
(2009) 11 AHC CK 0032
In the Allahabad High Court

Krishan Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Citation : (2010) 1 AWC 622

Hon'ble Judges : R.K. Agrawal, J; Jayashree Tiwari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.K. Agrawal and Jayashree Tiwari, JJ.—By means of the present writ petition the petitioner sought a writ, order or direction in the nature of certiorari calling for the record of the case and quashing the order dated 11th November, 2009, passed by the Sub-Divisional Magistrate Sadar, district Deoria-respondent No. 3, filed as Annexure-7 to the writ petition by which the residence certificate issued to the petitioner on 23rd July, 2009 has been cancelled on the basis of the complaint made on 9th November, 2009 by one Sanjay Tiwari, respondent No. 6.

2. According to the petitioner the complaint was made on 9th November, 2009 and without affording any opportunity to show cause or hearing the order has been passed in haste on 11th November, 2009. The entire exercise has been done within a short span of two days which according to the petitioner itself speaks about the motive. The averment regarding neither issuing any show cause notice nor affording any opportunity of hearing to the petitioner has been made in paragraph 16 of the writ petition.

3. We have heard Sri Ashok Khare, learned senior advocate assisted by Ms. Durga Tiwari, learned standing counsel appearing for respondent Nos. 1 to 4, Sri Sunil Kumar Singh, learned Counsel appearing for respondent No. 6 and Sri Sanjiv Singh has filed his appearance on behalf of respondent No. 5.

4. With the consent of the learned Counsel for the parties, the writ petition is being disposed of at the admission stage without calling for counter-affidavit.

From a perusal of the impugned order dated 11th November, 2009, we find that the Sub-Divisional Magistrate has mentioned that the complaint was filed by Sri Sanjay Tiwari on 9th November, 2009, an enquiry was conducted on 10th November, 2009 and the impugned order has been passed on 11th November, 2009 whereby the petitioner's residence certificate has been cancelled. It does not mention that any show cause notice or opportunity of hearing was given to the petitioner before passing the impugned order.

5. From a perusal of the order and the averments made in paragraph 16 of the writ petition, we are of the considered opinion that neither any show cause notice nor any opportunity of hearing was afforded to the petitioner stands established and the impugned order has been passed in gross violation of principle of equity, fair play and natural justice. The same cannot be sustained which is hereby set aside. The respondent No. 3 may proceed in accordance with law.

6. The writ petition succeeds and is allowed.