
(1999) 06 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2828 of 1999

Hindustan Lever Limited

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 02-06-1999

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3, 5

Citation : (2000) 2 CivCC 363 : (1999) 123 PLR 234 : (2000) 1 RCR(Civil) 145

Hon'ble Judges : G.S. Singhvi, J; Amar Dutt, J

Bench : Division Bench

Advocate : M.L. Sarin and Alka Sarin, for the Appellant; Rajesh Mahajan, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The petitioner has prayed for quashing the eviction order dated 30.12.1996 passed by the Estate Officer, UCO Bank (respondent no.2) on the basis of proceedings initiated, u/s 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the 1971 Act") against M/s Brooke Bond India Limited, who was lessee of the second floor of S.C.O. No. 55-57, Sector 17-B, Chandigarh belonging to UCO Bank (respondent No. 3). It has also prayed for setting aside the judgment dated 4.1.1999 rendered by the District Judge, Chandigarh dismissing the appeal filed by M/s Brooke Bond Lipton India Limited.

2. It is not disputed that M/s Brooke Bond India Ltd., was initially amalgamated with M/s Lipton India Limited and the new Company, namely Brooke Bond Lipton India Ltd., was amalgamated with petitioner-Hindustan Lever Limited. The premises in question were leased out by respondent No. 3 to M/s Brooke Bond India Limited on 26.2.1966. Vide notice dated 25.2.1991 issued by the advocate of respondent No. 3, the lessee was called upon to vacate the premises in question on the ground that the tenure of lease has expired by efflux of time. Thereafter, proceedings for eviction were initiated by respondent No. 2 by issuing

notice u/s 4 of the 1971 Act. The petitioner submitted reply dated 20.7.1991 to contest the proposed eviction by asserting that appointment of the Estate Officer was not in accordance with law and that there was no justification to pass the order of eviction. Respondent No. 2 controverted the objections raised by the petitioner by filing a counter reply. After hearing representative of the parties, respondent No. 2 passed order of eviction Annexure P.8 dated 30.12.1996. The appeal filed by the lessee against the order of eviction has been dismissed by the learned District Judge, Chandigarh.

3. Shri M.L. Sarin argued that the order of eviction passed by respondent No. 2 should be declared as nullity because the notification dated 16.4.1998 issued by the Government of India for appointment of the Officers of respondent No. 3 as Estate Officers is ultra vires to Section 3 of the 1971 Act. He submitted that the appointment of the Assistant General Manager (General Administration) and the various Zonal Managers by designation is alien to the provisions of Section 3 of the 1971 Act and, therefore, respondent No. 2, who was, at the relevant time, holding the post of Zonal Manager could not have exercised the power of the Estate Officer. The other contention of Shri Sarin is that the order of ejection passed by respondent No. 2 should be quashed on the ground of violation of Section 5(1) of the 1971 Act because the petitioner was not given reasonable opportunity of hearing and also because the reasons which constituted the basis of the impugned order were not communicated to it. Elaborating his argument that the petitioner was not given reasonable opportunity of hearing as contemplated by Section 5(1), learned counsel submitted that respondent No. 2 did not give permission to the petitioner to lead evidence to substantiate the objections raised on its behalf to the legality of the notice issued u/s 4 of the 1971 Act. He further argued that the failure of respondent No. 2 to communicate reasons which constituted the basis of the order of eviction has the effect of vitiating the order Annexure P.2. Learned Counsel submitted that due to noncommunication of the reasons, the petitioner was prevented from effectively availing the statutory remedy of appeal available to it u/s 9 of the 1971 Act. In support of his arguments, Shri Sarin relied on the following decisions:-

1. M.K. Bakshi, Deputy Excise and Taxation Commissioner, Patiala v. The State of Punjab and Ors. 1971 (1) S.L.R. 119;
2. Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, ;
3. Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ;
4. C.B. Gautam Vs. Union of India and Others, ;
5. Mohammad Jafar v. Union of India (1994) Suppl. 2 S.C.C. 1;
6. Managing Director, ECIL, Hyderabad v. B. Karunakar 1994(1) R.S.J. 443;
7. Brij Bassi Hitech Udyog Ltd. Vs. State of Punjab and Others, ; and

8. Geeta Devi Vs. Chandigarh Administration, .

Shri Rajesh Mahajan argued that the challenge to the jurisdiction of respondent No. 2 should be rejected as misconceived and wholly untenable because the concerned officer was holding the rank of Zonal Manager in the services of the Bank at the time of initiation of proceedings and also at the time of passing of the impugned order. Learned counsel submitted that Section 3 of the 1971 Act does not contemplate appointment of the Estate Officer by name. He further submitted that entrustment of the power of Estate Officer upon high ranking officers of the Bank should be treated as a sufficient safe-guard against any possibility of arbitrary exercise of power. Shri Mahajan controverted the argument of Shri Sarin that the lessee was not given reasonable opportunity of hearing. He placed before us the original file containing details of the proceedings held by respondent No. 2 to show that sufficient opportunity was afforded to the lessee to substantiate its case against the proposed eviction. Shri Mahajan further submitted that the impugned order is a speaking order because the substance of the reasons recorded by respondent No. 2 were communicated to the lessee and the detailed reasons are available on the file.

4. From the pleadings of the parties and the arguments urged by the respective counsel, the following questions arise for consideration by the Court:

(i) Whether respondent No. 2 had the jurisdiction to pass the impugned order of eviction?

(ii) Whether the order of eviction is liable to be invalidated on the ground of denial of reasonable opportunity of hearing?

(iii) Whether the impugned order is contrary to Section 5(1) of the 1971 Act?

Re:(i)

5. The objection which Shri Sarin has raised qua the competence of respondent No. 2 to pass the order of eviction was also raised on behalf of the petitioner in the appeal filed by it u/s 9 of the 1971 Act. The learned District Judge dealt with and decided this objection in the following manner:

"The submissions of the learned counsel for the appellant is that only a natural person or persons designated could be appointed as Estate Officer u/s 3 of the 1971 Act. However, the text of the Act does not support the contention of the learned counsel for the appellant. This section reads as under:-

"Section 3: Appointment of Estate Officer

The Central Government may, by notification in the official gazette (a) appoint such person being gazetted officer of Government, or officer of equivalent rank of the (Statutory Authority) as it thinks fit to be Estate Officer for the purposes of this Act:

Provided that no officer of the Secretariat of the Rajya Sabha shall be so

appointed except after consultation with the Chairman of the Rajaya Sabha and no officer of the Secretariat of the Lok Sabha shall be appointed except after consultation with the Speaker of the Lok Sabha.

Provided further that an officer of a statutory authority shall only be appointed as an Estate Officer in respect of the public premises controlled by that authority."

Now Section 3 of the 1971 Act gives power to the Central Government by notification in the official gazette to appoint such persons being gazetted officers of Government or officer of equivalent rank of the statutory authority as it thinks fit, to be Estate Officer for the purpose of this Act. The Zonal Manager of the UCO Bank has been appointed as Estate Officer in respect of the public premises controlled by the said Bank. Therefore, the requirement of the second proviso to Section 3 of the Act is also fulfilled. The use of the word "Such Person" in the opening sentence of Section P(ibid) gives an illusion that only a person so nominated could be appointed as an Estate Officer. However, on reading the contents of the Section as a whole, the illusion is removed, because in the context of this Section it is laid down that such person could be a gazetted officer of the Government or an officer of the equivalent rank of the statutory authority. It is not suggested that the Zonal Manager of the UCO Bank is not an officer of the equivalent rank of the Gazetted Officer of the equivalent rank of the Gazetted Officer of the Government. Since the section permits the appointment of the Gazetted Officer or officer of the equivalent rank to be appointed as Estate Officer, therefore, it would be placing an unreasonable construction on Section 3 of the Act by interpreting it to mean that only an officer, by name could be appointed as Estate Officer. So the contention of the learned counsel for the appellant is repelled.

A connected submission is that the notice which was served by the Estate Officer on the appellant purported to be u/s 3(1) of the Act whereas it ought to have been served u/s 4(1) of the Act. However, this objection is nothing more than a hyper-technical objection. It is now settled by authority that mere wrong mentioning of the Section of the Act does not change the nature and purport of the notice. Its contents are decisive. I have perused this notice with the able assistance of the learned counsel for the parties and find that it fulfills the material requirement of Section 4 of the Act. Therefore, the inadvertence, or even erroneous mention of Section 3(1) of the Act in the heading of this notice does not vitiate it. So, the contention of the learned counsel for the appellant is repelled."

6. We approve the reasons assigned by the learned District Judge for rejecting the petitioner's plea that the officer concerned did not have the jurisdiction to exercise the power of the Estate Officer because he had not been appointed by name. A bare reading of Section 3 of the 1971 Act shows that the Central Government is competent to appoint a gazetted officer of the government or an officer of equivalent rank of the statutory authority to act as Estate Officer. If we read the expression (such person) in conjunction with the words "being gazetted

officer of the government or officer of the equivalent rank of the statutory authority", it becomes crystal clear that Section 3 does not contemplate appointment of an officer to work by name. Thus, the appointment of the Zonal Manager of the Bank as Estate Officer cannot be declared illegal. The apprehension expressed by Shri Sarin that this power may be delegated to a low ranking officer is based on a wholly unfounded assumption and we do not consider it necessary to dilate on this aspect because it is an admitted position that Shri I.M. Sharma, who passed the impugned order, holds the rank of the Zonal Manager.

RE: (ii) and (iii)

For the purpose of deciding whether the order of eviction passed by respondent No. 2 should be nullified on the ground of denial of reasonable opportunity of hearing or on the ground that the reasons recorded by respondent No. 2 were not communicated to the petitioner, it will be useful to refer to Section 5(1) of the 1971 Act, which reads as under:

"5. Eviction of unauthorised occupants.- (1) If, after considering the cause, if any, shown by any person in pursuance of a notice u/s 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under clause (b) of Sub-section (2) of Section 4, the Estate Officer is satisfied that the public premises are in unauthorised occupation, the estate officer may make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises."

8. An analysis of Section 5 shows that the power vested in the Estate Officer to make order of eviction is subject to the following conditions:

(i) The Estate Officer must consider the cause, if any, shown by the person upon whom notice u/s 4 has been served. He is also required to consider the evidence, if any, produced by such person in support of this case.

(ii) If asked for, an opportunity of personal hearing is to be given to the person likely to be affected by the order of eviction.

(iii) The process of reasoning adopted by the Estate Officer for coming to the conclusion that the person proceeded against is in unauthorised occupation of public premises and, therefore, he is liable to be evicted must be reflected in the order of eviction.

9. While dealing with the contention urged on behalf of M/s Brooke Bond Lip-ton India Limited that it was not given reasonable opportunity of hearing, the learned District Judge observed as under:

"A connected submission is that for proving whether the tenancy had been

terminated by a quit notice or with the efflux of time, the appellant ought to have been given an opportunity of leading evidence, and since the evidence was not allowed to be led, therefore, the proceedings before the Estate Officer stood vitiated. It is significant to note that even during the hearing, an argument was raised by the appellant before the Estate Officer that it should be given an opportunity of being heard. This point was specifically dealt with by the Estate Officer in the proceedings dated 6.8.1996. After hearing the parties, the Estate Officer ordered on that day that both the parties may place their relevant record on the file of the Estate Officer. As it is well known, the proceedings under the 1971 Act are of summary nature where the technical rules of evidence are not applicable. Since the Estate Officer had given the parties an opportunity to produce their documents and also to submit their written arguments and address oral arguments, in these circumstances, it could not be said that there was procedural unfairness in the conduct of the proceedings before the Estate Officer. In this context, it may be stated that the enquiry was of a very limited nature and scope because both the parties relied on the lease deed. According to the respondent No. 2 the lease had either expired with the efflux of time, or by a service of quit notice. Therefore, it cannot be said that reasonable opportunity of placing the evidence i.e. the documents before the Estate Officer was not given to the parties. So, this contention of the learned counsel for the appellant is repelled."

10. Shri Sarin challenged the correctness of the above extracted observations and findings of the learned District Judge by arguing that the Appeal Court has totally ignored the fact that in spite of the specific prayers made by the representative of the petitioner the Estate Officer did not give him the opportunity to lead evidence. On the other hand, Shri Mahajan emphatically asserted that sufficient opportunity was given to the petitioner to establish its case.

11. A perusal of the record produced by Shri Mahajan shows that after filing of the written reply to the notice issued by the Estate Officer, Shri R.P. Bali, Advocate representing M/s Brook Bond India Limited filed photo copies of the 7 documents on 12.8.1991. On the next date of hearing i.e. 30.8.1991, Shri Bali made a grievance that he has not been given documents filed on behalf of the Bank. Upon this, the Estate Officer directed the Bank to furnish the documents to the counsel. On 11.9.1991, the case was adjourned due to the fact that the Estate Officer was not available at the headquarters. On 29.10.1991, the case was adjourned at the request of Shri R.P. Bali, Advocate. On the next date, i.e. 7.7.1992, Shri Bali again made a grievance about non-supply of copy. Therefore, representative of the Bank was directed to supply the copy of documents. These were made available to him along with letter No. CZD/GAD/92/93 dated 13.7.1992 written by the Assistant Chief Officer of the bank. On 25.7.1992 and 14.8.1992, the case was adjourned at the request of Shri R.P. Bali. In the minutes of proceedings held on 14.8.1992 it has been specifically recorded that the documents produced by the Bank were made available to the representative

of the petitioner. On 11.11.1992 the case was adjourned because the counsel appearing on behalf of M/s Brooke Bond India Limited was not present. Thereafter, written arguments were submitted by the representatives of the parties. It appears that thereafter the proceedings of hearing remained dormant for the next 4 years and were revived only in August, 1996 when notice dated 31.8.1996 was issued by the Estate Officer for hearing of the case. On the appointed date, hearing of the case was adjourned at the request of the representative of the petitioner. On 29.10.1996, the Estate Officer directed representatives of the parties to appear on 9.11.1996 for personal hearing. Thereafter, he passed the impugned order of eviction.

12. From what we have mentioned above, it is crystal clear that after filing of the written statement the representative of M/s Brooke Bond India Limited or M/s Brooke Bond Lipton India Limited did not submit any application for permission to lead evidence in support of the case set up by it and the only grievance made by it regarding non-supply of documents stood remedied on 13.7.1992. Therefore, we have no hesitation to record our complete agreement with the learned District Judge that reasonable opportunity of hearing was given to the petitioner and the impugned order cannot be invalidated on the ground that it has been passed in violation of the principles of natural justice.

13. The question which now remains to be considered is whether the order of eviction deserves to be quashed on the ground that the reasons recorded by the Estate Officer were not communicated to the petitioner. The learned District Judge has, after taking note of the contention urged on behalf of the petitioner and after making reference to the decisions relied upon by the learned counsel, rejected the petitioner's plea that the impugned order of eviction is a non-speaking order by observing that the Estate Officer has recorded reasons for the conclusions arrived at by him and the same are available at pages 101 to 104. According to the learned District Judge, the principles of natural justice cannot be put in a straight jacket formula and if one reads the reasons recorded on the file, it cannot be said that the impugned order is a non-speaking order. In our opinion, the approach adopted by the learned District Judge while dealing with this issue is clearly erroneous. The requirement of recording reasons by the quasi-judicial authorities and communication thereof to the affected party has been high-lighted in the judgments relied upon by Shri Sarin. In *Geeta Devi v. Chandigarh Administration* (supra), a Division Bench of this Court, after discussing various judicial precedents, laid down the following principle:

"The requirement of recording of reasons and communication thereof has been regarded as an integral part of the concept of natural justice which, as held above, has to be complied with by every quasi-judicial authority. The courts have insisted on compliance of this branch of natural justice by every quasi-judicial authority because an order passed by quasi-judicial authority is open to be challenged in appeal or revision provided under the relevant statute or by filing writ petition under Article 226 of the Constitution of India. In an appropriate

case, appeal under Article 136 can also be filed. If the order under challenge does not contain reasons, the appellate or the revisional authority, as also the Superior Courts, will be left to grope in dark about the manner in which the concerned authority applied its mind to the facts placed before it and the contentions urged on behalf of the parties."

14. In *Sh. Pragdas Umar Vaiahya v. Union of India and Ors.*, Civil Appeal No. 657 of 1967 decided on 17.8.1967, their Lordships of the Supreme Court rejected the argument urged on behalf of the respondent that the requirement of passing a speaking order should be treated as fulfilled if the reasons are available on the file. Some of the observations made by the Apex Court on this, issue are extracted below:

"If the right to appeal is intended to be effective, the tribunal must record its reasons and make them available to the parties to the dispute. In the present case the reasons in support of the order of the Central Government were apparently not recorded and were not made available to the parties concerned in the dispute. But, it was urged by the counsel for respondents 2 and 3, that the High Court had looked into the file of the Central Government and it appeared that the revision petition filed by respondents 2 and 3 was granted by the Central Government because their application for a mining lease for "refractory clay" was prior to the application filed by the appellant, and the Central Government was satisfied that the revision application filed by respondents 2 and 3 on 4.2.1964, was within the prescribed time.

In our view the procedure followed by the High Court was irregular. It is not for the High Court to give reasons which the Government might have, but has not chosen to give, in support of its conclusion. Since no reasons were given in support of the order passed by the Central Government, the order was ex-facie defective, and the defect could not be remedied by looking into the file maintained by the Government and constructing the reasons in support of the order. The reasons in support of the order had to be recorded and disclosed to the parties concerned by the Central Government: the reasons could not be gathered from the "notings" made in the files of the Central Government. Recording of reasons and disclosure thereof is not a mere formality. The party effected by the order has a right to approach this Court in appeal, and an effective challenge against the order may be raised only if the party aggrieved is apprised of the reasons in support of the order."

15. The above quoted observations have been relied upon by this Court in *M.K. Bakshi, Deputy Excise and Taxation Commission v. The State of Punjab and Ors.* (supra) and by applying the ratio of the decision of the Supreme Court to the facts of this case, we hold that the reasons recorded by respondent No. 2 on the file cannot be taken into consideration for holding that the order of ejectment is a speaking order.

16. The argument of Shri Mahajan that the impugned order has been

communicated to the petitioner strictly in accordance with Form B prescribed under Rule 4 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971 (hereinafter referred to as "the 1971 Rules") and, therefore, it should not be quashed on the ground of non-communication of reasons recorded on the file is devoid of merit. In our considered opinion, the form prescribed under the 1971 Rules will have to be read subject to Section 5 of the 1971 Act which, in turn, requires that the reasons must be recorded in the order of eviction. This necessarily means that such reasons must be communicated to the affected person.

17. In the result, the writ petition is allowed. The impugned judgment is set aside. The order of eviction passed by the Estate Officer is also quashed with the direction to him to pass fresh order after giving opportunity of hearing to the representative of the petitioner. The reasoned order shall be communicated to the petitioner. The petitioner is directed to appear before the Estate Officer on 7.7.1999 who shall pass fresh order within next 6 weeks. If the Estate Officer again passes an order of eviction and the petitioner challenges the same by filing appeal u/s 9 of the 1971 Act, the District Judge shall hear and decide the same within a period of next 2 months.