
(1969) 04 DEL CK 0021

In the Delhi High Court

Case No : Civil Writ Appeal No. 526 of 1968

Mahan Singh

APPELLANT

Vs

The New Delhi Municipal Committee

RESPONDENT

Date of Decision : 25-04-1969

Acts Referred:

Citation : (1969) ILR Delhi 824

Hon'ble Judges : Narain Andley, J;Hardayal Hardy, J

Bench : Division Bench

Advocate : Daljit Singh and D.K. Bhargava, for the Appellant;

Judgement

S.N. Andley, J.

(1) The petitioner has challenged the discontinuance of the supply of electricity to him on June 17, 1968 in pursuance of a notice dated June 13, 1968 which was issued by the New Delhi Municipal Committee in purported exercise of powers under clause 7(6) of the Delhi Electricity Control Order, 1959, hereinafter referred to as "the Order", promulgated by the Lt. Governor of Delhi in exercise of powers conferred by section 22B of the Indian Electricity Act, 1910, hereinafter referred to as "the Act." The petitioner has challenged the disconnection on the ground that the period of notice had not expired before the disconnection; that it was in violation of the principles of natural justice because he was not given any opportunity at all of showing cause against the notice and that it was discriminatory and malafide

(2) The petitioner alleges that he has since 1947 been running a small workshop for repairing refrigerators and air-conditioners. In 1960, he shifted to premises bearing No. 12/1, B-Block Connaught Place, New Delhi and continue his aforesaid business. Upon his application, the New Delhi Municipal Committee (respondent No. 1) sanctioned a power load of I Kw and allotted K. No. 62452/P on which the petitioner has been running a lathe. Later, the petitioner applied for and was sanctioned an additional power load of 2KW which was being utilised for testing

refrigerators and air-conditioners repaired in his workshop. On June 15, 1968, a notice was served upon the petitioner informing him that he was carrying industrial load on the above K. number without a valid license and the details of the load carried were "motor 2x1/4 H.P. & 2x 1/2H.P. for lathe etc." He was also informed that such use was in contravention of clause 4(4) of the Order rendering the petitioner liable for disconnection under clause 7(6) of the Order. The petitioner was further informed that on expiry of 48 hours of receipt of the said notice, the supply of electricity will be disconnected. It is not disputed that the supply of electricity was in fact disconnected on June 17, 1968. On this date he made a representation to the respondents explaining that the allegation that he was running a workshop without a license was not tenable and he had neither consumed electricity in excess of the sanctioned load nor in contravention of the Order but his representation was not heeded and the supply was not restored.

(3) Section 22B of the Act gives the State Government the power to provide by order for regulating the supply, distribution, consumption or use of electricity if it is of the opinion that it is necessary or expedient so to do for maintaining the supply and securing the equitable distribution of energy. In exercise of this power the Order was promulgated on November 23, 1959 by the Lt. Governor, Delhi. Clause 3 of this Order provides that the licensee shall not make fresh supply of energy or increase supply of energy without the permission of Lt. Governor in cases other than those mentioned in this clause. Two of the cases mentioned are domestic appliances in commercial premises not covered by the Factories Act up to a maximum of 3KW. for each commercial unit and household industries up to a maximum of 1/2 KW. It is clear that so far as these two cases are concerned, the licensee, which in this case is the New Delhi Municipal Committee, can sanction a maximum load of 3KW. for domestic appliances in commercial premises not covered by the Factories Act and a maximum load of 1/2 Kw for household industries.

(4) Clause 4(4) of the Order prohibits a consumer from using "a load for a purpose other than the purpose for which it was sanctioned in his favor without the permission of the Lt. Governor viz. a load sanctioned for domestic/commercial purposes shall not be used for lighting or industrial purpose or a load sanctioned for lighting purpose shall not be used for domestic/commercial or industrial purpose without the permission of the Lt. Governor."

(5) The duties imposed upon the licensee are mentioned in clause 7. One of the duties is to report to the Lt. Governor within four days of its coming to its notice every case of contravention of the provisions of clause 4 of the Order. Another duty is with respect to the contravention of clause 4(4) of the Order and that duty is (a) to discontinue the supply of energy by giving the consumer not less than 48 hours" notice of its intention to do so; (b) on discontinuing the supply, to communicate to the Lt. Governor within 48 hours of the discontinuance, the circumstances in which it has done so; and (c) to comply with the directions issued by the Lt, Governor regarding the restoration of supply.

(6) The scheme of the said Act and of the Order seems to be that the Lt. Governor in the case of Delhi is the supreme authority which grants a license for the sale, distribution etc. of electricity and enjoins upon the licensee to do so in the manner laid down either in the Act or in the Order. In so far as the licensee is concerned, it is to comply with the provisions of the Order and one of its duties is to discontinue the supply of energy by giving the consumer not less than 48 hours' notice of intention to do so in case there is a contravention of clause 4(4) of the Order.

(7) The petitioner contends that section 22 of the Act imposes a statutory obligation on the licensee to supply electricity to a consumer and once supply is sanctioned a vested right accrues in the consumer with a corresponding obligation upon the licensee to continue the supply and Therefore, before the licensee discontinues the supply, it must give the consumer an opportunity to show cause against the intended discontinuance and to determine whether or not the consumer has committed a breach of the terms upon which the supply has been made. It is urged that even though the notice of disconnection is an administrative act, there is an obligation upon the licensee to pass the order of disconnection after giving an opportunity of being heard. Reliance is placed upon the decision of the Supreme Court reported in *re: State of Orissa v. Dr. (Miss) Binapani Dei and others* (1) where it was held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice after informing the person concerned about the allegation against him, the evidence in support thereof and after giving an opportunity to him of being heard and meeting or explaining the evidence.

(8) The respondents contend that the order does not contain any provisions requiring any inquiry inasmuch as the respondent-committee is a licensee, it must carry out its statutory obligation to discontinue supply after the requisite notice whenever there is a misuse by the consumer. To meet this argument reliance is placed by the petitioner upon the observations of the Supreme Court in its decision dated September 25, 1969 in *State Bank of India v. Rajendra Kumar Singh and others* and the observations are:-

"IT is true that the statute does not expressly require a notice to be issued, or a hearing to be given to the parties adversely affected. But though the statute is silent and does not expressly require issue of any notice there is in the eye of law a necessary implication that the parties adversely affected should be heard before the Court make an order for return of the seized property. The principle is clearly stated in the leading case of *Cooper v. Wandsworth Board of Works* (3). In that case section 76 of the Metropolis Local Amendment Act, 1855 authorised the District Board to demolish the building if it had been constructed by the owner without giving notice to the Board of his intention to build. The statute laid down no procedure for the exercise of the power of demolition, and, Therefore, the Board demolished the house in exercise of the above power without issuing a notice to the owner of the house. It was held by the Court of Common Pleas that

the Board was liable in damages for not having given notice of their order before they proceeded to execute it. Erle C.J. held that the power was subject to a qualification repeatedly recognised that no man is to be deprived of his property without his having an opportunity of being heard and that this had been applied to many exercises of power which in common understanding would not be at all a more judicial proceeding than would be the act of the district board in ordering a house to be pulled down. Wills J. said that the rule was "of universal application and founded upon the plainest principles of justice" and Byles J. said that "although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

(9) The same principle has been reaffirmed in a recent case *Ridge v. Baldwin* (4). In that case, section 191 of the Municipal Corporations Act, 1881 provided that a watch committee may at any time suspend or dismiss any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same. The appellant, who was the chief constable of a borough police force, was dismissed by the watch committee on the ground that he was negligent in the discharge of his duties as chief constable. He brought an action against the members of the watch committee by stipulating that his dismissal was illegal and ultra virus the powers. It was held by the House of Lords that the decision of the watch committee was ultra virus because they dismissed the appellant on the ground of neglect of duty and as such they were bound to observe the principles of natural justice by informing him of the charges made against him and giving him an opportunity of being heard. The same principle was applied by this Court in *Board of High Education and Intermediate Education, U.P. Allahabad v. Ghanshyam Das Gupta and Ors* (5). It was held in that case an examination committee of the Board of Secondary Education in Uttar Pradesh was acting quasi judicial when exercising its power under rule (1)1 of Chapter Vi of Regulations dealing with cases of examines using unfair means in examination halls and the principles of natural justice which require that the examinee must be heard, will apply to the proceedings before the Committee. Though there was nothing express one way or the other in the Act or the Regulations casting a duty on the committee to act judicially, where no opportunity whatever was given to the examinee to give an Explanation and present their case before the Committee, the Regulation of the committee cancelling their results and depriving them from appearing at the next examination was defective."

(10) We do not find any substance in the argument on behalf of the respondents that the licensee is helpless because of the statutory obligation imposed upon it. The licensee has to come to a conclusion as to misuser. Is such a conclusion to be arrived at ex-parte and is it in the nature of an administrative fiat or is such a conclusion to be arrived at after affording a reasonable opportunity to the consumer to be heard in his defense ? In view of the aforesaid decisions, the conclusion is irresistible that inasmuch as rights of consumer are affected, no decision to his prejudice should be taken in his absence or without hearing him.

The prescription of a period of 48 hours in the notice is a pointer to the conclusion that during these 48 hours, the petitioner should have an opportunity of showing cause against the proposed notice. If it had been otherwise, there was no point in prescribing the period of 48 hours after the receipt of the notice by the consumer upon the expiry of which the supply was to be discontinued. In our opinion, it is implicit in the fact that a period is to be prescribed and that action is not to be taken upon the notice before the expiry of the period that the supply is not to be discontinued without affording the consumer an opportunity to show cause.

(11) The petitioner, in the present case, did make a representation on June 17, 1968 but it was dispatched to the respondents after the supply had already been disconnected. It is, Therefore, contended by the respondents that inasmuch as the representation was made after the discontinuance of the supply, it must be taken that it was not necessary to consider that representation and, Therefore, the discontinuance of the supply in pursuance of the notice cannot be challenged as being in violation of the principles of natural justice. The question, Therefore, is whether the notice was in compliance with the provisions of the Order and whether in view of the circumstances it was possible for the petitioner to make a representation within the time specified in the notice.

(12) The petitioner has alleged that the impugned notice was received by him on June 15, 1968 at 3.30 Pm and that the supply was discontinued before the expiry of 48 hours, in the counter filed on behalf of the respondents it is stated that "the time of service as mentioned by the petitioner is not admitted. The said notice was served in the forenoon by the actual time in the absence of proper data cannot be given." It is further stated by the respondents that "the power load was disconnected on 17-6-1968 at 11.30 A.M. after the expiry of 48 hours." It has to "be remembered that June 16, 1968 was a Sunday. In the state of the pleadings of the parties and in the absence of specification in the counter affidavit of the time of the service of the notice by the respondents upon the petitioner, we hold it proved that the impugned notice was served upon the petitioner on June 15, 1968 at 3.30 P.M. That being so, it cannot be disputed that 48 hours had not expired when the supply was disconnected at 11.30 A.M. on June 17, 1968 and, Therefore, the notice issued by the respondents did not comply with the provisions of the Order. The action of the respondents is, Therefore, ultra virus the provisions of the Order and the notice issued must be quashed. The result is that the discontinuance of the supply was not in accordance with the provisions of the order. It also follows that the discontinuance was in violation of the principles of natural justice because admittedly it was without taking into consideration the representation made by the petitioner and giving him a reasonable opportunity to show cause.

(13) In view of our conclusion on the above two aspects, we do not consider it necessary to deal with the other contentions raised by the petitioner.

(14) In the result, the impugned notice dated June, 13, 1968, issued by the

respondents is quashed and the respondents are hereby directed by a writ of mandamus to restore the supply to the petitioner.

(15) We may make it clear that it will be open to the respondents to take fresh action against the petitioner under the aforesaid Order after issuing to him a proper notice as required by the Order and affording him a reasonable opportunity to show cause. The petitioner will also have his cost of this petition which are assessed at Rs. 150.00.