
(2015) 07 AHC CK 0247
In the Allahabad High Court
Case No : C.M.W.P. No. 4777 of 2007

Vansh Bahadur

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 72

Citation : (2015) 6 AWC 5543

Hon'ble Judges : Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : D.P. Shukla, for the Appellant; I.B. Singh, for the Respondent

Final Decision : Allowed

Judgement

Dr. Devendra Kumar Arora, J.—Petitioner, in the instant writ petition, has questioned the correctness and validity of the order dated 16.1.2006 passed by the General Manager, Government Opium and Ksharod Factory, Ghazipur, U.P. (opposite party No. 3) and the appellate order dated 14.8.2007 passed by the Chief Controller, Government Opium and Ksharod Factory, Gwalior, Madhya Pradesh (opposite party No. 2). Apart from above, the petitioner has also challenged the order dated 14.8.2007 passed by the District Opium Officer, Barabanki (opposite party No. 4), whereby the petitioner has been required to deposit a sum of Rs. 16,400. Submission of learned counsel for the petitioner is that petitioner is a cultivator of opium for which he has been granted licence by the competent authority. According to the petitioner, in the crop year 2003-04, the petitioner produced the opium and the same was delivered by him to the District Opium Officer, Barabanki (opposite party No. 4). The opium produced by the petitioner was measured and taken by the opposite party No. 4, which was classified as Class III (Soem) category. The total cost of opium delivered by the petitioner was fixed as Rs. 18,239 and 90% of the amount, i.e. Rs. 16,400 was paid to the petitioner.

2. Contention of the petitioner is that after lapse of considerable long time, a

show-cause notice dated 5.8.2005 was issued to the petitioner, indicating therein that the petitioner's opium has been found adulterated and to show-cause why the same may not be confiscated under Rule 22 of the Narcotic Drugs and Psychotropic Substances Rules, 1985. In this context, the petitioner was directed to appear before the General Manager, Government Opium and Ksharod Factory, Ghazipur, U.P. (opposite party No. 3) on 19.8.2005.

3. It is said that in compliance of the said notice, the petitioner appeared before the opposite party No. 3 and submitted his reply/explanation. It appears that opposite party No. 3 not being satisfied with the reply, so tendered by the petitioner, passed the impugned order dated 16.1.2006 whereby entire opium of petitioner has been confiscated.

4. Feeling aggrieved by the said order dated 16.1.2006, petitioner preferred an appeal before the Chief Controller, Government Opium and Ksharod Factory, Gwalior, Madhya Pradesh on 14.3.2006. The said appeal was rejected by the opposite party No. 2 vide order dated 18.9.2006. Thereafter, opposite party No. 4 passed the order dated 14.8.2007 directing the petitioner to deposit the amount of Rs. 16,400 and provided that in default of payment the amount would be recoverable under Section 72 of Narcotic Drugs and Psychotropic Substances Act.

5. Learned counsel for the petitioner contends that neither the General Manager, Government Opium and Ksharod Factory, Ghazipur, U.P., nor the appellate authority has considered the submissions/points raised by the petitioner and the orders have been passed contrary to the provisions and the procedure as prescribed under the law.

6. Refuting the allegations, Shri Ishan Baghel, Advocate holding brief of Shri I.B. Singh, learned counsel appearing for the Department submitted that the opium of the petitioner was put for chemical analysis and it was found that the same was mixed with ash and other foreign articles. It is also submitted that opening of the sample of the petitioner was not required to be done in the presence of cultivator as the opium of the petitioner was not categorised as suspected but was categorised as category III.

7. Elaborating his submission, learned counsel for the department submitted that the Chemical Analyst reported that the opium is unfit to manufacture alkaloid, copy whereof was supplied to the cultivator by registered post. Consequently, the District Opium Officer, having power to confiscate the opium, passed the order dated 14.8.2007 on the basis of report of the chemical analyst. The order of confiscation is appealable before the Deputy Narcotics Commissioner under Rules 28 of N.D.P.S. Rules but the petitioner did not file any appeal.

8. It has also been clarified that when the opium was deposited before the District Opium Officer by the cultivator, 90% of payment of cost of opium, i.e., Rs. 16,400 was paid to the petitioner and after the report of the Chemical Analyst and after dismissal of the appeal against the said report, the cultivator is

liable to deposit the said amount, which he had extracted by mixing adulterated material. In these circumstances, there is no illegality in the order passed by the District Opium Officer or the General Manager, Factories or the Chief Controller of Government Opium and Alkaloid Factory, Ghazipur, and the writ petition is liable to be dismissed.

9. Before dealing with the controversy involved in the present writ petition, it would be apt to reproduce the relevant provisions of Narcotic Drugs and Psychotropic Substances Rules, 1985 (hereinafter referred to as "N.D.P.S. Rules").

Chapter III of N.D.P.S. Rules deals with Opium Poppy cultivation and production of opium and poppy straw. Rule 10 deals with the designation of Lambardar and says:

"Designating of Lambardar.--The District Opium Officer may designate one of the cultivators of opium poppy as Lambardar in each village where opium poppy cultivation is permitted, who shall perform such functions and on such terms and conditions as may be specified from time to time by the Narcotics Commissioner."

Rule 14 deals with the delivery of opium produced and provides that;

"All opium, the produce of land cultivated with opium poppy, shall be delivered by the cultivators to the District Opium Officer or any other officer duly authorised in this behalf, by the Narcotics Commissioner at a place as may be specified by such officer."

Rule 15 deals with the weight of the opium, its examination and classification and says:

"15. Opium to be weighed, examined and classified.--All opium delivered by the cultivators to the District Opium Officer or any other officer authorised as aforesaid, shall, in the presence of the concerned cultivator or any person authorised by him and the Lambardar of the village, be weighed, examined and classified according to its quality and consistence and forwarded by the District Opium Officer to the Government Opium Factory in such manner as may be specified by the Narcotics Commissioner."

Rules 17, 18, 22 and 23, which are also relevant for the present purposes are also being reproduced as under;

"17. Procedure where cultivator is dissatisfied with classification of opium.--When opium delivered by a cultivator to the District Opium Officer or any other officer authorised in this behalf, is suspected of being adulterated with any foreign substances, it shall be forwarded to the Government Opium Factory separately, after it is properly sealed in the presence of the cultivator and the concerned Lambardar.

18. Drawing of samples from opium sent to Government Opium Factory under Rule 16 or Rule 17.--The sealed opium received separately in accordance with Rules 16 and 17, shall be opened and sample drawn thereof in the presence of

the cultivator, if he so desired, to whom, a notice intimating the date and time in this behalf, shall be sent well in advance.

22. Confiscation of adulterated opium.--All such opium received separately under Rule 17, if found to be adulterated on examination by the Chemical Examiner in the Government Opium Factory may be liable to confiscation by the General Manager.

23. Adjudication of confiscation of adulterated opium.--No such confiscation shall be ordered by the General Manager unless the concerned cultivator is given a reasonable opportunity of showing cause against the proposed order and is heard in person, if he so desires."

10. From the provisions of the aforesaid it is crystal clear that the opium shall be delivered by the cultivators to the District Opium Officer or any other officer, authorised in this behalf in view of Rule 14. As per Rule 15, in presence of the Lambardar and the cultivator, the opium so delivered by the cultivator shall be weighed, examined and classified according to its quality and consistence and forwarded by the District Opium Officer to the Government Opium Factory.

11. Rule 17, referred to above makes it abundantly clear that when opium delivered by a cultivator to the District Opium Officer is suspected of being adulterated with any substance, the authorities are under an obligation to forward such opium to the Government Opium Factory separately, after proper seal in presence of the cultivator and the concerned Lambardar.

Rule 18 puts an onus on the concerned authority to open the seal opium sent to Government Opium Factory either under Rule 16 or Rule 17, after giving proper intimation of the date and time, so that cultivator may be able to present at the time of opening of seal.

12. It would be relevant to add here that it is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner, then the said authority has to exercise it only in the manner provided in the statute itself. In *Nazir Ahmed v. King Emperor*. LR 63 Ind. Ap 372, the Apex Court has laid down as under:

"It is the basic principles of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule traceable to the decision in *Taylor v. Taylor* which was followed by Lord Roche in *Nazir Ahmad v. King Emperor*."

13. In the instant case, respondents have failed to produce any document to establish that the sample was taken in presence of the cultivator and Lambardar; was kept separately in the container for chemical examination: and at the Laboratory/Factory, the seal was broken after due intimation to the petitioner as required under the rules, referred to above. Respondents have also failed to show any letter sent to the petitioner intimating the date and time for removing the seal of the container. Thus, it can easily be summed up that statutory rules

have been violated with impunity.

14. It may be added that in paragraphs 17 and 18 of the writ petition the petitioner has taken specific stand that Rule 30 has not been followed by the appellate authority and the respondents have adopted different yardstick in the matter of confiscation as the opium of one Uma Shanker was also found to be adulterated but against him no confiscation order was passed. The respondents, in the counter-affidavit, have given evasive reply in respect of the aforesaid allegations.

15. It may be added that Rule 30 of the aforesaid Rules lays down in unambiguous words that the appellate authority shall give an opportunity to the appellant to be heard, if he so desires. Rule 30(4) provides that the order of the appellate authority disposing of the appeal under this rule shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

16. A perusal of the impugned appellate order dated 18.9.2006 shows that the appellate authority while rejecting the appeal, has only given the reference of Chemical Analysis and not a single plea as raised by the petitioner has been considered and dealt in a correct manner. Further, it is also not clear as to whether prior to disposal of appeal, any notice was sent to the petitioner asking him to put-forth his point of view, if he so desires. Needless to observe that the practice of the executive authority dismissing statutory appeal against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law. "Recording of reasons" in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. In the absence of mandatory requirement, the impugned appellate order cannot survive. For the reasons aforesaid, the writ petition is allowed and impugned order dated 16.1.2006 passed by the opposite party No. 3, and the orders dated 14.8.2007 passed by opposite party Nos. 2 and 4 are hereby quashed. Consequences to follow.

Costs easy.