

Before J. V. Gupta, J.

TEJINDER SINGH,—Petitioner.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ Petition No. 3234 of 1987

July 26, 1989.

*Air Craft Act (XXII of 1934)—S. 6—Air Craft Rules, 1937—
Rl. 39-A(2)—Petitioner's licence cancelled in public interest—Oppor-
tunity of hearing not granted—Validity of such order.*

Held, that since the matter was quite sensitive, as it concerned the safety of the company. Once the petitioner was given notice and allowed to use the aircraft, the mischief would have been there and the very purpose of the cancellation of the licence would have been frustrated. Thus, it could not be successfully argued on behalf of the petitioner that the petitioner was entitled to an opportunity of hearing before his licence could be cancelled. The licence has been cancelled on the basis of secret report against the petitioner as contained in the record file produced in this Court. (Para 5)

Petition under Article 226/227 of the Constitution of India, praying that this Hon'ble Court be pleased to issue a writ in the nature of Mandamus or Certiorari or such other writ, direction or order as this Hon'ble High Court deems just and fit in the circumstances of the case;

- (i) for the respondents to produce the complete records of the case.
- (ii) to cancel the order of Director General of Civil Aviation No. 1-999/83-L(1) dated 3rd December, 1988 (Annexure P. 1) debarring the petitioner from holding any licence as permissible under Air Craft Rules, 1937.
- (iii) to return the Private Pilot's Licence of the petitioner to him.
- (iv) to direct the respondents to allow him to continue his flying training without any let or hinderance and to appear in the various examinations and tests starting from July, 1987 which it is necessary for the petitioner to pass at appropriate stages before May, 1988.

(v) to pass such other direction or order as this Hon'ble High Court deems just and fit; and

(vi) to award costs to the petitioner.

G. S. Grewal Sr. Advocate with S. S. Bajwa Advocate, for the Petitioner.

H. S. Brar, Advocate, for the Respondents.

JUDGMENT

J. V. Gupta, J.

(1) The petitioner got his private Pilot's Licence, No. 3651 on January 22, 1986, from the Director General, Civil Aviation, (hereinafter called the DGCA) and simultaneously continued his studies for obtaining a Commercial Pilot's Licence. The said licence was withdrawn by the DGCA in December, 1986,—*vide* Annexure P.1. It is this order which has been challenged by the petitioner in this writ petition. According to the said order, the petitioner has been debarred to hold the licence under sub-rule (2) of rule 39-A of the Aircraft Rules, 1937 (hereinafter called the Rules). It provides :—

“The Central Government may debar a person permanently or temporarily from holding any licence mentioned in rule 38 if in its opinion it is necessary to do so in public interest.”

2. The learned counsel for the petitioner submitted that section 6 of the Aircraft Act, 1934 (hereinafter called the Act), authorises the Central Government to make orders in emergency. According to the learned counsel, if the Central Government is of the opinion, that in the interest of the public safety or tranquility the issue of all or any of the orders enumerated therein is expedient, it may by notification in the official Gazette, make such order or orders. Thus, according to the learned counsel under section 6(1) (a) only a licence could be cancelled in the interest of public safety or tranquility whereas under the abovesaid rule, the licence could be cancelled in public interest, which according to the learned counsel, was *ultra vires* the Act itself. I do not find any force in this contention.

(3) Section 6 of the Act does not give powers to the Central Government to make rules. It only provides for the powers of the

Central Government to make orders in emergency. The power of the Central Government to make the rules is provided under section 5 of the Act, which reads as under :—

- “(1) The Central Government may, by notification in the official Gazette, make rules regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft and for securing the safety of aircraft operations.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for,—
- (a)
to
(f)
- (g) the licensing of persons employed in the operation, manufacture, repair or maintenance of aircraft;
- (h)
to
(rr)

Consequently, the Rules, known as the Aircraft Rules, 1937 have been framed. It has been stated therein *inter alia* that in exercise of the powers conferred by sections 5 and 7 and sub-section (2) of section 8 of the Aircraft Act, 1934, (XXII of 1934) and section 4 of the Indian Telegraph Act, 1855 (XXII of 1885), the Central Government is pleased to make the said Rules.

(4) Faced with this situation, the learned counsel for the petitioner submitted that sub-rule (1) of rule 39-A of the Rules provides that where the licensing authority is satisfied after giving him an opportunity of being heard, that any person is habitual criminal or is habitually intemperate in the use of alcohol, or is an addict of narcotics, drugs and the like, or is using, has used, or is about to use an aircraft in the commission of a cognizable offence or in contravention of these rules, or has, by his previous conduct as member of the crew of an aircraft, shown that he is irresponsible in the discharge of his duties connected with his employment or is likely to endanger the safety of the aircraft or any person or thing carried therein, or of other aircraft or persons or things on the

ground, the licensing authority may, for reasons to be recorded, in writing, make an order disqualifying that person for a specified period from holding or obtaining a licence. According to the learned counsel sub-rule (2) of rule 39-A which authorises the Central Government to debar a person permanently or temporarily from holding any licence, should also require that before passing such an order, an opportunity of being heard should be given to the person concerned. Thus, argued the learned counsel, since no opportunity was given to the petitioner for being heard, the impugned order is liable to be set aside. The learned counsel further contended that not only according to the said rule, on the principle of natural justice as well since the cancellation of the licence affects the civil rights of the petitioner, he was entitled to a notice before the withdrawal of his licence in the absence of which, the order passed was arbitrary and thus hit by Article 14 of the Constitution. In support of the contention, the learned counsel relied upon *Maneka Gandhi v. Union of India* (1), particularly to paragraph 61 of the said judgment. It was observed therein that the law must therefore now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.

(5) The learned counsel for the Union of India submitted that the licence has been cancelled in public interest. It was a sensitive matter as it concerned the safety of the country. Since the licence was for flying an aircraft, once he was allowed to do so, the mischief would have been done. In these circumstances, argued the learned counsel, the question of issuing any notice prior to the cancellation of the licence was not warranted. In support of the contention, the learned counsel relied upon *Union of India v. Charanjit Kaur* (2).

(6) On the last date of hearing, the learned counsel for the Union of India was directed to produce the personal file of the petitioner for the satisfaction of this Court which has been produced today.

(7) As regards the law laid down by the Supreme Court in *Maneka Gandhi's case* (supra), it was noticed in paragraph 61 of the judgment as follows :

“The rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given

(1) A.I.R. 1978 S.C. 597.

(2) A.I.R. 1987 S.C. 1057.

case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case."

Thus, taking into consideration the said observations and the law laid down by the Supreme Court, on the facts and circumstances of the present case, since the matter was quite sensitive, once the petitioner was given notice and allowed to use the aircraft, the mischief would have been there and the very purpose of the cancellation of the licence would have been frustrated. Thus, it could not be successfully argued on behalf of the petitioner that the petitioner was entitled to an opportunity of hearing before his licence could be cancelled. The licence has been cancelled on the basis of secret report against the petitioner as contained in the record file produced in this Court.

(8) Consequently, this writ petition fails and is dismissed with no order as to costs.

P.C.G.

Before J. V. Gupta, J.

HOLA RAM, SON OF GIRDHARI LAL,—*Plaintiff/Petitioner.*

versus

KEWAL KRISHAN AND OTHERS,—*Defendants/Respondents.*

Civil Revision No. 322 of 1988.

July 28, 1989.

Civil Procedure Code Section 115—Plaintiffs claiming to be tenant in equal shares—Death of one tenant—Claim of the other tenant on whole of land—Such claim—Legality of.

Held, that the plaintiffs claimed to be the tenants on the suit land in equal shares, i.e., one half each. If once the shares are determined then on the death of one tenant the other tenant would not claim to be the tenant on the whole land. Para 4)