
(2014) 03 GUJ CK 0073

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1480 of 2008 in Special Civil Application No. 3634 of 1998 and Letters Patent Appeal No. 1709 of 2009 in Special Civil Application No. 3634 of 1998

Medical Director

APPELLANT

Vs

State of Gujarat and 2 Ors.

RESPONDENT

Date of Decision : 06-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 03 GUJ CK 0073

Hon'ble Judges : K.S. Jhaveri, J;Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : Amar N. Bhatt, Advocate for the Appellant(s) No. 1 in LPA No. 1480 of 2008 and Mr J.K. Shah, Asst. Government Pleader for the Appellant No. 1 -3 in LPA No. 1709 of 2009, Advocate for the Appellant; J.K. Shah, Asst. Government Pleader for the Respondent(s) No. 1 - 3 in Appearance in LPA No. 1480 of 2008 and Mr. Amar N. Bhatt, Advocate for the Respondent(s) No. 1 in LPA No. 1709 of 2009, Advocate for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—Both these appeals have been filed challenging the judgment and order dated 24-25.11.2008 passed by the learned Single Judge of this Court in Special Civil Applications No. 3634 of 1998 to the extent it is against them.

2. Mr. S.N. Soparkar, learned Senior Counsel appearing with Mr. Amar Bhatt for the original petitioner submitted that the learned Single Judge inspite of holding that the Collector did not grant a fair hearing to the appellant erred in coming to the conclusion that the lapse of not granting fair hearing would not be fatal. He submitted that the learned Single Judge ought to have remanded the matter as there was admittedly a failure on the part of the Collector to observe principles of natural justice. He submitted that even the Revisional Authority's order which was impugned in the writ petition was based on his own inspection and impressions gathered during his personal visit and therefore the Revisional

Authority ought to have called the original petitioner for a hearing before submitting his inspection report. He submitted that the learned Single Judge failed to appreciate that the orders of the authorities below were likely to have adverse civil consequences on the appellant and therefore also the same could not have been passed without following due procedure of law. He contended that the impugned orders are passed without giving sufficient opportunity of hearing to the present petitioners and therefore the same is violative of Article 14 of the Constitution and therefore the same may be quashed and set aside.

3. Mr. J.K. Shah, learned AGP submitted that the impugned judgment passed by learned Single Judge is contrary to the law and evidence on record to the extent it grants benefits more than the order passed by the Revisional Authority.

4. In view of the fact that the original petitioner was not heard before passing the impugned order by the Collector, Gandhinagar, which is also not disputed by Mr. Shah, learned AGP and which has also been observed by the learned Single Judge in the impugned order, this court is of the opinion that the same is pure violation of principles of natural justice and therefore the orders passed on such basis cannot survive. Accordingly, the following order is passed:

(I) The orders dated 24-25.11.2008 passed by the learned Single Judge in Special Civil Application No. 3634 of 1998, 21.02.1998 passed by the Special Secretary (Appeals), Revenue Department, Government of Gujarat and 13.03.1987 passed by Collector, Gandhinagar are hereby quashed and set aside.

(II) The matter is remanded to Collector, Gandhinagar for hearing the matter de novo.

(III) The original petitioner shall appear before the Collector, Gandhinagar on 21.04.2014 with all necessary documents to be relied upon.

(IV) The Collector shall hear the parties on the same day or fix any other convenient date for hearing.

(V) It is made clear that this court has not entered into the merits of the matters and therefore the Collector may not be influenced by the remand order passed by this court, the order of learned Single Judge or Revisional Authority.

(VI) This order is passed without expressing any opinion on merits in view of the fact that the original petitioner was not heard before passing the order which amounts to violation of principles of natural justice.

(VII) The Collector shall hear the parties and consider the submissions made by them and pass an order in accordance with law.

(VIII) Till the matter is heard and decided by the Collector, both the sides shall maintain status quo as on today.

6. Appeals are allowed to the aforesaid extent.