
(1979) 09 RAJ CK 0017
In the Rajasthan High Court
Case No : Civil Special Appeal No. 10 of 1974

Mangilal	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 04-09-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Motor Vehicles Act, 1939 — Section 12

Citation : AIR 1980 Raj 78 : (1979) RLW 585

Hon'ble Judges : C.M. Lodha, C.J.;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : M.C. Bhandari, for the Appellant; R.R. Vyas, for Union of India, for the Respondent

Final Decision : Dismissed

Judgement

Bhatnagar, J.—This Special Appeal u/s 18 of the Rajasthan High Court Ordinance has been filed against the judgment passed by the learned single Judge of this Court on Nov. 9, 1973 in a writ petition filed by Mangilal -- Appellant against the respondents.

2. Briefly stated the facts of the case giving rise to this special appeal are that the petitioner was appointed as a cleaner in the Directorate of Plant Protection (Quarantine and Storage) of the Ministry of Food and Agriculture, Government of India. In the year 1953 he was appointed as Driver. In the year 1962, while he was posted at Suratgarh the vehicle which he was driving met with an accident. On 16th Jan., 1967 order (Ex. 1) was issued by the Deputy Locust Entomologist, Jodhpur " asking him to appear before the licensing authority, Delhi for a test. He was declared unfit on account of his weak eye-sight. By the order dated June 13, 1967 (Ex. 2) he was directed to get his eye-sight tested by the Principal, Medical & Health Officer, Jodhpur. He was found fit. On Dec. 21, 1967 by order Ex. 4 he was again asked to appear for test at Delhi. Appellant protested against that order but he was informed by memorandum Ex. 10 dated Feb. 12/ 13, 1968 that

his representation was rejected and he should keep ready for the test. On May 17, 1968 he appeared before the licensing authority at Delhi. According to the appellant he was not tested and was asked to return to Jodhpur. The case of the respondents was that the appellant was tested and was found unfit. By the order dated 13th May, 1968 (Ex. 12) the Motor Licensing Authority, Delhi revoked the driving licence held by the appellant and directed him to surrender the driving licence to the authority at the earliest. In consequence to that order the appellant was reverted to his substantive post of Messenger-cum-Cleaner with effect from 30th Nov., 1968 vide Order Ex. 11 passed by the Deputy Locust Entomologist, Jodhpur,

3. Being aggrieved by the orders revoking his driving licence and consequently reverting him to his substantive post of cleaner, the appellant filed the writ petition under Article 226 of the Constitution of India in this Court.

4. The following three points were agitated before the learned single Judge during the course of arguments:--

(1) That the order dated 30th May, 1968 (Ex. 12) revoking the driving licence by the licensing authority at Delhi was illegal inasmuch as the licence having been issued by the licensing authority, Jodhpur it was not permissible for the licensing authority at Delhi to revoke the same.

(2) That medical test was the only proper way for ascertaining whether the petitioner was unfit to drive a motor vehicle due to any disease or disability and the Delhi authority had erred in dispensing with the medical examination.

(3) That the order (Ex. 12) revoking the licence was mala fide and deserves to be quashed. The ground of mala fide was that while posted at Suratgarh in the year 1962, Mangilal was asked by Deputy Locus Entomologist, Kuldeep Bhatia to proceed to Palanpur with his personal luggage. During that trip the vehicle met with an accident on the way to Palanpur and Y. P. Dogra who was the Transport Officer happened to reach there. The two officers were not on good terms and Y. P. Dogra felt annoyed with the appellant for taking the goods of Kuldeep Bhatia. He, therefore, hatched a plan to harass the appellant and the order dated June 16, 1967 (Ex. 1) directing him to get himself medically tested was the consequence of that planning.

5. About the first point the learned single Judge held that Section 12 of the Motor Vehicles Act (hereinafter to be referred as "the Act") authorises any licensing authority to revoke the licence on the ground of disease or disability and therefore the order passed by Delhi authority was not without jurisdiction. About the second contention the finding of the learned single Judge was that the proper and lawful remedy for the petitioner was to prefer an appeal under S. 13 of the Act and since he has not cared to avail of that simple and efficacious remedy, this Court cannot entertain the arguments on merits of the order of revocation in the writ petition. The contention about the mala fides in issuing orders Exs. 11 and 12 was rejected on the ground that the appellant could not substantiate his

case to that effect and also because the interval of 5 years between the accident in the year 1962 and the order for medical examination in the year 1967 was such a long, period that the accident which took place while taking the luggage of Kuldeep Bhatia cannot be connected with the order passed in the year 1967. The learned single Judge in view of these findings dismissed the writ petition. Dissatisfied by that order the appellant has filed this special appeal.

6. All the points agitated in the writ petition have been taken in this special appeal but the learned counsel for the appellant at the commencement of the arguments submitted that the ground of mala fides in issuing the impugned orders Ex. 11 and Ex. 12 could not be substantiated and so he dropped that point.

7. Assailing the impugned order the learned counsel for the appellant strenuously contended that the interpretation of Section 12 of the Act by the learned single Judge is erroneous because the licensing authority at Delhi having not issued the licence could not have revoked it. This point need not detain us much because the provisions of Section 12 of the Act are quite clear on the point. The words occurring in the said section are "any licensing authority" and not the authority issuing the licence. The intention of legislature is amply clear by the 1st part of the section which provides that "where the authority revoking a driving licence is not the authority which issued the same, it shall intimate the fact of revocation to the authority which issued that licence.

8. Mr. Bhandari vehemently stressed that the order revoking the driving licence and the consequent order of reversion are in flagrant disregard of the principle of natural justice because the appellant was not intimated about the intention of taking action against him. He has argued that the principle of natural justice demands that proper opportunity should be given to the delinquent to explain any material found against him and an order detrimental to his interest can be passed only after providing him an opportunity of being heard. According to the learned counsel, the finding of the learned single Judge that, as the appeal lies against the order passed u/s 12 of the Act, the arguments cannot be entertained in writ petition, is erroneous.

9. Learned counsel for the respondents submitted that the principle of natural justice is not attracted in an executive order and the appellant having failed to avail of the right of appeal, he cannot seek any relief in this Court.

10. Section 13 of the Act provides for appeals against the orders reviewing or revoking the driving licence. In the case of Hari Narain Natani Vs. Regional Transport Authority, Jaipur and Another, this Court while dealing with the case of permits granted by Regional Transport Authority without limiting number of stage carriages for which the remedy of the aggrieved person is by way of appeal under S. 64 of that Act had held that this Court will not entertain writ petition challenging appealable orders directly, unless such orders are without jurisdiction. It being not the practice of this Court to entertain writ petitions

challenging appeal-able orders, the learned single Judge, in our opinion, was quite correct in not entertaining the arguments on the merits of the orders challenged by the appellant in the writ petition.

11. Mr. Bhandari, learned counsel for the appellant, submitted that in this case the question of disregard to the principles of natural justice by not issuing notice to the appellant is involved and. therefore, this Court should hear the matter from that angle. To substantiate his arguments Mr. Bhandari referred to a Full Bench decision of the Gujarat High Court in the case of *Abad Cotton Mfg., Co. Ltd. v. Union of India* AIR 1977 Guj 113. It has been observed therein that the writ petitions under Article 226(1)(a) on the ground of invasion of fundamental rights are entertainable where the action is taken under an ultra vires statute, or where, although the statute is intra vires the action is without Jurisdiction or the principles of natural justice was violated. When the grievance against an order is that the fundamental rights of a person are infringed and the principles of natural justice are violated, the writ petition is entertainable.

12. We will now view the matter in hand to find out whether it was obligatory on the authorities concerned to issue notice to the appellant before revoking his licence and passing consequent; order of his reversion. Section 12 of the Act does not envisage any such notice. Mr, Bhandari submitted that whenever any order affecting any right of a person is issued, the principles of natural justice demand that the intention, to do so should be communicated to the affected person to enable him to explain the grounds raised against him. In this connection he referred to the principle enunciated in the case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, . In that case the passport of the petitioner was impounded in public interest by the order of the Government of India and that order was challenged by her in a writ petition under Article 32 of the Constitution, The order impounding the passport of the petitioner was held to be clearly in violation of the rule of natural justice embodied in the maxim *audi alteram partem* because it was not in conformity with the procedure prescribed by the Passport Act, 1967 and also because the Central Government not only did not give an opportunity of hearing to the petitioner after making the impugned order impounding her passport but even declined to furnish to the petitioner the reasons for impounding her passport despite requests made by her. In such circumstances their Lordships observed that the exercise of the power is not made dependent on the subjective opinion of the Passport Authority as regards the necessity of exercising it On one or more of the grounds stated in the section, but the Passport Authority is required to record in writing a brief statement of reasons for impounding the passport and, save in certain exceptional circumstances to supply a copy of such statement to the person affected, so that the person concerned can challenge the decision of the passport authority in appeal and the appellate authority can examine whether the reasons given by the Passport Authority are correct, and if so, whether they justify the making of the order impounding the passport.

13. The provisions of impounding the passport are altogether different from the provisions of revoking the licence u/s 12 of the Act. In the former, licence can be impounded only in the interest of general public and reasons are to be given, which in the case referred to above were not given and the only ground for impounding the licence was that in the opinion of the Central Government the presence of the petitioner was necessary for giving evidence before the Commission of Inquiry and her leaving India might frustrate or impede to some extent the inquiries which were being conducted by the Commission of Inquiry.

14. Section 12 of the Act does not require reasons to be recorded. Despite that the licensing authority at Delhi has assigned reasons for the action taken vide Ex. 12. The words used in Section 12 "it the licensing authority has reason-able grounds to believe" suggest that it is the subjective satisfaction of the licensing authority. Whether any notice prior to the revoking of licence or Of the intention to proceed against the person concerned in consequence to that revocation is required or not is to be viewed from the provisions of enactment. As we have observed above, there is no such requirement in Section 12 of the Act. In this connection it will be profitable to refer to the principles "enunciated in the case of Kishore Singh Vs. State of Rajasthan and Another, That case related to the cancellation of the licence u/s 18 of the Arms Act. That order was considered to be an executive order as distinguished from judicial or quasi-judicial order. While differentiating between the two, their Lordships observed that four conditions are necessary before an order becomes a judicial order viz: (i) there should be a body of persons, (ii) this body of persons should have legal authority, (iii) the legal authority should be to determine questions affecting rights of subjects or citizens, and (iv) this body of persons should have the duty to act judicially. It was observed that three of these conditions will be present in most orders of an executive or administrative nature and it is only the fourth condition which will not be present in the case of executive orders, namely, there should be a duty to act judicially. According to their Lordships, it is the presence of this condition which differentiates an executive order from a judicial or quasi-judicial order. In view of the case before them it was held that u/s 18(a) Arms Act, 1878 no duty is cast on the authority cancelling a licence to act judicially. Considering the question of notice in connection with the two orders assailed; by the appellant, we can safely say that statute does not require any notice to be issued and the order being an executive or administrative order notice was not necessary, and therefore, principles of natural justice were not violated nor any right of the appellant to be heard was infringed. We are strengthened in our view by the observations made in the case just referred to above wherein it has been held as under:--

"Where an authority exercising administrative powers under a statute (e.g. u/s 18(a) Arms Act) acts within the four corners of the statute, and does not exceed or abuse its powers, it is unnecessary to introduce into the statute the principles of natural justice. Thus, if in a particular type of statute it is thought unnecessary to provide for notice of hearing in an administrative matter, the Courts should not

introduce that in the law on the basis of principles of natural justice."

15. This principle is applicable with full force to the case in hand. As no right of the appellant is infringed, the plea of violation of principles of natural justice is not available to him.

16. We, therefore, find no force in this special appeal, and it is dismissed. But in the circumstances, there will be no order as to costs,