

(1965) 08 AHC CK 0017
In the Allahabad High Court
Case No : Special Appeal 439 of 1959

Electric Inspector to Govt. of U.P.

APPELLANT

Vs

R.J. Singh

RESPONDENT

Date of Decision : 24-08-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Electricity Rules, 1937 — Rule 48, 48(1)

Citation : AIR 1966 All 326

Hon'ble Judges : M.C. Desai, C.J; S.C. Manchanda, J

Bench : Division Bench

Advocate : Raja Ram, for the Appellant; A.P. Pandey, for the Respondent

Final Decision : Allowed

Judgement

Desai, C. J.

1. This is an appeal by the Electric Inspector to Government from a judgment of our brother Jagdish Sahai quashing by certiorari his order dated 19-11-1958 cancelling the licence granted to the respondent under Clause 12 of Notification No. 877/EI-86-1938, dated 2-6-1942, issued by the State Government of U. P., debarring him from obtaining a licence for the next two years.

2. The respondent is a contractor who undertakes electrical installation work. The Indian Electricity Act enacted to amend the law relating to the supply and use of electrical energy has created, the Central Electricity Board to exercise power conferred by Section 37. The power is to make rules to regulate transmission, supply and use of energy and generally to carry out the purposes and objects of the Act including rules providing for the protection of persons and property from injury by reason of contact with or the proximity of, or by reason of the defective or dangerous condition of any appliance or apparatus used in the transmission, supply or use of energy. In exercise of this power the Central Electricity Board has made Indian Electricity Rules, 1937. Rule 48(1) reads as follows:

"No electrical installation work..... shall be carried out upon the premises of or on behalf of any consumer or owner for the purposes of the supply of energy to such consumer or owner, except by an electrical contractor licensed by the State Government in this behalf."

This is the only rule regarding a licence for carrying out electrical installation work; there is no rule laying down the conditions of a licence, to whom a licence can be granted or refused, what are the conditions to be fulfilled by a person applying for a licence, what is the duration of a licence, by whom and in what circumstances can a licence be cancelled, what is the remedy against cancellation of a licence etc. There is no rule expressly empowering the State Government to make rules regarding a licence. Rule 48(2) laid down that Rule 48(1) would come into force in respect of any State on such day as the State Government may by notification in the official Gazette appoint. The State Government on 2-6-1942 issued notification No. 877/EI-86-1938 prescribing conditions for the grant of licences to electrical contractors under Rule 48. Clauses 12, 15, 16, 17, 19, 20, 21 and 24 deal with qualifications, application for licence, fees, responsibilities of an electrical contractor, cancellation of a licence and renewal of a licence. The only qualification required is possession of instruments for carrying out the tests of electrical installation required under the Indian Electricity Rules.

An application for a licence is to be made on a prescribed form, and a licence is granted on a prescribed form on payment of a fee of Rs. 100. Subsequently, a fee of Rs. 25 is to be paid for annual renewal. A contractor is responsible for submitting certain returns and any other return or information which the Electric Inspector may require, for maintaining only bona fide, certificated and full time employees, for maintaining a register of supervisors, wiremen and apprentices and for the quality of all materials used and the work carried out by his employees, for removing or rectifying defects in any work found to be defective by the Electric Inspector and for undertaking electrical installation work only on a written contract. Clause 21 is to the effect that the Electric Inspector may at any time cancel a "licence if the person to whom the licence is granted is in his opinion not fit to hold the licence" and every order made by him is subject to revision by the State Government. A licence is granted in a prescribed form and must be renewed "annually".

Clause 24 provides that "failure to renew a licence shall render such licence liable to cancellation, and the full initial fees will be charged for the issue of a new licence" and that an "application for renewal together with the licence shall be submitted to the Electric Inspector to Government at least one month before the date of expiry of the licence" A licence expires on the 31st day of March every year.

3. The respondent obtained a licence under Clause 16 of the above notification in 1950 and it was renewed year after year till 1958. He carried out electrical installation in an exhibition in the months of October and November, 1956. The

work done was found to be defective resulting in a death by electrocution and after an inquiry lasting nearly two years, the Electric Inspector (the appellant before us) on 19-11-1958 passed the impugned order cancelling the licence under Clause 21 of the Notification and debarred him from getting a fresh licence for a period of two years because he was not "considered fit to hold the licence inasmuch as he did not comply with Rule 30 of the Indian Electricity Rules in respect of the electrical installation carried out by him in the exhibition in November, 1956". The respondent did not apply to the State Government to revise the order of the Electric Inspector, instead he filed a petition for certiorari for the quashing of it.

4. The respondent advanced three grounds in support of his petition. One is that the State Government had no power to make rules regarding the grant and cancellation of a licence. Another is that Clause 21 of the Notification gives unbridled power to the Electric Inspector to cancel a licence and consequently is hit by Articles 14 and 19(1)(g) of the Constitution. The third is that the licence expiring on 31st March 1959 which was cancelled and the licences for the next two years which he was prohibited from obtaining were licences different from the licence expiring on 31-3-1957, during the enforcement of which he had done the electrical installation found to be defective and that, consequently, the licences could not be cancelled or could not be withheld from him. The petition was contested by the Electric Inspector. Our learned brother held that Clause 21 was hit by Articles 14 and 19(1)(g) of the Constitution and allowed the petition, though he rejected the other two contentions.

5. The argument about Clause 21 being hit by Article 14 was that it brought about inequality by conferring upon the Electric Inspector the power of cancelling a licence without laying down any guiding principles. It was contended that the discretion conferred upon him was so absolute that it resulted in unconstitutional discrimination between one licensed contractor and another. We see no force in this argument. Clause 21 makes it clear that a licence can be cancelled only on the ground that the licence is not fit to hold it. Every contractor's licence is liable to be cancelled on this ground and no contractor's licence can be cancelled if he is found fit to hold it. The clause divides licensed contractors into two classes, one of those who are fit to hold the licence and the other of those who are not, only the latter's licence is to be cancelled. This division of licensed contractors does not offend against the provisions of Article 14 of the Constitution. It is reasonable that the licence of a contractor, who is not fit to hold it, must be cancelled and that a licence should not be cancelled except on the ground that the contractor is not fit to hold it.

The fact that the notification does not lay down how to decide whether a contractor is fit to hold the licence or not, does not bring in any inequality among contractors or under the division of contractors into two classes, one of those who are found fit to hold the licence and the other of those who are not, irrational and hence unconstitutional. Whether a contractor is fit to hold a licence

or not obviously depends upon whether he is fit to discharge the responsibilities that have been laid upon his shoulders under the notification itself. The responsibilities are all mentioned in the notification and any contractor who is not able to discharge them is unfit to hold the licence and every contractor who is able to discharge them is fit to hold it, even though he is bad in some respect. The enumeration of the responsibilities that a contractor has to discharge is a standard to guide the Electric Inspector in determining whether a particular contractor is fit to hold the licence or not. Clause 21 is to be read along with the other clauses laying down the responsibilities and it would be wrong to say that the Electric Inspector is left free to decide the question of fitness according to his whim and regard-less of whether he is able to discharge the responsibilities enumerated in them or not.

In order to bring discretion within the constitutional limitations, it is not essential that the standard to guide it is laid down expressly; it can be implied also. In *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, the policy underlying *The Cotton Textiles (Control of Movement) Order, 1948* requiring a licence to be taken for transporting cloth or yarn was held to govern the grant or refusal of a permit. Clause 3 of the Order laid down that no person could transport any cloth or yarn except under, and in accordance with, a permit and Clause 8 provided that the Textile Commissioner could prescribe the manner in which an application for a permit could be made. The Order contained not a word as to whom a permit could be issued or ought not to be issued and yet the Supreme Court held that Clause 3 of the Order did not violate Article 14, The provision impugned in the instant case is less vulnerable than Clause 3 of the Order, because it lays down that the criterion for deciding whether to cancel a licence or not is whether the contractor is fit to hold it or not and one has not even to go to the policy underlying the notification because there are express provisions in the notification laying down the duties and responsibilities of a contractor.

The only express provision that is missing is that a contractor who is fit to discharge the responsibilities laid upon his shoulders is to be held to be fit to hold the licence and vice versa. The connection between the responsibilities and the finding of fitness or unfitness is so obvious that no express provision stating it was required in the notification. Section 5(7A) of the Indian Income Tax Act conferring upon the Commissioner of Income Tax and upon the Central Board of Revenue the power to transfer any case from one Income Tax Officer to another was held to be not violative of Article 14 in *Pannalal Binjraj Vs. Union of India (UOI)*, even though neither the Act nor the Rules framed under it lay down any principles to guide the Commissioner and the Central Board of Revenue in deciding whether to transfer a case from one Income Tax Officer to another or not. Bhagwati, J., speaking for the Supreme Court, inferred the principles from the objects and purposes of the Income Tax Act, even though there is nothing in the purposes and objects of the Act and the preamble having any bearing on the question whether a case should be heard by one Income Tax Officer or another.

As the learned Judge himself pointed out at p. 407, whether the case is heard by one Income Tax Officer or by another, it would be heard in the same manner. All the provisions of the Act would be applicable whether it was heard by one Income Tax Officer or another, yet it was held that the power of transfer was to be exercised only to further the object of the Act which was to levy Income Tax, cess and collect it. Aiyanger, J. pointed out in *Jyoti Prasad v. Administrator for the Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, at p. 1609 that it is not essential for the legislation to comply with the rule as to equal protection that principles for the guidance of the authority, upon whom a discretion is conferred, laid down in express terms in the legislation itself. It is enough if the impugned legislation indicates the policy which inspired it and the object which it seeks to attain. Guidance for the authority in the exercise of the discretion can be afforded by the Preamble, or even by the policy and the purpose of the legislation which may be gathered from other operative provisions.

In Special Appeal No. 197 of 1959 (All). *The U. P. Independent Labour Federation v. The State of U. P.*, decided on 7-10-1964, our brother Jagdish Sahai sitting with our brother G. C. Mathur rejected the contention that Rule 40(4) of the U. P. Industrial Dispute Rules giving power to the Labour Commissioner to allow or reject an application by a federation to present a party before a court, Labour Court or Tribunal, was unconstitutional as giving unguided discretion to the Labour Commissioner. The learned Judges observed that the power conferred upon the Labour Commissioner was not absolute but was controlled by the policy and purposes of the Industrial Disputes Act. The power conferred by the impugned clause is not dissimilar.

6. The power conferred by the impugned provision upon the Electric Inspector is not uncontrolled, being subject to revision by the State Government. It is true that there are no principles laid down to govern the discretion of the State Government when exercising its revisional jurisdiction. If the power conferred upon the Electric Inspector is discriminatory, the power conferred upon the State Government to revise his order is equally discriminatory. The latter power does not become undiscriminatory or less discriminatory merely because it is of a comparatively higher authority. If the power is liable to be abused by the Electric Inspector it is also liable to be abused by the State Government (though to a less extent) when exercising its revisional jurisdiction. There is nothing to prevent the State Government's revising a reasoned order of the Electric Inspector and substituting in its place an arbitrary order; the State Government may not do it ordinarily but there is nothing in the notification to prevent its doing it. We are only considering possibilities and not what has actually happened.

Clause 21 is impugned on the ground that it does not lay down a standard for deciding whether a contractor is fit to hold the licence or not. In a particular case the contractor may undisputedly be found to be unfit to hold the licence and the Electric Inspector may be undisputedly justified in cancelling it but that would not be the criterion for deciding whether the clause is arbitrary or not. It would have

to be held arbitrary if no standard is laid down or can be inferred even though in the particular case the exercise of the power is eminently reasonable. Thus, it would appear that the fact that there is a provision for appeal or revision from the exercise of the power does not by itself make the conferment of power constitutional but the Supreme Court has relied upon it for validating the conferment of power, vide *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, . Bhagwati, J. said at p. 708 in that case that:

".....any order made by him in regard thereto is subject to appeal to the State Government at the instance of the party aggrievedit cannot be urged that wide powers are conferred on the Cane Commissioner which can be used by him in a discriminatory manner so as to violate the fundamental right guaranteed under Article 14."

Though revisional jurisdiction, unlike appellate jurisdiction, is discretionary, the existence of even revisional jurisdiction against exercise of the power is sufficient to render the provision conferring it immune from attack under Article 14.

7. The respondent relied mainly upon *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, in which the Supreme Court knocked down as unconstitutional Clause 4(3) of the Uttar Pradesh Coal Control Order, 1953 which was to the following effect:

"The Licensing Authority may grant, refuse to grant, renew or refuse to renew a licence and may suspend, cancel, revoke or modify any licence or any terms thereof granted by him under the Order for reasons to be recorded."

It was held that the Licensing Authority was given absolute power to grant or refuse to grant or renew or refuse to renew and to suspend or cancel a licence. No rules were framed and no directions were given to regulate or guide his discretion. The Supreme Court did not hold that the clause violated Article 14; it only held that it imposed an unreasonable restriction. This case has been distinguished by the Supreme Court itself in the subsequent decisions referred to above.

8. We are of the opinion that the impugned clause is not hit by Article 14.

9. Cancellation of the licence prevents the contractor from following the profession of doing electrical installation. The impugned clause does, therefore, infringe the freedom guaranteed under Article 19(1)(g). But if the restriction is reasonable and in the public interest the notification imposing it is saved. We are satisfied that both the conditions are fulfilled here. It is reasonable to cancel the licence of a contractor who is not fit to hold it. Naturally, since there are certain responsibilities placed on the shoulders of a contractor, he must be able to discharge them and no licence should be given to, or retained by, a contractor who is not able to discharge them. It is reasonable to take away the licence from a contractor who is not fit to hold it. That the restriction is in public interest cannot be, and has not been disputed before us. The profession of doing

electrical installation is a dangerous profession and it is in the public interest to place restrictions upon it. It is in the public interest to cancel the licence of a contractor who is not able to discharge the responsibilities which have been laid upon his shoulders in the interest of the public safety.

Sri A. P. Pandey made it clear that his argument that the impugned provision is hit by Article 19(1)(g) is based solely upon the contention that the power to cancel the licence is absolutely arbitrary. Once it is found that it is not so arbitrary and is governed by the consideration whether the contractor is able to discharge the responsibilities or not the attack on the ground of unreasonable restriction vanishes.

10. Sri Pandey has pressed upon us the two contentions which have been repelled by our brother Jagdish Sahai. He told us that his argument before our brother Jagdish Sahai was misunderstood and that he did not mean to contend that there was excessive delegation of powers by the Central Electricity Board to the State Government. His argument was, and in any case now is, that Rule 48 conferred no power upon the State Government to make rules regarding the grant and cancellation of a licence and that it could not confer any such power because *delegatus non potest delegare*. Rule 48 certainly conferred upon the State Government the power of granting a licence and this power included the power to cancel a licence already granted vide Section 21 of the General Clauses Act. The rule did not expressly authorise it to make rules for its own guidance in the matter of granting and cancelling licences but this fact did not prevent its doing so. Any authority upon whom a power is conferred is competent to make rules for its own guidance in the exercise of it.

The authority conferring the power may make rules governing its exercise; if it has done so, the rules made by the authority should not clash with any of them and must be in conformity with them. If it has not done so, the authority is free to make any rules. Obviously, if it can exercise the power without any rules being made by it, it can certainly do so in accordance with rules made by it and brought to the notice of all interested. It is always better that the power is exercised in accordance with certain rules than that it is exercised unfettered by any rules. If the State Government could cancel a licence without there being any rules we fail to understand why it could not cancel a licence in accordance with certain rules, though made by itself for its own guidance. In the case of *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, also no express power was conferred upon the Central Government to make rules regarding licences under the Cotton Textiles Order; still the Central Government made rules and the Supreme Court applied them.

It was not even argued before the Supreme Court that the Central Government could not make them because the power to make them was not conferred upon it by the Order. A statutory provision empowering the Federal Communications Commission to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice" has been interpreted

by the Supreme Court of America as explicitly and by implication delegating to the Commission power to re-solve subordinate questions of procedure and as not merely conferring power to promulgate rules generally applicable to all proceedings before the Commission but also delegating broad discretion to prescribed rules for specific investigations; see *Federal Communications Commission v. Schreiber* 14 Law E (2d) 383. We are, therefore, of the opinion that the notification issued by the State Government is not rendered invalid by the mere fact that rule 48 did not authorise it.

11. If Rule 48 had expressly conferred upon the State Government the power to make rules regarding grant and cancellation of licences it would not have been hit by the maxim *delegatirs non potest delegare*. Conferring the power upon the State Government to make rules for the grant and cancellation of licences would not be delegating to the State Government any power delegated to itself. No power has been delegated to the Central Electricity Board to make rules regarding the grant and cancellation of licences; actually the Indian Electricity Act contains no provision about licensing electrical contractors at all. So, even if the Central Electricity Board had conferred upon the State Government the power to make rules regarding the grant and cancellation of licences it would have been conferment of a new power and not of its own power. What the maxim means is that the power that is delegated to a person cannot be sub-delegated by him to a third person.

The Central Electricity Board itself created the system of licencing electrical contractors and could confer upon the State Government the power of granting and cancelling licences and also the power of making rules for the grant and cancellation of licences. In this view we receive support from *Amaravathi Motor Transport Co. v. State of Andhra* AIR 1956 AP 232 in which Subba Rao, C. J., as he then was, and Satyanarayana Raju, J. held that Rule 134-A of the Madras Vehicles Rules made by the State Government empowering the Transport Board to delegate certain functions to its Secretary was valid.

12. There is no force in the other contention that on account of the respondents having been found to do defective installation in the year 1956-57 his licence for 1958-59 could not be cancelled. There is nothing in Clause 21 connecting the year of licence to be cancelled with the year of the defective electrical installation on account of which the contractor is found to be unfit to hold the licence. On the other hand, it lays down that the punishment of cancellation can be inflicted "at any time", thus denying any connection between the year in which the punishment is inflicted and the year in which the defective installation was done. The words used are "the licence" but they do not necessarily mean the licence given for a particular year, the article "the" is used to denote the licence granted under the notification. "The licence" means a licence granted under the notification and not the licence for a particular year or in force at the time of the defective installation.

It could not have been contemplated by the Government that a licence granted

under the notification can be cancelled only before it expires because time must elapse between the doing of the electrical installation and its being found to be so defective that it can be said that the contractor is unfit to hold the licence and it may very well be that the term of the licence expires in the meanwhile. If nothing could be done because of the expiry of the licence it would mean that the contractor would escape punishment and would continue to hold the licence even though unfit. The reason for the cancellation is unfitness to be licences under the notification; this unfitness is general unfitness to hold licence for any year at all and not confined to a particular year. One can say that an electric contractor is unfit to be licences but not that he is not fit to be licences for a particular year, because fitness or unfitness does not depend upon any particular year. Cancellation of the licence is a punishment for unfitness to be licences and can be inflicted in any year.

We have, therefore, no doubt that it is the licence that is in force at the time of the finding of unfitness and the imposition of the punishment that can be cancelled. The order of the Electric Inspector debarring the respondent from obtaining a licence for the next two years has not been assailed before us. The power to debar a contractor from obtaining a licence for the future itself means that punishment for defective installation done by a contractor in one year can be inflicted in another year.

13. We have proceeded on the assumption that every year's licence is a new licence as was contended by Sri Pandey. Sri Raja Raim's reply was that there is only one licence which continues from year to year on being renewed. He relied upon the provisions in Clause 24 that the failure to renew a licence renders it liable to cancellation. The argument was that a licence has to be cancelled and does not expire automatically on the 31st of March. If a licence granted for the first time for the next year it may be cancelled but remains in force so long as it is not cancelled. We do not think that this was the intention behind Clause 24. If a licence was granted for the year ending on 31st March, 1965 it means that it did not remain operative after that date and there is no question of its being cancelled subsequently. A licence can be cancelled only if it is in operation and there can be nothing like cancellation after the expiry of the term for which it is valid. Every renewed licence is a new licence; the only difference between a fresh licence and a renewed licence being in the fee payable. What is meant by Clause 24 is that if a licence is renewed by applying for renewal at least one month before the date of expiry the fee payable would be Rs. 25, other-wise the fee payable would be Rs. 100. The clause itself refers to "the date of expiry of the licence" clearly showing that it is not in operation after the date. The sentence "failure to renew a licence shall render such licence to cancellation" is redundant and no argument can be built upon it. In the case of Amaravathi Motor Transport Co. AIR 1956 AP 232 (supra) it was held that a renewed licence is substantially a new licence.

14. Accordingly we must allow the appeal and dismiss the petition filed by the

respondent with costs of this Court. The appellant has incurred costs twice in this Court and we assess them at Rs. 300, the respondent shall pay this amount to him. But this is not the end. We have to consider certain facts in order to decide the order to be passed on this appeal. The respondent applied for stay of the impugned order during the pendency of the petition for certiorari but the stay was refused. He filed a special appeal from the order though as has been held by this Court the order was not a judgment or final order and no special appeal lay from it. Still not only was the special appeal admitted but also this Court stayed the operation of the order (during the pendency of the special appeal). The special appeal could not be disposed of before the petition for certiorari and the result was that the respondent got the operation of the impugned order stayed during the pendency of the writ petition even before the special appeal in which this was the only relief claimed by him was allowed. The petition was allowed and the impugned order was set aside and thereupon the respondent got the special appeal dismissed.

No terms were imposed upon him and owing to the stay order he not only continued to hold the licence during the year 1958-59 but also obtained renewal of the licence in the subsequent years. This was all the relief that he could get on the writ petition being allowed and he got it even before it was allowed. We dismiss his petition but this dismissal has now no effect because it is not possible for us to give retrospective effect to the order dated 21-11-1958, the operation of which was suspended. It is true that if the operation of the impugned order was not suspended during the pendency of the special appeal allowing the special appeal after the expiry of the period for which the impugned order was to operate would not have been of any benefit to the respondent. It is also true that allowing the petition for certiorari after the impugned order had been fully given effect to would have been of no benefit to him. But it is equally true that dismissing the special appeal and dismissing the petition after March 31, 1961 would have been of no use if owing to suspension of the impugned order he continued to hold the licence for 1958-59 and got it renewed for 1959-60 and 1960-61.

There is no reason why he should be favoured in preference to the Electric Inspector to Government. One or the other result had to be chosen but the choice should have been guided by the fact that on one hand there was an order of a competent authority and on the other hand there was only a possibility of that order being quashed. If effect has to be given either to an order being quashed by a superior authority naturally effect must be given to the former which is a certainty and not to the latter which is an uncertainty. We have found that the impugned order was valid and not fit to be quashed. It ought to have remained in force, i.e. the respondent's licence ought to have been ineffective from 21-11-1958 and he should not have got licence for 1959-60 and 1960-61. As he himself procured from this Court a direction that the order should not take effect between 21-11-1958 and 1-4-1961 during which period alone it could be in operation the order has become infructuous and cannot be put into operation

now and we must allow the Electric Inspector to pass another order of punishment which can take effect.

15. We allow the appeal, dismiss the writ petition and quash the impugned order (because it is too late to enforce it now) and direct the Electric Inspector to pass another order according to his discretion under Clause 21 in respect of the detective installation done by the respondent (in October and November 1956). The respondent shall pay Rs. 300 as costs of this Court to the Electric Inspector.