

(2004) 08 AHC CK 0174

In the Allahabad High Court

Case No : Special Appeal No's. 371, 372, 373, 374 and 433 of 1996 and 2, 3, 4 and 5 of 1997

Executive Officer, Nagar Palika and Others

APPELLANT

Vs

Rajendra Singh Yadav

RESPONDENT

Date of Decision : 03-08-2004

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (2004) 5 AWC 4839 : (2006) 106 FLR 462 : (2005) 2 LLJ 359 : (2004) 3 UPLBEC 2529

Hon'ble Judges : Umeshwar Pandey, J; M. Katju, J

Bench : Division Bench

Advocate : N.K. Chaturvedi, for the Appellant; Anil Bhushan, for the Respondent

Final Decision : Allowed

Judgement

M. Katju, J.—These special appeals have been filed against the impugned judgment of the learned Single Judge dated 12.1.1996, by which he allowed the writ petition.

2. Some other special appeals have been filed against the impugned judgment of another learned Single Judge who followed the judgment dated 12.1.1996,

3. Heard learned Counsel for the parties.

4. In the writ petition filed by Rajendra Singh Yadav, being Writ Petition No. 19434 of 1994, which we take as the leading case, the petitioner had challenged the order of the Executive Officer, Nagar Palika, Firozabad dated 7.5.1994 (vide Annexure-8 to the writ petition).

5. The petitioner was appointed on daily wage basis by the Executive Officer of Nagar Palika Firozabad by order dated 25.10.1989 (vide Annexure-1 to the writ petition).

6. When a vacancy arose on the retirement of the Chowkidar the petitioner was

appointed by the Acting Chairman of the Nagar Palika as Chowkidar in temporary capacity vide order dated 17.7.1990 (vide Annexure-2 to the writ petition).

7. Subsequently the State Government took a decision for abolition of octroi in the year 1990 and an order dated 24.8.1990 was issued by the Executive Officer informing the petitioner that in view of the abolition of octroi his temporary service was no longer required and was being terminated. True copy of the order dated 24.8.1990 is Annexure-3 to the petition.

8. Subsequently the petitioner made an application to the Chairman, Nagar Palika for appointment on the vacant post of Chowkidar and by order dated 17.9.1992, he was appointed on probation of one year (vide Annexure-5 to the writ petition). It is alleged in Para 9 of the writ petition that the petitioner submitted his joining on 18.9.1992 (vide Annexure-6 to the petition).

9. It is alleged in Para 11 of the petition that subsequently on the petitioner's application he was confirmed by order of the Executive Officer dated 8.10.1993, However, by impugned order dated 7.5.1994, the Executive Officer cancelled the petitioner's appointment.

10. It is alleged that this order was passed without giving opportunity of hearing; and on the basis of some ex-parte inquiry.

11. A counter affidavit was filed in the writ petition by the Nagar Palika, Firozabad. o

12. In Para 3 of the same it was alleged that the petitioner was appointed illegally. Neither was the post advertised in any newspaper nor was the name asked from the Employment Exchange. No interview was held. The claims of various other employees who were working in the Municipal Board and were liable to be promoted on the, post, were altogether ignored. The Appointing Authority is the Executive Officer while the petitioner was appointed by the President of the Board. The appointment of the petitioner was made secretly by the President without following any legal procedure for ulterior motive.

13. In Para 4 of the counter affidavit it is stated that Sri D.D. Agarwal, who had been working as the Executive Officer, had made illegal appointments and confirmation and hence was placed under suspension by the State Government by order dated 23.6.1993 for making such illegal appointments (vide Annexure-CA-1).

14. In Para 5 of the counter-affidavit it is stated that the State Government had issued an order dated 24.9.1991 to all the Executive Officers and Presidents directing them not to make even appointment on daily wagers as it would create financial difficulties. True copy of the GO dated 24.9.1991 is Annexure-CA-2).

15. In Para 6 of the counter affidavit it is stated that there was no work for the petitioner and hence his services came to an end automatically as he was only a daily wager in octroi department who was given work only when it was available.

It was denied that no Executive Officer was working at the time when the petitioner was appointed. The Executive Officer, was on temporary leave and his function was discharged by some other Government Officer.

16. On the facts of the case we are of the opinion that these appeals deserve to be allowed. It is evident from the faults that there was large scale collusion and fraud in the appointments/regularization.

17. The Appointing Authority of Class-III and Class-IV employees is the Executive Officer but the appointment letter in question was issued by the President of the Municipal Board evidently for extraneous consideration. No advertisement in any newspaper was published nor was any name called for from the Employment Exchange. The so-called Selection Committee consisted of three elected members of the Board and no Officer of the Board was made a member of the Committee. The persons of the choice of the President of the Municipal Board were appointed without following any legal procedure. Hence in our opinion the entire process was fraudulent and in violation of Article 16 of the Constitution.

18. The learned Single Judge. (Hon''ble R.K. Mahajan, J.) allowed the writ petition primarily on the ground that the impugned order was passed without giving opportunity of hearing.

19. In the present case only a fact finding inquiry was held by the A.D.M. who found that fraud and irregularity on a large scale was committed. In our opinion it was not necessary to give opportunity of hearing in such a case. The rules of natural justice are not a straight jacket formula vide *Union of India and Another Vs. Tulsiram Patel and Others*, ; *The Maharashtra State Financial Corporation Vs. M/s. Suvarna Board Mills and another*, ; *Anil Kumar Srivastava Vs. Chairman, L.I.C. of India and Others*, ; *Bar Council of India v. High Court of Kerala JT 2004 Supp 1 SC 428* and *S.R. Kashyap Vs. Canara Bank and Others*, ; etc.

20. The rules of natural justice cannot always be applied strictly vide *A. K. Mittal v. Vice Chancellor 1991 AWC 66* ; *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, . Where there are large scale malpractices no show cause notice need be issued vide *Biswa Ranjan Sahoo v. Sushanta Kumar Dinda JT 1996 (6) 515*.

21. In exceptional cases the rules of natural justice can be modified or excluded altogether vide *Union of India v. V.K. Jain 2003 UPTC 536* (vide Para 10); *Union of India and Another Vs. Tulsiram Patel and Others*, ; etc. When the entire selection is cancelled no opportunity of hearing is necessary vide *Biswa Ranjan Sahoo v. Sushanta Kumar Dinda JT 1996 (6) 515*; *Hanuman Prasad v. Union of India JT 1996 (8) 510* ; *U.P. Junior Doctors" Action Committee Vs. Dr B. Sheetal Nandwani and Others*, ; *The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others*, . In *U.P. Junior Doctors Action Committee v. Dr. B. Sheetal Nandwani (supra)*, the Supreme Court observed that where admission is obtained by fraud no opportunity of

hearing need be given before cancelling it.

22. It is well settled that natural justice is not an unruly horse vide *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, .

23. Moreover, it is well settled that fraud vitiates all proceedings. The issue of misrepresentation and fraud has been considered by the Courts time and again. A Constitution Bench of the Supreme Court in *Pratap Singh v. State of Punjab* AIR 1964 SC 72, placed reliance upon the judgment in *Lazarus Estates Ltd. v. Beasley* 1956 (1) ALLER 341, wherein it "has been observed :-

"No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud."

24. It is a settled proposition of law that where an applicant get an order by making misrepresentation or playing fraud upon the Competent Authority, such an order cannot be sustained vide *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, In our opinion the since principle will apply where appointments are made evidently for extraneous considerations.

25. In *Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another*, and *State of Maharashtra and Others Vs. Prabhu*, , the Supreme Court has observed that a Writ Court, while exercising its equitable jurisdiction, should not act as to promote perpetration of a legal fraud as the Courts are obliged to do justice by promotion of good faith. "Equity is also known to prevent the law from the crafty evasions and subtleties invented to evade law."

26. The ratio laid down by the Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the persons who played fraud or made misrepresentation and in Such circumstances the Court should not perpetuate the fraud by entertaining the petitions on their behalf vide *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi*, and *M. Bhaskaran v. Union of India and Ors.*

27. In *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, the Apex Court observed that "Fraud and justice never dwell together" (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries.

28. A similar view has been reiterated in *K.G. Ashok and Ors. v. Kerala Public Service Commission and Ors.* AIR 2001 SCW 1969 and *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*,

29. In *Upen Chandra Gogoi Vs. State of Assam and Others*, the Apex Court held that the Court should not "validate an action which was not lawful at inception." Nor should the Court permit an appointment made by giving a go-bye to the essential mode of recruitment as provided by the Statutory Rules or the rules

framed under the proviso to Article 309 of the Constitution which have binding force and the same cannot be permitted to be overlooked/violated vide R.K. Trivedi and Others Vs. Union of India (UOI) and Others,

30. Similarly, in New India Assurance Co., Shimla Vs. Kamla and Others etc. etc., the Apex Court held that an order which is null and void remains in-executable and unenforceable forever as it cannot acquire legal validity by any process of sanctification whatsoever for the reason that forgery is anti-thesis to legality and law cannot afford to validate a forgery.

31. In Virendra Kumar Gupta Vs. State of U.P. and Others, a Division Bench of this Court held that a lease executed in favour of a certain party which had been bequeathed by the original owner to a trust for building an eye hospital was wholly fraudulent and hence was null and void.

32. In United India Insurance Co. Ltd. v. Rajendra Singh 2000 (2) AWC 1349 : AIR 2000 SCW 835, the question whether a decree or an order of a Court obtained by fraud is void was again considered and it was held that such an order is wholly void.

33. The Supreme Court followed its own earlier judgment in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, in which the Supreme Court observed:

"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non est in the eyes of law. Such a judgment/decreed by the first Court or by the highest Court has to be treated as a nullity by every Court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings."

34. The Supreme Court also relied on its earlier decision in Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., where it was observed that since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of the Court the Court has inherent power to set aside an order obtained by fraud.

35. The respondents were purely temporary appointees being daily wagers and hence they have no right to the posts vide State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, and Triveni Shankar Saxena Vs. State of U.P. and others,

36. The learned Single Judge has observed that the petitioners had worked for more than one year and hence they were entitled to an opportunity of hearing. We do not agree. In Triveni Shankar Saxena's case (supra), the employee had worked for 18 years, but still his termination without notice was upheld by the Supreme Court.

37. We may also mention that a similar writ petition being Writ Petition No. Nil of

1994, Naresh Kumar and Ors. v. Nagar Palika, Firozabad, had been dismissed by a learned Single Judge of this Court on 9.3.94. Against that judgment a Special Appeal was filed before a Division Bench being Special Appeal No. 301 of 1994, Naresh Kumar and Ors. v. Municipal Board, Firozabad and Ors., which was dismissed by this Court on 1.11.1994, with the following observation :

"The appointment of the appellants was made by the President of Municipal Committee who was admittedly not the Competent Appointing Authority. No occasion arises for interference in this special appeal. Dismissed."

38. The learned Single Judge has brushed aside the above judgment by observing that the above case was not disposed off on merits. In our opinion he was not justified in doing so as the above observations were on merits and were binding on the learned Single Judge.

39. For the reasons given above all these appeals are allowed. Impugned judgments of the learned Single Judge are set aside.