
(2000) 05 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 9752 of 2000

Rayeen Fruit Company and others	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 7(2)

Citation : (2000) 3 AWC 2001 : (2000) AWC 2001

Hon'ble Judges : Shyamal Kumar Sen, Acting C.J.; D.S. Sinha, J

Bench : Division Bench

Advocate : Ashish Kumar Singh and Ravi Kiran Jain, for the Appellant; S.C. and B.D. Mandhyan, for the Respondent

Judgement

Shyamal Kumar Sen, A.C.J.

1. The short facts involved in this writ petition, inter alia, are that the petitioners are engaged in wholesale business of fruits and vegetables situate at Subzi Mandi, Bahadurganj, Shahjahanpur. It has been alleged that the petitioners and their ancestors have been engaged in the same business since 1935. They are licence holders for selling fruits and vegetables and have been granted licence on yearly basis, which had been renewed from time to time. On 31.10.1998, the District Magistrate, Shahjahanpur vide letter No. 627 informed the Director, Rajya Krishi Utpadan Mandi Samiti/Parishad about the shifting of fruits and vegetables market to village Hathaura Buzurg. It may be mentioned here that there was a proposal in the year 1996 to shift the entire fruits and vegetables market from Subzi Mandi, Bahadurganj to the New Krishi Utpadan Mandi area at Roza. It has been alleged in the petition that the District Magistrate, Shahjahanpur was apprised of the situation and made aware of the likely hardships of the shop owners and consequently, on 21.8.1996 the District Magistrate wrote letter No. 432/ST/96 by which he made a proposal to purchase a land measuring 3.75 hectares situate at village Hathaura Buzurg, Tehsil Sadar,

District Shahjahanpur for establishing a new market of wholesale fruits and vegetables. It has been alleged in the petition that the proposed site of Hathaura Buzurg, which is at a distance of 3.5 kms. from the city, would be the most suitable place for shifting and establishing the wholesale market of fruits and vegetables.

2. Vide letter No. 627 dated 31.10.1998, the District Magistrate, Shahjahanpur informed the Director, Rajya Krishi Utpadan Mandi Samiti/ Parishad about the shifting of the fruits and vegetables market to village Hathaura Buzurg. By this letter, the then District Magistrate had recommended that the aforesaid land be acquired for the purpose of establishing fruits and vegetables market. In the petition, it has also been alleged that there was a parallel proposal for establishing the fruits and vegetables market in Roza grain mandi. It is relevant to mention here that the proposal was not conducive for establishing a fruits vegetables market because of the reason that there was paucity of place and the Mandi could not have been further extended towards west as there was boundary and bye-pass.

3. By letter dated 20th November, 1999, the Mandi Director issued directions to the Regional Deputy Director (Admn.), Rajya Krishi Utpadan Mandi Parishad that shifting process of fruits and vegetables market to Roza may remain suspended till further orders. On 9.12.1999 Sachiv, Krishi Utpadan Mandi Samiti, Shahjahanpur issued a notice and got it published in the Newspaper "Amar Ujala" on 17.12.1999 to the effect that the entire fruits and vegetables market is being shifted to Roza. On 25.12.1999 an announcement by loudspeaker was also made at the behest of district administration that no business activity would be allowed at Subzi Mandi, Bahadurganj and from the next date, i.e., on 26.12.1999, a large number of police force was deployed at Subzi Mandi, Bahadurganj and the petitioners were restrained by brute force of law from carrying on business at Subzi Mandi. Shahjahanpur inasmuch as no truck, etc. carrying fruits and vegetables were being allowed to unload at subzi mandi, Bahadurganj.

4. The petitioners, being aggrieved, filed Writ Petition No. 54789 of 1999, M/s. Mohd. Jomil and Company and others v. Krishi Utpadan Mandi Samiti, Shahjahanpur and others, which was dismissed by a Division Bench of this Court vide order dated 6.1.2000. The said order is set out hereinbelow ;

"We have heard Sri V. P. Srivastava and Sri S. K. Mehrotra for the petitioners. Sri B. D. Mandhyam for the respondent Nos. 1 to 3, learned standing counsel for the respondent Nos. 4 and 5 at considerable length and have perused the record.

In our opinion the issue raised is purely administrative in nature. The petitioners have expressed an apprehension that in case the vegetable and food market is shifted to Roza, they will not get proper place or accommodation to carry on their business. After the market has been shifted to Roza and the petitioners are not provided adequate place to carry on their business, they may raise grievance

before the appropriate authority and if still they are not satisfied, they may approach this Court.

The writ petition is dismissed.

Dated 6.1.2000

Sd./- G. P. Mathur. J. Sd./- Bhagwan Din. J."

In pursuance of the said order on 18.1.2000, the petitioners filed their representation before the Chairman, Krishi Utpadan Mandi Samiti, Shahjahanpur specifically mentioning their grievances. On 8.2.2000 an order was passed by the City Magistrate, Krishi Utpadan Mandi Samiti, Roza, Shahjahanpur. whereby the representation of the petitioners was rejected. The petitioners, being aggrieved, made a representation to the Chief Minister, U. P. Lucknow, who directed the District Magistrate, Shahjahanpur on 10.2.2000 to consider the grievances of the petitioners. As appears from the chart of dates of events filed by the writ petitioners, on 15.2.2000, the District Magistrate assured the petitioners that a reply would be sent to the Chief Minister.

5. The question involved in the writ petition appears to be restricted in a narrow compass, namely, if there was any violation of natural justice while disposing of the representation of the petitioners. It has been alleged that the order rejecting the representation suffers from serious infirmity and was passed in complete disregard of the principles of natural justice. It has been specifically alleged in the petition that the impugned order dated 8.2.2000 mentions that the report of Sachiv, U. P. Rajya Krishi Utpadan Mandi Samiti was sought and spot inspection was also made by the City Magistrate. After receiving order dated 8.2.2000, the petitioners have requested respondent No. 3 to supply them the copy of the report of the Sachiv and the copy of inspection report of the City Magistrate on the basis of which, the impugned order has been passed. Despite repeated requests made on 11.2.2000, 14.2.2000 and 16.2.2000, neither the copy of the report of Sachiv nor the alleged inspection report, prepared at the time of inspection, has been made available to the petitioners. It has further been alleged that to the best of the information available to the petitioners, no inspection has been made by the City Magistrate of either of the two sites, namely, Subzi Mandi Bahadurganj or the mandi complex at Roza, A perusal of the impugned order shows that it is totally based on the report of the Secretary, a copy whereof has not been made available to the petitioners.

6. It is the specific case of the petitioners that as of fact not only the copy of the report of the Secretary or the inspection report of the City Magistrate had not been made available to the petitioners, further the petitioners have also not been afforded opportunity of hearing before the impugned order was passed. The petitioners were entitled to a copy of the report of the Secretary and also to an opportunity of hearing, which would have facilitated the authorities concerned to decide the issue raised by the petitioners.

7. It appears that these allegations made in the writ petition have not been controverted in the counter-affidavit filed by one Sri H. P. Pandey, Mandi Inspector, Krishi Utpadan Mandi Samiti, Roza. Shahjahanpur on 2.3.2000. Moreover, it also does not appear from the supplementary counter-affidavit filed by Sri V. K. Srivaslava. working as Supervisor, Krishi Utpadan Mandi Samiti. Roza. Shahjahanpur that the said allegations have been controverted. It also does not appear from the counter-affidavit of Sri H. P. Pandey, Mandi Inspector that the said affidavit has been affirmed and filed on behalf of respondent Nos. 3 and 4 or Mr. H. P. Pandey had any authority to file this counter-affidavit on behalf of the said respondents. There is nothing on record to show that in fact any affidavit has been affirmed or filed on behalf of the respondent Nos. 3 and 4

8. It is well-settled that if a document is taken into account in arriving at a decision by an authority, copies, thereof, if asked for by the petitioners, should have been supplied. In the instant case, it appears, that the concerned authority had taken into account the report of Sachiv. U. P. Rajya Krishi Utpadan Mandi Samiti and had also referred to the spot inspection. Since the concerned authority has relied upon the said documents, it was incumbent upon him to supply copies thereof when the same was specifically asked for by the writ petitioners. Non-supply of the copies of such documents, viz.. the report of Sachiv as also of the inspection report, in our view, amounts to violation of principles of natural Justice and vitiates the orders rejecting the representation of the petitioners.

9. Mr. B. D. Mandhyan, learned counsel for the respondents, however, has contended that the petitioners have no right to file this petition and, as such, the writ petition should be rejected.

10. He has further submitted that only four of the petitioners, namely, petitioner Nos. 4, 5, 26 and 28 have not shifted to the new Krishi Utpadan Mandi area at Roza and all others have already gone to the said market. He has referred to Section 7(2)(b) of the U. P. Krishi Utpadan Mandi Adhlniyam 1964 (hereinafter referred to as the Act) and has submitted that since a notification has been issued under the aforesaid provisions of the Act. the petitioners cannot carry on their business at old Subzi Mandi at Bahadurganj in Shahjahanpur where they had been doing their business of fruits and vegetables and they can be compelled to shift their business to the new Mandi complex at Roza. He has further submitted that Section 7(2)(b) provides that the place for wholesale transaction may be shifted in terms of the Statute and it is not intended to shift the shops as a whole and the petitioners can go on selling fruits and vegetables in the existing market at Bahadurganj. It is also the contention of the learned advocate for the respondents that the plea of non-existence of adequate facilities and space as taken by the writ petitioners, is not really tenable since the notification for shifting of the place of business for wholesale transaction has already become operative and the writ petitioners have not challenged the said notification.

11. Learned advocate has further submitted that it is not open to the Court at this stage to go into the question of requirement of the writ petitioners and availability of the space, since the notification authorizes the respondents to shift to the place of wholesale transaction and in support of this contention, he has relied upon the following decisions, namely. AIR 1981 1127 (SC) . M/s. Amrit Rice Mills and others v. Krishi Utpadan Mandi Samiti. Pilibhit and another 1987 ALJ 1118, Ram Chandra Kailash Kumar and Company v. State of U. P. and another 1980 ALJ 490. Kredin Jaiswal and others v. State of U. P. and another, 1993 AWC 1513 and Vishal Traders v. State o/U. P. and another. 1983 AWC 204.

12. We have considered the submissions of the learned advocates for the parties, it is well settled that in case no counter-affidavit is filed denying the allegations made in the writ petition, it shall be presumed that the allegations made therein are correct. In the instant case, as already noted, it appears that no duly affirmed counter-affidavit by respondents 3 and 4 has been filed in this proceeding and, even if the counter-affidavit filed by H. P. Pandey is taken into account, in the said affidavit also, there is no specific denial of the allegations made in the writ petition. There is also no specific denial that the copy of the report of the secretary. Krishi Utpadan Mandi Samiti and that of spot Inspection made by the City Magistrate were not supplied to the writ petitioners, although reliance was placed upon the same by the concerned authority in arriving at its decision. In this connection, we may take note of the judgment and decision in the Division Bench case of Rama Shanker Bamwal v. State of U. P. and others 2000 1 UPLBBC 567. of which relevant portion wherein one of us. namely, Hon"ble D. S. Sinha, J.. has held and observed as follows :

"... 6. In paragraph 12 of the petition it is asserted that the respondent No. 3 submitted a report and the respondent No. 2 submitted his note (Samiksha). But neither the copy of the report of the respondent No. 3 nor the copy of the note (Samiksha) submitted by the respondent No. 2 was supplied to the petitioner. In paragraph 14 of the petition, it is asserted that after the respondent No. 2 had sent his note (Samiksha). no notice or opportunity was given to the petitioner by the respondent No. 1.

7. The averments of the petitioner made in paragraphs 12 and 14 of the petition have been replied in paragraph 14 of the counter/affidavit filed on behalf of the respondent Nos. 2 and 3. The said paragraph is as follows :

"14. That in reply to the contents of paragraphs 12. 13, 14 of the writ petition, it is stated that the petitioner was given full opportunity to submit his reply against the charges framed and to submit evidence in support of his case and after having received reply of the petitioner, the same was sent to the State Government alongwith the comments of the authority concerned for necessary action and the State Government after having considered each and every aspect of the matter, removed the petitioner from his part which is perfectly just and legal."

8. The reply to the averments of the petitioner made in paragraphs 12 and 14 of the petition given in paragraph 14 of the counter-affidavit filed on behalf of the respondent Nos. 2 and 3. extracted above, does not. in the opinion of the Court constitute denial of the plea of the petitioner either specifically or by necessary implication. Therefore. the averments contained in paragraphs 12 and 14 of the petition cannot be taken to have been denied by the respondent Nos. 2 and 3.

9. At this stage, it is pertinent to notice that no counter-affidavit has been filed on behalf of the respondent No. 1. Therefore, in the absence of any counter-affidavit. It has to be presumed, that the respondent No. 1 does not dispute the averments of the petitioner made in paragraphs 12 and 14 of the petition.

10. It is also relevant to notice that in paragraph 8 of the counter/affidavit, filed on behalf of the respondent Nos. 2 and 3, it is stated that after receiving the reply to show-cause notice, charges were framed against the petition and the petitioner was required to submit the evidence. and that he was also accorded opportunity of hearing by the Enquiry Officer.

11. Paragraph 8 of the counter-affidavit has been replied by the petitioner in paragraph 8 of his rejoinder-affidavit. In the rejoinder-affidavit, the petitioner asserts that it is patently wrong to say that the charges were framed against the petitioner. No charge-sheet as such was served on the petitioner, although after submission of reply to show-cause notice, the respondent No. 3 had sent a letter dated 16th March, 1998 requiring him to submit evidence in support of his reply to the show-cause notice. The petitioner did submit evidence.

12. From the pleading noticed above, inescapable conclusion is that the petitioner was not given copy of the report of respondent No. 3, and that he was also not supplied the copy of note (Samiksha) submitted by the respondent No. 2. It is also clear that the petitioner was not given any opportunity of hearing subsequent to the filing of his reply to the show-cause notice.

13. A perusal of the impugned order clearly shows that it is founded on the comments and notes (Samiksha) submitted to the respondent No. 1 by the respondent No. 2. which were not supplied to the petitioner. At no point of time was the petitioner wanted that the comments and notes (Samiksha) of respondent No. 2 will be relied upon by the respondent No. 1. Thus, the well-known principle of natural justice, which required the respondent No. 1 to give opportunity to the petitioner, was flagrantly violated rendering the impugned order wholly unsustainable in law."

In the instant writ petition also, similar facts are involved, and as such, we are of the view that the principles decided therein very clearly apply to the facts of the present case and the principles of natural justice appears to have been violated while considering the representation of the writ petitioners, as directed by the earlier Division Bench of this Court In its order dated October 7. 1999.

13. We have also considered the submissions made by the learned advocate

appearing for the respondents and the decisions relied on by him in the cases noted aforesaid. We are of the view that the submissions made by the learned advocate for the respondents and the decisions relied upon by him cannot justify the findings of the authority, which considered the representation since the said findings are in complete disregard and violation of the principles of natural justice, as already noted above. Accordingly, we are of the view that the findings of the concerned authority on the representation made by the writ petitioners cannot be sustained and are liable to be set aside. Accordingly we set aside the same and direct respondent No. 3 Chairman. Krishi Utpadan Mandi Samiti. Shahjahanpur to consider afresh the grievances of the writ petitioners, as raised in their representation, already made pursuant to the earlier order of the Division Bench and to dispose of the same by passing a reasoned order In accordance with law.

14. The writ petition is. accordingly, allowed to the extent indicated above. There shall be no order as to costs.