

Abdul Butt Vs. Govt. of Union Territory of Himachal Pradesh, and anr.

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Court : Delhi

Decided On : Jun-19-1967

Reported in : AIR1968Delhi49a; 1968CriLJ145

Judge : Hardayal Hardy, J.

Acts : [Criminal Law Amendment Act,1961](#) - Sections 3(3) and 3(6); [Constitution of India](#) - Articles 19 and 226

Appeal No. : Civil Writ Petn. No. 58 of 1967

Appellant : Abdul Butt

Respondent : Govt. of Union Territory of Himachal Pradesh, and anr.

Advocate for Def. : Sushil Malhtora, Adv.

Advocate for Pet/Ap. : H.S. Thakur, Adv

Judgement :

ORDER

1. The petitioner Abdul Butt in this petition under Article 226 of the Constitution claims to be a citizen of India having this permanent place of residence at Village Ktoi-Chandiar, Tehsil Basoli, District Kathua in the Statea of Jammu and Kashmir. He alleges that he has been residing within the District of Kinnapur in the Union Territory of Himachal Pradesh for the last five years or so and is carrying on

business as a contractor of sawyer and has as many as twenty workmen employed under him. He also alleges that he has been doing work for the Public Works Department and for several other persons and has to recover about twelve thousand rupees as outstanding for the work done by him for various persons in the District of Kinnaur.

(2) According to Notification No. G. S. R. 377 dated 23rd March, 1962 issued by the Government of India, Ministry of Home Affairs, certain portions of Kinnaur District in the Union Territory of Himachal Pradesh have been declared on and from 1-6-1962, to be a 'notified area' for the purpose of sub-section (3) of section 3 of the Criminal Law Amendment Act, 1961 (Central Act 23 of 1961). As a result of that notification no person other than those mentioned in clauses (a) to (g) thereof shall enter or attempt to enter the said area or be therein except in accordance with the terms of a permit in writing granted to him by the District Magistrate, Kinnaur District or by any of the officers mentioned therein. The permit so granted is however liable to be cancelled by the District Magistrate, Kinnaur at his discretion.

(3) The petitioner alleges that on 9th September, 1966 he was granted a Permit by the Magistrate 1st Class Kalpa, District Kinnaur authorizing him to enter the notified area via Chaura and Wangtu and to remain therein for the purpose of working as a Beldar at Kalpa for a period of six months up to 8th March, 1967. The permit was however cancelled by the Deputy Commissioner (District Magistrate) Kinnaur District before the expiry of its period on the basis of some false reports made against him by the officials of the Forest Department of Himachal Pradesh accusing him of felling of trees belonging to the Government. He further alleges that a policeman called at his residence on 9th February, 1967 informing him about the cancellation of his permit and directing him to quit the limits of Kinnaur District and once. The petitioner asked the policeman concerned to give him a copy of the order but no such copy was given to him.

(4) The petitioner avers that he has to recover a sum of over rupees twelve thousand from various persons there. He therefore went to the Police Station Kalpa and also to the S. D. O; Kalpa and made a request that he be permitted to

reside there but his request was not considered and since he was unable to leave the place, he was challaned before the S.D.O. (Magistrate 1st Class) Kalpa on 18th February, 1967 for having disobeyed the order of externment made against him.

(5) The petitioner has now moved this Court for relief under Article 226 of the Constitution and has prayed for quashing of the order of the District Magistrate cancelling his permit without notice of ex parte reports received against him. He has also prayed that the respondents be prohibited from interfering with his right of movement within the area covered by his permit and they be further directed to renew his permit from time to time as before. He further prays that a writ of certiorari or any suitable writ or direction be issued to the authorities to withdraw the case pending, against him in the Court of Magistrate 1st Class Kalpa for alleged disobedience of the order of externment issued against him.

(6) In the written statement filed on behalf of the State it is not disputed that the petitioner's permit has been cancelled before the expiry of its period. It is however stated that the purpose for which permit was granted to the petitioner was that he should work as a Beldar within the notified area. The petitioner however, on his own showing started working as a contractor of sawyer and thereby contravened the terms of the permit. It is further alleged that the petitioner during the course of his stay in the notified area indulged in various illegal acts of felling of trees in Government forest in Kalpa range. The range Officer Kalpa brought it to the notice of the District Magistrate on 27th December, 1966 that the petitioner had been caught redhanded while unauthorisedly cutting Govt. timber and removing the same. As the petitioner had thus contravened the terms of the permit and had also indulged in various unauthorised and illegal acts, his permit was cancelled by the District Magistrate (respondent No. 2 herein) on 29th December, 1966 and he was directed to vacate the notified area of Kinnaur District within three days.

(7) The petitioner's allegation that no opportunity was afforded to him nor was any hearing granted to him before action for cancellation of his permit and for his externment from the notified area was taken, has not been disputed by the respondents. It is however contended on their behalf that under the notification

dated 2nd March, 1962 the grant of permit and its cancellation are matters within the discretion of the District Magistrate and therefore it was not necessary to issue any show cause notice or afford an opportunity for oral hearing before cancelling the permit.

(8) The respondents admit that on 8th February, 1967 the petitioner made an application to the District Magistrate praying that he be permitted to stay within the notified area for another period of two months but his application was rejected on the same day by Shri K. C. Mahajan District Magistrate, Kinnaur who passed an order that the petitioner could not be given any extension. Since the order of the District Magistrate dated 29th December, 1966 had not been complied with by the petitioner and he had continued to stay in the notified area in spite of cancellation of his permit, necessary proceedings for his prosecution under Section 3(6) of Criminal Law Amendment Act, 1961 had been launched against him.

(9) At the hearing of the petition Mr. H. S. Thakur learned counsel for the petitioner has not challenged the validity of the Act and the Notification nor has he challenged the right of the authorities to restrict the entry of persons into the notified area by means of permits. His contention however is that the petitioner as a citizen of India has a right to move about freely throughout the territory of India. This right can however be regulated in the interest of the safety and security of India and in public interest, but once a citizen has been granted a permit to enter and stay in such area the permit cannot be cancelled arbitrarily and without affording an opportunity to the permit holder to show cause why his permit should not be cancelled.

(10) Learned counsel for the respondents Mr. Sushil Malhotra has argued on the other hand that the present petition was filed by the petitioner on 10th March, 1967 i.e. two days after the expiry of the period of which permit had been issued to the petitioner. The petitioner had therefore no legal right subsisting at the time when he moved this Court for redress. As the existence of a legal right is an essential pre-requisite for obtaining relief under Article 226 of the Constitution he did not have any such right precluded him from claiming any relief from this Court.

Mr. Malhorta has also argued that the notification under which the petitioner was granted permit expressly states that the permit is being issued subject to its being cancelled by the District Magistrate of Kinnaur District at his discretion and since the rule conferred absolute discretion on respondent No. 2 his action in cancelling the permit cannot be challenged by means of a petition under Article 226 of the Constitution. The learned counsel further contends that the act of granting and cancelling permits is an administrative act and inasmuch as it is an act within the discretion of the District Magistrate, Kinnaur no writ of mandamus can issue from this Court.

As regards the petitioner's prayer for quashing the criminal proceedings launched against him under section 3(6) of Criminal Law Amendment Act, 1961 the argument of the learned counsel for the respondents is that the petitioner on his own showing continued to stay within the notified area in spite of cancellation of his permit on 29th December, 1966 and the order of the District Magistrate requiring him to remove himself from the confines of that area; he therefore became liable to the penalties prescribed under the Act and thus became disentitled to invoke the extraordinary jurisdiction of this Court.

(11) I have given my careful consideration to the arguments advanced by the learned counsel for the respondents. I agree that the grant of permit is an administrative act and so is the act of its cancellation; but once a permit has been granted to a citizen which is to remain in force for a certain period its cancellation without notice and without any opportunity being afforded to the permit-holder to have his say against the action proposed to be taken against him is clearly violative of principles of fair play.

The allegations against the petitioner are that he had contravened the terms of the permit and had also indulged in certain unauthorized and illegal acts. These allegations, if true, would no doubt entitle the District Magistrate to cancel the petitioner's permit; but before he took such action the rule of fair play required that the petitioner should have been called upon to explain why action should not be taken against him and to show how far the allegations against him were true. It is not that the District Magistrate was bound to hold a regular enquiry into the

charges but it was certainly incumbent upon him to ask the petitioner what his Explanationn to the allegations made against him was. The fact that the rules empower the District Magistrate to cancel the permit at his discretion does nto imply that he can act arbitrarily and in utter disregard of the rules of fair play. Even administrative tribunals have to observe the rules of fair play especially when they have to decide questions involving citizen's rights to freedom guaranteed by the Constitution.

(12) The object of clause (d) of Art. 19(1) of the Constitution is to guarantee to every citizen the right to move freely 'throughout the territory of India' without any hindrance and without any discriminatory barriers; clause (e) gives him the freedom to reside and settle in any part of the territory of India; while clause (g) confers on him the right to practice any profession, or to carry on any occupation trade or business. The scope of the guarantee under each head is however subject to the limitations contained in clauses (2) to (6) of the Article itself. When the Central Government issued its Ntoification dated 23rd March, 1962 in exercise of the powers conferred on it by sub-section(1) of section 3 of the Crimnal Law Amendment Act, 1961 (Central Act 23 of 1961) imposing restrictions on the right of the citizens to enter and stay in the area declared to be ntoified area under the said ntoification and to regulate the entry of persons by means of permits its action amounted to a curtailment of their rights guaranteed under clauses (d), (e) and (g) of Article 19(1) of the Constitution. This abridgment of citizen's rights was however justified only because it was conceived in the interest of the safety and security of India and in the interests of general public.

But once the authority named in the ntoification granted permit to the petitioner he acquired the right to enter and stay within the prtoected area. He also acquired the right to hold and dispose of property within that area and to carry on his occupation, trade or business therin. All this was of course subject to the terms and conditions of which permit had been granted to him but the rights which had been guaranteed to him under Article 19 of the Constitution. These rights could nto be taken away by the District Magistrate, Kinnaur in an arbitrary manner without compliance with the rules of fair play.

(13) The question as to how far statutory authorities taking administrative action are bound to observe the ordinary rule of fair play, came up for consideration before their Lordships of the Supreme Court in *Radheshyam Khare v. State of Madhya Pradesh*, : [1959]1SCR1440 . The question which their Lordships had to decide in that case related to the action taken by the Government of Madhya Pradesh in exercise of the powers conferred on it by section 53-A of the C. P. and Berar Municipalities Act, 1922, the relevant portion of which reads as under:-

'53-A. (1) If a committee is not competent to perform the duties imposed on it or undertaken by it by or under this Act in force and the State Government considers that a general improvement in the administration of the municipality is likely to be secured by the appointment of a servant of the Government as the executive officers of the Committee, the State Government may, by an order stating the reasons therefor published in the Gazette, appoint such servant as the executive officer of the Committee for such period not exceeding eighteen months as may be specified in such order'.

(14) After holding that the act of the Government was an administrative act S. R. Das C. J. observed as under:-

'To say that action to be taken under S., 53-A is an administrative action is not to say that the State Government has not to observe the ordinary rules of fair play. Reference to the observation made by Forest J. in *Bentley's case* about God asking Adam and Eve whether they had eaten the forbidden fruit appearing in the judgment of Byles J. in *Cooper v. Wandsworth Board of Works*, (1863) 14 CB 180=143 ER 414 is apposite. The decision in the last mentioned case clearly establishes that in some cases it may be necessary to give an opportunity to a party to have his say before an administrative action is taken against him. But that is quite different from the well-ordered procedure involving notice and opportunity of hearing necessary to be followed before a quasi-judicial action, open to a writ of certiorari, can be taken. The difference lies in the manner and mode of the two procedures. For the breach of the rules of fair play in taking administrative action a writ of certiorari will not lie.'

(15) It is no doubt true that the permit granted to the petitioner provided that it was subject to cancellation by the District Magistrate at his discretion. The argument of the learned counsel for the respondents therefore is that the petitioner having accepted this condition could not be heard to complain about the cancellation of the permit without showing that the District Magistrate had acted mala fide and the discretion exercise by him amounted to abuse of power. I am not at all impressed by this argument. The fundamental right guaranteed to citizen cannot be allowed to rest on such slender foundations. The area of discretion vested in the District Magistrate, no matter how wide its extent might be, is still subject to the ordinary rules of fair play and since on the respondents' own showing there has been complete non-observance of the rules of fair play, the action taken against the petitioner cannot possibly be sustained.

(16) There is also no substance in the argument of Mr. Malhotra that the permit having expired on 8th March, 1967 the petitioner lost his right to approach this Court thereafter. An illegal order made by the authorities is not transformed into a legal order merely because the period during which petitioner would have ordinarily been entitled to enjoy his rights had come to an end. The fact remains that the petitioner's permit was arbitrarily cancelled on 29th December, 1966 and the request made by him on 8th February, 1967 for permission to stay for another period of two months was also rejected before he was constrained to move this Court. The expiry of the period during which the permit would have ordinarily remained in force would not make the order dated 29th December, 1966 legal in any sense of the term.

As facts stand the petitioner is being prosecuted under section 3(6) of the Criminal Law Amendment Act, 1961 for having disobeyed the orders made by respondent No. 2 on 29th December, 1966 and for having continued to stay within the notified area in spite of cancellation of his permit. But for the order dated 29th December, 1966 made by respondent No. 2 the petitioner would have had the right to stay on in the area till 8th March, 1967 and would not have become liable to any action being taken against him under the aforementioned provision of the Criminal Law Amendment Act, 1961. This gives the petitioner his right to move this Court and this right of his cannot be defeated because the permit granted to him had expired.

(17) The powers of this Court under Article 226 of the Constitution are not confined to technical writs of mandamus etc., issued by the Court of Queens Bench in England; they are much wider. In a suitable case where this Court comes to the conclusion that the administrative authorities have in exercise of their discretionary powers transgressed the limits of their powers or have acted in violation of principles of fair play there is nothing which can stand in its way to give relief to the citizens. The instant case appears to me to be one in which manifest injustice has been done to a citizen.

The petitioner was not charged with any act prejudicial to the safety and security of India. The affidavit filed on behalf of the respondents also does not disclose any grave emergency which prevented the District Magistrate from affording opportunity to the petitioner to have his say against the action proposed to be taken against him. If the petitioner was engaged in unauthorized felling of Government trees or theft of Government timber, action could be easily taken against him under the ordinary provisions of law. In any case, the action could very well be deferred till the petitioner's Explanation was invited and considered by the District Magistrate. His stay within the area for a few days more would not have resulted in any irreparable harm or loss to the State.

(18) For the foregoing reasons, the order cancelling the petitioner's permit is hereby quashed. The necessary consequence of this order is that the proceedings launched against the petitioner for his prosecution on account of his continuing to stay within the notified area till the expiry of his permit on 8th March, 1967 in defiance of the order of the District Magistrate requiring him to remove himself from that area, are also quashed. It may however be made clear that this order will not affect any action that may be taken against the petitioner for his continuing to stay with petitioner for his continuing to stay within the notified area after 8th March, 1967.

(19) The petitioner will also have his costs of these proceedings which are assessed at Rs. 100.

20. Order accordingly.

