

Ramesh Chander Jain v. Deputy Commissioner, Gurgaon and another (M. M. Punchhi, J.)

The learned counsel referred to the following decisions reported as :

- (i) A.I.R. 1967 S.C. 1643
- (ii) A.I.R. 1983 S.C. 1461
- (iii) A.I.R. 1975 S.C. 2299

These have no bearing on the facts of the instant case.

(11) For the foregoing reasons, we hold that the impugned provisions are not *ultra vires* of any of the provisions of the Constitution and accordingly we dismiss this writ petition.

R.N.R.

Before : M. M. Punchhi and A. L. Bahri, JJ.

RAMESH CHANDER JAIN,—Petitioner.

versus

DEPUTY COMMISSIONER, GURGAON AND ANOTHER,
—Respondents.

Civil Writ Petition No. 11043 of 1988.

August 17, 1989.

Constitution of India, 1950—Arts. 226 and 227—Show-cause notice for cancellation of licence—Licencee in reply claiming personal hearing—No such hearing granted—Validity of such order.

Held, that we are of the view that there has been a miscarriage of justice. Written pleadings apart, oral argument is part of our judicial process. Even the same is necessary at the quasi judicial level. It is not a ritual which can be assumed to have been performed by giving paper opportunity. Since the petitioner had submitted a detailed reply against the show-cause notice, the least that was expected by the District Food and Supplies Controller was to intimate a date of hearing to the petitioner so that he could substantiate and explain what was stated in writing. In these circumstances, we are of the view that the appellate remedy availed of by the petitioner also suffered from the basic defect since it endorsed the views

of the District Food and Supplies Controller in the matter of grant of personal hearing.

(Para 3).

Writ petition under Articles 226/227 of the Constitution of India praying that:—

- (i) *record of the case be summoned from respondent No. 2 and after perusal of the same a suitable writ, order or direction be passed quashing the order Annexures P-3 and P-5.*
- (ii) *a direction be issued to the respondents that the Food Distribution Licence of the petitioner for village Kherki Majar is restored.*
- (iii) *filing of advance copies of the writ petition for service of the respondents be dispensed with.*
- (iv) *filing of certified copies of Annexures P-1 to P-5 may kindly be dispensed with.*
- (v) *cost of the writ petition be allowed.*

It is further prayed that during the pendency of the writ petition, operation of the impugned orders Annexures P-3 and P-5 may kindly be stayed till the decision of the writ petition.

CIVIL MISC. NO. 15905 of 1988.

Application under Section 151 CPC praying that during the pendency of the writ petition, operation of orders Annexures P/3 and P/5 be stayed.

Ashok Aggarwal, Sr. Advocate with Neena Bansal, Advocate, for the petitioner.

S. S. Ahlawat, D.A.G. Haryana for the State.

JUDGMENT

(1) After hearing learned counsel for the parties, we think it better to dispose of this petition at this stage.

(2) The petitioner was a licensed depot holder for the sale and distribution of food articles in three villages in district Gurgaon, Haryana. For some defalcations, he was issued a show cause notice,

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dated 22nd April, 1988, Annexure P.1, by the District Food and Supplies Controller, Gurgaon asking him to show cause as to why his licence be not cancelled. He was simultaneously asked that he could show cause within the stipulated period by personally explaining the case to the said officer. The petitioner controverted the basis of the show cause notice by submitting a lengthy reply, Annexure P.2. Since no specific date was given to him for hearing, it was not wrong for him to anticipate that he would get an intimation of the date as had asked for a personal hearing. The District Food and Supplies Controller thought that it was enough compliance of law if a show cause notice had been served and an open opportunity given to the petitioner to come and explain his case. He accordingly cancelled his licence. The appeal of the petitioner was dismissed by the Deputy Commissioner, Gurgaon, on the ground that no personal hearing as asked for was necessary and further that the petitioner did not deserve licence in three villages which by itself justified cancellation.

(3) Having gone through the impugned orders, Annexures P.3 and P.5, we are of the view that there has been a miscarriage of justice. Written pleadings apart, oral argument is part of our judicial process. Even the same is necessary at the quasi-judicial level. It is not a ritual which can be assumed to have been performed by giving paper opportunity. Since the petitioner had submitted a detailed reply against the show cause notice, the least that was expected by the District Food and Supplies Controller was to intimate a date of hearing to the petitioner so that he could substantiate and explain what was stated in writing. In these circumstances, we are of the view that the appellate remedy availed of by the petitioner also suffered from the basic defect since it endorsed the views of the District Food and Supplies Controller in the matter of grant of personal hearing.

(4) For these reasons, we allow the writ petition, quash the orders, Annexures P.3 and P.5, and remit the case back to the District Food and Supplies Controller for granting the petitioner a hearing. He shall now issue a date to the petitioner for the purpose when he can conveniently hear him. No costs.

S.C.K.