

(1999) 05 AHC CK 0181
In the Allahabad High Court
Case No : C.M.W.P. No. 9806 of 1999

Sanjeev Deevan and another	Vs	APPELLANT
State of U.P. and others		RESPONDENT

Date of Decision : 12-05-1999

Acts Referred:

Citation : AIR 1999 All 295 : (1999) 3 AWC 2204

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : Sunil Ambwani and P.C. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

O.P. Garg, J.—By means of this writ petition under Article 226 of the Constitution of India, the petitioners have challenged the propriety and correctness of the order dated 12.10.1998, Annexure-21 to the writ petition whereby wholesale licence of the petitioners to distribute the kerosene oil was cancelled by the licensing authority-respondent No. 3 and the order dated 24.2.1999, Annexure-26 passed by the respondent No. 2 dismissing the appeal of the petitioners under Paragraph 12 of the U. P. kerosene Control Order, 1962 (hereinafter referred to as the "Control Order, 1962").

2. The petitioner No. 2 M/s. Deewan Oil Company is a registered firm having its office at Chhatta Bazar. Agra. The petitioner No. 1--Sanjeev Dewan is one of its partners. The firm carries on the business as a wholeseller in kerosene oil having licence No. 35 issued under the Control Order, 1962. The supplies of kerosene oil are received by the petitioners from the Indian Oil Corporation. Under the orders of the State Government, every wholesale licensee is required to distribute his quota of kerosene oil to the retail dealers under the directions of the District Supply Officer at the distributive points. The District Supply Officer fixed quota for each retail dealers and distributes month-wise quota for them. On 21.8.1998. the petitioners had taken the delivery of 34 Kilo litres (34,000 litres) kerosene oil

in three tankers from local I.O.C. Depot, Idgah, Agra. One of the tankers containing 12,000 litres of kerosene oil was meant for distribution to 10 retail dealers who were running the fair price shops in Tahsil Ball in district Agra. On getting a tip from a reliable informer that 12,000 litres of kerosene oil supplied to the petitioners and meant for distribution to 10 retail dealers in Tahsil Bah has been black-marketed in Mohalla Rambagh, Agra, the licensing authority respondent No. 3 deputed a team of officers to make an on the spot surprise check. The team visited different places in Tahsil Bah on 22nd and 23rd August, 1998 and interrogated Uma Charan Singh, one of the retail dealers in village Rampur Chandra Saint. On account of absence of the other retail dealers in the concerned villages, the statements of their near relatives such as brothers and nephews were recorded. The team could not visit village Simrai, which had two retail dealers, namely, Jeewa Ram and Ho Ram Singh on account of inaccessibility due to water logging in the rainy season. The statements of the concerned persons recorded by the team have been filed as Annexures-3 to 9 by the petitioners. It was reported that on 21.8.1998, no supplies were made to any one of the retail dealers. Consequently, a show cause notice dated 31.8.1998 was issued by the licensing authority to the petitioners. The petitioners submitted their reply/explanation on 24.9.1998. The licensing authority cancelled the licence of the petitioners to deal in the kerosene oil as a wholeseller by order dated 12.10.1998, a copy of which is Annexure-21 to the writ petition. Against the said order, the petitioners preferred Appeal No. 32 of 1998 before the Commissioner of the Division. The appellate authority refused to stay the order of cancellation of licence of the petitioners and, therefore, the petitioners preferred Civil Misc. Writ No. 39259 of 1998 before this Court. The operation of the order of cancellation dated 12.10.1998 was stayed. Ultimately, the appeal filed by the petitioner was dismissed on 24.2.1999, a copy of which is Annexure-26 to the writ petition.

3. Besides the cancellation of the licence of the petitioners, a First Information Report has also been lodged against them for having allegedly resorted to malpractice of black-marketing the kerosene oil which was meant for the distribution to the retail fair price shop dealers.

4. Order of cancellation of the licence and the order dismissing the appeal have been challenged both on legal and factual matrix. It is used that the petitioners have not black-marketed the kerosene oil which was meant for distribution to the retail dealers in Tahsil Bah and they have properly explained the supply of 12,000 litres of kerosene oil to the retail dealers (except for 1,810 litres) and that the stand taken by the petitioner is duly supported by signed vouchers, cash memos, other documents, including the stock registers of the retail dealers which were verified and signed by the concerned Supply Inspector and Lekhpal of the village. The order passed by the licensing authority, it is stated, is based on conjecture, inasmuch as, it has omitted to take into consideration the documentary evidence which the petitioners have filed to establish that the supply of kerosene oil delivery of which was taken by them on 21.8.1998, has

been actually made to the retail dealers. In any case, it is asserted that the drastic action of cancellation of the licence was not justified in the circumstances of the case.

5. On behalf of the respondents, a counter-affidavit has been filed. In short, the order of cancellation as well as order dismissing the appeal have been justified on the ground that the petitioners have not supplied the kerosene oil, delivery of which was taken by them on 21.8.1998 to the retail dealers and that they have illegally sold the same on higher rates, thereby contravened the terms and conditions of the licence. It is maintained that the tanker containing 12,000 litres of kerosene oil was never taken on 21.8.1998 to the villages concerned to supply the same to the 10 retail dealers in the requisite quantity. A rejoinder-affidavit has been filed to repel and explain the various allegations made in the counter-affidavit.

6. With the consent of the learned counsel for the parties, this writ petition is being finally disposed of at this stage according to the provisions of Rules of Court. Heard Sri Sunit Ambwani, learned counsel for the petitioners as well as learned standing counsel on behalf of the State.

7. The petitioners are undoubtedly the wholesale dealers of long standing to receive supply of kerosene oil from Indian Oil Corporation for being distributed to the retail dealers. The licence has been granted to them under the provisions of the Control Order, 1962.

8. Sri Sunil Ambwani learned counsel for the petitioners urged that the order of cancellation of the licence has been passed on the basis of certain statements recorded in the absence of the petitioners by the team of the officers deputed by the A.D.M. (Civil Supplies), Agra for an on the spot enquiry ; that the said statements stand falsified by the subsequent affidavits filed by the fair price shop dealers as well as from the various documents in which the entries of the supply of the kerosene oil on 21st August, 1998 were made and that the vouchers and the cash memos which are duly signed by the concerned persons give a death blow to the concocted theory that no kerosene oil was supplied by the petitioners to the fair price shop dealers on 21.8.1998. It was also emphatically urged that the order of cancellation has been passed in an arbitrary manner in flagrant violation of the principles of natural justice and the procedure adopted to arrive at the conclusion that the petitioners have black marketed 12,000 litres of oil delivered to them on 21.8.1998 does not stand the test of fairness.

9. It is an indubitable fact that the licence which has been granted to the petitioners is subject to suspension/cancellation if its terms and conditions are in any manner violated. The order of suspension or cancellation is also subject to scrutiny in appeal by the Commissioner of the Division. It is also not disputed that 12,000 litres of kerosene oil was supplied to the petitioners on 21.8.1998 from the local I.O.C. Depot, Idgah, Agra. In terms of the order of the District Supply Officer, this quantity of oil was to be distributed by the petitioners to ten

fair price shop dealers located in different villages at Tahsil Bah (Agra) and on the spot enquiry made by the team of the officers appointed by the A.D.M. (Civil Supplies). Agra, to verify the correctness or otherwise of the complaint received by him, indicated that the kerosene oil was not transported by any tanker to the villages in which the aforesaid fair price shop dealers were having their shops. In the rejoinder-affidavit, the stand taken by the petitioners is that all the fair price shops in Tahsil Bah are situate in village having Kaccha road which become unmotorable in rainy season on which heavy oil tanker could not be plied ; that the dealers received their supply on points convenient to them situated on main pucca road where the tanker can be taken : that the supply was off-loaded from the tanker in the drums owned by the dealers which were then taken by them to their respective shops according to their convenience. Out of 10 centres of the fair price shops, villages Dearak, Killa, Gopalpur and Farera are almost on the motorable roadside while other villages, namely, Raipura. Bhadouria, Rampur, Chandra Saini are at a distance of few kilometers from the main road and are accessible by Kachcha roads. Village Simral, though is on Delhi Gosali-road. was not accessible on account of water- logging as has been reported by the inspecting team. Uma Charan Singh respondent is having a fair price shop in Rampur Chandra Saini. He has made a categorical statement that no supply of kerosene oil was made on 21.8.1998 and that the tanker of the plaintiff-petitioners did not arrive on that date. Besides Uma Charan Singh. there are statements of the near relatives of the other fair price shop-dealers who have, in unerring terms, gave out that the kerosene oil was not supplied on 21.8.1998 and that the tanker of the petitioners was also not seen on that date. Twelve thousand litres of kerosene oil in 10 drums was found lying on the main road outside the village Farera on 22.8.1998. Though in writ Jurisdiction the controversy which requires the examination of the evidence cannot be gone into and sifted but the facts remain that from the statements of various persons recorded by the team which made the surprise inspection in the presence of various villagers go to establish that kerosene oil was not supplied to anyone of the fair price shop-dealers at ten centres on 21.8.1998 and that the tanker of the petitioner was not seen around. This part of the evidence falsifies the stand taken by the petitioners that 12,000 litres kerosene oil was transported through a tanker for delivery of the oil in the specified quantity, to the ten dealers in Tahsil Bah on 21.8.1998. After the receipt of the report of the Inspecting team, A.D.M. (Civil Supplies) issued show cause notice to the petitioners and ultimately cancelled the licence recording a firm finding that the kerosene oil which was meant for public distribution to the ten fair price shop-dealers in Tahsil Bah was mis-supplied by the petitioners by selling the same elsewhere obviously on higher rate. The Court would be loathe to upset this finding of fact in writ jurisdiction.

10. The submission of Sri Sunil Ambwani that the licensing authority and, for that matter, the appellate authority discarded the documentary evidence in preference of oral statements of certain witnesses recorded in the absence of the

petitioners in an unjustified manner and, therefore, the order of cancellation and dismissal of appeal are vitiated. Is wide off the mark. The licensing authority has concluded that the various documents on which the petitioners relied upon have been fabricated or manufactured with a view to give fillip to their defence and the signatures of the concerned Supply Inspectors and the Lekhpal on the delivery vouchers and other documents are the product of the collusion of these officers with the petitioners. For the same reason, affidavits of the various fair price shop dealers which have been brought on record are afterthought. Some of the delivery vouchers bear the signatures In the handwriting of one and the same person though he has signed the same in different names. The reasons for manipulating the documents are not too far to seek. When clinching evidence had come on record as a result of on the spot immediate enquiry that the kerosene oil was not transported from the tanker or delivered to the fair price shop dealers on 21.8.1998. the petitioners obviously in collusion with the Supply Inspectors made all out efforts to save their skin or to shield themselves by spinning a false story by coining fictitious documents. The licensing authority has rightly initiated departmental enquiry against the officials who have colluded with the petitioners to prepare a false defence for them.

11. Now comes the key question whether the impugned order withstands the test of scrutiny at the alter of the principles of natural justice. A brief summary of the decisions on the point may usefully be made. In the process of development of doctrine of natural Justice as applicable to administrative bodies, the law laid down by the Apex Court in the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , is a turning point. It was said that under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our constitution is regulated and controlled by the rule of law. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered Inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision. In the case of The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, . it was observed that the administrative authorities concerned should act fairly, impartially and reasonably and where the administrative officers are concerned, the duty is not so much to act judicially but to act fairly. The oft quoted celebrated observations of Justice Krishna Iyer of the Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , have left an indelible Impact on the development of the law on the point. It was commented that the natural Justice though varying is the soul of the rule as fair play in action. It extends to both the fields of judicial and administrative. The administrative power in a democratic set up is not allergic to fairness in action and discretionary executive justice cannot be degenerated into unilateral justice. Good administration demands fair play in action and this simple

desideratum is the fount of natural justice. Fairness is flexible and is intended for improving the quality of Government by injecting fair-play into its wheels. In *Swadeshi Cotton Mills v. Union of India* 1981 (42) FLR 225 (SC), Sarkaria, J., speaking for himself and Desai, J., said that irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied. The presumption is that in a democratic polity wedded to the rule of law. the State or the Legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly. The citations on the point may be multiplied since fairly abundant case law has come into existence. The modern concept of administrative law is that the State functionaries must act fairly and reasonably. In *Management of M.S. Nally Bharat Engineering Co. Ltd. Vs. State of Bihar and Others*, , it was observed that what is thus important in the modern administration is the fairness of procedure with elimination of element of arbitrariness. The State functionaries must act fairly and reasonably. That is, however, not the same thing to state that they must act judicially or quasi-judicially.

12. The decisions with regard to the question of applicability of the principle of natural justice do not all speak in the same voice and sometimes it is difficult to reconcile them. Nevertheless, a duty has been cast on the administrative authorities to act fairly, i.e., in consonance with the fundamental principles of substantial justice.

13. After having gone through the various illuminating decisions of the Apex Court on the question of observance of the fundamental principles of natural Justice, such as. *Som Datt Datta Vs. Union of India (UOI) and Others*, : *Union of India v. Mohan Lal Kapoor* (1978) 2 SCC 836 : *Gurdian Singh Fijji v. State of Punjab*. (1979) 2 SCC 368 ; *S.N. Mukherjee Vs. Union of India*, ; *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, ; *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, and *M.J. Sivani and Others Vs. State of Karnataka and Others*, , one cannot escape from the conclusion that the applicability of the principles of natural justice is not a rule of thumb or strait-jacket formula or an abstract proposition of law. It depends upon the facts of the case, nature of the enquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is noticeable features that the Courts have not hesitated in moulding the concept of natural justice to suit the exigencies and situations.

14. An order arising out of the cancellation of the licence is undoubtedly penal in nature and has serious repercussions on the business, reputation and goodwill of the dealer. He is visited with serious evil consequences. In the case of cancellation of the authorization, if the rule of law is to prevail, it is Implicit that the State executive cannot act in such matters arbitrarily or on mere humour or caprice. An order passed against the dealer which visits with such serious consequences and which is penal in nature can only be passed in accordance

with the principles of natural justice as laid down by the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . In the administrative decision, the requirement of principles of natural Justice would be satisfied if the aggrieved person is informed of the reasons to initiate action against him and is called upon to submit his explanation to the various complaints of alleged irregularities which have surfaced after a preliminary enquiry. If after taking into consideration the report of the preliminary enquiry and the reply of the aggrieved person pursuant to the show cause notice issued to him a reasoned and speaking order is passed, in that situation the person proceeded against cannot complain of the violation of the principles of natural justice. In the Instant case, for the reasons stated above. the requirements of the principles of natural justice have been substantially complied with and a well informed order containing reasons has been passed by the licensing authority. The reasons recorded by the licensing authority clearly reveal nexus between the facts considered and the conclusions reached.

15. This fact cannot be lost sight of that dominant object and intendment of the various control orders is to secure equitable distribution and availability at fair prices of essential commodities in the interest of the general public. Insofar as the issue of control orders is concerned, it is intended to regulate the supply of the essential commodities as the State cannot afford to and does not want to let loose the subject to do whatever they like in respect of such commodities which have become in one way or the other essential for human beings and of which uneven distribution, unjust hoarding and uncontrolled price may cause great hardship on the people. The State being the custodian of the people is required to see that at least such essential stuffs either of food or otherwise are made available so as to provide it to all those persons who require it. The kerosene oil is undoubtedly one of the essential commodities. It is used by the masses for domestic purposes, e.g., cooking their food and to light the lamps. Sometimes, motors or engines to lift the water for irrigation and other agricultural purposes are propelled by its liquefied gas. If the authorised dealers who are charged of the duty to regularly supply the kerosene oil meant for the most needy persons in the villages, divert the sale of the oil meant for them, for their own unjust enrichment imbued with an acquisitive urge, they may easily be branded of being guilty of perfidy of the highest order. Least which these recalcitrant and antisocial elements deserve is to strip them of the authority and benefit of receiving the supplies to avoid their maldistribution. The petitioner have been found guilty of the serious charge of misdirecting and diverting the supply of kerosene oil which they sold at higher rates than specified. In such a situation, only course left was to cancel the licence of the petitioners. It was rightly cancelled and the appellate court has also for good reasons dismissed the appeal. The submission that the punishment awarded to the petitioners is disproportionate and is not commensurate to the alleged charge said to have been established against them also is not acceptable. Emphatic denunciation of the culpable act committed by the petitioners may amply be reflected by cancelling their licence and depriving

them of the rights thereunder.

16. In the conspectus of the above facts, the present petition turns out to be meritless and it is accordingly dismissed. No order as to cost is made.