
(2014) 12 RAJ CK 0137
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6214/2014

Noida Health Care Training and Placement Private Limited	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Citation : (2014) 12 RAJ CK 0137

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : M.S. Singhvi, Senior Advocate assisted by Varun Singhvi, Advocate for the Appellant; P.S. Bhati, Additional Advocate General and S.S. Rathore, Advocate for the Respondent

Judgement

Arun Bhansali, J.—This writ petition is directed against the order dated 26.8.2014 passed by the District Collector, Rajsamand, whereby the allotment order dated 5.1.2011 and allotment made in favour of the petitioner-Company has been withdrawn.

2. The writ petition has been filed in the following circumstances: the petitioner filed an application on 19.5.2010 with the Collector, Rajsamand seeking allotment of land for setting up of a tourism unit under the provisions of the Rajasthan Land Revenue (Industrial Areas Allotment) Rules, 1959 ("the Rules"). After undertaking the required procedure i.e. approvals from the tourism authorities and no objection certificates from Department of Mines and Municipal Board, Nathdwara, the petitioner was directed to deposit a sum of Rs. 22,39,232/- towards cost of land, development charges, annual rent by communication dated 18.10.2010, which amount was deposited by the petitioner on 5.1.2011 (Annex.-9). Whereafter, by allotment order dated 5.1.2011, the land applied by the petitioner was allotted under the Rules subject to terms and conditions indicated therein. The terms and conditions, inter-alia, included Clause 6, wherein the petitioner was required to set up the tourism unit within two years of the allotment of the land in question.

3. It is claimed in the petition that after the allotment, the petitioner took steps for setting up of the tourism unit, whereby approach road was constructed for reaching the land in question which is situated at a distance of 1 km. from the major district road, prepared a project report and construction was started. It is further claimed that the petitioner proposed to construct 25 rooms but in phased manner, wherein in the first phase it constructed 04 rooms, restaurant and other amenities and the operation was started and intimation in this regard was submitted to the Director, District Industries Centre, Rajsamand on 26.3.2014, which was acknowledged on 6.5.2014 indicating the commencement of service w.e.f. 1.1.2013; based on the said communication, it is claimed that Condition No. 6 as noticed here-in-before regarding setting up the tourism unit within two years was complied with.

4. The petitioner further claims to have written a communication to District Collector, Rajsamand on 25.2.2013 that it has completed first phase of the unit and the construction of second phase was going on. The petitioner claims that tourists have also started pouring in and the petitioner's activities are regularly going on at the tourism unit.

5. A report dated 17.6.2014 came to be submitted by the Tehsildar, Nathdwara indicating that the tourism unit consists 04 rooms, porch, veranda and other constructions were going on, however by order dated 26.8.2014 (Annex. 17), the allotment was cancelled by the District Collector, Rajsamand on the ground that the petitioner has not used the land for tourism unit within two years of the allotment.

6. On enquiries, it is claimed that it was revealed that the Patwari had submitted another report on 26.8.2014 to Tehsildar, Nathdwara based on his inspection conducted on 17.6.2014; Tehsildar, Nathdwara submitted a report to the Collector on the same day and the order of cancellation also came to be passed on the same day, the Tehsildar prepared a note regarding taking possession of the land & building on 26.8.2014 itself and the revenue records were also altered on 26.8.2014.

7. It is also claimed that though possession has been taken on papers, the physical possession continuous with the petitioner though the Tehsildar has locked the gate, the petitioner has already spent sum of Rs. 63 lacs towards establishment of tourism unit. It is contended that the order dated 26.8.2014 has been passed in the breach of principle of natural justice; no opportunity of hearing was offered to the petitioner; the respondents have acted in hot haste in taking action which is apparent from the fact that all the reports were collected on 26.8.2014, cancellation order was passed on the same day and even the revenue record was altered on the same day after showing paper possession.

8. A reply to the writ petition has been filed by the respondents justifying the action of cancellation/withdrawal of the allotment. It is inter-alia contended that the provisions of Rule 7 of the Rules are explicit and the petitioner having failed

to complete the construction of the tourism unit even after passage of 3 1/2 years, which is in violation of express provisions of the Rules and terms & conditions of allotment and therefore, the cancellation is justified.

9. It is submitted that the provisions of Rule 7 does not envisage any opportunity of hearing and in case the petitioner wanted any extension in terms of the said Rule, the same should have been applied, however, no such application was made. It was prayed that the writ petition be dismissed.

10. Learned counsel for the petitioner vehemently submitted that the action of the respondents is in clear breach of the principles of natural justice, inasmuch as, the petitioner was not afforded any opportunity of hearing before the cancellation/withdrawal dated 26.8.2014 was made. The order entails civil consequences and therefore, the principles of natural justice have to be read in the provisions of Rule 7 of the Rules. It is submitted that in fact, the petitioner had informed the District Collector well in advance regarding the completion of the first phase of its unit vide its communication dated 25.2.2013, which was not responded; the manner in which the action has been taken whereby the reports have been obtained from the Patwari, Tehsildar on the same day on telephonic communication by the Collector and whereafter the action of cancellation/withdrawal, taking paper possession and alteration in the revenue entries have happened on the same day clearly reflects on the manner in which the action has been taken by the respondents. The order dated 26.8.2014 be quashed and set aside.

11. Reliance was placed on Banwari Lal Vs. State of Rajasthan and Another, and Mangilal Vs. State of Madhya Pradesh, .

12. Per contra, learned counsel for the respondents vehemently submitted that a bare look at the photographs filed at Annexure-14 clearly indicates that the namesake construction has taken place and even according to the petitioner's own assertion, out of 25 rooms only 04 rooms have been constructed; the claim about starting of the unit is belied from the photographs itself and the report of the Patwari dated 17.6.2014, wherein it is indicated that the labourers were staying at the site and construction material was lying. The violation of Condition No. 6 of the allotment letter and Rule 7 of the Rules is ex-facie clear from the record and therefore, the plea regarding violation of principles of natural justice has no basis and therefore, the order passed by the Collector cannot be faulted.

13. I have considered the submissions made by learned counsel for the parties.

14. It would be appropriate to notice the provisions of Rule 7 of the Rules, violation whereof is alleged, which reads as under:-

"Rule 7. Setting up of Industries.-Industries shall be set up within a period of two years on the land allotted for the purpose, failing which the land shall revert to the Government, unless the period of two years is extended by the allotting authorities for valid reasons.

Provided that if such land could not be used for Industrial purposes within the period as prescribed above, the State Government may extend the period further as deemed proper. In such cases, the applicant shall move application through the Divisional Commissioner who after examination of the case, forward the same to the State Government with his comments."

15. A bare look at the provision reveals that it is required of the allottee to set up within a period of two years, the industry/the tourism unit on the land allotted for the purpose, failing which the land shall revert to the Government. The provision envisage extension of the period of two years by the allotting authorities for valid reasons. The proviso to the Rule indicates that if such land could not be utilized for the industrial purpose even within the extended period, the State Government may extend the period further as deemed proper and for the purpose of proviso, the applicant must move an application through the Divisional Commissioner, who after examination of the case would forward the same to the State Government with his comments.

16. A comprehensive reading of the said provision reveals that though the setting up of industry within the period of two years is necessary as per the said Rules, but the said period of two years in the provision is not inflexible, inasmuch as, not only that the provision confers power on the allotting authorities, Collector in the present case to extend the period of two years for valid reasons but even if in the extended period, the same could not be used, the State Government may extend the period further as deemed proper.

17. In the present case, the petitioner was allotted the land by order dated 5.1.2011, during the period of two years as envisaged by Condition No. 6 of the allotment and Rule 7 of the Rules, the petitioner appears to have constructed the approach road, the boundary wall and about 04 rooms out of proposed 25 rooms and claims to have started the operation with the said 04 rooms. The petitioner vide its communication dated 25.2.2013, informed the Collector regarding completion of first phase of tourism resort, receipt of which communication is not denied by the respondents. Whereafter, it appears that the Patwari prepared a site inspection report on 17.6.2014 and noticed the construction of 04 rooms, porch, veranda and that the same was finished; construction material was lying and construction of 6 ft. height boundary wall was going on, which was nearing completion. However, from the record it is apparent that the District Collector sought report from the Tehsildar, Nathdwara on 26.8.2014 on telephone and the Tehsildar again obtained the report from the Patwari, who based on his report dated 17.6.2014 submitted the report and the Tehsildar reported to the District Collector that presently the tourism unit was not operational and Condition No. 6 of the allotment having not been fulfilled, further action may be taken and the Collector on the same day on 26.8.2014 cancelled/withdrew the allotment made on 5.1.2011 and gave effect to the same by taking possession and the alteration in the revenue entries was also effected on the same day.

18. From the above, it is apparent that the Collector before passing order dated

26.8.2014 did not issue any notice to the petitioner and/or provided any opportunity of hearing regarding the violation of Condition No. 6 of the allotment and/or Rule 7 of the Rules; the copy of report obtained from the Tehsildar/Patwari was not forwarded to the petitioner and the report dated 25.2.2013 sent by the petitioner was not taken into consideration.

19. Hon''ble Supreme Court in the case of Mangilal (supra) observed as under:-

"Even if a statute is silent and there are no positive words in the Act or Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See Swadesi Cotton Mills etc. v. Union of India.) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met, and opportunity to explain."

(emphasis supplied)

20. Further, the Hon''ble Supreme Court in Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, underlying the aim of rule of principle of natural justice stated as under:-

"15. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. As observed by this Court in A.K. Kraipak v. Union of India the aim of rules of natural justice is to secure justice or to put in negatively to prevent miscarriage of justice. These rules can operate only in

areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see ITO v. Madnani Engg. Works Ltd.)"

21. However, despite the generality of the principles, the principles of natural justice are not necessarily of universal application. There are certain circumstances where these principles need not be applied, when non-observation would not imply that the impugned action or order should be set-aside and Hon"ble Supreme Court in the case of Sahara India (supra) further held as under:-

"19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

20. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined. (See Union of India v. Col. J.N. Sinha.)"

(emphasis supplied)

22. As to whether the principles of natural justice would be applied in the present case or not and whether the petitioner"s right under the said doctrine are violated or not needs to be considered.

23. A bare look at the provision reveals that the same though provides for reversion of the land on violation, the same does not entail automatic cancellation of allotment for non-setting up of the industry within a period of two years. The said aspect is also clear from the very fact that the respondents have passed order dated 26.8.2014 withdrawing the allotment made on 5.1.2011. The provision clearly provides that the period of two years can be extended by the allotting authorities i.e. the Collector in the present case, for valid reasons. Although the extension cannot be claimed as of right, but nonetheless under the provision, the allottee has got a right of consideration and thus, the petitioner in the present case also had right that its case was considered for extension of time.

24. Naturally, a case cannot be considered until and unless an opportunity of hearing is given to the affected party and hence, the requirement of audi alteram partem is built into Condition No. 6 of the allotment or Rule 7 of the Rules. Under the provisions, the petitioner should have been given an opportunity of hearing in order to explain its side and to plead for extension of time and therefore, the submission made by counsel for the respondent that as the cancellation under the Rule is automatic and therefore, the grant of opportunity of hearing would be futile exercise, is clearly unacceptable.

25. So far as the question of prejudice is concerned, the denial of opportunity of hearing has clearly caused prejudice to the petitioner for having invested its money and effort in putting up whatever construction has been raised by the petitioner, it has to face evil consequences without any opportunity of hearing and on that count clearly the petitioner's right of opportunity of hearing has been violated. The action of the respondents have been in violation of the said principles.

26. The submission of learned counsel for the respondents that as no extension was sought by the petitioner, the question of grant of extension and/or hearing in this regard does not arise, also has no basis. As noticed hereinbefore, the petitioner has submitted report dated 25.2.2013 to the Collector, Rajsamand indicating completion of first phase and construction of second phase being in progress and the report of the Patwari indicating construction material at the site and construction in progress and, therefore, it cannot be said that petitioner's version regarding the progress made was not before the Collector and merely because a formal written application was not filed, the same would authorise the Collector to give a go bye to principles of natural justice cannot be accepted.

27. This Court in the case of Banwari Lal Vs. State of Rajasthan and Another, , a case pertaining to cancellation of a plot allotted by Urban Improvement Trust emphasised the need to provide opportunity of hearing before cancellation observed and held as under:-

"9. After hearing the learned counsel for the parties and after examining the pleadings and other relevant material placed on the record I find that the respondents have acted in haste. Admittedly the site was allotted to the petitioner in the reserved category way back in the year 1983. The application had been moved through proper channels and was duly recommended by the Commandant and processed by the respondent Trust. The respondent Trust was under a bounden duty to examine the application and its contents in order to find out the eligibility of the petitioner. The statutory authorities have been time and again told by this Court that while dealing with the rights of the citizens in respect of their right, title and interest in the property, the matter should always be examined objectively and keeping in view the basic norms of equity and justice. Admittedly no notice or opportunity was ever provided to the petitioner before taking such a drastic action against the petitioner which in my view amounts to deprivation of property to a citizen without even hearing or

opportunity. This is totally against all norms of law and procedure. Assuming the petitioner secured allotment by misrepresentation, he was at least entitled to a notice accompanied by proper opportunity and hearing. The respondents have to blame themselves for their inaction during all this time and responsibility should have been fastened on the official who processed the allotment file and approval was granted. It was not open for the respondents to hold some enquiry at the back of the petitioner and reach an ex-parte decision resulting in cancellation of the allotment."

28. Further the fact that all the activities/actions beginning from obtaining the report by telephonic communication, passing the order of cancellation/withdrawal, taking possession and altering the revenue entries were taken in one day i.e. on 26.8.2014 and that also in violation of principles of natural justice, clearly indicates attempt on part of the respondents to put the issue beyond the petitioner and that they have acted in an arbitrary, unreasonable and unjust manner.

29. In view of the above discussion, the order dated 26.8.2014 (Annex. 17) cannot be sustained.

30. Consequently, the writ petition is allowed. The order dated 26.8.2014 alongwith all consequential actions taken by the respondents are quashed and set aside. It would be open for the Collector to proceed under Rule 7 of the Rules after providing adequate opportunity of hearing to the petitioner-Company.

31. No costs.