
(2016) 10 AHC CK 0173
In the Allahabad High Court
Case No : Writ C No. 32272 of 2016

Sushil Kumar

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 19-10-2016

Acts Referred:

Citation : (2017) 4 ADJ 320 : (2017) 121 ALR 385 : (2017) 1 RJ 626

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : Birendra Singh, Advocate, for the Petitioner; C.S.C., Ghanshyam Dwivedi, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.— Heard Sri Birendra Singh, learned counsel for the petitioners, learned Standing Counsel appearing for the State-respondents and Sri Ghanshyam Dwivedi, learned counsel for the respondent no.5.

2. This writ petition has been filed for issuing a writ of certiorari quashing the orders dated 29.6.2016 passed by the Commissioner, Chitrakoot Dham Mandal, Banda, (the respondent no.2) and the District Supply Officer, Banda, (the respondent no.4). The order passed by the respondent no.2 has been brought on record as Annexure I to the supplementary affidavit filed by the petitioner duly sworn on 29th July, 2016 and the order of the same date passed by respondent no.4 has been brought on record as Annexure 1 to the writ petition.

3. Vide order dated 29.6.2016 the Divisional Commissioner has decided the representation filed by Prem Narain and 7 others, who happen to be the retailers (Licensee) under the U.P. Kerosene Control Order, 1962; The aforesaid order has been passed pursuant to the order of this Court dated 9.3.2016 passed in Writ C No. 10826 of 2016 (Prem Narain and 7 others v. State of U.P. and 4 others). Vide order dated 29.6.2016 the Divisional Commissioner, respondent no.2 has directed the Sub Divisional Officer and the District Supply Officer to distribute the

quota of kerosene oil in between 12 fair price shop agents and 27 retailers equally, accordingly the ration cards shall also be attached at both the places, i.e. with the shops of the retailers under U.P. Kerosene Control Order, 1962. The District Supply Officer has complied the aforesaid order by attaching ration cards with both, fair price shops and the retailers and also quantified the quantity of the kerosene oil to be distributed by the fair price shop agents and the retailers.

4. While assailing the impugned orders learned counsel for the petitioners contended that the orders impugned have been passed without affording any opportunity of hearing to the petitioners. Not only that learned counsel for the petitioners has also contended that the petitioners are the fair price shop agents and the Sub Divisional Officer on behalf of the State Government has entered into an agreement with the petitioners for distributing the scheduled commodities of a particular area assigned to the fair price shop agents. Therefore, the quota of kerosene oil could not be unilaterally curtailed without modifying the agreement and without having the version of the petitioners.

5. Refuting the submissions of the learned counsel for the petitioners, Sri Dwivedi, learned counsel who appears for the respondent no.5 submitted that full opportunity was offered to 12 fair price shop agents and they did not file their written objections before the Divisional Commissioner and the Divisional Commissioner after considering the case of the association of respondent no.5 has passed a very reasonable/ equitable order directing the Sub Divisional Officer and the District Supply Officer to equally quantify the quantity of the kerosene oil in between the fair price shop agents and the retailers of kerosene oil. In his submission the order passed by the Divisional Commissioner and the consequential order passed by the District Supply Officer are perfectly in accordance with law and those need no interference under Article 226 of the Constitution of India. He has also submitted that in view of the paragraph no.2 of the Government Order dated 6.4.1990 the cards have rightly been attached and the quantity of the kerosene oil has rightly been quantified. In his submission the appointment of the petitioners has been made only in accordance with the Government Order dated 6.4.1990, therefore, the petitioners are bound by the terms and conditions contained under the Government Order dated 6.4.1990.

6. Considering the submissions of the learned counsel for the petitioners certain queries were made by this Court from the learned standing counsel on 12.8.2016. For appreciation the order dated 12.8.2016 is reproduced herein below:

"Learned counsel for the petitioner is permitted to amend the writ petition.

On 26.7.2016 following order was passed:-

"Learned standing counsel is directed to seek instruction as to whether a person working as fair price shop agent also requires the licence under U.P.Kerosene Control Order, 1962. He shall also seek instruction to the effect that if the fair price shop agent and the licensee/retailer under Kerosene Control Order are

operating in the same area how the distribution of kerosene oil shall be ensured by each of them and how the arrangement of the card holders for obtaining the kerosene oil be made.

Put up as a fresh case on 1st August, 2016." Pursuant thereto learned standing counsel has sought instruction only from the District Supply Officer whereas controversy involved in this case requires the stand of the State Government as to whether there is any specific guidelines with regard to distribution of the kerosene oil through fair price shop agent and licensee under the Kerosene Control Order, 1962.

Learned standing counsel is directed to obtain instruction from Principal Secretary, Food and Civil Supplies in this regard and in case there is any Government Order or policy of the State Government with regard to distribution of kerosene oil through fair price shop agent and retailer located in the same area, that be also brought on record through affidavit duly sworn by an officer of the State Government not below the rank of Secretary/Special Secretary, Food and Civil Supplies.

Put up this case as fresh on 26.8.2016. On that date learned standing counsel shall produce entire record of the Commissioner relating to the proceeding dated 29.6.2016 with respect to distribution of the kerosene oil in between the fair price shop agent and licensee under the Kerosene Control Order, 1962. In the meantime, learned standing counsel shall also file counter affidavit."

7. Pursuant thereto Sri Shashi Bhushan Lal Susheel, Special Secretary, Food and Civil Supplies, Government of Uttar Pradesh, Lucknow has filed his personal affidavit. For ready reference, paragraph nos. 12 and 13 of his affidavit, which are relevant, are reproduced herein below:

"12. That, if at a given place, both the fair price shop agent and the licensee/retailer under Kerosene Control Order are operating in the same area then the attachment of cards and distribution of kerosene oil between the two, is made in accordance with Government Order No. 1177/29-7-33(K.O.)/90 dated 6.4.1990 with special reference to clause 2.1, 2.2 and 2.3 thereof. True copy of the Government Order dated 6.4.1990 is being filed herewith and marked as Annexure no.1 to this affidavit.

13. That it is also submitted that the aforesaid Government Order dated 6.4.1990 also provides that a card holder is at liberty to choose the shop of his choice however in view of the larger interest of card holders, it is by and large ensured that most of the card holders of the area are attached to the fair price shop from where they can obtain food grains as also kerosene oil from only one shop and they have not to wander here and there for fulfilment of their requirements."

8. Learned standing counsel submitted that in paragraph no.12 by typographical error reference has been made to clauses 2.1, 2.2 and 2.3 of the Government

Order dated 6.4.1990, which in his submission is Clauses 1.1, 1.2 and 1.3. For appreciation the aforesaid clauses are reproduced herein below:

"feV~Vh ds rsy ds QqVdj fodzsrkvksa ds lkFk jk"ku dkMksZa dk lEc)hdj.kA

1-1- mfpr nj dh nqdkukssa ds vfrfjDr vU; dk;Zjr feV~Vh ds rsy fjVsyjksa ds lkFk jk"ku dkMksZa dk leqfpr lEc)hdj.k ds u gksus ds dkj.k fodzsrk }kjk bldk nq;i;ksx djus dh laHkkouk jgrh gSA bl dkj.k ls vko";d gS fd ,sls QqVdj fodzsrkvksa ds ;gka jk"ku dkMksZa dk lEc)hdj.k djds lEc) miHkksDrkvksa dks Hkh bldh tkudkjh nh tk;sa ,sls QqVdj fodzsrk] vVSpesUV dh fyLV ds lkFk mfpr nj dh nqdkuksa ds fy;sa fu/kkZfjr lHkh vfHkys[k esuVsu djsaA

1-2- leLr ftyk iwfrZ vf/kdkjh mfpr nj ds nqdku ,oa mDr izdkj ds fjVsyjksa ds chp lEc) jk"ku dkMksZa dh la[;k ds vk/kkj ij feV~Vh ds rsy dh ekfld vkoaVu dj nsa] rFkk fu;fer :i ls muds mBku ,oa forj.k dh ekuhVfjax djrs jgsA

1-3- viuh nqdku Lo;a pqus ;kstuk ds vUrxZr ;fn dksbZ dkMZ /kkjd viuk dkMZ fdLh fjVsyj ls gVkdj fdLh fudVLFk mfpr nj dh nqdku ls lEc) djuk pkgs rks vkosnd ds jk"ku dkMZ dks rn~uqlkj lEc) dj fn;k tk;sa"

9. From the perusal of the aforesaid clauses 1.1, 1.2 and 1.3 of the Government Order dated 6.4.1990 it transpires that no definite provision has been made for attachment of ration cards with the retailers and fair price shop agents. The impugned orders are vague on the point.

10. The bone of contention here in this case is that how the quantity of the kerosene oil is required to be distributed in between the retailers and the fair price shop agents. Submission is that the fair price shop agents in addition to kerosene oil are distributing other scheduled commodities and the retailers are only distributing kerosene oil, therefore, distribution of the kerosene oil must be equal in between the fair price shop agents and the retailers but as discussed herein above, no definite provision has been made to rationalize the distribution of the kerosene oil in between the fair price shop agents and the retailers.

11. Submission of the learned counsel for the petitioners is that the Divisional Commissioner has erred in directing the District Supply Officer and the Sub Divisional Officer of the area to equalize the distribution of the kerosene oil in between the fair price shop agents and the retailers. In his submission that is not permissible in absence of any specific Government Order, terms and conditions of the agreement and the conditions of the licence of the retailers.

12. There may be substance in the submissions of the both the parties but here I am not inclined to address myself on this point as this Court vide order dated 9.3.2016 has directed the Divisional Commissioner to decide the representation made by the Association of respondent no.5 and pursuant thereto the impugned orders dated 29.6.2016 have been passed.

13. The Challenge of the impugned orders is based on the fact that before passing the impugned orders no opportunity of hearing was offered to the

petitioners. The submission in this regard has been made in paragraph no.24 of the writ petition, which is reproduced herein below:

"24. That impugned order dated 29.6.2016 has been passed by respondent no.4 in clear cut violation of the provisions of Government Order dated 6.4.1990. Before passing the impugned order, no enquiry has been conducted, no notice has been issued to the petitioners and further no opportunity of hearing has been provided to the petitioners and thus, impugned order has been passed in utter violation of principle of natural justice."

14. A counter affidavit has been filed by the District Supply Officer and reply to paragraph no.24 of the writ petition has been given in paragraph 27 of the counter affidavit which is also reproduced herein below:

"27.That the contents of paragraphs no. 23, 24 and 25 of the writ petition are wrong as stated hence denied. Suitable reply has already been given in preceding paragraphs of the present affidavit which need no reiteration at this state. The impugned orders passed by the respondent no.4 is in pursuance of direction given by the respondent no.2 while passing the impugned order dated 29.6.2016."

15. In paragraph no.24 of the writ petition it is clearly stated that the impugned order has been passed without there being any notice or opportunity of hearing to the petitioners. There is a vague denial in paragraph no. 27 of the counter affidavit to the averments made in paragraph no.24 of the writ petition. Learned standing counsel was directed to obtain relevant record and he also endorses that from the perusal of the record it does not transpire that any notice or opportunity of hearing was offered to the petitioners.

16. In view of the fact since no notice or opportunity of hearing was offered to the petitioners before passing the impugned orders dated 29.6.2016, I am of the considered opinion that the impugned orders suffer from breach of principle of natural justice. It is settled that any order which leads to civil consequences and even an administrative order has to be passed only after affording an opportunity of hearing to the person against whom order is passed. Reference may be had to the judgments of the Apex Court in *State of W.B. v. Anwar Ali Sarkar*, 1952 SCR 284: AIR 1952 SC 75: 1952 Cri LJ 510, *M/s Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Another* (AIR 1975 SC 266), *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405 : (1978) 2 SCR 272, *Maneka Gandhi v. Union of India* (1978) 1 SCC 248: (1978) 2 SCR 621, *D.K. Yadav v. J.M.A. Industries Ltd.* Reported in 1993 SCC 259, *M/s Southern Painters v. Fertilisers & Chemical Travancore Ltd. and another* AIR 1994 SC 1277, *M.C. Mehta v. Union of India and others* (1999)6 SCC 237; *Aligarh Muslim University and others v. Mansoor Ali Khan* (2000) 7 SCC 529, *Gronsons Pharmaceuticals (P) Ltd. & Anr. v. State of Uttar Pradesh & Ors.*, A.I.R. 2001 SC 3707 and *Mohd. Sartaj and another v. State of U.P. and others* (AIR 2006 SC 3492, the Division Bench judgment of this Court in *Smt Rajni Chauhan v. State of U.P. & Ors.* (2010

(6) AWC 5762), Society for Education and Welfare Awareness (Sewa) thru its secretary v. Union of India thru Ministry of Human welfare (Manav Sansadhan) New Delhi and others (2011 (6) ADJ 787), as well as the Single Judge judgment of this Court in Mohit Kumar Goyal v. State of U.P. and others, 2016 (4) ADJ 151 and M/S Asian Fertilizers Ltd. v. State of U.P. and others, 2016 (4) ADJ 577.

17. In view of the observations made herein above, I am of the opinion that the order dated 29.6.2016 passed by the Divisional Commissioner, respondent no.2 and the consequential order of the same date passed by the District Supply Officer cannot be sustained in the eyes of law and the same are hereby quashed. The writ petition succeeds and is allowed. The Divisional Commissioner, respondent no.2 is directed to pass a fresh order after affording an opportunity of hearing to the petitioners expeditiously, in accordance with law, preferably within a period of two months from the date of production of a certified copy of the order of this Court.