
(1965) 04 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Writ Petition No. 65 of 1957

Mrs. Leela Jain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 21-04-1965

Acts Referred:

Constitution of India, 1950 — Article 166, 226

Citation : AIR 1966 Raj 50 : (1966) RLW 312

Hon'ble Judges : I.N. Modi, J;B.P. Beri, J

Bench : Division Bench

Advocate : M.B.L. Bhargava and R.C. Jain, for the Appellant; Raj Narain, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Modi, J.—This is a writ application under Article 226 of the Constitution against an order of the Minister of Local Self Government Department of our State dated the 17th April, 1957, passed u/s 4 of the Rajasthan City Municipal Appeals (Regulation) Act, 1950 (Act No. 3 of 1950 hereinafter referred to as the Act of 1950). This application was originally allowed by a Bench of this Court (Bapna Ag. C.J. and Modi J.) by an order dated the 7th November, 1958, on the ground that the State Government had no jurisdiction to pass the order under challenge. The respondent State of Rajasthan then obtained special leave for appeal to the Supreme Court and by its judgment d/- 16-9-1964, Civil Appeal No. 245 of 1962, State of Rajasthan Vs. Leela Jain, the interpretation put by this Court on the proviso to Section 4 of the Act of 1950 was held to be erroneous and it was further held that a revision lay to the Government against the order of the municipal authority concerned thereunder and the case has been remanded to this Court for being disposed of on the other points arising in the case. This is how the case has come before us today.

2. The material facts in so far as they are necessary for the decision of this writ application may be stated very shortly. The petitioner Mrs. Leela Jain being the

owner of a plot of land in Ashok Nagar in the city of Jaipur, applied to the Municipal Council for permission to build on it. Respondent No. 3 D.D. Goswami is her neighbour. The petitioner was permitted to construct on her plot of land according to certain plan submitted by her, and approved by the Municipal Council, but it appears that during the course of constructions, she made certain deviations therefrom by which respondent No. 3 felt aggrieved and it is out of this discord that the present litigation has arisen. The said respondent made a revision to the Municipal Council complaining against the deviations as a result of which an inquiry was made and it was found that the petitioner had made certain departures from the approved plan.

On the 19th September, 1956, the President of the Municipal Council directed the petitioner to stop the construction, but it is alleged that she paid no heed to that direction. Consequently, action was contemplated against her u/s 210 of the City of Jaipur Municipal Act, 1943, which provides that whenever under the provisions of the Act, any work is required to be executed by the owner or occupier of any building or land and default is made in the execution thereof, the Municipal Board may cause such work to be executed and the expenses thereby incurred shall be paid to it by the person by whom such work ought to have been executed and shall be recoverable according to the procedure laid down in Chapter 8 of the Act. On the 24th September, 1956, the Municipal Overseer reported that the objectionable construction had been completed whereupon the President Municipal Council directed action to be taken u/s 210 of the aforesaid Act. In the meantime the petitioner through her lawyer prayed to the Municipal Council that the case be compounded by imposition of a reasonable penalty. Consequently on the 24th October, 1956, the President of the Council inspected the site and finally recorded the following order:

"I have inspected the site and seen the record of the case as well. The applicant Shrimati Leela Devi has of course made some alterations in the original plan submitted by her. The constructions, however, do not infringe any bye-law regarding construction. She has altered the plan without permission for which she has applied for compounding on 7-8-56. The Municipal Council can enforce the regulations of the Urban Improvement Board or not, is a doubtful matter. The case be, therefore, compounded for Rs. 101 (one hundred one) only. The party be informed and compound money be realised."

The petitioner's case is that she had deposited the composition fee of Rs. 101 with the Municipal Council, Jaipur, and this fact stands admitted in the reply filed on behalf of the respondent State. In the meantime, respondent Goswami filed a revision to the Government against the order of the President dated the 24th October, 1956, set out above and this revision was disposed of in his favour as will appear from the following letter of the Assistant Secretary to the Government in the Local Self Government to the Municipal Council dated the 17th April, 1957:

"I am directed to state that Government after full consideration hold that the

power of the Board for compounding a case should be exercised judicially wherever the construction has been made in contravention of the bye-laws of Urban Improvement Board and to the detriment of the neighbours there does not seem to be justification for compromise. Under the I. P. C. (Indian Penal Code) only some affairs are compoundable and they are private crimes. Public crimes are not compoundable. Had the affair been between the Municipal Council and the owner of the house it could have been compounded, but where it affects any neighbours the construction seems to have been adversely affected by the construction (sic) and on his complaint it was decided by the Municipal Council that the construction be demolished. Under the circumstances the unauthorised construction should be demolished. The revision petition is, therefore, accepted and the order of the Municipal Council, Jaipur, is set aside. The unauthorised construction should be demolished. The parties concerned may be informed accordingly." It is this order which is being assailed by the petitioner in the present writ proceeding.

3. In support of the petition, a number of grounds were taken but learned counsel for the petitioner confined his argument, when the case first came up before this Court, to the contention that the order of the Government was ultra vires and it had no jurisdiction whatsoever to make it under the proviso to Section 4 of the Act of 1950. As already stated, this ground no longer survives in view of the decision of their Lordships of the Supreme Court.

4. When the case, therefore, came up again before us for arguments, learned counsel for the petitioner submitted that he wished to contest the impugned order on the following farther grounds:

(1) The order in question was not passed by a competent authority.

(2) It was passed in flagrant violation of the principles of natural justice.

(3) It was a speaking order and consequently the reasoning on which it was based was capable of being examined by this Court and when so examined it would be found that the order was based on wholly extraneous and untenable grounds.

(4) As the President had ordered the compounding of the case and the composition fee had been paid by the petitioner, any order in the nature of demolition was entirely unwarranted and illegal.

(5). The impugned order in so far as it directs the demolition of a portion of the building is extremely vague and, therefore, incapable of execution.

5. To start with, learned counsel addressed us on the second contention set out above, namely, that the impugned order was passed in utter violation of the principles of natural justice and, therefore, could not be maintained, and as this contention seems to us to go to the very root of the matter before us, we propose to deal with it first. For the purposes of this contention, we may state that we shall proceed on the assumption, though learned counsel for the

petitioner has made no concession on that point, that the impugned order was passed by a competent authority.

6. Now, the facts in so far as they bear on this question may be shortly stated as follows: On the 7th December, 1956, a notice was issued to Mrs. Leela Jain, the petitioner, that the petition filed by respondent No. 3, D.D. Goswami, against the order of the President, Municipal Council, ordering compounding of the unauthorised construction made by her was to come up for hearing before the Deputy Minister, Local Self Government, on the 13th December, 1956. She was, therefore, directed to be present at the hearing and was further warned that no adjournment would be granted in any case and that if she failed to appear on the aforesaid date, the case would be decided *ex parte*.

7. We pause here to point out that in order to be able to see how this case was exactly dealt with in the Ministry of Local Self Government Department. We called upon the learned Deputy Government Advocate appearing on behalf of the State to place the revision file before us for perusal. This has been done. It appears from a perusal of this file that the case was not heard on the 13th December, 1956, the date which was originally fixed for the purpose but was adjourned more than once, and eventually the hearing before the Deputy Minister, Local Self Government Department, Shri Shah Allimuddin, took place on the 31st January, 1957. By his note dated the 14th March, 1957, for reasons which have been mentioned therein and into which we need not go for our present purposes, the Deputy Minister was of the opinion that the revision petition be rejected, and he marked the case for the Minister for Local Self Government. Accordingly the case came before the Minister on the 25th March, 1957, but he rejected the recommendation made by the Deputy Minister and passed an order in terms, which has already been set out above directing the demolition of the unauthorised portion of the petitioner's house.

8. Now it is admitted before us that the Minister for Local Self Government Shri Badri Prasad who decided this case on the 25th March 1957, had not heard or afforded any opportunity of hearing to the parties before he passed the impugned order. It is in these circumstances that a very strenuous argument has been raised before us on behalf of the petitioner that the order of the Minister was opposed to the fundamental principles of natural justice. It is equally strenuously contended on the side of the respondents that it was not. And our attention in this connection has been invited to the Rules of Business made by the Governor under Article 166 of the Constitution. Rule 21 of these Rules lays down as follows:

"Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister-in-charge who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the department. Copies of such standing orders shall be sent to the Governor and the Chief Minister."

It has been pointed out to us that according to the standing orders which we regret to have to say have not been placed before us, cases were required by the Minister to be heard by the Deputy Minister and put up to him (the Minister) for final orders. Our attention has also been invited in this connection to the definition of "Deputy Minister" as given in Clause (g) of Rule 2 which runs as follows:

"Deputy Minister" means the Deputy Minister appointed by the Governor to assist a Minister in the discharge of his responsibilities."

Relying on these provisions, the submission of the learned Deputy Government Advocate is that the Deputy Minister who was to assist the Minister in charge in the discharge of his departmental responsibilities having heard the petitioner, there was no further need for the Minister to have afforded any opportunity of hearing to her and that the failure so to furnish any opportunity of hearing on the part of the Minister did not violate any principle of natural justice. On giving our very careful and anxious consideration to this contention, we have not felt persuaded to accept it as correct.

9. Now we may point out at the very outset that the learned Deputy Government Advocate did not and could not venture to argue before us that the hearing of a revision or appeal under the Act of 1950 was not a quasi judicial matter. We should like to add that even if he had raised such a contention, we should have found it extremely difficult to accept it. The reasons, in our opinion, are not far to seek. The matter for the Minister's decision was between two parties as the order of the Minister itself shows--the petitioner who was seeking to build her house according to a certain pattern and her neighbour who felt aggrieved by the manner in which she was building it. Again, the decision of the controversy between the parties was bound to affect fairly considerable proprietary interest of the petitioner. The decision of the entire controversy between them then depended upon whether the petitioner had deviated from her plans contrary to the rules and regulations applicable to such constructions. For all these reasons, we have hardly any doubt that the matter which was up for decision before the Minister was a quasi judicial matter.

10. If that is the correct conclusion to come to on a controversy like the present and we have no doubt that that is so, then the deciding authority must have decided it judicially or by a judicial approach. We are tempted here to reproduce the observations of the House of Lords in *Local Government Board v. Arlidge*, 1915 AC 120 of the report:

"My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be

the same."

These observations have been cited with approval by our own Supreme Court in *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, a case to which we shall have occasion to refer in some detail hereafter.

11. It seems to us that the Ministry for Local Self Government itself thought that some such procedure had to be followed in the decision of such matters. That was why a notice was given to the petitioner and a date was fixed for the hearing of the parties. The parties were also heard, so far there does not seem to be much trouble.

12. Where the trouble, however, seems to us to have arisen in that according to an unfortunate procedure which seems to have been in vogue in this department, as the learned Deputy Government Advocate tells us, the Deputy Minister who heard the cases was not authorised to decide them and the Minister who alone had the authority to decide them never heard the parties. The narrow question, therefore, for determination before us is whether a procedure like this is in consonance with the fundamental principles of natural justice?

13. In *Purshotam Singh v. Narain Singh*, ILR (1955) Raj 995: AIR 1955 Raj 203, the Rajpramukh of Rajasthan in his capacity as a quasi-judicial tribunal decided a disputed case of succession on the recommendation of the Revenue Minister without hearing the parties. It was held by a bench of this Court (K.N. Wanchop C. J. and Dave J. as he then was) that the minimum requirement that a quasi judicial tribunal should fulfil in deciding matters such as a disputed succession to a jagir is to give a hearing to the parties before it. It was further held that the hearing of the parties by the Revenue Minister who had recommended the case to the Rajpramukh could not in the absence of a rule or law to that effect, dispense with the hearing of the parties by the quasi judicial tribunal itself. I This case is, therefore, an authority for holding that in the absence of a rule or law, the authority which decides the case must hear it itself.

14. There is an earlier case of a bench of this Court (consisting of K.N. Wanchoo C. J. and Bapna J.) in *Nathmal Vs. The Board of Revenue, Rajasthan, Jaipur and Others*, in which an analogous question arose and which seems to us to go farther still. There was a second appeal before the Board of Revenue, Rajasthan, which was set up for hearing before a single member who after hearing the parties ordered that subject to the concurrence of his colleague, the appeal be allowed. The file of the case was then passed on to the other members who, without hearing the parties or giving notice of hearing to them concurred with the first member and the appeal was allowed. The defeated party filed an application for a writ of certiorari in this court contending that as the second member who was not sitting in the bench with the first member had passed a judgment without affording an opportunity to the parties to be heard, the decision was illegal, and, therefore, it deserved to be quashed. This contention

was opposed on the ground that the procedure adopted was in accordance with the provisions of the Board of Revenue Ordinance No. 22 of 1949 and the rules made by the Government u/s 13 of the Ordinance. It was held that Section 13(i) of the Ordinance of 1949 provided only two modes of hearing: (i) either by a member of the Board sitting singly or (ii) by a bench of the Board consisting of two or more members, and consequently Rule 6 which authorised the hearing of cases by two members of the Board without forming a bench was contrary to the provisions of that section. It was further held that even as Rule 6 stood, it did not provide that the second member could express his opinion without giving a notice of hearing to the parties and on that score also the procedure adopted was illegal. It was also emphasised that if the case were to be heard by two members, the party should have an opportunity of convincing either of them about the strength of his case. Yet another principle that was laid down and that is important for our present purposes in that the principle of natural justice was firmly established that where judicial functions were to be exercised by a Court or by a Board, it was necessary that they must always give a fair opportunity to those who are parties in the controversy to correct or to contradict any relevant statement prejudicial to their views. Reliance was placed in coming to this conclusion on the observations of Lord Macnaghten in *Lapointe v. L' Association de Bienfaisance et de Retraite de la Police de Montreal* 1906 AC 535 relating to the mode of administering justice by persons other than those who have judicial functions to perform, which in turn were quoted from *Labouchere v. Earl of Wharncliffe*, (1880) 13 Ch D 346 and we cannot do better than to reproduce them here:

"They are bound in the exercise of their functions by the rule expressed in the maxim *Audi alteram partem*, that no man should be condemned to consequences resulting from alleged misconduct unheard and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals, but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."

The last case to which we should like to make reference in this connection is AIR 1959 SC 309. This was a case u/s 68C of the Motor Vehicles Act, 1939. The Minister there who was in charge of the transport department had made an order directing the Secretary to the Government to hear objections filed u/s 68D against the scheme proposed by the State Transport Department. The Secretary to the Government in the Transport Department gave a personal hearing to the parties and the entire material recorded by him was placed before the Minister-in-charge. Thereafter the latter made an order approving the scheme and the order was issued in the name of the Governor authenticated by the Secretary in charge of the Transport Department. It was in these circumstances that the question arose whether the so called hearing given by the Secretary to the Government in the Transport Department and the decision thereon given by the Minister-in-charge offended the principles of natural justice. It was accepted that while the Act and the Rules framed thereunder imposed a duty on the State Government

to give a personal hearing, the procedure prescribed by the Rules imposed a duty on the Secretary to hear and the Minister to decide. But their Lordships condemned this practice in no uncertain terms and laid down that this divided responsibility is destructive of the concept of judicial hearing and that a procedure like this defeats the very object of hearing. It was further pointed out that personal hearing enables the authority concerned to 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; but if one person hears and another decides, then personal hearing becomes an empty formality. Indeed, if we may go further and say, with all respect, it becomes a mockery of a judicial procedure. It was in these circumstances held that the procedure followed in this case offended a basic principle of judicial procedure.

15. It was also held by the Supreme Court in *Shivji Nathubhai Vs. Union of India (UOI) and Others*, that in a quasi judicial matter, it was incumbent upon an authority deciding a review application to give a reasonable opportunity of representing his case to the party whose rights were going to be affected by the decision arrived at in the case.

16. As against these cases, the learned Deputy Government Advocate has drawn our attention to *F.N. Roy Vs. Collector of Customs, Calcutta*, ; *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, We consider it sufficient to say so far as these cases are concerned that they do not afford any parallel to the case before us, and, therefore, need not be discussed in any detail.

17. The position, therefore, to which we are irresistibly driven is that the order passed by the Minister for Local Self Government violated a fundamental principle of natural justice inasmuch as he passed it without granting any opportunity of hearing to the party which was to be adversely affected by it. We feel bound to point out here that a procedure according to which the hearing in a judicial or a quasi-judicial matter is relegated to one authority while the power of final disposal is vested in another and the latter authority decides the case adversely to the party concerned without affording any opportunity of hearing to the party so affected, cannot be countenanced as correct and must be struck down as being substantially violative of a basic rule of natural justice. We should also like to point out that the mere fact that such a practice was current in the hearing of such matters at the time with which we are concerned or even afterwards or even that it was in accordance with some standing order passed by the Minister concerned, which has not been actually placed before us but the existence of which we may assume for the purposes of this argument, cannot be accepted as a sound ground for the acceptance or condonation of such illegal procedure. In our considered opinion the authority which hears a matter like this must be the one which is capable of deciding it and that which decides it must also hear it, and if that is not so, hearing becomes more or less a farce or in the

language of their Lordships of the Supreme Court "an empty formality". That being so, the order which is impugned before us cannot be supported in law and we quash it accordingly.

18. As the point that we have decided above goes to the very root of the case before us, we do not think that it will serve any useful purpose to deal with the other grounds of attack raised by learned counsel for the petitioner against the impugned order. We, therefore, decline to go into them.

19. The result is that we allow this writ application, quash the order of the Government dated the 17th April, 1957 as being opposed to the fundamental principles of natural justice and hereby direct that the case shall go back to the Government for being disposed of in accordance with law and in the light of the observations made in our judgment. As for costs, we think that the party which eventually loses should shoulder the costs of this entire litigation and in this view of the matter, we direct that costs shall follow the event.