

(2008) 12 AHC CK 0170

Allahabad High Court (Lucknow Bench)

Case No: None

Kanak Singh

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision: Dec. 4, 2008

Hon'ble Judges: Rajiv Sharma, J

Final Decision: Disposed Of

Judgement

Rajiv Sharma, J.

On an application for disposal of interim relief, with the consent of learned counsel for the parties, I proceeded with the hearing of the case.

Heard learned counsel for the parties.

It has been stated by the counsel for the petitioner that the petitioner's fair price shop agreement has been suspended on 5.9.2007. The petitioner tendered his reply on 10.9.2007. He also filed an appeal against the suspension order. The Commissioner outrightly rejected the appeal preferred by the petitioner.

Learned counsel for the petitioner submits that while suspending the petitioner's fair shop agreement, he has not been afforded opportunity of hearing.

Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

Besides, natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary.

The Hon'ble Supreme Court in umpteen cases has reiterated that a person who is put to any harm, he shall first be afforded adequate opportunity of showing cause. In D.K. Yadav Vs. J.M.A. Industries; (1993) 3 SCC 259 the Supreme Court while laying

emphasis on affording opportunity by the authority which has the power to take punitive or damaging action held that orders affecting the civil rights or resulting civil consequences would have to answer the requirement of Article 14. The Hon"ble Apex Court concluded as under:

"The procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14. The procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. Article 14 has a pervasive procedural potency and versatile quality, equalitarian in its soul and principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable, and not arbitrary, fanciful or oppressive."

In *National Building Construction Corporation v. S. Raghunathan*; (1998) 7 SCC 66, it was observed by the Apex Court that a person is entitled to judicial review, if he is able to show that the decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he is informed the reasons for withdrawal and the opportunity to comment on such reasons.

At this juncture it would be relevant to produce relevant portion of paragraph 34 of the judgment rendered in *State Bank of Patiala and others v. S.K.Sharma*, JT 1996(3) SC 722 Though this decision was given in a service matter but the Hon"ble Apex Court has dealt with the principles of natural justice and the result if it is not followed:

(1)Where the enquiry is not governed by any rules/regulations/ statutory provisions and the only obligation is to observe the principles of natural justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e. between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice, in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(2)While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

Keeping all these aspects of the matter in view, I am of the opinion that the petitioner has not been afforded opportunity of hearing before passing the suspension order.

In view of above, the writ petition is allowed and the orders dated 21.5.2008 passed by the Commissioner and the suspension order dated 5.9.2007 passed by the SubDivisional Officer are hereby quashed. However, it will be open for the opposite parties to pass fresh order after affording reasonable opportunity of hearing to the petitioner.