

Delhi Development Authority and ors. Vs. Ashok Kumar

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Court : Delhi

Decided On : Mar-21-2006

Reported in : 2006(88)DRJ637

Judge : Markandeya Katju, C.J. and; Shiv Narayan Dhingra, J.

Acts : [Constitution of India](#) - Article 309

Appeal No. : LPA 348/2004

Appellant : Delhi Development Authority and ors.

Respondent : Ashok Kumar

Advocate for Def. : Mahesh Srivastava, Adv.

Advocate for Pet/Ap. : Anil Sapra, Adv

Disposition : Petition dismissed

Judgement :

Markandeya Katju, C.J.

1. This Writ Appeal has been filed against the impugned judgment of the learned Single Judge dated 8.12.2003 in WP(C) No. 4740/2000 allowing the writ petition.

2. We have heard learned counsel for the parties and perused the record.

3. The writ petitioner (respondent in this appeal) had applied for the post of Patwari claiming to be a scheduled caste candidate. He was selected against the reserved quota for scheduled caste candidates and given appointment letter dated 18.11.1992 vide Annexure C to the writ petition. The petitioner had submitted a scheduled caste certificate at the time of joining duty. A true copy of the scheduled caste certificate dated 23.7.1981 is Annexure D to the writ petition. That certificate which was issued by the Tehsildar, Sadar, Rampur (UP) states that the petitioner is a Mochi (Chamar) which is a scheduled caste.

4. On 4.3.1998 the petitioner was issued a show cause notice alleging that he had falsely stated that he was a scheduled caste candidate and he had obtained appointment on that basis. The show cause notice stated that the Tehsildar, District Rampur (UP) made a verification about the alleged scheduled caste certificate of the petitioner and after an enquiry he has reported that the petitioner is not a member of the scheduled caste and he has given a false declaration to that effect and obtained appointment on that basis to the post of Patwari. The petitioner was asked to show cause as to why his service be not terminated forthwith for furnishing a false scheduled caste certificate. A true copy of the show cause notice dated 4.3.1998 is Annexure E to the writ petition.

5. The petitioner requested for a copy of the report sent by the Tehsildar, Rampur (UP), but the Director (Personnel) vide letter dated 30.3.1998 informed the petitioner that although he could not be supplied a copy of the letter of the Tehsildar, Rampur (UP), he was at liberty to inspect the said letter. The petitioner was given further 7 days time to reply to the show cause notice. The petitioner carried out an inspection of the report of the Tehsildar. A true copy of the letter dated 30.3.1998 is Annexure G to the writ petition.

6. On 7.4.1998 the petitioner submitted his reply to the show cause notice and denied the charges against him. A true copy of the letter dated 7.4.1998 is Annexure H to the writ petition.

7. The petitioner alleged that no opportunity of hearing was given by the Tehsildar, Rampur to him. Subsequently by order dated 29.4.1998 the petitioner's service was terminated vide Annexure A to the writ petition. In that order it is stated that

the petitioner concealed material facts regarding his claim of caste and had furnished false certificate and had on that basis obtained employment on the post of Patwari. Against that termination order the petitioner filed an appeal which was dismissed. Hence, the petitioner filed the writ petition.

8. The learned Single Judge by the impugned judgment has allowed the writ petition on the ground that the petitioner was not given an opportunity to lead evidence to show that the certificate which he had filed was neither forged nor fabricated.

9. During the pendency of this appeal, we passed an order dated 9.1.2006 allowing the appellant to file an affidavit of the Tehsildar, Rampur or the concerned authority as to the authenticity of the caste certificate dated 23.7.1981. In compliance of the said order an additional affidavit was filed on behalf of the appellant. In para 3 thereof it is stated that in pursuance of the direction of this Court the appellant wrote to the Tehsildar (Sadar) of District Rampur, UP vide letter dated 30.11.2005 to send information about the factum of issuance of a show cause notice to the respondent before verifying the genuineness of the scheduled caste certificate submitted by the respondent. The appellant received a letter dated 28.12.2005 from the Tehsildar, Rampur, U.P stating that an on the spot inspection about the caste certificate of the respondent has revealed that the respondent does not belong to the scheduled caste category and in fact belongs to Kayasth (Saxena) community which comes under the general category. It was further stated in the said letter of the Office of the Tehsildar that the alleged certificate in question has not been issued at all and hence there was no question of cancelling the same or issuing any show cause notice for cancelling it. A true copy of the letter dated 28.12.2005 of the Tehsildar, Rampur, U.P is Annexure-5 to the additional affidavit.

10. An affidavit in reply has also been filed by the respondent to the said additional affidavit and we have perused the same.

11. In our opinion, when the Tehsildar states that the caste certificate has not even been issued to the respondent (writ petitioner), it is obvious that there was no question of cancelling the said caste certificate or issuing a show cause notice for

cancelling the same. The question of cancellation or show cause notice arises only when a certificate has in fact been issued. When a certificate has not been issued at all, obviously there is no question of issuing a show cause notice or cancelling the same. Hence, there is no question of violation of the principles of natural justice.

12. We see no reason to disbelieve the letter dated 28.12.2005 of the Tehsildar which states that the caste certificate has not been issued from his office at all and hence, the question of hearing Shri Ashok Kumar, the respondent does not arise.

13. It is well known that a lot of fraud has been committed in our country regarding caste certificates in order to obtain a job or admission in some institution. Hence, this Court should not encourage these tactics.

14. In a very recent decision of the Supreme Court in Bank of India and Anr. v. Avinash D. Mandivikar and Ors. : AIR 2005 SC3395 , this wide spread malpractice has been strongly commented upon. It is evident that the writ petitioner had obtained his appointment by practicing fraud. It is well settled that fraud vitiates everything.

15. In our opinion it was not necessary for the Tehsildar to give opportunity of hearing in such a case. The rules of natural justice are not a strait jacket formula vide Union of India v. Tulsiram Patel : (1985)IILLJ206SC ; Maharashtra State Financial Corporation v. Suvarna Board Mills : AIR 1994 SC2657 ; Anil Kumar Srivastava v. Chairman, L.I.C. of India : (2003)IILLJ108All ; Bar Council of India v. High Court of Kerala : AIR 2004 SC2227 ; and S.R. Kashyap v. Canara Bank 2004(102) FLR 12 .

16. The rules of natural justice cannot always be applied strictly vide A.K. Mittal v. Vice Chancellor 1991 All LJ 175; Hira Nath Mishra v. Principal Rajendra Medical College, Ranchi 0044/1973 : (1973)IILLJ111SC . Where there are large scale malpractices no show cause notice need be issued vide Biswa Ranjan Sahoo v. Sushanta Kumar Dinda : (1996)IILLJ763SC .

17. In exceptional cases the rules of natural justice can be modified or excluded altogether vide *Union of India v. V.K. Jain* 2003 UPTC 536; and *Union of India v. Tulsiram Patel* (supra).

18. In *U.P. Junior Doctors Action Committee v. Dr. B. Sheetal Nandwani* : AIR 1991 SC909 the Supreme Court observed that where admission is obtained by fraud no opportunity of hearing need be given before cancelling it.

19. It is well settled that natural justice is not an unruly horse vide *Board of Mining Examination v. Ramjee* : [1977]2SCR904 .

20. Moreover, it is well settled that fraud vitiates all proceedings. The issue of misrepresentation and fraud has been considered by the Courts time and again. A Constitution Bench of the Supreme Court in *Pratap Singh v. State of Punjab* : (1966)ILLJ458SC , placed reliance upon the judgment in *Lazarus Estates Ltd v. Beasley* 1956 All ER 341, wherein it has been observed:

No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud.

21. It is a settled proposition of law that where an applicant gets an order by making misrepresentation or playing fraud upon the competent authority, such an order cannot be sustained vide *S.P. Chengalvaraya Naidu v. Jagannathan* : AIR 1994 SC853 .

22. In *Andhra Pradesh State Financial Corporation v. Gar Re-Rolling Mills* : [1994]1SCR857 and *State of Maharashtra v. Prabhu* : (1995)ILLJ622SC , the Supreme Court has observed that a writ Court, while exercising its equitable jurisdiction, should not act as to promote perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. Equity is also known to prevent the law from the craft evasions and subtleties invented to evade law.

23. The ratio laid down by the Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to persons who played fraud or made misrepresentation, and in such circumstances the Court should not perpetuate the fraud by entertaining the petitions on their behalf vide *District*

Collector and Chairman, U.S.W School Society v. M. Thirupura Sundri Devi : (1990)IILLJ153SC ; and Union of India v. M. Bhaskaran : (1996)4SCC416 .

24. In United India Insurance Company Ltd v. V. Rajendra Singh : [2000]2SCR264 , the Apex Court observed that Fraud and justice never dwell together (fraus et jus nunquam cohabitans) and it is a pristine maxim which has never lost its temper over all these centuries.

25. A similar view has been reiterated in K.G. Ashok v. Kerala Public Service Commission : [2001]3SCR453 ; and Kendiya Vidyalaya Sangathan v. Ram Ratan Yadav : (2003)IILLJ523SC .

26. In Upen Chandra Gogoi v. State of Assam : (1998)IILLJ63SC , the Apex Court held that the Court should not validate an action which was not lawful at inception. Nor should the Court permit an appointment made by giving a go-bye to the essential mode of recruitment as provided by the Statutory Rules or the rules framed under the proviso to Article 309 of the Constitution which have binding force and the same cannot be permitted to be over looked/violated vide R.K. Trivedi v. Union of India : (1998)9SCC58 .

27. Similarly, in New India Assurance Co, Shimla v. Kamla : [2001]2SCR797 , the Apex Court held that an order which is null and void remains inexecutable and unenforceable forever as it cannot acquire legal validity by any process of sanctification whatsoever for the reason that forgery is anti-thesis to legality and law cannot afford to validate a forgery.

28. In Virendra Kumar Gupta v. State of U.P. : 2004(1)AWC6 , a Division Bench of Allahabad High Court held that a lease executed in favor of a certain party which had been bequeathed by the original owner to a trust for building an eye hospital was wholly fraudulent, and hence was null and void.

29. In United India Insurance Company Ltd v. V. Rajendra Singh (supra), the question whether a decree or an order of a Court obtained by fraud is void was again considered and it was held that such an order is wholly void.

30. The Supreme Court followed its own earlier judgment in S.P. Chengalvaraya Naidu (dead) by L.Rs v. Jagannathan (dead) by L.Rs (supra), in which the Supreme Court observed:

Fraud avoids all judicial acts, ecclesiastical or temporal observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.

31. The Supreme Court also relied on its earlier decision in Indian Bank v. Satyam Fibres (India) Pvt. Ltd. where it was observed that since fraud amounts to an abuse of the process of the Court the Court has inherent power to set aside an order obtained by fraud.

32. Similar view has been taken by the Supreme Court in Kumari Madhuri Patil and Anr. v. Addl. Commissioner, Tribal Development and Ors. : AIR 1995 SC94 .

33. In view of the above, we are of the opinion that there is no merit in the writ petition. The appeal is, therefore, allowed and the impugned judgment is set aside and the writ petition is dismissed.