

(2005) 10 UK CK 0002

In the Uttarakhand High Court

Case No : Writ Petition No. 5234 (M/S) of 2001

Narain Dutt Bharadwaj

APPELLANT

Vs

The Collector/District Magistrate and Others

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Citation : (2006) 1 UC 342

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : Rajiv Bisht, for the Appellant; Learned Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Shri Rajive Bisht, learned Counsel for the Petitioner and Learned Standing Counsel.

2. By the present writ petition, the Petitioner has prayed for a writ of certiorari quashing the order dated 15-01-1993 passed by Respondent No. 1.

3. Standing Counsel was directed in the year 1993 to file the counter affidavit and the operation of the order was stayed. No counter affidavit has been filed.

4. Briefly stated, the Petitioner is a Stamp Vendor at Tehsil Kotdwar, district-Pauri Garhwal having a valid licence. The licence was given to the Petitioner on 12-07-1985 by the District Stamp Officer, Pauri Garhwal.

5. In paragraph 8 of the writ petition, the Petitioner has stated that before passing the order no show cause notice was given and no opportunity was given to the Petitioner and ail of a sudden the order has been passed canceling the licence. Even the copy of the report dated 4th January, 1993 was not given to the Petitioner. Since the matter is old and the stay order is continuing in his favour, therefore, the matter is sent back to the Collector for deciding the case of the Petitioner after giving him opportunity of showing cause and also permit him

to submit his explanation before the cancellation order is passed.

6. It is well settled that opportunity has to be given before any order is passed.

7. In the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , the Apex Court held as under:

It is well established that even where there is no specific provision in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the State of Orissa v. Dr. (Miss) Binapani Dei in the following words:

The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its Officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed : it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance; thereof transcends the significance of a decision in any particular case.

In England, the rule was thus expressed by Byles, J. In Cooper v. Wandsworth Board of works.

The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam" (says God), "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?" And the same question was put to Eve also.

8. Petitioner is directed to file objections before the Collector within a period of one week from the receipt of the certified copy of the order, the Collector shall decide the objections within a period of four months after giving opportunity of hearing to both the parties. However, the interim order dated 24-02-1993 shall continue till the disposal of the objections.

9. A writ of certiorari is issued quashing the order dated 15-01-1993 passed by the Respondent No. 1.

10. Writ petition is allowed. No order as to costs.