
(2012) 04 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 18838 of 2012

Pramod Kahar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Citation : (2012) 6 AWC 6277

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Indrasen Singh Tomar, for the Appellant; Mahesh Narain Singh and C.S.C., for the Respondent

Judgement

Ran Vijai Singh, J.—Through this writ petition, the petitioners have prayed for issuing a writ of certiorari quashing the orders dated 22.12.2011, 26.12.2011 and 27.12.2011 passed by Sub-Divisional Magistrate, Sagri, Azamgarh and notice dated 27.3.2012 issued by Sub-Divisional Magistrate, Sagri, Azamgarh for fresh auction of the Pond Nos. 164/0.275 village Kubasath, 117/0.426 village Molanapur Prithvipal, 294/0.957 village Baasthan, 127/1.035 village Dhanawa Khas, 243/0.410 village Raghunathpur, 336/0.745 village Baasthan and 139/0.249 village Shitalpur of Tehsil Sagri, Azamgarh. Further, prayer has been made for issuing a writ of mandamus commanding the respondents not to interfere in the performance of fishery rights of the petitioners in the aforesaid ponds. It appears pursuant to the advertisement dated 21st July, 2011 published in Hindustan, the petitioners have participated in the proceeding for an allotment of fishery lease over the aforesaid ponds and offered their bid alongwith other persons. The petitioners' bid, being highest one, were accepted and the direction was issued to deposit 25% of the auctioned amount. Pursuant thereto, the petitioners have deposited one-fourth amount as required by the competent authority. It appears prior to the lease could be executed, the impugned order has been passed by the Sub-Divisional Officer cancelling the auction proceeding with the direction to issue fresh advertisement in a newspaper having wide

circulation in the area. The aforesaid order has been passed taking note of the direction of this Court in Writ Petition No. 52872 of 2011, Ramesh Ram v. State of U. P. and others, decided on 13.9.2011.

2. Sri M. B. Singh holding brief of Sri Indrasen Singh Tomar, learned counsel for the petitioners submits that the impugned order has been passed under misconception, as in the Writ Petition No. 52872 of 2011 this Court has issued direction only to take fresh steps with respect to the allotment in which some complaints were made. In the submissions of learned counsel for the petitioners, in the petitioners' case no complaint was made and they, being a highest bidder, deposited one-fourth required amount, therefore, it was not open for the Sub-Divisional Officer to cancel the allotment proceedings. He has further submitted that entire proceeding of auction has been made in accordance with law, therefore, also the impugned order is unsustainable.

3. Refuting the submissions of learned counsel for the petitioners, Sri Rajesh Kumar learned standing counsel appearing for the State respondents as well as counsel for the Gaon Sabha has submitted that the writ petition on the instance of the present petitioners is not maintainable for the simple reason, as lease was not executed in favour of the petitioners. So far the submissions of learned counsel for the petitioners that there was no such direction in the Writ Petition No. 52872 of 2011 to pass an order in respect to the petitioners' case, it is also unsustainable, as even if there was no complaint against the petitioners' allotment, even then it was open for the Sub-Divisional Officer, the supervisory authority, to find out as to whether the advertisement was made in accordance with law or not. In response to the submissions of learned counsel for the petitioners that the impugned order was passed without affording an opportunity of hearing, the learned standing counsel contends that the opportunity was not required to be offered to the petitioners as prior to execution of lease the ball was in hand of the State authorities either to execute the lease or to refuse on valid reason. If the lease was executed in favour of the petitioners then in that eventuality the order of cancellation of lease could not have been passed by the authority concerned without notice to them. In the submissions of learned standing counsel, there is no illegality in the order impugned and the writ petition deserves to be dismissed.

4. I have heard learned counsel for the petitioners, learned standing counsel and counsel for the Gaon Sabha and perused the record.

5. From the perusal of advertisement which has been brought on record as Annexure-4 to the writ petition, it transpires that the advertisement was made for settlement of fishery lease at Tehsildar Head Quarter at Sagri without specifying the village, without specifying the area of the pond including its number which was to be auctioned, without disclosing the eligibility of the persons, who can apply for such lease and the entire proceeding has been concluded on the basis of vague advertisement. I am of the view that this kind of advertisement is a waste paper and misuse of the public money. The Tehsil

authorities must have taken care to issue a proper advertisement so that the persons entitled for the same could have participated in the proceedings. The Tehsildar who has issued the advertisement dated 21st July, 2011, it appears has issued the advertisement without going through the provisions contained under the Government orders and entire proceeding has been concluded on the basis of aforesaid advertisement. In such view of the matter, if the Sub-Divisional Officer taking note of the fact that the advertisement was vague and cancelled the auction proceedings, in my considered opinion he did not commit any wrong.

6. It is experienced that the lease are being executed without there being a proper advertisement which amounts to denial of equal opportunity to those who fall in the eligibility zone for consideration for lease and are being deprived of their right to participate in lack of proper information given in the advertisement. Taking note of this fact, I would like to issue a writ of mandamus directing the Principal Secretary Revenue/Secretary Revenue, U. P. Government to issue a circular requiring the officers of the State Government who are responsible for settlement of fishery lease, while issuing the advertisement for grant of fishery lease, they must take care and issue the advertisement in a newspaper having wide circulation in the area, in unambiguous (clear words), disclosing all the details namely the pond number, its area, place where it is situated, the eligibility of the persons who can participate in the proceedings and other requirements, if any, for participation in the proceeding of allotment, in addition to other mode of advertisement as provided in the relevant Government orders for settlement of fishery lease. It is further provided while issuing the circular a model format be annexed alongwith the circular for the said purpose. To my mind, the very purpose of the advertisement is to make aware of the public at large who falls in the eligibility zone for consideration/participation in the proceeding and in absence of that, it cannot be said to be a valid advertisement.

So far as petitioners' submission with respect to non-falling of the petitioners' case in the ambit of the order of this Court in Writ Petition No. 52872 of 2011 is concerned, learned counsel for the petitioners may be right in his submissions as in this case there was no such complaint but in substance in view of the vague advertisement which amounts to denial of equal opportunity to all the persons eligible for participation in the proceeding for settlement of fishery lease. The argument of petitioner's counsel appears to be misconceived as the basic requirement of the advertisement was missing in the advertisement in question.

7. The next argument of learned counsel for the petitioner is that no opportunity of hearing was offered to the petitioner before passing the impugned orders also appears to be unsustainable, as opportunity of hearing is not a ritual which should be offered in each and every case. It is well settled that even after giving an opportunity of hearing, if the same result is likely to come and the order has been passed without affording an opportunity of hearing, in that eventuality, the order would not be vitiated. Here in this case, on the face of record it appears that the advertisement is vague having no details, therefore, even if the

opportunity is offered to the petitioner, he cannot improve his case.

8. The Apex Court in the case of *Malloch v. Aberdeen Corporation*, (1971) 2 All ER 1278, has held that the breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute but relief can be refused when the case of the applicant is not one of "real substance" or that there is no substantial possibility of his success or that the result will not be different even if natural justice is followed. The same view has been reiterated in the case of *Glynn v. Keele University*, *Cinnamond v. British Airports Authority*, not only in England but here also the Supreme Court in the case of *S.L. Kapoor Vs. Jagmohan and Others*, , has held as under:

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural Justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural Justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural Justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the Judgment under appeal.

The same view has been reiterated in *M.C. Mehta Vs. Union of India (UOI) and Others*, ; *Aligarh Muslim University and Others Vs. Mansoor Ali Khan, and Manish Kumar v. State of U. P. and others*, 2010 (6) AWC 6320 and many other decisions of Apex Court as well as of this Court.

9. Otherwise also, before granting the lease in favour of the petitioner, it was in the competence of the Sub-Divisional Officer to cancel the advertisement being the supervisory authority over such matter. In view of foregoing discussions, I am not inclined to interfere with the impugned orders. The writ petition falls and it is hereby dismissed.

Copy of this judgment may be supplied to the learned Chief Standing Counsel for necessary information to Principal Secretary/Secretary Revenue, U. P.