(1962) 01 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1339 of 1961

Messrs. Vemco Laboratories, Bhatinda APPELLANT

Vs

The State of Punjab and Others RESPONDENT

Date of Decision : 18-01-1962

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1962) 01 P&H CK 0047

Hon'ble Judges : Dua, J

Bench : Single Bench

Advocate : D.S. Nehra, for the Appellant; H.S. Doabia, Additional Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Dua, J.—This petition has been filed by Messrs. Vemco Laboratories, Bhatinda, under Article 226 of the Constitution and is directed against the orders of Shri S.N. Bhanot, Excise and Taxation Commissioner, dated 2nd March, 1961 and of the Financial Commissioner (Revenue), who is also Secretary, Excise and Taxation Department dated 21st September, 1961, confirming on appeal the order of the Commissioner. It is pleaded that the petitioner held since 1954-55 a license in form L.I. under the Medicinal and Toilet Proparations (Excise Duties) Act 1955 and the rules made thereunder. In the petitioner''s laboratory, the Medicinal Preparations are manufactured under the supervision of the Excise Officer appointed by the department concerned and the accounts and registers are regularly maintained which are duly inspected by the department from time to time. By means of a letter dated 27th July, 1959, the Excise and Taxation Commissioner, Punjab, respondent No. 3, called upon the petitioner to submit his explanation in respect of a transaction of 80 lbs. of Tincture Quassia issued on 19th August, 1959. The petitioner submitted the explanation on 11th August, 1959. On 11th March, 1960, respondent No. 3, served a show cause notice on the petitioner under rule 87 of the Medicinal and Toilet Preparations Rules. The charges contained in the show cause notice were duly replied to by the petitioner on 4th April, 1960. According to the averments in the petition, nothing further was charged and no enquiry of any kind was held in the petitioner''s presence and at no stage was any opportunity afforded to the petitioner to cross examine the witnesses or to produce defence.

2. On petitioner''s request, Shri S.S. Grewal, Excise and Taxation Commissioner, discussed the case with the petitioner''s representative on 30th August, 1960 when it was submitted that the petitioner did not have a fair deal inasmuch as no opportunity to cross-examine the witnesses or to produce defence had been afforded and that the petitioner had throughout been kept in the dark by the department. According to the petition, Shri Grewal observed that he was not attaching any importance to charge No. 1 contained in the show cause notice which was of a trivial nature. In respect of charge No. 2 also, Shri Grewal observed that the department would not press the same. Regarding charge No. 3, the petitioner requested the Commissioner to make available to them a copy of the Chemical Examiner''s report and then to afford an opportunity for producing defence. In respect of charge No. 4, also, a request was made that an enquiry should be held by recording the statement of Shri Sarohia, Deputy Excise and Taxation Commissioner, in the presence of the petitioner and that an opportunity to cross-examine him should be afforded; on this charge also, a request was made to enable the petitioner to produce defence. Since Mr. Sarohia was not available on that day, the case according to the petition, was adjourned. With respect to charge No. 5, the petitioner took the stand that the case was mala fide and false and that the petitioner could substantiate it by producing a judgment delivered by a Magistrate 1st Class, Barnala, establishing the high handedness of the Deputy Excise and Taxation Commissioner in initiating an untenable charge. On 7th September, 1960, the petitioner handed over a copy of the Judgment to the Commissioner of the said Magistrate dated 29th May, 1960 in challan No. 26. A request was also made for a further hearing in the matter. Shri Grewal, however, informed the petitioner that the report of the Chemical Examiner with respect to charge No. 3 was still awaited and that the petitioner would be given an opportunity to cross-examine the Deputy Excise and Taxation Commissioner and also to produce defence after the case was complete.

3. Shri Grewal was then transferred and was succeeded by Shri S.N. Bhanot who took over as Excise and Taxation Commissioner. Till February, 1961, no further action was taken in the matter when orders for Shri Bhanot''s transfer were passed. On 2nd March, 1961, while relinquishing the charge, Shri Bhanot, according to the petition, arbitrarily passed an order cancelling the licence of the petitioner by refusing to renew the same. This, according to the averments, was done without affording any opportunity of hearing as required by the mandatory provisions of rule 87.

4. The petitioner went up in appeal to the Punjab Government under rule 127, but the same was heard by Shri Gian Singh Kahlon who by his order dated 21st

September, 1961, dismissed the same. It is these two orders which have been assailed in the present proceedings and two main points have been raised by the learned counsel for the petitioner.

5. To begin with, it has been argued that the petitioner has not been given a reasonable opportunity of showing cause against the action proposed to be taken. This argument is based on a two-pronged attack. In the first instance if has been argued that the petitioner was entitled to cross-examine the witnesses on whose testimony reliance was sought to be placed in support of the charges contained in the show cause notice and also to adduce defence evidence. In the second place, it has been stressed that Shri S.N. Bhanot did not hear the petitioner in person. In developing this point, the learned counsel has forcibly asserted that Shri S.S. Grewal had considered it proper and fit to discuss the matter personally with the petitioner and if Mr. Grewal had, pronounced final orders, he would have taken into consideration the personal discussion during the course of which, as the petitioner claims, the officer was convinced that the charges had not been substantiated. It is submitted that the petitioner would similarly have convinced Shri Bhanot by a personal discussion that the charges were untenable and unsubstantiated. Stress has in this connection been laid on the contention that it was not open to Shri Bhanot to adopt a less favourable procedure by omitting to hear the petitioner in person, when his predecessor had actually considered it desirable to give such a hearing on the facts and circumstances of the present case. As a matter of fact, the counsel has gone a step further and has submitted that the petitioner is, as of right, entitled under the rules to a personal hearing in order to convince the Commissioner that the charges are unproved.

6. The second point relates to the jurisdiction and power of the Financial Commissioner to hear the appeal which under the rules lies to the Punjab Government. In support of this contention, the counsel has submitted that delegation of the power to hear appeals can only be validly effected by the legislature and that by the executive instructions such a jurisdiction cannot be conferred on the Financial Commissioner.

7. In the written statement, it has been denied that Shri Grewal ever informed the petitioner that an opportunity to cross-examine the Deputy Excise and Taxation Commissioner or to produce defence would be afforded after the case was complete. The record, according to the reply does not bear out this assertion. Similarly the averment in the petition that Shri Grewal had made observations in respect of various charges has not been admitted. According to the record, Shri Grewal, merely noted that the petitioner had promised to supply a copy of the judgment delivered by the Magistrate, 1st Class, Barnala, in challan No. 26 of 26th February, 1960 and an opportunity was given to the petitioner to produce the same. In respect of the plea that the Financial Commissioner had no jurisdiction to hear the appeal, the respondents have merely stated that this is a point of law without elaborating their point of view.

8. In so far as the first point is concerned, on behalf of the petitioner, reference has been made to certain decided cases. Gullapalli Nageswara Rao v. Andhra Pradesh State Road Transport Corporation AIR 1959 S.C. 328, has been relied upon in support of the proposition that divided responsibility is destructive of the concept of judicial hearing and that such a procedure defeats the object of personal hearing. The following passage from this judgment has been particularly relied upon:-

The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.

9. The reported case deals with Motor Vehicles Act and the rules framed thereunder. Mr. Doabia has however, invited my attention to pages 324 and 326 of the report and has submitted that in the reported case, according to the Supreme Court, there was a clear dispute between the two parties and that, therefore, the observations made there should be confined to their own context. The counsel has also submitted that the rules of natural justice vary with varying constitutions of statutory bodies and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what they may be but in the light of the provisions of the relevant Act. The petitioner has also referred me to the State of Punjab v. Karam Chand (1959) 61 P.L.R. 167, for the proposition that the opportunity given to the person called on to show cause against a proposed punishment must be real opportunity and not an illusory and sham opportunity in which he knows from the start that, whatever, force there may be in his representations, they do not stand the slightest chance of being considered, and also for the view that the expression "reasonable opportunity" means the opportunity, the vital elements of which are timely notice and full opportunity to the person concerned to present all the evidence and the arguments which he deems important for the purpose of his case and that the hearing must be had before an unbiased and unprejudiced officer. This, decision deals with a service matter and I am not quite sure if the observations made therein can be of any direct assistance to the petitioner before me. State of U.P. v. Mohammad Nooh AIR 1958 S.C. 86 also deals with a service matter and lays down that in such departmental enquiries canons of fair play and rules of natural justice should be observed.

10. The learned Additional Advocate General has in reply submitted that there is no provision for a personal hearing in the rules and, therefore, merely because Shri S.N. Bhanot did not hear the petitioner personally cannot vitiate his order. The counsel has in support of his contention placed reliance on Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others, Paragraph 7 of the judgment at page 418 has particularly been relied upon:-

This brings us to the main contention pressed on behalf of the petitioners, viz., that the licencee has not been given a reasonable opportunity of being heard before the order of cancellation was made. There can be no doubt that if a reasonable opportunity to be heard as against the proposed order of cancellation has not been given the order would be an unjustified interference with the petitioners'' right. It is necessary therefore to examine the material on the record to see whether the petitioners have succeeded in showing that no reasonable opportunity has been given.

In my opinion, this judgment, if anything goes against the respondents, and this would be clear from the various passages in the judgment. At page 418, Das Gupta J. who spoke for the majority stated the position thus:-

(8) The requirement that a reasonable opportunity of being heard must be given has two elements. The first is that an opportunity to be heard must be given; the second is that this opportunity must be reasonable. Both these matters are justiciable and it is for the Court to decide whether an opportunity has been given and whether that opportunity has been reasonable. In the present case, a notice to show cause against the proposed order was given; it was stated in the notice that the ground on which the cancellation was proposed was that the licences had been obtained fraudulently; and later on a personal hearing was given. It must therefore be held that the requirement that an opportunity to be heard must be given was satisfied. What the petitioners'' counsel strenuously contends however is that though an opportunity was given that opportunity was not reasonable. In making the argument he had laid special stress on the fact that particulars of the fraud alleged were not given and an opportunity to inspect the papers though repeatedly asked for was not given. It is now necessary to consider all the circumstances in order to arrive at a conclusion whether the omission to give particulars of fraud and inspection of papers deprived the petitioners of a reasonable opportunity to be heard.

(9) There can be no invariable standard for "reasonableness" in such matters except that the Court''s conscience must be satisfied, that the person against whom an action is proposed has had a fair chance of convincing the authority who proposes to take action against him that the grounds on which the action is proposed are either non-existent or even if they exist they do not justify the proposed action. The decision of this question will necessarily depend upon the peculiar facts and circumstances of each case, including the nature of the action proposed, the grounds on which the action is proposed, the material on which the allegations are based, the attitude of the party against whom the action is

proposed in showing cause against such proposed action, the nature of the plea raised by him in reply, the requests for further opportunity that may be made, his admissions by conduct or otherwise of some or all the allegations and all other matters which help the mind in coming to a fair conclusion on the question.

Applying the test laid down in this case, I think it was incumbent on Shri S.N. Bhanot to hear the petitioner before giving a decision adverse to him. The impugned order, it may be borne in mind, affects the fundamental right of the petitioner and, therefore, if an order to his prejudice was to be passed, he must, in my opinion, have been given a reasonable opportunity of showing cause against the proposed action. It appears from the record produced by the learned Additional-Advocate General that the petitioner had questioned the personal presence of the Deputy Excise and Taxation Commissioner at the time of the recovery of certain articles from his premises and it was also suggested that the report of the Chemical Examiner to whom the samples out of the articles captured in a truck in Hissar has been sent was favourable to the petitioner''s licence. The Excise and Taxation Commissioner wanted to know about the contents of the Chemical Examiner''s report. The petitioner also asked for a personal hearing after the Chemical Commissioner''s report was made available to the Excise and Taxation Commissioner. This prayer was, in my opinion, just and reasonable and should have been granted. The Excise and Taxation Commissioner in refusing to accede to this request, in my opinion, violated the rules of natural justice attracted on the facts and circumstances of the present case. Similarly by failing to hear the petitioner in person he committed a breach of the said rules.

11. In view of my decision on the first point it is unnecessary to express any considered opinion on the second point, though as at present advised, I am inclined to take the view that under the rules of business, the Financial Commissioner could legally dispose of the appeal. The contention that Rule 127, envisages an appeal against the order of Excise Commissioner to the State Government does not necessarily mean that the appeal should be disposed of by the Governor himself. The respondents have placed on the record a copy of the order passed by Dr. Gopi Chand Bhargava, Finance Minister, Punjab according to which the Secretary to Government, Punjab, Revenue Department, was delegated the power to dispose of the appeals which lie to the State Government under Rule 127, Medicinal and Toilet Preparations (Excise Duties) Rules, 1956. On behalf of the petitioner, nothing has been urged to convince me that this order is ultra vires or otherwise contrary to law. That quasi-judicial function can be delegated has not been seriously questioned before me and indeed, the procedural rules made by the Government for facilitating transaction of business of the State Government also apply to quasi-judicial acts provided that the rules conform to the principles of judicial procedure.

12. For the reasons given above, this petition succeeds and allowing the same I set aside and quash the impugned orders of the Financial Commissioner dated

21-9-1961, and of the Excise & Taxation Commissioner dated 2-3-1961. Under Article 227 of the Constitution, I send the case back to the Excise and Taxation Commissioner to bear the petitioner and then decide the question of renewing or refusing the petitioners licence in accordance with law and in the light of observations made above. In the circumstances of the case, there would be no order as to costs.

