

(2000) 01 AHC CK 0154
In the Allahabad High Court

Case No : C.M.W.P. No. 39767 Connected with 13 other C.M.W.Ps. of 1999

Kashi Krishi Carbonic Khad Udyog, Varanasi	APPELLANT
Vs	
District Magistrate, Varanasi and others	RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 All 330 : (2000) 2 AWC 1118 : (2000) 1 UPLBEC 644

Hon'ble Judges : G.P. Mathur, J; Bhagwan Din, J

Bench : Division Bench

Advocate : Alok Kumar, for the Appellant;

Final Decision : Allowed

Judgement

G. P. Mathur and Bhagwan Din, JJ.—This bunch of writ petitions has been filed challenging the same order dated 31.7.1999 of General Manager, District Industries Centre, Varanasi, by which their registration as a Small Scale Industry was cancelled. Writ Petition No. 39767 of 1999 filed by M/s. Kashi Krishi Carbonic Khad Udyog, will be treated as the leading case.

2. The case of the petitioner. in brief, is that it is a partnership firm which established a new unit for manufacture of "Carbonic Khad", it was registered as Small Scale industry on 23.11.1998 by the General Manger, District Industries Centre, Varanasi, and its Registration No. is 08615. One of the essential material required for manufacture of Carbonic Khad is coal. On the application of the petitioner, it was Issued a Linkage Advice Letter for 1925 M. T. of Coal per month by the Coal India Limited (respondent No. 3). Thereafter, the unit started manufacturing of Carbonic Khad from 1.4.1999. Shortly, thereafter the General Manager, District Industries Centre passed the impugned order on 31.7.1999 cancelling the registration of the petitioner as a Small Scale Industry.

3. Learned counsel for the petitioner has made two submissions while assailing the validity of the impugned order. The first submission is that the impugned

order has been passed entirely on the dictate of the District Magistrate, Varanasi and the respondent No. 2 has not applied his own independent mind while passing the said order. The second submission is that the impugned order has been passed in complete violation of principles of natural justice inasmuch as neither any notice nor any opportunity of hearing was given to the petitioner before passing the order dated 31.7.1999. Learned standing counsel has, on the other hand, submitted that before passing of the impugned order several letters had been sent to the petitioner pointing out the deficiencies and shortcomings in the working of the unit and, consequently, the petitioner had sufficient notice of the action which was likely to be taken against it. He has further submitted that though the impugned order mentions that the same was being passed in compliance of the order passed by the District Magistrate but the actual order cancelling the registration of the petitioner's unit as a Small Scale Industry had actually been passed by the General Manager, District Industries Centre.

4. Coming to the second point urged by the learned counsel for the petitioner, it may be noticed that in paragraph 15 of the writ petition, it has been averred that the petitioner had never been confronted with any Inquiry made by District Magistrate and further that no opportunity had ever been provided, to it specifically pertaining to the allegation that it was not carrying on any manufacturing activity but was selling the coal allotted to it in the open market. Again in paragraphs 21 and 24 of the writ petition, it has been averred that the impugned order has been passed without giving any notice or opportunity of hearing to the petitioner. In the counter-affidavit filed by Project Manager, District Industries Centre, Varanasi, it has been stated that the unit was inspected by Assistant Manager, District Industries Centre on several occasions and it was found that it was not working in spite of repeated directions, the petitioner did not submit any statement in respect of use of raw material. A letter was written to the petitioner on 15.1.1999, directing it to start production and to give information to the office so that necessary verification may be made. The unit was again Inspected on 18.2.1999 and a letter was sent to the petitioner on the same day asking it to start production. Thereafter, the petitioner got 388.16 mt. of coal but when the Inspection was made, it was found that the unit had not commenced production nor it submitted any details regarding the consumption of coal. The General Manager, District Industries Centre, inspected the unit of the petitioner on 20.5.1999 and at that time also, it was found to be closed and consequently, an explanation was sought regarding closure of the unit vide letter dated 21.6.1999. It is stated in paragraph 9 of the counter-affidavit that a Committee was constituted by the Directorate of Revenue and Special Intelligence, Lucknow, to inquire about evasion of tax and commission of economic offences by the owners of Small Scale Industries and this Committee submitted a report dated 19.7.1999 stating that 33 units in Varanasi, were not working and they were illegally selling the raw materials, the quota of which was given to them. It is further stated that on the direction of the District Magistrate, the A.D.M. (Civil Supplies), Varanasi inspected the unit who found that it was not

running and on the basis of his report, action was taken against the petitioner for cancellation of its registration. Regarding the averments made in paragraphs 15 and 21 to 24 of the writ petition, it is stated that every time the unit was inspected, it was found to be closed and that the Impugned order has been passed after proper inquiries. It is also stated that the unit was served several notices dated 15.1.1999, 16.1.1999, 19.4.1999 and 21.6.1999 before passing of the impugned order.

5. The facts stated in the counter-affidavit show that though the unit was Inspected on several occasions and was found to be not working and the petitioner was sent several letters to submit details regarding the quota of coal received by it by road and rail but no specific notice was issued to it to show cause why its registration as a Small Scale Industry be not cancelled. Copies of several letters Issued from the office of District Industries Centre have been annexed along with the counter-affidavit and in these letters, the petitioner was Informed of the date when the unit was inspected and was found to be closed and was required to give details of the coal consumed by it every month. However, in none of these letters, the petitioner was required to show cause why its registration be not cancelled. Copy of any such notice has not been annexed along with the counter-affidavit. The writ petition was heard on 26.10.1999 when on the request of learned standing counsel further time was granted to him to ascertain whether any notice was issued to the petitioner to show cause why its registration be not cancelled before passing of the impugned order. Thereafter, a supplementary counter-affidavit has been filed by Sri Ram Raj Maurya, Project Manager, District Industries Centre, Varanasi on 24.11.1999. In paragraphs 2 and 3 of this affidavit, it is stated that the petitioner's unit was inspected by various authorities on several occasions but every time some illegality was detected. After inspection, notices were issued to the petitioner to provide Information on certain specific points but it did not do so and violated the conditions of the certificate which had been given to it. Paragraphs 4 and 5 of the supplementary counter-affidavit are of some importance and they read as follows :

"Para 4. That from perusal of the conditions it is clear that no prior notice is required to be given to the petitioner before cancelling the certificate if the petitioner unit may be found in breach of conditions."

"Para 5. That since in the petitioner's unit there were several illegalities and irregularities therefore the certificate has been cancelled in which there is no illegality."

6. As stated earlier, the supplementary counter-affidavit has" been filed after a specific order had been passed by us directing the standing counsel to ascertain whether any notice was issued to the petitioner before passing of the impugned order. The plea taken in the supplementary counter-affidavit is that the unit had been inspected on several occasions and the petitioner had been asked to furnish information on some specific points but as the same was not supplied and there

were illegalities and irregularities in the petitioner's unit no prior notice was required to be given before cancelling the certificate of registration. The counter-affidavit filed earlier also does not show that any notice to show cause against the proposed action of cancellation of registration was issued to the petitioner before passing the impugned order.

7. There can be no denial of the fact that the registration of the petitioner's unit as a Small Scale Industry confers several benefits upon it. The petitioner uses coal as a fuel in the manufacturing process and on account of its registration as a Small Scale Industry, it becomes entitled to get coal from the Coal India Limited. Besides this, the petitioner also gets the advantage of getting quota of certain other raw materials and may get exemption from payment of taxes, etc. for certain period. Certain rights had been acquired by the petitioner by virtue of its registration as a Small Scale Industry and on account of its cancellation, those rights have been taken away. Thus, the impugned order of cancellation of registration affects the civil rights of the petitioner and deprives it of certain advantages consequent upon the registration of the unit. Merely sending a letter informing the petitioner that on a particular date when the unit was inspected, it was found to be closed and asking it to give details of the quantity of coal received by it cannot tantamount to asking the petitioner to show cause why its registration be not cancelled. As shown earlier, at no point of time, the authorities informed the petitioner that they were contemplating to cancel the certificate of registration and requiring it to show cause why such an action be not taken. We are of the opinion that the nature of the power conferred upon the General Manager, District Industries Centre, the manner of exercise of power and its impact on the rights of the person affected clearly show that an order of cancellation of registration as a Small Scale Industry can be passed only after complying with the principles of natural justice. It has been held in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice, in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . It was held as follows :

".....If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry....."

8. In *Judicial Review of Administrative Action* by De Smith (4th Edition), the learned author has expressed the following opinion on page 181 :

".....Again, a decision to revoke the licence, especially when it casts a slur on

the reputation of the licensee or if it Inflicts severe economic loss or refusal to renew a licence that has similar consequences may require the Imposition of a right to prior notice and hearing as well....."

9. The law is, therefore, well-settled that If an administrative action causes a serious injury to a person or deprives him of some right or privilege, the same should be taken after complying with the principles of natural justice. In the present case, no prior notice was given to the petitioner to show cause against the action proposed to be taken, namely, cancellation of registration of the unit as a Small Scale Industry, and consequently, the impugned order dated 31.7.1999 passed by the General Manager, District Industries Centre, Varanasi, cannot be sustained and deserves to be quashed.

10. Learned standing counsel has submitted that the certificate of registration of the petitioner's unit as a Small Scale Industry contained in conditions of registration and condition No. 6 gave power to the Authority to cancel the certificate without any prior notice and, therefore, the respondent No. 2 was perfectly justified in passing the impugned order. Condition No. 6 reads as follows :

"If at anytime it is found that the declaration /affidavit furnished by the applicant is not true or in the event of violation of any of the conditions imposed by the registering authority or if the Investment exceeds the prescribed limit, the registration certificate is liable to be cancelled/quashed without any prior notice."

11. In our opinion, the submission made by learned standing counsel has no substance. The development of Industries in the State is essential from economic point of view. It provides employment to persons and improves their financial condition, The registration of a unit as Small Scale Industry is done under the policy of the Government and it is not a matter of contract between the Government and the owner of the unit. If the law requires that before taking any action which has a serious consequence upon the person, economic or otherwise, a prior notice or opportunity of hearing is to be given, then the requirement of law cannot be done away with by merely mentioning a condition that the registration certificate is liable to be cancelled without any prior notice. That apart, reading of clause 6 shows that it is only in the event of violation of any of the conditions imposed by Registering Authority that the registration certificate is liable to be cancelled. The decision of the authority on the question as to whether any of the conditions have been violated or not cannot be taken unilaterally without giving opportunity to the person concerned to explain his stand. If the authority takes a unilateral decision that any condition imposed by him has been violated, then such a decision would also be bad as having been arrived in violation of principles of natural justice. Therefore, Condition No. 6 cannot be interpreted to mean that the registration of unit as a Small Scale Industry can be cancelled without giving any opportunity to the owner of the unit to show cause against the action proposed to be taken.

12. The impugned order is liable to be set aside on the second point urged by the learned counsel for the petitioner and, therefore, it is not necessary for us to examine the first contention raised by him. It may, however, be mentioned that if the General Manager, District Industries Centre has been conferred the power to cancel the registration of the unit, such a decision should be taken by him objectively on the basis of the material placed before him. The impugned order, however, mentions that in compliance of the order passed by the District Magistrate, the registration of the units mentioned in the order was being cancelled on account of misuse of the quota of coal allotted to them. In our opinion, the General Manager of the Centre should have exercised his independent judgment and should not have blindly passed the impugned order in compliance of the order passed by a District Magistrate.

13. At the fag end of hearing of the writ petition. Sri V. K. Burman, learned counsel for the Chief General Manager (Sales and Marketing). Coal India Limited. Calcutta (respondent No. 3), pointed out that under an order passed by the Commissioner and Director of Industries, U. P. dated 14th September, 1999, a right of appeal has been provided against an order of cancellation of registration passed by General Manager, District Industries Centre, before the Additional/ Joint Director, Industries and against his decision a further appeal has been provided to Commissioner and Director of Industries U. P. On the basis of the aforesaid order, Sri Burman urged that the writ petition should not be entertained as the petitioner has an alternative remedy available to it. Learned standing counsel was twice given time to produce a complete copy of the aforesaid order dated 14th September. 1999 passed by the Commissioner and Director of Industries U. P., which makes a provision for appeal but he could not do so. It is well settled that existence of alternative neither ousts jurisdiction of the Court nor acts as a complete bar on the power of the High Court to issue an appropriate writ under Article 226 of the Constitution, specially in a case where there has been violation of principles of natural justice. Neither any plea was raised nor any reference has been made to the order dated 14th September, 1999 of the Commissioner and Director of Industries in the two counter-affidavits filed on behalf of the State. It was virtually at the close of the argument that learned counsel appearing for Coal India Limited brought to the notice of the Court about the existence of the aforesaid order. In the facts and circumstances of the case, we are of the opinion that no useful purpose will be served by directing the petitioner to file an appeal at this stage.

14. In several other petitions, no counter-affidavit has been filed by the State. However, the learned standing counsel has fairly conceded that the factual position is exactly similar to that of the present case and that the Impugned order dated 31.7.1999 was passed by the General Manager, District Industries Centre, without Issuing notice or giving any opportunity of hearing to the concerned persons. In view of the discussion made above, the remaining writ petition also deserve to be allowed on the same ground.

15. The writ petitions are accordingly allowed and the impugned order dated 31.7.1999 passed by General Manager District Industries Centre, Varanasi, is quashed.

16. Before parting with the case, we make it clear that it will be open to the General Manager, District Industries Centre, Varanasi, to Initiate action against the petitioners for cancellation of their registration as a Small Scale Industry after giving them a notice of the action proposed to be taken and affording them opportunity of hearing. If the allegation made against the petitioners that they did not utilise the quota of coal allotted to them in their own unit but sold it in open market is correct, then the same is quite serious and public Interest may require that suitable action be taken against guilty persons. The General Manager may examine each case on merits and take appropriate action as he may consider proper in the facts and circumstances of the case. We further make it clear that this Court is expressing no opinion regarding the merits of the case of the petitioners. If proceedings for cancellation of registration are initiated, the authority concerned shall examine all materials placed before him and exercise his Independent judgment in accordance with law without being influenced by the order of the District Magistrate.