
(2005) 01 AHC CK 0129
In the Allahabad High Court
Case No : C.M.W.P. No. 14 of 2005

Chaturgun and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-01-2005

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 34

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202, 34

Citation : (2005) 2 AWC 1256 : (2005) 98 RD 244 : (2005) 1 RD 244

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : S.K. Pathak, for the Appellant;

Final Decision : Allowed

Judgement

S.U. Khan, J.—Entry of the name of the petitioner in the revenue records has been set aside after 30 years without hearing the petitioner. Additional Deputy Collector and Tehsildar, Deoria gave ex parte report dated 7.10.2004 to the effect that case No. 1489 decided on 6.8.1975 was farzy hence entries in C.H. Form 45 on the basis of said order were recommended to be cancelled. A.D.M (Finance and Revenue), Deoria on 20.10.2004 in case number letter No. 1/RRK-2004 approved the ex parte report dated 7.10.2004 on the basis of legal opinion given by D.G.C. (Revenue), Deoria dated 14.10.2004, in the said order, which is challenged in this writ petition it is mentioned that there are authorities of High Court, Supreme Court and Board of Revenue to the effect that farzy entry can be cancelled without hearing anyone. In several cases such types of orders are being passed. Whether the entries are farzy or not can be decided only after hearing the person in whose name entry is continuing. The Court completely fails to understand that what harm would have been caused if before passing the impugned order petitioner had been heard. Entry was continuing for 30 years. Revenue authorities/courts often forget the first principle of natural justice that no adverse order can be passed against a person without providing opportunity

of hearing to him (*audi alteram partem*).

2. As impugned order has been passed without hearing the petitioners, hence the matter has to be decided again by the authority concerned. In view of this I do not consider it necessary to call for counter affidavit.

3. Heard learned counsel for the petitioners as well as learned standing counsel representing all the respondents.

4. In several revenue matters Deputy Collectors/Sub-Divisional Officers and other revenue authorities and courts are passing orders particularly of removal of names from revenue records without hearing the parties which are effected by the said orders placing reliance upon the authority of the Supreme Court in *U.P. Junior Doctors' Action Committee Vs. Dr B. Sheetal Nandwani and Others*, . It is the first principle of natural Justice that no adverse orders shall be passed against a person without hearing him even in administrative matters which affect the rights of persons. Grant of opportunity of hearing in administrative matters is comparatively a recent doctrine. As far as judicial matters are concerned since the time when Courts were established it has been the most essential ingredient of procedural law that no order shall be passed without hearing parties concerned. Removal and substitution of entry in revenue records u/s 34 of Land Revenue Act or any other provision is a judicial matter making it all the more necessary to provide opportunity of hearing to the party concerned. The aforesaid authority of the Supreme Court is a rare exception to the Rule. In the said authority the facts were that innumerable medical students on the basis of a fake order of this High Court had obtained admission in higher classes. The Supreme Court enquired the matter from Registrar of this Court. The Registrar sent the original file to the Supreme Court with the report that in the said case no such order was passed. As innumerable persons had obtained benefit under an order which was not in existence and as the original file with the report of Registrar of this High Court was available before the Supreme Court hence the Supreme Court held that in view of peculiar facts and circumstances of the case it was not necessary to hear those innumerable students who had obtained admission in different medical colleges of Uttar Pradesh on the basis of the said order. There is one more point of distinction in the aforesaid authority of the Supreme Court. The fake order of the High Court Stated that the order was being passed on the basis of an earlier judgment of the Supreme Court. The Supreme Court had later on modified the said judgment. The said judgment of the Supreme Court cannot therefore be applied to such revenue cases where entries in revenue records are to be cancelled and substituted particularly when entries are continuing for a long time, i.e., more than a year. In some cases I have found that entries continuing for several decades have been cancelled without hearing the person affected on the basis of the aforesaid Supreme Court authority. The Board of Revenue in *Chandra Datt v. State* 1992 RD 160, has also taken similar view. In the said authority it has been held that:

"When men get their name incorporated by deceitful means they do not turn up

when process is issued to them. In avoiding the summons they hope to prolong continuance of their names in record. They sit like an eagle over a lonely crag surveying the proceeding. Immediately after the order is passed, they will descent on the scene to lodge their protest in revision." (Para-6).

5. This may also happen in other such cases where defendant considers his case weak. However, denial of opportunity of hearing is no solution to this problem. In the said authority reliance upon an earlier authority of Board of Revenue in 1991 RD 48 (Hindi) has also been placed. In my opinion the aforesaid and other similar authorities of Board of Revenue do not lay down correct law. As far as the aforesaid authority of the Supreme Court is concerned in this regard it is also important to note that subsequently none of the affected persons came forward with the allegation that the order of the High Court was not fake but genuine. In the aforesaid authority of the Supreme Court when original file of the High Court was itself before the Supreme Court then there was not the remotest possibility of the order of the High Court being genuine.

6. Whether an entry in revenue record is fake or fraudulent is a question of fact and can be found to be proved like any other fact only after providing opportunity of hearing to the parties concerned and likely to be affected by the ultimate order/judgment. It is correct that action taken on the basis of fraud has to be set aside and any entry on the basis of fake order has to be expunged. [Vide United India Insurance Co. Ltd. Vs. Rajendra Singh and Others, , wherein it has been held (approved) that "no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels every thing"). However, finding in respect of fraud cannot be recorded ex-parte. The Supreme Court in Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others, , placing reliance upon AIR 1941 93 (Privy Council) held in para 44 as under :

"Fraud like any other charge of a criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion and conjecture."

7. In the following authorities the Supreme Court has held that even before passing administrative orders affecting rights of parties opportunity of hearing shall be granted :

(1) Dr. Ashok Vs. Union of India and others, (It was a case of ban of particular insecticides).

(2) Sahi Ram Vs. Avtar Singh and Others, (It was a case of mining lease).

(3) Grosons Pharmaceuticals (P) Ltd. and Another Vs. The State of Uttar Pradesh and Others, (It was a case of black listing of contractor).

(4) AIR 2002 SC 2423 (It was a case of reduction of category of a contractor).

(5) Director General of Police and others Vs. Mrityunjay Sarkar and others, (In

this case constables were discharged from service on the ground that they produces a fake list from Employment Exchange without providing opportunity of hearing. Supreme Court approved the order of High Court setting aside discharge order on the ground of denial of opportunity of hearing).

(6) All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc., (In this case hundreds of employees were affected hence Supreme Court held that they might be served in representative capacity).

(7) Godawat Pan Masala Products I.P. Ltd. and Another Vs. Union of India (UOI) and Others, (In this case it was held that notification prohibiting manufacture and sale etc. of pan masala and gutka was bad in law as it had been issued without providing opportunity to the manufactures of meeting the facts relied upon in the notification in respect of injurious effects of pan masala and gutka).

(8) Canara Bank and Others Vs. Shri Debasis Das and Others, (In this authority several principles of natural justice expressed in Latin words have been discussed in detail giving their history (since 1215), scope and applicability.

Regarding first principle of natural justice that no person shall be punished unheard (*audi alteram partem*) it has been held that if appellate authority (it was a case of punishment of an employee) grants post decisional hearing then it may be sufficient compliance of requirement of hearing. In this regard reference has been made to Charan Lal Sahu Vs. Union of India, . (Concept of useless formality theory has also been adverted to in para 22 but no final opinion in that regard has been expressed).

8. Accordingly, it is held that whenever an entry in the revenue record is to be cancelled and substituted particularly when the entry is continuing for more than a year, notice must be given to the party in whose favour entry stands even if *prima facie*, authority/court concerned (i.e. Deputy Collector/Sub Divisional Officer in most of the cases) is of the opinion that the entry is result of fake order or fraud. Similarly if name of an asami pattedar is to be expunged from the revenue records on the ground of expiry of period of patta or any other ground, notice must be given to him before expunging his name. In a recent authority in Hari Ram v. Collector 2004 (2) RD 360, it has been held by this Court that apart from suit for ejectment u/s 202 of U. P. Z.A. and L.R. Act, asami pattedar may be evicted after expunging his name from the revenue records u/s 34 of U. P. Z.A. and L.R. Act but it can be done only after providing opportunity of hearing to the pattedar/lessee. However if entry is expunged or any other order is passed without hearing the person affected then he is entitled to file an application for post decisional hearing and recall of the order before the Court/authority which passed the *ex parte* order. If such an application is filed then the Court/authority concerned shall hear the applicant and in case it comes to the conclusion that the earlier order is not correct then the said order shall be set aside. In such situation it is not necessary to first set aside the order and then hear the party concerned, Alongwith such application such evidence must be filed which the

party considers necessary for his case. It has been held by the Supreme Court in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , that a person who complains about denial of opportunity of hearing must show that in case opportunity had been provided to him, what cause he would have shown or what defence he would have taken. (Similar view has been taken in S.L. Gupta v. A.D. Gupta 2003 AIR SCW 7089 (para 29) and Canara Bank (supra)]. Against ex parte orders of expunging of names it is not proper to file revision and appeal etc. directly. However, if revision, appeal etc. is directly filed then revisional court/appellate court may also instead of deciding the revision or appeal on merit may grant leave to the affected party to apply for post decisional hearing and recall of order before the trial court/authority. The revisional/appellate authority may also decide the matter on merit after providing opportunity of post decisional hearing (i.e. opportunity to show that earlier entry was not fake) as mentioned in the judgment of Supreme Court in Canara Bank (supra).

9. Revenue, authorities/courts must remember that a party can in some cases successfully show that entry of his name in the revenue record is correct and not fake or based upon fake order. This question can be decided only and only after hearing the party concerned and likely to be affected.

10. Impugned order dated 20.10.2004 is set aside and A.D.M. (Finance and Revenue), Deoria is directed to decide the matter after hearing the petitioners. Petitioners are directed to file certified copy of this order before A.D.M. (Finance and Revenue), Deoria, along with their objection within one month from today. A.D.M. (Finance and Revenue), Deoria must decide the matter afresh thereafter positively within two months. However, if the petitioners do not file certified copy of this order and their objection within one month before the A.D.M. then this writ petition shall stand dismissed.

11. Instead of granting liberty to the petitioners to file application for post decisional hearing and recall of order before the court below/A.D.M. I have quashed the order only for the reason that entry in revenue records, before it was cancelled, was continuing for about 30 years.

12. Writ petition is allowed accordingly.