
(2010) 12 UK CK 0137
In the Uttarakhand High Court
Case No : Writ Petition No. 2202 of 2009

Arbind Chauhan

APPELLANT

Vs

Krishi Utpadan Mandi and Samity and Others

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2010) 12 UK CK 0137

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—By means of this writ petition under Article 226 of the Constitution of India, the Petitioner has sought the following relief-

(1) To issue a writ, order or direction in the nature of certiorari quashing the impugned cancellation order dated 24th December, 2009 (contained as Annexure No. 6 to the writ petition), passed by the Secretary Krishi Utpadan Mandi Samity Haldwani, District Nainital.

(2) To issue a writ, order or direction in the nature of mandamus commanding the Respondents not to dispossess the Petitioner from the Canteen No. 5 situated in the premises of Krishi Utpadan Mandi Samity Naveen Mandi Sthal Haldwani District Nainital.

2. The brief facts of the case according to the Petitioner are that the Petitioner was allotted Canteen No. 5 from 1st January 2008 to 31st December, 2009 on rent and a sum of Rs. 1,51,000/- was paid by the Petitioner to the Respondents. Further the Petitioner received an offer dated 17th December, 2009 by which the Respondents asked the Petitioner that if he so desires, the aforesaid Canteen would be renewed for another two years, from 1.1.2010 to 31.12.2011 on 10% enhanced rent of previous allotment. The Petitioner was further directed to deposit 50% advance rent on enhanced basis and the terms and conditions of

the previous agreement would remain unchanged. The Petitioner was also required to bring a stamp paper of Rs. 100/- and the Petitioner was directed to complete all the formalities on or before 19th December, 2009 before 5.00 P.M. along with consent letter. The Petitioner was agreeable to the above terms and conditions, therefore he deposited a sum of Rs. 83,050-00 vide cheque No. 101580 dated 18th December 2009 payable at Almora Urban Cooperative Bank Ltd. Haldwani. The Petitioner further alleged that he gave his consent pursuant to letter dated 17th December, 2009 on 18th December 2009. The case of the Petitioner is that he has sent the consent letter as well as the cheque through courier receipt No. 22158 dated 18th December, 2009. Since the Respondents accepted the cheque of the Petitioner, the Petitioner expected that his canteen has been renewed upto 31st December, 2011 and he started the business on the canteen and still he is running his business. The Respondent invited tender for six canteens vide advertisement dated 21st December, 2009 and canteen No. 5 was not included in the said advertisement. But to the utter surprise of Petitioner on 24th December, 2009 the Petitioner was served the impugned order by which it was informed that the canteen No. 5 has not been allotted to the Petitioner as such the consent letter of the Petitioner has been rejected.

3. The grievance of the Petitioner is that the cancellation of the canteen was done in a hasty manner and against the principle of natural justice and no prior notice was served upon the Petitioner. Since the Respondents have accepted the money as such part performance of agreement has already been done and it was incumbent on the part of the Respondents that they ought not have cancelled the allotment without due process of law and the action on the part of the Respondents is violation of Articles 14, 16 and 21 of the Constitution of India.

4. The Respondents filed counter affidavit alleging therein that according to the Petitioner he submitted the consent letter in the office of Mandi Samity by hand on 18-12-2009 as such there was no justification for sending cheque by courier on 18-12-2009 and this fact shows that actually the Petitioner did not submit the cheque on or before the date fixed i.e. 19-12-2009 and in collusion with courier agency forged the document. It is further assertion of the Respondents that although the Petitioner has given his consent letter in the office of Mandi Samity on 18-12-2009 but the cheque was received by courier only after the offer had been rejected. The Respondents never accepted the cheque received from the Petitioner. As regards the advertisement for bid of six canteens dated 21-12-2009, the Respondents alleged that due to inadvertence mistake tenders were invited only for six canteens, but as soon as the mistake came to notice, a corrigendum dated 24.12.2009 was issued inviting tenders for all the fifteen canteens. The terms of canteen of the Petitioner allotted to him was to expire on 31.12.2009 and the license of the Petitioner was never renewed for further two years, therefore, the consent letter of the Petitioner has rightly been rejected, vide impugned order.

5. The Petitioner filed rejoinder affidavit and reiterated the averments made in

the writ petition.

6. I have heard Mr. Harendra Balwal, learned Counsel for the Petitioner and Sri J.C. Belwal, Advocate on behalf of the Respondents.

7. It is admitted case of the parties that Canteen No. 5 was allotted to the Petitioner during the period 1-1-2008 to 31.12.2009 and its term was to expire on 31.12.2009. Thereafter the Secretary, Mandi Utpadan Samity Haldwani vide notice dated 17-12-2009 gave offer to the Petitioner if he wants allotment of the Canteen for further two years, he should submit his consent letter and deposit 50% of previous allotment at an enhanced rate of 10%. He was also directed to submit a stamp paper of Rs. 100/- and all these formalities should be completed upto 5.00 P.M. on 19-12-2009 and after due date the application of the Petitioner shall not be considered.

8. In pursuance to above notice dated 17-12-2009 the Petitioner submitted application before Secretary Mandi Samity, Annexure C-A-2.

9. The main controversy involved in this writ petition is whether the Petitioner had fulfilled the terms and conditions of the offer given to him by Mandi Samity vide letter No. 1189 dated 17-12-2009 or not?.

10. According to the Petitioner, he was agreeable to the above terms and conditions, therefore he deposited a sum of Rs. 83,050-00 vide cheque No. 101580 dated 18th December 2009 payable at Almora Urban Cooperative Bank Ltd, Haldwani. The Petitioner further alleged that he gave his consent pursuant to letter dated 17th December, 2009 on 18th December 2009, to the writ petition. According to the Petitioner he has sent the consent letter as well as the cheque through courier receipt No. 22158 dated 18th December 2009. The Petitioner has filed copy of cheque No. 101580 dated 18-12-2009, as annexure No. 2 to the writ petition and the receipt of courier annexure No. 4. It is apparently revealed on the face of this document Annexure No. 4, that all the columns of this document are blank. This document is also inconsistent to the application Annexure CA-2. In the application CA-2 the Petitioner has mentioned in the concluding paragraph that he is submitting cheque No. 101580 dated 18-12-2009 in the office of Mandi Samity on 18-12-2009. On one hand the Petitioner has taken the plea that he has submitted the cheque to the Mandi Samity through courier, at the same time he is narrating this fact in C.A.-2 that he himself is handing over the cheque to the office of Mandi Samity on 18-12-2009. When the Petitioner was submitting the cheque on 18.12.2009 then what was the necessity to send the cheque through courier on the same date. This contradiction totally falsify the claim of the Petitioner that he has submitted the cheque with the Respondents on due date.

11. The Respondent in the counter affidavit also pleaded that the cheque submitted by the Petitioner was signed by one Mulayam Singh Chauhan and it was received in the office of Mandi Samity on 26-12-2009. In the rejoinder affidavit the Petitioner has not emphatically denied this fact and gave evasive

reply. It is amply proved that the cheque was not issued to the Mandi Samity by the Petitioner, rather it was signed by one Mulayam Singh Chauhan.

12. Learned Counsel appearing on behalf of the Petitioner has submitted that Petitioner is running his business on the aforesaid canteen and the renewal of the canteen should be treated upto 31.12.2011 as the Respondents have accepted the cheque of the Petitioner. He also argued that since in the advertisement dated 21-12-2009 the canteen of the Petitioner was not included for auction therefore it should be treated that the canteen was allotted to the Petitioner.

13. The above submission of learned Counsel has no substance. The Respondents have never accepted the cheque of the Petitioner and the Petitioner is running his business on the disputed canteen in the protection of stay order passed by this Court on 30.12.2009 in the instant writ petition and it cannot be presumed that the proposal of the Petitioner has ever been accepted by the Respondents. The Respondent Mandi Samity is entitled to recover the rent for the period during which the Petitioner did his business in the disputed canteen at the rate of previous allotment plus 10% at enhanced rate.

14. So far as not inclusion of canteen of Petitioner in the auction notice dated 21-12-2009 is concerned, the Respondents have given explanation that due to inadvertence mistake in place of 15 canteens only 6 canteens were mentioned in the advertisement and when this mistake came to notice corrigendum was issued on 25-12-2009. I find that the explanation submitted by the Respondents is plausible. The corrigendum was issued without any further delay and before the expiry of the last date of previous allotment of the canteen in favour of Petitioner. The Petitioner cannot be extended any benefit of this fact.

15. It is also pertinent to mention here that the Petitioner was given specific offer to deposit 50% of previous allotment with 10% enhanced amount up-to 19-12-2009, but rather depositing the amount with the Mandi Samity on or before the last date fixed for the transaction, the Petitioner concocted a false story of depositing the amount through cheque.

16. Learned Counsel for Petitioner also submitted that no opportunity of hearing was given to Petitioner before rejecting the consent by the Respondents.

17. A bare perusal of offer letter Annexure No. 1, shows that it has been specifically mentioned in it that after expiry of due date i.e. 19-12-2009, the application will not be considered. As the Petitioner has not fulfilled the terms and conditions, his application/offer was liable to be rejected out rightly and there was no occasion to give him opportunity before rejecting his consent.

18. In view of foregoing discussion it is apparent that the Petitioner has failed to deposit the amount with the Respondents on due date meaning thereby terms and conditions of offer could not be fulfilled by the Petitioner therefore the Mandi Samity was justified in rejecting the consent of the Petitioner. The consent of Petitioner was rejected by the Respondents on 24.12.2009, after the due date

19-12-2009 and before expiry of last date of previous allotment i.e. 31.12.2009.

19. The writ petition, being devoid of merit, is dismissed. The interim stay order dated 30.12.2009 is vacated.