexure-2 would be invalid.

6. Now to the second prong of attack, admittedly the petitioner was not given an opportunity of hearing before direction was given under Section 6A(2) for disposal of the commodities seized. Whereas the learned Counsel for the petitioner has vehemently urged that the principles of audi alteram partem should be read into the provision, the learned Additional Government Advocate has submitted that having regard to the object in the absence of specific provision providing an opportunity of hearing, there was no duty to hear in the scheme of Section 6A(2).

7. As early in Kraipak's case : [1970]1SCR457 , it was held:

The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. In a welfare State like ours it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.

The law was considered in depth in *Maneka Gandhi v. Union of India* : [1978]2SCR621 , where it was observed. The proliferation of administrative law provoked considerable fresh thinking on the subject and soon it came to be recognised that 'fair play in action required that in administrative proceeding also, the doctrine of natural justice must be held to be applicable. The duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted. The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine' of natural justice must be held to be applicable. Although there may not be positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi

alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice and, the law was summed up with the following observations:

The inquiry must, therefore, always be; does fairness in action demand that an opportunity to be heard should be given to the person affected?

8. On certain premises being satisfied, the commodities seized by the authorities are directed to be disposed of under Section 6A(2). If neither of the premises is present, the authority does not acquire jurisdiction for giving a direction for disposal. Inasmuch as a direction for disposal entails a civil consequence to the party from whom the commodities were seized, the question is should or should not he be heard? Is denial of an opportunity of hearing fair play in action? We understand and the courts have also so held that there may be exceptional circumstances where right of hearing may not be granted, namely, demolition of dangerous and unsafe structures etc. where an opportunity of hearing would itself frustrate the object. But can it be said that under the scheme of the Essential Commodities Act an opportunity of hearing to the party from whom commodities are seized before direction is given for disposal during the pendency of the confiscation proceeding would frustrate the object? If the circumstances so warrant, hearing can be expedited. When and in what manner the hearing for the purpose of Section 6A(2) shall be done would depend upon the facts and circumstances and is to be regulated by the authority in his discretion. We are, therefore, of the view that though the provision does not specifically provide for an opportunity of hearing, having regard to the nature of the exercise of power and the authorities exercising it and the consequence that would ensue, the principles of audi alteram partem should be read into Section 6A(2). With respect, we dissent from the decision of the Andhra Pradesh High Court in K. Venkataratnam v. District Revenue Officer, Guntur : AIR 1975 AP359 , where the contrary view has been taken.

9. In the result, we quash Annexure-2. If any action under Section 6A(2) is desired, an opportunity of hearing should be given to the petitioner, with the aforesaid observations and directions, the writ application is allowed. Hearing fee is

assessed at Rs. 250/-.

S.C. Mohapatra, J.

10. I agree.

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