

(1989) 12 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : C.W. P. No. 236, 250 and 365 of 1989

RanGila Ram Rao

APPELLANT

Vs

H.P. State Housing Board and Another, etc.etc.

RESPONDENT

Date of Decision : 02-12-1989

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (1989) 2 ILR HP 1279

Hon'ble Judges : P.C. Balakrishana Menon, C.J; Bhawani Singh, J

Bench : Division Bench

Advocate : M.C. Mandhotra, in C.W.P. No. 236 Of 1989, K.S. Patyal, in C.W.P. No. 250 of 1989 and M.L. Sharma, in C.W.P. No. 365 of 1989, for the Appellant; Prem Goel and L.S. Panta, in C.W.P. No. 236, 250 and 365 of 1989, for the Respondent

Judgement

Bhawani Singh, J.—This group of three petitions G.W.P. No. 236 of 1989, Rangila Ram Rao v. H.P. State Housing Board and Anr., C.W.P. No 250 of 1989 Daulat Ram Sankhyan v. H.P. State housing Board and Anr. And C.W.P. No. 368 of 1989 Bachit H.P. State u/Housing Board and Ors.) has similar object claim therefore, they are being decided by this common judgment.

2. The facts, in brief, are that H.P. State Housing Board Shimla therein after referred to as the board is instrumentally of the state. It has been created under the provisions of the H.P. housing board Act, 1972. It performs the functions including those relating to the framing and execution of housing schemes and allotment of houses and plots to anyone who may apply for the same under various categories that may be available for the purpose. Similarly the performers also applied for the allotment of plots in their favour. They complied with all the essential requirements that were desired by the board and ultimately the allotments were made and the Petitioners contend that they were put in possession of their respective plots also.

3. Further, it is submitted that a Writ Petition (C.W.P. No. 10 of 1982) was filed

by one Sh. Deepak Gupta Advocate, Saint Marks, Shimla, calling in question the allotment of plots by the Board to various persons including the Petitioners. During the pendency of this writ petition, these allotments were justified by the Board. However during the continuous of that Writ Petition, this Court passed certain directions in C.W.P. No. 58 of 1982 on 8-1-1983 to the following effect :

Meanwhile, no further action in pursuance of allotment of plots in question made in favour of Respondents No. 3 to 14 by Respondent No. 1 shall be taken. The nature of neither the manner nor any standing trees shall be felled. The No. 2, the State of H.P. is also restrained for any permission to fell trees of these plots.

4. This order was confirmed by the court. Thereafter it appears that the state Government interferes into the enquiry into the allotment of certain plots. This was conducted through the Superintendent of Police, Shimla. The Petitioner submits that the exparte enquiry since none of them were associated for any of this enquiry and the Board accepted the enquiry report and cancelled ; the allotment of plots in question. The Petitioners were informed by the Estate Manager of the Board through different communications, like Annexure P-E, Annexure P-5 and Annexure P-I, respectively. The Petitioners have a grievance against this communication. They seek to challenge the same by way of these petitions, interalia, on the grounds that the Petitioners had become owners of the plots in their possession in accordance with the letters of allotment which was the result of the completion of all requirements necessary for the purposes. In such a situation, they contend that the act of cancellation of plots allotted to them may interfere with their ownership arid, possession illegally and unjustifiably. Finally, they submit that the whole action of the Board is in violation of the principles of natural justice since they were not heard before the grants, in their favour were terminated. The enquiry was conducted behind their back. It was ex parte and they were neither associated during the course of this enquiry nor called upon to answer any charge that may have been found against them by the Enquiry Officer. It is also stated that the action of the Board in accepting the enquiry report and then canceling allotments in their favour violates the principles of natural justice and therefore, deserves to be set aside.

5. During the course of arguments, the learned Counsel appearing for the Petitioners confined their submissions to the violation of principles of natural justice as the grants according to them were cancelled without hearing them at any stage of the proceedings before the impugned cancellations were ordered.

6. We see great deal of strength in these submissions of the counsel for the Petitioners. There is little doubt that the Petitioners were allotted plots by the Board and these allot-Bgejags were defended by the Board as having been made in a choric safe with the statutory provisions. The events turned against the Petitioners after the State Government initiated enquiry 4of these allotments and the Enquiry Officer went in and submitted a report that was accepted by the Board in its 79th meeting held on 28 -11-1985 which led to the ultimate cancellation of the plots allotted in favour of the Petitioners. There is no evidence

on the record nor could Sh. Preni Goel, counsel appearing for the Board, bring to our notice; iv Mach, could indicate that right the course of the enquiry by the Enquiry Officer, Me Petitioners were associated and they were heard by the Enquiry officer further, the report of Enquiry officer was not made available to them nor were they heard at any stage by the Board before their grants were cancelled¹. It is a cardinal principle of law that the authority which intends to pass an order prejudicial to the interests of a person must resort to the process of hearing before the order is passed. The requirement of hearing before a prejudicial order is passed has, assumed immense importance and it is absolutely essential for the authority, more so, an instrumentality of the State like the Board in the present case, to follow these principles while taking administrative decisions which have the effect of taking away or violating the rights of citizens. It is not necessary to refer to all the decisions. Suffice it to seek distance from State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, wherein the Supreme Court while discussing the principles of, natural justice; vis-à-vis an administrative order which involves civil consequences said in Para 9 as under:

The first Respondent held office in the Medical Department of the Orissa Government. She, as holder of that office, had a right to continue in service according to the rules framed under Article 309 and she could "not be removed from office- before superannuation, except for good and sufficient reasons". The state was undoubtedly not precluded, merely because of the acceptance of the date of birth of the first Respondent in the service, register, from holding an enquiry if there existed sufficient grounds, for holding such enquiry and for re-fixing her date of birth. But the decision of the State could be based upon the result of an enquiry in manner consonant with the basic concept of justice. An order by tap State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority it is true is not in the position of a judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to .give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct: or to controvert any evidence in the possession of the 4utho-riety which is sought to be relied upon to his prejudice: For that purpose the person against whom an enquiry is ftt0 must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passes is entitled to a hearing applies alies to judicial tribunals and bodies of persons invented with authority to adjudicate upon matters involving civil. 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 for would, therefore, arise from the very nature of the function intended to be performed: it need not be shows to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act medicinally is implicit in the exercise of such power. If the essentials of be ignored and an order

to the pre-judice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof trainband the significance of a decision in any particular case.

Further in para 12, the Court observed as under :

We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, has even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first Respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first Respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State.

7. Examination of these matters, in the light of the aforesaid dismissal, leaves not even an iota of doubt that the allotment of plots in the case of the Petitioners and first Respondents was without conforming to the fundamental requirements of the enquiry report and other adverse material, if any, with the facts and their explanations thereto.

8. The result is that the orders of cancellation of grants in the case of the Petitioners and first Respondents similarly situated who have not been able to approach this Court by way of writ petitions are set aside leaving the Board free to proceed with the matters after learning the facts of the case of the Petitioners and first Respondents whose grants have been similarly cancelled keeping in view the observations made in this judgment. The parties are left to bear their own costs.