

(1985) 05 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4426 of 1985

Suraj Coal Traders

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-05-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) AWC 843

Hon'ble Judges : K.P. Singh, J;A. Banerji, J

Bench : Division Bench

Advocate : C.L. Pandey, for the Appellant;

Final Decision : Allowed

Judgement

A. Banerji, J.—We have heard Learned Counsel for the parties and we propose to dispose of the writ petition on the merits at the admission stage.

2. M/s. Suraj Coal Traders, the Petitioner, is a proprietary firm situated in Varanasi. It deals in coal. The Petitioner was a licensee in Form B, a whole sale dealer under the U.P. Coal Control Order, 1977 (hereinafter referred to as Control Order). The Petitioner alleged that he deals only in slack coal and free sale coal. He brings slack coal by road to its depot for the purposes of sale to its customers. According to the Petitioner, free sale coal which constitutes hard coke, steam coal, slack coal, soft coke and all other derivatives of non cooking coal, are decontrolled commodity under the notifications issued by the Central Government from time to time. According to the Petitioner, the State Government has suspended the provisions of the Essential Commodities Act as well as Control Order in respect of slack coal which is brought by road. One such notification is dated 3rd June, 1982. The Petitioner made an application for the renewal of his licence for the year 1985-86 to the District Supply Officer Varanasi. The Petitioner's case further is that he is a licensee since 1979 and there is no charge against him for non compliance or contravention of any of the provisions of the Control Order. On the 28th of March, 1983 he was informed by

the District Supply Officer Varanasi that his licence had been cancelled and he was handed over a cyclostyled order on the same day. The above order showed that on 25th February, 1988, Senior Inspector had made an inspection and during the inspection neither the licensee nor any of his agents could be met at the place of business. Neither the stock board, rate board or licence could be seen. The conclusion drawn was that the licensee was not doing any business at the specified plots of land and therefore he had contravened the provisions of the Control Order. Consequently, the District Supply Officer passed an order rejecting his application for the renewal of the licence. The Petitioner has come up to this Court under Article 226 and challenged the above order on the ground that no notice was given to the Petitioner before passing the order of refusal of licence and as such the order was against the principles of natural justice, and since the Control Order in respect of slack coal had been suspended by the State Government, the District Supply Officer acted illegally In refusing to renew the licence. The Petitioner also challenged that there was any inspection made by the Inspector on 25th February, 1985 as also the fact that the depot of the Petitioner did not exist on plot No. 82/1 and 82/2.

3. On the 10th of April, 1985, a Division Bench of this Court directed the Standing Counsel appearing for Respondents 1, 2 and 3 to file a counter affidavit specifying therein whether the Petitioner was afforded an opportunity of being heard before the impugned order rejecting the application for renewal of the licence was passed.

4. A counter affidavit has been filed by Sri Ram Chandra Tripathi, Senior Inspector in the office of the District Supply Officer, Varanasi. A perusal of paragraph 13 of the counter affidavit shows that no notice or opportunity was given to the Petitioner before refusing the renewal of his licence. The stand taken by the Respondents is that no notice or opportunity is contemplated before passing any order under Clause 5(c) of the Control Order and as such there was no occasion for giving any notice.

5. We need not go into the other pleas taken in the counter affidavit regarding inspection or absence of the rate board etc, for we do not wish to express any opinion thereon. In our opinion, the writ petition can be disposed of on a short question which was posed by the Division Bench by its order dated 10th April, 1985. The question therefore is that before refusing the renewal of the licence was it necessary for the District Supply Officer to have given an opportunity to the Petitioner. In other words, whether the rules of natural justice were attracted in such a case. Rules of natural justice envisage a right to an unbiased tribunal, a right to notice of the charges and the right to be heard in answer to the charges. These three features of natural justice apply to all such cases where the rules of natural justice are attracted.

6. A person, who is a licensee and whose licence expires on a particular date and where the licence is required to be renewed from time to time, has expectation of renewal of his licence before the expiry of the term of the licence. Unless there

be something against him or there is a change in the policy, a licence is ordinarily to be renewed. Consequently, there comes an expectation and a legitimate expectation too for the renewal of the licence. It thus becomes incumbent upon the authority charged with the renewal of licence either to renew the licence or issue a show cause notice to the licensee for the proposed non renewal of the licence. A licensee is then under an obligation to give a reply. The matter does not end there. The Authority has to consider the reply and then pass an order either renewing the licence or refusing it. In case of the latter, the order must be a speaking order. This procedure will have to be followed if the Statute or the Rules are silent. According to the stand taken by the Respondents, there is no rule nor anything in the Control Order directing the Authority to give any opportunity to the licensee before passing the order of refusal of the licence. The stand taken by the Respondents that it was not incumbent upon the Authority to have given any such opportunity is, in our opinion misconceived.

7. We now refer to the decision in the case of Chingleput Bottlers Vs. Majestic Bottling Company, where the Court referred with approval the decision of Megarry, V.C. in *Mclunnes v. Onslow Fane* (1978) All. ER 211. Megarry, V.C. drew a distinction between initial applications for grant of licence and the revocation, suspension or refusal to renew licences already granted. Their Lordships observed that Megarry, V.C. says:

That there is a substantial distinction between "application cases" and "forfeiture cases". He observes that while an applicant for grant of licence has neither a right to such a grant nor a reasonable expectation that such grant would be made in his favour, but cancellation or forfeiture of an existing licence or refusal to renew a licence, involves a right to a hearing as the applicant has what may be called "reasonable expectation". Megarry, V.C. dealt with the question whether the grant or refusal of licence by the Board of Control is subject to any requirement of natural justice or fairness which would be enforced by the Courts....

Their Lordships said that according to the dicta of Megarry V.C. the Courts will require natural justice to be observed for expulsion from a social club, but not on an application for admission to it. Their Lordships affirmed the above views of Megarry V.C. enunciating the principles of the application of natural justice in case of refusal to renew the licence. The case their Lordships were considering was initial application for the grant of liquor selling licence. Their Lordships held that it was in the nature of an "application case" and the grant of a licence in such a case was no more than a privilege. That could not be enforced by a Writ of Mandamus under Article 226 of the Constitution.

8. The present case is different. Here the Petitioner was a licensee. He had applied, within time, for the renewal of his licence. That renewal was rejected without affording him an opportunity. In our opinion, it was incumbent on the Authority to have afforded him an opportunity of showing cause in case there was proposal for rejecting his application for renewal of licence. It was only after

the disposal of such a reply that the order could be passed. This has not been done in the present case. The impugned order is therefore contrary to settled law and violates the rules of natural justice. We are, therefore, of the view that the impugned order should be quashed and a direction be Issued to the District Supply Officer, Respondent No. 2, to issue a show cause notice to afford an opportunity to the Petitioner before refusing his prayer for renewal of the licence for dealing in coal for the year 1985-86. It goes without saying that the order, if it refuses to renew the licence, must be a speaking order.

9. In the result, therefore, the Writ Petition succeeds and is allowed. The impugned order is quashed and a direction is issued to the District Supply Officer to reconsider the application made by the Petitioner for the renewal of his licence for the year 1985-86 in accordance with law and in the light of observations made above. We further meant that the District Supply Officer should dispose of the application within a month of the receipt of a certified copy of this order.