
(2004) 03 AHC CK 0219

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2686 of 2004

Anish Kumar Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2004 All 399 : (2004) 5 AWC 4004

Hon'ble Judges : Umeshwar Pandey, J; S.P. Srivastava, J

Bench : Division Bench

Advocate : P.C. Pandey and A.K. Sinha, for the Appellant; Brahmdeo Misra, S.C., for the Respondent

Final Decision : Allowed

Judgement

1. Heard the learned counsel for the petitioner.
2. Learned Standing Counsel representing the respondents Nos. 1 to 4 has also been heard.
3. It may be noticed that in spite of repeated opportunities having been provided to file a counter-affidavit in opposition to the writ petition, no counter-affidavit has been filed so far in spite of the fact that on 23-2-2004 it was made clear that no further time for filing the counter-affidavit will be granted.
4. The petitioner has asserted that UP Zila Adhikari/Deputy District, Magistrate. Bhadohi, who was also functioning as Assistant Collector, had granted domicile certificate in favour of the petitioner dated 10-7-2002 certifying that he was a permanent resident of Village Kandhiya, Tehsil - Bhadohi. District - Sant Ravidas Nagar. However, the aforesaid certificate was subsequently, vide the order dated 5-1-2004, a copy of which has been filed as Annexure-4 to the writ petition, cancelled with the direction to initiate the disciplinary proceedings against the Lekhpal who had submitted the report and for lodging a First Information Report Initiating criminal proceedings against the present petitioner.

5. The grievance of the petitioner is that the aforesaid order proceeds on the basis of the evidence which was never brought to the notice of the petitioner and further that the aforesaid order stands vitiated in law as it has been passed without affording any opportunity to the petitioner of being heard.

6. The contention of the petitioner is that the impugned order which visits the petitioner with penal consequences ought not to have been passed without affording any opportunity of being heard to the affected party.

7. As has already been noticed herein above, the allegations made in the writ petition specifically asserting that the impugned order had been passed without affording any opportunity of the hearing to the petitioner have not been controverted by filing any counter-affidavit and can safely be accepted as correct.

8. The rules of natural justice can operate in areas not covered by any law validly made and are evolved to ensure fair adjudication whenever rights of an individual are affected. They are aimed to secure fair play in action and prevent miscarriage of justice. One of the first principles of natural justice is that you must not permit one side to use means of influencing a decision which means are not known to the other side. It has to be emphasized that any person even if represented at any enquiry who is to be adversely affected by any decision therein should not be left in the dark as to the risk of the finding being made depriving him any opportunity to adduce evidence or material of probative value which had it been placed before the decision maker, might have deterred him from making the finding even though it cannot be predicated that it can not inevitably have had that result. Observation to this effect occurring in the decision of the Privy Council in the case of *Mohan v. Air Newzealand Ltd.*, reported in (1984) 3 ALLER 201 clearly indicate that mere knowledge of the enquiry proceedings or presence at the hearing is not enough. The person, who is going to be adversely affected must be informed of all the material which may be utilised against him so that he may have the opportunity to adduce the additional evidence or material of probative value which might deter the enquiring authority from making the finding as indicated above. As a matter of fact the Apex Court in its decision in the case of *Indra Sawhney and Others Vs. Union of India (UOI)*, has clearly held that taking action against a person on the basis of certain material or evidence without bringing the same to the notice of such person is violative of procedural safeguards and contrary to fair and just enquiry.

9. Considering the facts and circumstances as brought on record, sufficient ground has been made out for interference by this Court.

10. Accordingly, this writ petition succeeds and the impugned order dated 5-1-2004 is quashed with the liberty to the concerned authority to proceed afresh in accordance with law against the petitioner and pass a fresh order after affording him reasonable opportunity of being heard.