
(2018) 07 CAL CK 0151
In the Calcutta High Court
Case No : CASE NO. WP No. 446 of 2017

Dhanraj Dhankani

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 27-07-2018

Acts Referred:

Industries (Development and Regulation) Act, 1951 — Section 18AA

Citation : (2018) 07 CAL CK 0151

Hon'ble Judges : HARISH TANDON, J

Bench : Single Bench

Advocate : Debabrata Saha Roy, Pingal Bhattacharyya, T.M. Siddiqui, Nilotpal Chatterjee, Biswanath Chakrabarti, Krishnendu Bera

Final Decision : Disposed Off

Judgement

The instant writ petition is filed challenging the letter of appointment issued to the private respondent pertaining to allotment of dealer in fair price shop in terms of vacancy notice dated 27th May, 2009. The case has a checkered history. Pursuant to the notice having published inviting applications from interested persons for appointment of the dealer in fair price shop, several applications came to be filed and the authority thereafter decided to appointment the dealer, who was found to be more suitable. It is not disputed that the decision was taken for appointment of petitioner as dealer by competent authority.

The said decision was challenged by the respondent no.8 herein in W.P. No.1607 of 2010. The state defended the said order in the affidavit in opposition filed by them justifying the rejection of candidature of the said respondent. The Single Bench accepted the contention raised by the state respondent and dismissed the said writ petition. The respondent no.8 carried the

said order to an appeal filed before the Division Bench being

A.P.O.T. No.211 of 2012 which was renumbered as A.P.O. No.365 of 2012. The Division Bench set aside the order of the Single Bench as

consequence whereof the writ petition was allowed to the extent that the Director of Rationing shall take decision on the perusal of the report of the

Chief Inspector and the recommendation of the Rationing Officer on the basis of the materials which form the basis of such recommendation and

report and directed the Director of Rationing to take decision on the recommendation made by the Rationing Officer within twelve weeks from the date of communication of the said order.

In compliance of the said direction passed by the Division Bench in the said mandamus appeal, the Director of Rationing, West Bengal, passed a fresh

order on 14th January, 2013. The said order would reveal that an opportunity of hearing was given to the respondent no.8 only and the said authority

further found that the recommendation and the report submitted by the Rationing Officer and Chief Inspector respectively cannot be rejected and

proceeded to appoint the respondent no.8 as fair price shop dealer.

Two writ petitions being W.P. No.18593(W) of 2013 and W.P. No.17433(W) of 2013 came to be filed by the respondent no.8 and the petitioner

respectively. The writ petition filed by the private respondent contains a restrictive prayer that the order of the Director of Rationing should be

implemented. On the other hand, the writ petition filed by the petitioner was in relation to the order of the Director of Rationing in appointing the

respondent no.8 as fair price shopdealer.

Both the writ petitioners were clubbed together and decided on 22nd December, 2016 by the Single Bench. It was found by the Single Bench that the

writ petition filed by the petitioner had no merit and proceeded to dismiss the same. The petitioner challenged the said order before the Division Bench

in M.A.T. No.94 of 2017. The said appeal was disposed of on 30th January, 2017. The Division Bench observed that the Director of Rationing, West

Bengal, arrived at the decision giving opportunity of hearing to the respondent no.8 only and quashed and set aside the said order directing the said

authority to take a fresh decision in accordance with the provisions of the West Bengal Urban Public Distribution System (Maintenance and Control)

Order, 2003.

Since the matter again rolled to the domain of the Director of Rationing in terms of the order of the latter Division Bench, the authority thereafter

decided not to afford an opportunity of hearing either to the petitioner or the respondent no.8. The said authority subsequently decided to appoint the

respondent no.8 as dealer of fair price shop and as a consequence whereof issued the appointment letter in his favour. The letter of appointment is a

subject matter of challenge in the instant writ petition.

According to the petitioner, on comparative assessment of the candidature of the petitioner as well as the respondent no.8, the petitioner is a better

candidate and, therefore, the decision to appoint the respondent no.8 as dealer is an outcome of closed mind. However, the said appointment letter is

also challenged on the ground of natural justice which can be seen from Ground-III and Ground-VIII in the instant writ petition. The petitioner says

that the said authority has overlooked the recommendations previously made where the petitioner was considered to be a better candidate than the

respondent no.8 and, therefore, the decision of the Director of Rationing is per se illegal and invalid having not taken into consideration the same

despite the direction passed by the first Division Bench. It is further submitted that the authority ought to have afforded an opportunity of hearing to

the respondent no.8 before arriving at the decision.

Learned Advocate appearing for the respondent no.8 submits that the authorities, after taking into account all the materials available on record, found

his client to be a suitable candidate and, therefore, the Court should not interfere with such decision having made strictly in terms of the directions

passed by the Division Bench of this Court. However, the learned Advocate appearing for the State took various points to support the decision of the

Director of Rationing in appointing the respondent no.8 as dealer. The first point urged by the learned Advocate is that the latter Division Bench

directed the authority to consider the application strictly in terms of the provisions of the Control Order of 2003.

According to him, the Control Order does not contain any provision in relation to affording an opportunity of hearing to be given to the parties at the

time of taking a decision for appointment of dealer. It is further submitted that the authority had taken into account all the material documents including

the report and the recommendation and ultimately found that the respondent

no.8 is the suitable candidate and, therefore, there is no infirmity and/or illegality in such decision.

The facts narrated hereinabove inexorably indicate that both the petitioner and the respondent no.8 offered their candidature for such dealership and approached the Court on more than one occasion. The first round of litigation at the instance of the respondent no.8 resulted into quashing and setting aside of the order of the authority with direction to take fresh decision in the light of the report and recommendation of the authorities. The subsequent order was further challenged by the petitioner in the second round of litigation and the Division Bench set aside the said order solely on the ground that the Director of Rationing afforded opportunity of hearing to the respondent no.8 only. The Division Bench directed the said authority to reconsider the said application strictly in accordance with the provisions of the Control Order of 2003.

Though the State says that the latter Division Bench judgment did not contain any direction for affording an opportunity of hearing to the respective parties, but this Court finds that in the absence of any direction in this regard, interference with the order passed by the Director of Rationing was made solely on the ground that the opportunity of hearing was given to the respondent no.8 only when the petitioner was all along challenging the decision of the authority in appointing the said respondent as dealer.

The position of law is more or less settled that if a statute or any document having a statutory force does not contain express provision relating to affording the opportunity of hearing to the parties nor contains the specific provision for dispensation of such right, the rule of natural justice is ingrained and inbuilt therein, more particularly when the rights and the claims of the rival parties are adjudicated. The concept of natural justice is not static but is an ever expanding concept. Though the rule of natural justice operates on the freedom of administrative action and often proves time consuming, but that is the price that one has to pay to ensure fairness in administrative action and such fairness can be ensured by adherence to the notion of the rule of natural justice.

It would be apposite to reproduce the observations of the Supreme Court in the case of Dr. Rash Lal Yadav vs- State of Bihar & Ors., reported in (1994) 5 SCC 267, wherein it has been, inter alia, held⁸. This concept was

examined in greater detail in *Swadeshi Cotton Mills v. Union of India*, (1981) 1 SCC 664. Sarkaria, J., speaking for the majority reviewed the cases on the subject, approved the observations made in *Kraipak* case, (1969) 2 SCC 262 : AIR 1970 SC 150 : (1970) 1 SCR 457, and reiterated in the case of *J.N. Sinha*, (1970) 2 SCC 458:1970) 1 SCR 691, extracted hereinbefore, and then proceeded to add as under: (SCC p.685, para 33)

“We have already noticed that the statute conferring the power, can be express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors : such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of preventive or remedial nature.”

Pointing out that there was no consensus of judicial opinion “whether mere urgency of a decision is a practical consideration which would uniformly justify non-observance of even an abridged form of this principle of natural justice, the learned Judge referred to the observations of Krishna Iyer, J. in *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405, 439, that even in cases where immediate action was imperative it was not necessary to sidestep the rule of natural justice because “natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances”. The learned Judge then concludes that plain reading of Section 18-AA of the Industries (Development and Regulation) Act, 1951 makes it clear that it does not exclude the application of the rule of natural justice at the pre-decisional stage. It is here that Chinnappa Reddy, J. dissented. After referring to the ratio in *Kraipak*, (1969) 2 SCC 262 : AIR 1970 SC 150 : (1970) 1 SCR 457, and *J.N. Sinha* cases, (1970) 2 SCC 458:1970) 1 SCR 691, the learned Judge observed as under: (SCC p.713, para 106)

“The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced. The presumption is also weak where what are involved are mere property rights. In case of urgency, particularly where the public interest is involved,

preemptive action may be a strategic necessity. There may then be no question of observing natural justice. Even in cases of preemptive action, if the

statute so provides or if the courts so deem fit in appropriate cases, a postponed hearing may be substituted for natural justice. Thereafter referring

to the language of Section 18-AA, the learned Judge observed: (SCC p.719, para 111)

Where an express provision in the statute itself provides for a post-decisional hearing the other provisions of the statute will have to be read in the

light of such provision and the provision for post-decisional hearing may then clinch the issue where predecisional natural justice appears to be

excluded on the other terms of the statute.

Therefore, the learned Judge differed with the majority on the limited question whether under Section 18-AA the requirement of natural justice could

be met by post-decisional hearing. There was no difference of opinion so far as the ratio laid down in the cases of *Kraipak*, (1969) 2 SCC 262 : AIR

1970 SC 150 : (1970) 1 SCR 457, and *J.N. Sinha*, (1970) 2 SCC 458:1970) 1 SCR 691, was concerned. Even though the majority came to the

conclusion the order was null and void, it refrained from striking it down on the assurance of the learned Solicitor General that the Central Government

will give full and effective hearing on all aspects touching the validity and/or correctness of the order and/or action of take over within a reasonable

time.

9. What emerges from the above discussion is that unless the law expressly or by necessary implication excludes the application of the rule of natural

justice, courts will read the said requirement in enactments that are silent and insist on its application even in cases of administrative action having civil

consequences. However, in this case, the High Court has, having regard to the legislative history, concluded that the deliberate omission of the proviso

that existed in sub-section (7) of Section 10 of the Ordinance (1980) while re-enacting the said sub-section in the Act, unmistakably reveals the

legislature's intendment to exclude the rule of giving an opportunity to be heard before the exercise of power of removal. The legislative history

leaves nothing to doubt that the legislature did not expect the State Government to seek the incumbent's explanation before exercising the power

of removal under the said provision. We are in complete agreement with the High

Court's view in this behalf.

It is axiomatic to record that even if the Control Order of 2003 is silent on the rule of natural justice, yet it does not contain any express provision of its

exclusion and, therefore, the authority has to adhere to the principles of natural justice in deciding the rival claims of the persons as such rule is

inherently ingrained and/or inbuilt therein. I am not oblivious of the fact that mere non-adherence of audi alterem partem shall not invalidate the

decisions of the quasi judicial or the administrative authorities unless a prejudice is shown. This Court does not find that there is any scope to enter into

such aspect for the simple reason that the parties were asserting their rights in various litigations filed before this Court and any decision which is

taken against him would cause prejudice if the non-adherence is manifest and evident therefrom.

The letter of appointment challenged in the instant writ petition is hereby quashed and set aside. Consequently, the order which forms the basis of

issuance of the said letter of appointment cannot remain surviving and is accordingly quashed and set aside. The Director of Rationing is directed to

reconsider the matter afresh after affording an opportunity of hearing to the petitioner as well as the respondent no.8 in the light of the directions

passed by the Division Bench and the entire exercise shall be completed within four weeks from the date of communication of this order.

After the delivery of the judgment in the open Court, learned Advocate appearing for the respondent no.8 prays for stay of operation of this order.

After considering such submission and in view of the findings recorded hereinabove, this Court does not find that it is a fit case where the operation of

the order should be suspended. Accordingly, the prayer is refused. The writ petition is, thus, disposed of. No costs. Urgent photostat certified copy of

this judgment, if applied for, be supplied to the parties within three days from date subject to their compliance with all the requisite formalities.