

(2001) 11 AHC CK 0107
In the Allahabad High Court
Case No : C.M.W.P. No. 12749 of 1988

Roshan Lal

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 19-11-2001

Acts Referred:

Citation : (2002) 1 AWC 190 : (2002) 1 UPLBEC 292

Hon'ble Judges : Lakshmi Bihari, J;D.S. Sinha, J

Bench : Division Bench

Advocate : R.G. Padia and Prakash Padia, for the Appellant; Sandeep Mukherji, for the Respondent

Final Decision : Allowed

Judgement

D.S. Sinha and Lakshmi Blhari, JJ.—Heard Sri Prakash Padia, holding brief of Dr. R.G. Padia. learned senior advocate appearing for the petitioner. and Sri Sandeep Mookherji. learned standing counsel of the State of U.P., representing the respondent Nos. 1, 2, 3, 4 and 5. Despite due notice, the respondent No. 6 has not responded.

2. No counter-affidavit has been filed. Thus, the averments made in the petition are unrebutted, and taken to be correct.

3. By means of a notice dated 14th May, 1988. a copy whereof is Annexure-I to the petition. Issued at the behest of Kabirganj Kisan Sewa Sahakar Samiti Ltd., Kabirganj, Pilibhit, the respondent No. 6, the petitioner is called upon to pay a sum of Rs. 11,958 due on account of loan alleged to have been taken by him from the respondent No. 6.

4. The learned counsel appearing for the petitioner contends that the recovery in pursuance of the impugned notice is bad inasmuch as the petitioner was not given any opportunity before issuance of recovery certificate which is mandatory in view of Section 95A of the U.P. Co-operative Societies Act, 1965. To buttress his contention, the learned counsel places reliance on the two Division Bench

decisions rendered in Ram Narain Himmat Ram and another v. Jalaun Kraya Vikraya Sahakar Samiti Limited, Jalaun and others and Kashi Prasad Singh v. Collector and District Magistrate. Varanasi and Ors. 1986 AWC 273 and 1991 ALJ 1078. respectively.

5. The learned standing counsel representing the respondent Nos. 1 to 5, very fairly, does not dispute that the contention of the petitioner is well founded and fortified by the two Division Bench decisions rendered in Rom Narain Himmat Ram and Anr. v. Jalaun Kraya Vikraya Sahakari Samiti Limited, Jalaun and Ors. (supra) and Kashi Prasad Singh v. Collector and District Magistrate. Varanasi and Ors. (supra).

6. Admittedly, the petitioner having not been given opportunity as required by law, the impugned recovery is bad. For so long as the petitioner is not given due opportunity to contest the allegation of dues against him and the same is not determined by the relevant authority, the proceedings against the petitioner for the recovery of alleged dues cannot go on.

7. In the result, the petition succeeds, and is allowed. The respondents are, Jointly and severally, commanded not to proceed to recover from the petitioner the amount sought to be recovered in pursuance of the impugned notice (Annexure-I to the petition) until the petitioner has been given due opportunity to contest, and the objection of the petitioner, if any, is disposed of by the authority competent to do so.

8. There is no order as to costs.