

(1999) 08 AHC CK 0034
In the Allahabad High Court
Case No : C.M.W.P. No. 15519 of 1991

Smt. Chandrawati Devi

APPELLANT

Vs

Additional Commissioner (Stamps), Meerut and others

RESPONDENT

Date of Decision : 04-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 208, 226
Stamp Act, 1899 — Section 13, 14, 33, 38, 38(2)

Citation : (1999) 4 AWC 2848 : (1999) AWC 2848 : (1999) RD 583

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Vinod Sinha and Dinesh Rai, for the Appellant; P.K. Bisaria, S.C., for the Respondent

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—The prayer of the petitioner is to quash the Order dated 27.11.1990 passed by the Deputy Commissioner, Stamp, Meerut Division in Case No. 395/D.C. 82, State v. Chandrawati Devi, holding that instead of using stamps worth Rs. 2,510 In regard to the agreement which she has entered with the Municipality, Meerut, for obtaining lease of a shop for an indefinite period she has used stamps worth Rs. 5 only and. thus, liable to pay a sum of Rs. 2,505 further towards stamps and a sum of Rs. 6,000 as penalty thereon as contained in Annexure-4 to this writ petition.

The Submissions :

2. Sri Dinesh Rai, learned counsel appearing on behalf of the petitioner, holding brief of Sri Vinod Sinha, contended with reference to the statements made in paragraph 8 to the writ petition, which have not been denied by the respondents as incorrect by filing any counter-affidavit, that principles of natural justice were grossly violated while passing the impugned order inasmuch as even though the petitioner had filed her objection in August, 1982, no date of its hearing was fixed and the Deputy Commissioner Stamp had illegally proceeded to pass an ex-parte order behind her back and to her prejudice and thus her prayer be allowed.

3. Sri P. K. Bisaria, learned standing counsel appearing on behalf of the respondents, on the other hand, contended that in terms of Section 40(1)(b) of the Indian Stamp Act, 1899, no opportunity of hearing is required to be given before impounding an instrument and/or imposing penalty and the order holding that there were deficit stamps worth Rs. 2,505 being correct on facts and law both and the penalty of Rs. 6,000 imposed on the petitioner being less than even three times of the required deficit stamps, no interference is required by this Court in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India. Our Findings :

4. We do not want to record any finding on merits as contended by Sri Bisaria in view of the patent fact that the principles of natural justice have been admittedly violated and that the petitioner stands prejudiced.

5. Section 40(1) of the Indian Stamp Act reads thus :

"40(1). When the Collector impounds any instrument u/s 33, or receives any instrument sent to him u/s 38, sub-section (2), not being a receipt or a bill of exchange or promissory note, he shall adopt the following procedure-

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be ;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees or, if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees :

Provided that, when such instrument has been impounded only because it has been written in contravention of Section 13 or Section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section."

6. Rule 204 of the Rules framed under the Act reads thus :

"204. Notice to be given when order u/s 40(b) made in the absence of party concerned,--Whenever a Collector exercises power u/s 40(b) of the Stamp Act in the absence of the party concerned or his properly authorized counsel he should be careful to serve a notice on the party from whom the stamp duty and penalty are due, fixing a reasonable time within which they must be paid and drawing his attention to the provisions of Rule 205 also.

No process fee shall be realized on notices served for the realization of stamp duty and penalty."

7. Paragraphs 8 to 11 of the writ petition reads thus :

"8. That the impugned order has been passed in gross violation of the principles

of natural justice. No opportunity of hearing was provided to the petitioner. The objections were filed by the petitioner as far back in August, 1982. However thereafter no date was fixed nor any notice was issued to the petitioner for the purpose of hearing the aforesaid matter. Therefore the impugned order is ex facie, illegal and non-est.

9. That the petitioner came to know of the aforesaid order dated 27.11.1990 only when respondent No. 3 came to recover the aforesaid amount in the third week of April, 1991. Thereafter the petitioner immediately applied for a certified copy of the order. The petitioner has somehow been able to defer the recovery for some period, however now respondent No. 3 is pressing to recover the aforesaid amount.

10. That as stated above the impugned order has been passed in gross violation of the principles of natural justice, without providing any opportunity of hearing to the petitioner. After issuing show cause notice dated 21.7.1982 nothing was done by respondent No. 1 except passing the final order dated 27.11.1990. No date was fixed in the intervening period of 8 years.

11. That respondent No. 1 was exercising the quasi-judicial function it was incumbent upon him to provide an opportunity of personal hearing."

8. No counter-affidavit has been filed by the respondents denying the correctness of the aforementioned statements. The impugned order does not show that the petitioner was heard. In *State of U.P. v. Mohd. Nooh* AIR 1958 SC 86 the Supreme Court had held that an order passed violating the principles of natural justice is ex-facie nullity. The doctrine of "non-traverse" is also clearly applicable.

9. In our view, the provisions being penal and the jurisdiction, which the Collector under the Act is required to exercise, being quasi-judicial, it was mandatory on the part of the Collector to have given an opportunity of personal hearing to the person concerned whose instruments are sought to be impounded and penalty Imposed.

10. If we proceed to uphold the contention of Sri P. K. Bisaria, learned standing counsel, in that event we will have to strike down the aforementioned provisions as being violative of Article 14 of the Constitution of India which is antithesis to any arbitrary legislative act and/or executive action. This view of ours stands considerably supported by Rule 204 extracted as above.

11. We find that about twenty years ago, a Division Bench of our own High Court in *Ajaypal Singh v. State of U. P. and others* 1979 AWC 659 had taken exactly a similar view, the relevant portion of which reads thus :

"4. The principles of natural justice apply to quasi-judicial as well as administrative bodies. From a reading of Sections 38, 39 and 40 of the Stamp Act, it would be found that the power, which is exercised by the Collector in adjudicating upon the stamp duty on a document, is a judicial one. The adjudication involves the determination of rights inasmuch as he determines the

liability of the parties to the document to pay the stamp duty. As the rights are involved, it is necessary that before either enhancing the stamp duty or imposing penalty, the person affected must be given an opportunity of being heard. Denial to give opportunity may cause serious prejudice to his interest. It may be true that the principles of natural justice do not apply to a case where the Legislature expressly or impliedly excludes the giving of opportunity. But, in the present case, we cannot find any provisions in the Act or the Rules which could justify the exclusion of the opportunity to such a person. In the absence of opportunity having been given to the petitioners, the order of the Collector was invalid.

12. It was indeed pity on the part of the Deputy Commissioner, Stamp, Meerut Division, as he had proceeded to ignore the declaration of law made by the Division Bench of this Court which was binding hand and foot on him. We merely remind him in this regard that the Apex Court in *Bishnu Ram Borah and Another Vs. Parag Saikia and Others*, had already laid down that the judgment of the High Court has to be obeyed by all Courts and Tribunals subordinate to it.

13. In the peculiar facts and circumstances we are of the view that the petitioner is entitled to the relief claimed for by her.

14. In the result, this writ petition succeeds. The impugned order is quashed.

15. It will, however, be open for the Deputy Commissioner, Stamp, Meerut Division or the Collector under the Act to proceed against the petitioner in accordance with law.

16. Let a writ of certiorari issue accordingly.

17. The office is directed to hand over a copy of this order to Sri P. K. Bisaria, within one week for its communication to and follow up action by the authority concerned.