

(1982) 09 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 145 of 1978

On the Death of Priyokumar Singh his L. Rs. Kumari
Thokchom Hemabati Devi and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 06-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 21
Electricity Rules, 1956 — Rule 27

Citation : (1982) 09 GAU CK 0009

Hon'ble Judges : T.C. Das, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : L. Nandakumar Singh, for the Appellant; R.K. Manisana Singh, General, Munindra Kumar Singh, Government Advocate and A. Nilamani Singh, for the Respondent

Final Decision : Allowed

Judgement

Hansaria, J.—The predecessor-in-interest of the present petitioners, Priyokumar Singh, had approached this Court initially in its writ jurisdiction feeling aggrieved at the-withdrawal of electrical energy which he was enjoying since long. Priyokumar Singh had initially installed an Atta Mill in 1952. In 1967, he was given a licence to carry on the rice milling operation. Subsequently, in 1970, he was registered as a consumer of 20 H. P. A call was given in 1971 by the Director of Industries, Government of Manipur, to modernise the rire milling equipments, and Priyokumar Singh was one such person to respond to the call and he, by discarding conventional types of machineries, installed a modern rice mill. This modern type of mill needed 45 H. P. to run it properly. Prayer for additional 15 H. P. only was, however, granted and Priyokumar Singh deposited the necessary money in 1973. So the mill-owner got 35 H. P. in all. The Assistant Engineer of the Electricity Department, however, wrote to the Director of Industries on 11-6-75 that the existing load of 35 H. P. should be restricted only to the

sanctioned Horse Power as per the valid licence. This communication was at the instruction of the Chief Minister, Government of Msnipur. Priyokumar Singh was given a licence on 20-8-75 for 45 H. P. and the Director of Industries wrote to the Superintending Engineer (Electricity) to allot power load of 45 H. P. The Assistant, Engineer, Central Sub-Division, was thereafter asked by the Executive Engineer to restore the load of 35 H. P. Another communication came from the Secretary, Electricity Department, to withdraw supply of 25 H. P. Something was said in this communication as to why the mill should be working in the night time against the orders issued in this regard. This time, the Minister, Power, had issued the instructions. So Priyo-kumar Singh was informed that out of the sanctioned 35 H. P., he would get only 25 H. P. This order was passed on 15-11-1975.

2. The first round of litigation thereafter started and the petitioner approached this Court by way of an application under Article 226 of the Constitution which was registered as Civil Rule No. 84 of 1976. As this Article had been amended by 42nd Amendment Act in the mean time and as Section 21(4) of the Indian Electricity Act, 1910, (for short the Act), had provided for an alternative remedy, this Court ordered that the matter be either referred to an Electrical Inspector and decided by him or if the licensee or consumer so desires, determined by arbitration. The Electrical Inspector did not, however, give a final decision as he was stuck up with the question as to whether Clause 13 of the Terms and Conditions of Supply as mentioned in Appendix-A to the Mani-pur Electricity Supply Regulations did really empower the Government to direct disconnection of the supply for any "other reasons considered proper by the Government". As the consumer was left in lurch by the Electrical Inspector, he preferred an appeal to the Government as provided by Section 36(2) of the Act. This appeal has been rejected by Respondent No. 1.

3. Before advertng to the core of the matter, two preliminary points urged by the learned Advocate-General Mani-pur, who has appeared for the respondents and Sri Nilamani Singh, who takes his stand for the interveners, may be disposed of. The first point urged is related to the maintainability of the petition on the twin grounds of locus standi as well as absence of existing legal right. The question of locus standi has been raised because Priyokumar Singh had died after the Rule had been issued; but then his legal representatives were brought on record. Shri Nilamani Singh would say that the right which vested in Priyokumar Singh as a licensee did not pass on to his heirs and so they are not clothed with any right in them. We have not felt inclined to go into this aspect of the matter inasmuch as a licence in the name of Praphulla Singh, one of the legal representatives, brought on record, was issued by the Licensing Officer on 7-4-80. As such, the right of Praphulla Singh to come to this Court cannot be assailed. This apart, the law in regard to locus has been expanded so much that except for a busy body merely inter-meddling with the affairs of others, any person having sufficient interest in a matter can knock the door of a writ Court. Reference may only be made to the recent decision of the Supreme Court in S.P. Gupta Vs. President of

India and Others, commonly known as Judges' Transfer case.

4. Another attack closely related to the above question is on the ground that the licence granted to Praphulla Singh having expired on 31-12-80, Praphulla Singh has no right to enforce through this proceeding. Shri Nanda-kumar Singh has two answers to this objection. He has firstly submitted that in the present matter, the petitioners are not trying to enforce their right relating to the licence for milling, but are seeking to uphold their right as consumers of the electrical energy. We are referred to Clause 2 (a) of the aforesaid Terms and Conditions of Supply finding place in Appendix-A to the Manipur Electricity Supply Regulations which has defined the word "consumer" to include his heirs, assigns and legal representatives. He nextly contends that as the renewal application is pending which would be apparent from the communication dt. 26-6-82 (Annexure-A/57) of the Director of Industries to the Commissioner of Industries, the period of validity of Licence cannot be deemed to have expired, by virtue of the Explanation to Section 8 (3) of the Rice-Milling Industry (Regulation) Act, 1958 for short the Rice-Milling Act. Though Shri Nilamani Singh has urged in this connection that this Explanation would not assist the petitioners in view of the proviso to Section 6 (4) of the aforesaid Act, we are not satisfied if from the materials on record we could hold if the requirements of that proviso are existing in the present case. We may put on record that Shri Nandakumar Singh informed us after close of the hearing in the presence of the learned Advocate-General that the Director has been directed by the Government vide Memo No. 54/5/71-IND dated 3-8-82 to renew the licence. Thus we do not find any difficulty in holding that the petitioners do have a subsisting right to approach the Court for ventilation of their grievances.

5. It would be apposite to mention at this stage about the objection advanced by Shri Nilamani Singh touching the validity of licence granted to Priyo-kumar Singh or Praphulla Singh. He sought to assail the validity on the ground that the licence is in violation of Section 8 (3) (c) of the Rice Milling Act, so also of Section 228 of the Municipal Act. This is absolutely a collateral attack to the validity of the licence inasmuch as nobody has approached this Court with this grievance. It is because of this that we are not examining this aspect of the matter posed before us only by the interveners.

6. The other threshold objection taken by the learned Advocate-General is that what the petitioners are trying to enforce through this writ petition is a contractual right only for which a writ court is not the proper forum. We cannot agree to this submission inasmuch as the right of a consumer to receive energy flows from the provisions of the Act. It may be that when the electrical energy is supplied by the State Government, some of the provisions of the Act would not apply as provided in Section 51A of the Act. The learned Advocate General has mentioned about this provision because the aforesaid Manipur Electricity Supply Regulations has been framed, inter alia, in exercise of the powers conferred by Section 21 of the Act. Reference to Section 21 shows that this could have been

done in pursuance to what has been provided in Sub-sections (2) and (3) of this section, which are among some of the provisions excluded by the first proviso to Section 51A of the Act when the supply is by the State Government. Even if it be that the petitioner's right to receive the energy is controlled and governed by the Manipur Electricity Supply Regulations, we have no hesitation in holding that these Regulations are statutory in character, as these were expressly made in exercise of the powers conferred inter alia by Section 21 of the Act. It has been pointed out in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, that statutory rules cannot be described as or equated with, administrative directions.

7. We, therefore, do not find any impediment in the way of the petitioners in invoking the writ power of this Court. Let us now come to the heart of the matter. As is apparent from the narration of the facts, the electrical energy of the petitioners has been confined to 10 H. P. under the directions of the Government. The learned Advocate General has contended that the Government had the power to give this direction. He refers to the aforesaid Clause 13, which reads;

"13. The department reserves the right to disconnect the supply at any time if directed by the Government of Manipur who might issue such orders on being satisfied that the generating capacity is not sufficient to meet the demand or for any other reasons considered proper by the Government."

There is no dispute that the direction had been given by the Govt. not because of insufficiency in the generating capacity, but because of "other reasons". These reasons have been spelt out in the affidavit-in-opposition filed on behalf of the respondents. The reasons have been disclosed in paragraph 20, the relevant portion of which reads:--

"Some applicants made representation to the Government of Manipur for reducing supply of electric energy to 10 H. P. complaining against the operation of the petitioner's mill and milling business by using energy in excess of 10 H. P. has caused a great nuisance causing injury to their health and comfort and for relieving them and their families of the unbearable inconveniences and discomforts".

We do not propose to say anything proceeding as to whether these reasons are relevant or not for the exercise of powers under Clause 13. We have taken this stand because there is a fatal flaw in having exercised the power under Clause 13 without giving any opportunity of showing cause to the petitioners. The learned Advocate General has contended that opportunity of being heard was not necessary to be given because the power exercised was not statutory power, but merely administrative in nature. We would not think, as already alluded, that the Manipur Electricity Supply Regulations are merely administrative instructions inasmuch as the same have been clearly made "In exercise of the powers conferred by Section 21 of the Indian Electricity Act, 1910 (9 of 1910) and in pursuance of Rule 27 of the Indian Electricity Rules, 1956" The Government

having invoked statutory powers to make the Regulations, it does not lie in its mouth to say that it was not so. This apart, this controversy has not much significance for the case at hand as it is settled beyond any controversy by now that the principles of natural justice apply even where an action be administrative if it entails civil consequence or affects a person adversely. We have not thought it necessary to refer to a long line of decisions in this regard starting from A.K. Kraipak and Others Vs. Union of India (UOI) and Others, We may only refer to The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, in paragraph 7 of which it has been stated as below:--

"It is true that the order of the Government of India that has been challenged by the appellants was a purely executive order embodying an administrative decision. Even so the question of natural justice does arise in this case. It is too late now to contend that the principles of natural justice need not apply to administrative orders or proceedings; in the language of Lord Denning M. R. in R. v. Gaming Board. Ex parte Benaim (1970) 2 WLR 1009 "that heresay was scotched in R, v. Baldwin 1964 AC 40".

As the slashing down of power from 35 H. P. to 10 H. P. did vitally affect the right and interest of the petitioners, we have no doubt that an order to their prejudice could not have been passed without giving the petitioners a reasonable opportunity of being heard.

8. The exclusion of audi alteram partem has been built up by the learned Advocate General on another reasoning also. By referring to Clause 14 of the aforesaid terms and conditions of supply which has specifically mentioned about giving of opportunity to showcase, it is contended that the silence of Clause 13 on this point would exclude the hearing by necessary implication. Such an argument was advanced in S.L. Kapoor Vs. Jagmohan and Others, as well. In meeting this submission, it was stated in para. 10 that it is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It was stated that this may be a weighty consideration to be taken into account but the weightier consideration is whe-ther the administrative action entails civil consequences. This was also the view taken in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, where it was stated that the silence of a statute has no exclu-sionary effect except where it flows from necessary implication. As we are satisfied that the order did entail civil consequences of great moment to the petitioners, we cannot hold merely because of the silence of Clause 13 that the Government was not required to hear the petitioners before giving the direction in question. It may be that when a direction for general reduction in supply of power is given due to insufficiency of generating capacity, no hearing is required; but where reasons for the directions are personal to one consumer, we do feel that any order to his prejudice without hearing him would be in violation of the principles of natural justice. This is so because the reasons being peculiar to the affected person, it

may be that he is able to satisfy the authority on opportunity being given that the reasons are either non-existent, or not germane, or that he alone may not be picked up to face the peril.

8A. A last effort is made by the learned Advocate General that despite the above infirmity in the direction, we may not set aside the same. He has referred in this connection to the *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, in which the decision was not set aside despite the same having been found as violative of even Article 14 of the Constitution. This view had been taken by the Court mainly because the petitioner had been found to have no real interest in the result of the litigation as he had been put up by some other person. Another reason which had prevailed with the Court was the delay in filing the application. So far as the case at hand is concerned, it is apparent that the petitioners themselves have a vital interest and stake. It cannot also be said that they were guilty of any delay in approaching this Court.

9. The result is that the direction given by the Government to slash down the electrical energy to 10 H. P. is set aside. The effect of this is that the petitioners would get 35 H. P. of electric energy. But then it would be open to the Government to give necessary direction in the matter if it considers the same necessary. This could, however, be done only after giving an opportunity to the petitioners to show cause. In the show cause to be given, the reasons for which the direction is sought to be given would be specifically mentioned. The opportunity to be given would include a personal hearing and the ultimate order to be passed would be a speaking one. It would also be open to the authorities to prescribe the hours of the day during which the mill could operate.

10. The petition is allowed as aforesaid.

T.C. Das, J.

11. I agree.