
(2000) 05 AHC CK 0144

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18220 of 1998

Hari Das Singh

APPELLANT

Vs

Commissioner Agra Division and Others

RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3

Citation : AIR 2000 All 279 : (2000) 2 UPLBEC 1674

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : R.N. Sharma and G.N. Verma, for the Appellant; S.C., Arun Tandon and K.S. Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The petitioner was appointed as a dealer of a fair price shop of Gram Panchayat Badagaon, Block Jaitpur, Kahan, District Agra according to the Government Order dated 30th July, 1990. On the basis of certain allegations against him, the petitioner was asked to show cause by an order dated 16th September, 1997 contained in Annexure 4 in respect of the charges levelled against him. The petitioner's licence was suspended on 20th of September, 1997 by an order of even date contained in Annexure 5. The petitioner had submitted his reply contained in Annexure 6 which however does not bear any date. However, after considering this reply as well as taking into account the charges levelled against him by order dated 3rd November, 1997, his licence was cancelled. This order is Annexure 7 to this writ petition. The petitioner had preferred an appeal against the said order before the appellate authority and had also applied for stay of the order dated 3rd November, 1997 on 10th November, 1997, namely the date on which the appeal was preferred. The appeal for stay having been rejected and the stay having been refused on 11th December, 1997 the petitioner moved writ petition No. 44019 of 1997. By an order dated 23rd

December, 1997, this writ petition was disposed of directing the appellate authority to decide the appeal within two months. The appeal was decided by the appellate authority by an order dated 28th April, 1998 which is Annexure 12 to this writ petition. It is this order which is since been challenged in this writ petition.

2. Mr. G. N. Verma, learned counsel for the petitioner appearing with Mr. R. N. Sharma had contended that the decision of the Full Bench in the case of U.P. Sasta Galla Vikreta Parishad v. State of U.P. (1992) 2 EFR 655 (All) (FB) cannot be attracted in the facts and circumstances of the present case. In as much as in the said decision, the agreement of the Government Order under which the statutory contract was entered into did not contain any provisions for appeal. The provision for appeal was subsequently incorporated by a Government Order and that in the present case, the petitioner had preferred an appeal and the order thus challenges an appellate order and as such the said decision had no manner of application. He had also contended that in the present case there was no enquiry and that the petitioner was never given any opportunity. As such the principle of equality and natural justice having been violated, it is open to the petitioner to approach this Court under Article 226 of the Constitution of India. He had also pointed out from the respective orders and the materials on record that there was no material before the authority concerned to arrive at the conclusion that there was any breach in the condition of the contract or that the petitioner's licence could be cancelled. He then contended that even though it relates to a contract when the same is terminated Article 14 applies in full force and as such it is open to the petitioner to approach the Court under Article 226 and at the same time challenge the order on account of violation of natural justice and that of equity and equality.

3. The learned standing counsel on the other hand contends that in view of the decision of the Full Bench referred to above, the petitioner cannot maintain this writ petition. Over and above, the petitioner was given an opportunity and there was sufficient reasons to arrive at the conclusion. The materials that has been placed does not show that there was any perversity in the order. According to him the principle laid down by the Full Bench applies in full force in the present case. He then contends that the petitioner having been given an opportunity and the matter having been proceeded in accordance with law the petitioner cannot raise any grievance. He also pointed out that a Division Bench of this Court by an order dated 10th December, 1999 passed in Civil Misc. Writ Petition No. 51595 of 1999 formulated certain questions and had placed the same and opined that the same should be referred to a Larger Bench in order to consider acceptability after decision of the Full Bench in U.P. Sasta Galla Vikreta Parishad (1992 (2) EFR 655 (All)) (supra) on account of the challenged (changed?) condition.

4. Mr. Arun Tandon, learned counsel appearing for the added respondent on the other hand contends that the proposition that Article 14 is applicable in respect of the contract as far sought to be advanced by Mr. Verma relying on the decision

in the case of Tata Cellular Vs. Union of India, has no manner of application. Inasmuch as according to him Mr. Verma cannot draw any inspiration from the said decision in respect of the preposition in view of the present facts and circumstances of the case. According to him the said decision relates to a stage before the contract is concluded by Government at the stage of selection of the candidate who had submitted tenders whereas in the present case it is after contract. He also pointed that the decision in the Full Bench applies in full force and that the petitioner if he insists he may await the decision by a Larger Bench on the reference if he intends to do so. But still then according to him until the Full Bench is not overruled the ratio laid down therein would apply in full force. He then contends that even though the petitioner intends to keep this matter pending the interim order should be vacated. According to him when the licence was cancelled by an order dated 3rd November, 1997 in connection with the appeal preferred by the petitioner, the stay was prayed for but the same was rejected on 11th of December, 1997. This Court was approached under Article 226 against the said order. But no stay was granted. On the other hand the appeal was directed to be decided within two months. Even in this present writ petition no interim order was granted until 23rd of February, 2000. According to him the interim order could be granted only to maintain the state of affairs as existed on the date when the writ petition was moved, it cannot restore a situation which existed long before. He had relied on a decision of this Court in the case of Indian Telephone Industries Ltd. v. Director (D.O.T.) (2000) 1 ESC 695 (All). According to him if the petitioner's licence was suspended, the added respondent was appointed as dealer of the fair price shop who was continuing as such. By reason of the interim order that was passed on 23rd February, 2000 his licence was cancelled and the petitioner's dealership was restored. This according to him amounts to grant of the whole relief asked for in the writ petition. He then contends that it was only the operation of the impugned order dated 3rd November, 1997 was stayed. Staying of the operation of the order does not mean cancellation of the dealership of the added respondent and restoration of that of the petitioner after more than three years. Therefore, according to him the interim orders should be vacated forthwith and that the dealership of the added respondent should be restored.

5. Mr. G. N. Verma who had relied on the decision in the case of Tata Cellular Vs. Union of India, and in the case of Suresh Kumar Gupta v. State of U.P. 1999 UP Cri R 673 contended that since the ratio decided in the Full Bench is not applicable in this case, therefore the reference to a Larger Bench has nothing to do with the present case. He also contended that he is prepared to argue the case because of the changed situation and that he wanted the matter to be decided and disposed of finally. According to him the interim order cannot be vacated once it has been granted. Inasmuch as if it is vacated in that even again the decision would be changed and there would be an alteration of the situation and the relief which the added respondent is seeking would be granted finally to him. He also contends that the Court cannot pass such an order which may effect

changing situation from time to time. He also contends that the added respondent had no locus standi so far as the present case is concerned. Inasmuch as the present case arises out of a contract between the petitioner and the state with which the added respondent has no manner of concern and therefore he has no right of hearing.

6. I have heard learned counsel for the parties at length.

7. Let us consider the first question as to whether this matter should be adjourned in view of the pending reference to the Larger Bench by a Division Bench in terms of order dated 10th December, 1995 in Civil Misc. Writ Petition No. 51595 of 1999. Mr. Verma had insisted that this matter should be disposed of here and now and that it is not necessary to keep this matter pending or being connected with the said case that has been referred to a Larger Bench, since the ratio decided in U.P. Sasta Galla Vikreta Parishad (1992 (2) EFR 655 (All) (FB)) (supra) has no manner of application in the present case in view of the distinction sought to be made out by him. In such circumstances, when the counsel himself insists hearing of the case on merits for final disposal, the Court cannot, of its own, keep this matter pending and connect the same with the case referred to a Large Bench.

8. Therefore, the matter is taken-up for hearing.

9. The counsel for the parties had addressed the Court on merits respectively on all points at length.

10. Now let us examine the implication of the decision of the Full Bench in U.P. Sasta Galla Vikreta Parishad (1992 (2) EFR 655 (All)) (supra). One of the ground that has been raised by Mr. Verma is that there was no provision for appeal in the Government Order which was under consideration before the Full Bench and that the position has since been changed thereafter. From paragraph 4 of the said decision, it appears that the Full Bench was concerned with the Government Order dated 3rd July, 1990. The petitioner was also appointed dealer under the very same Government Order. It also appears that Clause 11 of the said order made provision for an appeal against order of appointment, suspension, cancellation and non-renewal of the contract. It is pointed out that the same letter was issue under clause 4 of the order. Thus the petitioner's dealership is based on questions identical with those which were involved in the Full Bench. Therefore, the distinction that has been sought to be made out on the ground of inclusion of provision of appeal subsequently does not stand to reason. The other ground on which it was sought to be distinguished was that the situation or circumstances had since been changed by reason of subsequent orders. Mr. Verma had referred to those specific Government Orders which are Annexures 1 and 2 to the rejoinder affidavit. He points out, from the said annexure that the said order contained in the said Annexure was issued in view of the 73rd Amendment of the Constitution of India for which certain powers were given to the Gram Panchayat with regard to the appointment and otherwise of the

dealership of fair price shop. But the fact remains that the licence of the petitioner was cancelled on 3rd November, 1997 whereas this order was Issued on 10th of August, 1999. Thus this order dated 10th August, 1999 has no manner of application in respect of the case at hand and as such the ground of changed circumstances as has been sought to be contended by Mr. Verma also does not help him. Thus it appears that this present case cannot be distinguished from the characteristic of the case that was involved before the Full Bench. Thus the ratio decided therein applies in full force in the present case. Since the ratio decided therein applies in full force therefore this petition cannot be held to be maintainable so long the said decision remains in force or until reversed. The pendency of the reference by the Division Bench to a Larger Bench cannot circumscribe the effectiveness of the said decision. Thus again from the order of reference it is apparent that it has taken note of the changed situation by reason of issue of the Government Order dated 10th August, 1999. This is also a distinguishing feature by reason whereof this matter cannot be included within the scope and ambit of the questions referred to the Larger Bench since the petitioner's licence was cancelled before the order dated 10th August, 1999 had come into being. The Government Order cannot be held to have any retrospective effect so as to affect the case of the petitioner. As such this matter cannot be connected with the pending reference as has been contended by Mr. Verma though on a different ground.

11. So far as the question of merit since being argued before this Court I would like to deal with the same as well,

12. It is contended by Mr. Verma that now it is Panchayat Samiti that has to make the enquiry in view of the changed situation is concerned, the same cannot be sustained for the simple reason that the circumstances had changed long after the cancellation of the petitioner's licence and the Government Order prescribing the authority of the Gram Panchayat having been entrusted by reason of the Government Order dated 10th August, 1999, without having retrospective effect, no advantage could be derived by the petitioner out of the same.

13. The other contention that the petitioner was not given any opportunity and that the principles of equity and natural justice have been violated does not seem to have any substance. Inasmuch as from the facts narrated and the records produced, it appears that distinct charges were levelled against the petitioner. By an order dated 16th of September, 1997 contained in Annexure 4 the petitioner was asked to submit his reply within 30th of September, 1997. The petitioner thereafter had submitted his reply which is Annexure 6 to this writ petition. From the order dated 3rd November, 1997 contained in Annexure 7 it appears that the said reply which was submitted by the petitioner on 30th of September, 1997 was considered. The order cancelling the licence contained in Annexure 7 is supported by reasons. Having gone through the reasons and having regards to the charges levelled and the reply submitted it does not appear that there are

any perversity. Even if this Court is of a different view, still this question being a question of fact arrived by an authority in exercise of its jurisdiction, this Court cannot substitute its own view. unless it appears that the order is perverse and based on no materials. From the materials placed before the Court and having regard to the facts and circumstances of the case, it cannot be said that the said order suffers from any infirmity and perversity or that it is based on no materials. On the other hand it appears that the authority had taken into consideration, the materials placed before it and the reply submitted by the petitioner which was found satisfactory.

14. The appellate authority had also passed a reasoned order. However, Mr. Verma contends that it has not gone into the other question which were dealt with by the order dated 3rd November, 1997. But then, from the order dated 28th April, 1998 passed by the appellate authority, it appears that it had applied its mind and had gone through the materials placed before it and had heard the appellant and therefore the decision that was arrived at cannot be thrown away simply because it has not given detailed reasons. That it had indicated its mind as to why he had arrived at the conclusion at least on one point was sufficient to sustain the order of cancellation. Having regard to the facts and circumstances of the case. I do not find that the order of the appellate authority is perverse so as to thrown out by this Court or interfered with.

15. Mr. Verma had relied on the decision in the case of Suresh Kumar Gupta (1999 UP Cri R 673) (supra) wherein such an order was quashed in the ground that the petitioner was not given an opportunity. In the said case, notice to show cause did not specified time within, which reply was to be submitted and that the licence was cancelled without considering any reply. The facts of the said case is distinguishable. Inasmuch as in the present case, the petitioner was asked to submit his reply within 30th September, 1997. The petitioner had submitted his reply on 30th September, 1997 which was taken into consideration while passing the order of cancellation. As such the decision in the said case does not help us for the present preposition.

16. So far as the decision in the case of Tata Cellular Vs. Union of India, is concerned, the same dealt with the question of selecting candidates for accepting offers pursuant to a tender which is at a stage prior to the conclusion of the agreement namely at the threshold of the contract where Article 14 could be attracted but after that stage is over and the contract is concluded the principle as enunciated in Tata Cellular v. Union of India (supra) cannot have any manner of application. Therefore Mr. Verma cannot derive any benefit out of the said judgment.

17. Then again in the present case as discussed above, the petitioner was given opportunity and there was nothing to indicate that the principle of equity or equality or natural justice have been violated in the present case. Thus, I am unable to agree with the contention of Mr. Verma.

18. So far as the question of locus stand of the added opposite party is concerned, as contended by Mr. Verma, it appears that he was added as the party pursuant to the order dated 20th April, 2000 on the ground as would be apparent from the said order itself which is quoted below:--

"By an order dated 23-2-2000 the Court had passed the following order"--

"Vide order dated 21-5-1998 this Court had granted six weeks time to file counter-affidavit, but no counter-affidavit has been filed so far. Learned standing counsel prays for further time.

Considering the facts and circumstances of the case, it is provided that counter-affidavit may be filed within three weeks. In case no counter-affidavit is filed within three weeks the operation of the impugned order shall be deemed to have been stayed with effect from the expiry of three weeks from today.

List this case on 29th March, 2000."

19. Mr. R.N. Sharma, learned counsel for the petitioner submits that by an order dated 10-12-1999 passed in Civil Misc. Writ Petition No. 51595 of 1999. 10 questions were formulated in order to consider as to whether Full Bench decision in the matter is a fetter in the way of the High Court to issue a writ under Article 226 of the Constitution of India? And for the purpose, the matter may be placed before the Hon"ble Chief Justice for referring the same to the Larger Bench of five Judges to decide the question of law formulated under Rule 6 of Chapter 7 of the Allahabad High Court Rules, 1952. It is further contended by Mr. Sharma that the matter has since been referred to the Larger Bench by the Hon"ble Chief Justice, therefore, this matter should be connected or decision of this matter may be deferred till decision of the said decision.

20. Mr. Sharma was requested to point out as to which out of the 10 question formulated in the said order dated 10-12-1999 are involved in the present petition. Going through the grounds and the prayers it does not appear that any of the grounds as formulated in the said decision is involved in this case. In the present case only the validity of the impugned cancellation of licence of fair price shop, affirmed by the appellate order have since been challenged on certain grounds, The fact reveals that the licence was suspended and the fair price shop was attached to some other fair price shop on 20-9-1997, out of which an appeal was preferred on 11-1-1997. The appeal was decided by an order dated 28-4-1998. However, subsequently by order dated 4-11-1997 the licence for the fair price shop was granted to one Shri Yashpal Singh.

21. Be that as it may, this question may be gone into at appropriate stage, But the fact remains that there was no interim order since 20-9-1997 and since 3-11-1997. It is contended by Mr. Sharma that by reason of the order dated 23-2-2000 there was deemed interim order after three weeks had lapsed after passing of the said order, since no counter-affidavit has been filed by the State Government.

22. Mr. Arun Tandon, learned counsel submitted that his client had filed an application for impleadment on 26-7-1999. Shri R. N. Sharma, learned counsel for the petitioner submitted that copy of the application was never served upon him. But the fact remains that the said application was on record having been filed on 26-7-1999 before the order dated 23-2-2000 were passed.

23. Mr. Arun Tandon submits that he had filed an application for vacating the interim order dated 23-2-2000 on 6-4-2000. He further states that a copy of the said application was sought to be served upon Mr. Sharma but Mr. Sharma had refused to accept the copy. On account whereof Mr. Tandon had made an endorsement on the application to the said effect. This fact has been strongly denied by Sharma that it was ever tendered to him. This question cannot be decided when there is contention and counter contention by the respective learned counsel. In as much it is not contended by Mr. Tandon that he had personally tendered the same to Mr. Sharma. Therefore, I am not inclined to enter into such a dispute.

24. Be that as it may, now the question remains as to whether there could be a deemed interim order on account of non-filing of counter-affidavit on behalf of the State when it does not affect the right of the State but of a third person when an application for impleadment is pending on record.

25. Admittedly, it is a settled principle of law that injunction or interim orders are issued not on grace or on default of any person. Interim orders are granted on the basis of the case made out prima facie in the pleadings and that in the interest of justice such interim order is necessary in order to prevent abuse of process of law to prevent wastage or to maintain the situation as on date or from recurrence of certain incident which were existing as on the date of presenting such application or at least the presentation of main application out of which the proceeding is arising. It is also to take into consideration the balance of convenience and inconvenience and other important matters, which are necessary factors for grant of interim order.

26. Perusal of the order dated 23-2-2000 does not show that any of those factors had been considered but the interim order was granted only on account of default in filing counter-affidavit on the part of the State that too a deemed interim order on expiry of three weeks from 23-2-2000. Mr. Sharma was requested to argue on this question but he asked for accommodation to argue on the question as to whether the interim order that might have been deemed to have been granted by the said order could be sustained.

27. Mr. Sharma filed counter-affidavit to application for impleadment on 7-4-2000.

28. Since the order dated 23-2-2000 was passed by a Court of co-ordinate jurisdiction, therefore, I do not think it proper to consider this question at this stage since Mr. Sharma rightly pointed out that unless Mr. Tandon's client is impleadment no order can be passed on the application for vacating the interim

order.

29. At this stage Mr. Tandon insisted that his application for impleadment may be taken up and be decided. Mr. Sharma however, opposed the same.

30. After hearing the parties it appears that the application for impleadment is pending since July, 1999 and that Mr. Sharma has filed his counter-affidavit to the said application, therefore there is no impediment in taking up the said application for impleadment as prayed for by Mr. Tandon. In such circumstances, the application for impleadment is taken up for disposal.

31. In the impleadment application it has been pointed by the applicant that after the fair price shop of the petitioner had been attached, the petitioner was not continuing with the fair price shop and the applicant has been allowed to run the fair price shop on and from 4-11-1997 and since then he is continuing. Therefore he is a party interested -- at least to the interim order granted by this Court, by reason of his continuation for about 3 years. Whether he has any right or not can be decided only at the time of hearing of the writ petition. At the same time prima facie he has some interest in the matter and as such in the fitness of things this application is allowed and the applicant is allowed to be impleaded as respondent in the writ petition. The cause title may accordingly be corrected.

32. Mr. R.N. Sharma may file his counter-affidavit to the application for vacating the stay order within a period of one week. Rejoinder affidavit if any may be filed within one week thereafter.

33. List on 11-5-2000 at 10.00 a.m.

34. The perusal of the above order shows the necessity of adding Mr. Tandon's client. Thus even though the added respondent may not have any locus standi with regard to the decision in respect of the cancellation of licence and he may not have any right of hearing with regard to the said questions, still then, he has a right to protect his own interest when his interest is being affected by the order which is otherwise not in conformity with the accepted judicial principles. Inasmuch as there was no interim order and that the petitioner was not continuing with his dealership since 3rd November, 1997, the petitioner's attempt to obtain interim order was also frustrated by the rejection of the stay application by the appellate authority on 11th of December, 1997, against which the petitioner had moved writ petition which was disposed of as discussed above. Till 23rd of February, 2000 there was no interim order and as such the added respondent, having been appointed dealer, had been carrying on his business which was affected by reason of the interim order dated 23rd February, 2000. Therefore, he had every right to protect his interest to that extent. But he has no right or locus standi to address the Court on the merit of the order of cancellation. So far as the order of cancellation is concerned, it has to be decided on its own merits. The discussions herein before has not taken note of the case made out by the added respondent in any manner whatsoever. It is on the basis of the materials relating to the cancellation of the licence alone which was relied

on for the purpose of this decision. As such the contention of Mr. Verma that Mr. Tandon's client cannot be heard has been accepted. Since the matter is being disposed of finally, the question of interim order becomes immaterial. Since orders impugned are not being interfered with and being confirmed, there is no question of interim order now.

35. Be that as it may, interim order was granted on 23rd February, 2000 which is against the principle as enunciated in the decision in the case of the State of U.P. v. Kumari Renu Tewari 1993 UPLBEC 1325 since been followed in the decision of Indian Telephone Industrial Limited v. Director D.O.T. (2000) 1 ESC 695 (All) cited by Mr. Tandon. This interim order was granted long after three years and had purported to alter the situation altogether and granted the whole relief. Then again the order was only stay of operation of the impugned, order which does not mean that the licence granted to the added respondent, is to be cancelled and the dealership of the petitioner is to be restored after long three years. It may also be noted that the interim order was not passed on any consideration on which the interim orders are granted. It was granted only in default and that too at a future date on account non-filing of the counter-affidavit with a deeming cause. In any way, it is not necessary to go into those questions. This question of interim order has become immaterial in view of the discussions made above and the decision arrived at herein. Therefore no relief as prayed for by the added respondent need be granted nor it is necessary to go into those questions.

36. In the result, the writ petition fails and is accordingly dismissed.

37. No order as to cost.

38. Let a copy of this order be given to the learned counsel for the petitioner on payment of usual charges within two weeks.