

LETTERS PATENT APPEAL

Before Bhandari, C. J. and Grover, J.

SHRI UTTAM SINGH,—Appellant.

versus

THE DISTRICT FOOD AND SUPPLIES CONTROLLER,
AMRITSAR,—Respondent.

Letters Patent Appeal No. 43 of 1957.

Punjab Coal Control Order, 1955—Paragraphs 10 and 11—Coal Depot, whether can be cancelled for reasons other than those mentioned in paragraphs 10 and 11—Such cancellation, whether entitles the depot-holder to apply for a writ of mandamus—Constitution of India (1950)—Article 226—Writ of Mandamus—When can issue.

Held, that as the express mention of one thing implies the exclusion of another, the express mention of the fact that a depot may be cancelled only under certain circumstances detailed in paragraphs 10 and 11 of the Punjab Coal Control Order, 1955, implies that it may not be cancelled under any other circumstances. As the powers exercisable by the State Government under the said order are no larger than the powers exercisable by the District Magistrate or by the Director of Industries, Punjab, it is not within the competence of the State Government to cancel the depot on any ground other than a ground mentioned in paragraph 10 or 11 of the Order of 1955. A depot-holder whose depot has been cancelled on a grounds other than those mentioned in paragraphs 10 and 11 of the Punjab Coal Control Order, 1955, had a clear legal right to continue to hold the depot without let or hindrance and a corresponding legal duty devolved on the State to refrain from cancelling his coal depot. When the State Government fails to perform the duty imposed on it by law, the person aggrieved has the right to the enforcement of the said duty by the issue of a writ of mandamus.

Held also, that a mandamus can issue only if the Court is satisfied that the petitioner has a specific legal right to the performance of the act sought to be enforced and that the

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respondent has a legal duty to perform the said act. The right must be so clear and certain as not to admit of any reasonable doubt and the duty must be a duty specially enjoined by law. If the right be doubtful or the duty discretionary the writ will be refused. Mandamus lies to compel an act which the party against whom it is directed must perform.

Letters Patent Appeal under Clause 10 of the Letters Patent of the Punjab High Court against the judgment of Hon'ble Mr. Justice G. D. Khosla, dated the 8th February, 1957, passed in C.W. No. 23 of 1957.

C. L. AGGARWAL, NARINDER SINGH and M. S. SETHI, for Appellant.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

JUDGMENT

Bhandari, C.J. BHANDARI, C.J.—This petition raises the question whether it is within the competence of the State Government to cancel a coal depot even though the provisions of paragraph 10 or 11 of the Punjab Coal Control Order, 1955, have not been contravened.

The facts of the case are simple and not in dispute. Sometime in July, 1955, the Deputy Commissioner of Amritsar, invited applications for the allotment of a coal depot by drawing lots. The lots were drawn on the 3rd September, 1955. Smt. Savitri Devi Sud obtained the first place, Shri Uttam Singh Nagpal the second place and Shri Nihal Chand the third place. Before issuing an order for the allotment of the coal depot the district authorities considered it desirable to enquire from the other candidates if they had any objections to the eligibility of the successful candidates. As a consequence of this enquiry several representations were received in which the eligibility of Smt. Savitri Devi Sud was challenged on

the ground that the income of her husband exceeded Rs. 100 per mensem as it was one of the conditions for the allotment of coal depot at the time that the applicant's income should not exceed Rs. 100 per mensem. Smt. Savitri Devi's name was accordingly removed from the list and the depot was allotted to Uttam Singh petitioner who was the next successful candidate on the list. Smt. Savitri Devi submitted a representation in which she protested against the order of allotment in favour of Uttam Singh and stated that the income of her husband was less than Rs. 100 per mensem. She accordingly prayed that the depot be allotted in her name. In view of this representation and the other representations which were received by Government against the allotment of coal depot to the petitioner, Government decided to review the policy regarding allotment of coal depots by drawing lots and embarked on a new policy of issuing permits on merit. It was in consequence of this new policy that on the 6th December, 1956, the District Food and Supplies Controller, Amritsar, informed the petitioner that Government had decided to cancel his coal depot with immediate effect and that his name had been removed from the list of coal depot-holders. On the 4th January, 1957, the petitioner presented a petition under Article 226 of the Constitution in which he complained that the State Government had no power to cancel his depot when he had been complying with all the instructions which had been issued from time to time and when he had never contravened the provisions of the Order of 1955.

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When this petition came up for consideration before a learned Single Judge of this Court it was contended that the order of cancellation was void and of no effect as no notice had been given to the petitioner before his permit was cancelled and as the communication which was sent to him did not

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contain any reasons upon which the permit was cancelled. The learned Judge came to the conclusion that although a permit can be cancelled at any time under paragraph 5(d) of the Order of 1955, and although it is incumbent on the officer cancelling the permit to give reasons for cancellation, no reasons need be given when the order of cancellation is passed by the State Government itself. It was held further that as the petitioner's permit had not been granted to any one else and as it was open to the petitioner to apply for it afresh, it was not necessary for this Court to interfere with the order the validity of which has been challenged in this case. The petitioner is dissatisfied with the order and has come to this Court in appeal under clause 10 of the Letters Patent.

Paragraph 10 of the Order of 1955 provides that if a depot-holder contravenes any of the provisions of this Order or any other instructions of the Director or the District Magistrate, then without prejudice to any other punishment to which he may be liable, the District Magistrate may for reasons to be recorded in writing direct the depot-holder to suspend his coal business for a period to be specified by him or cancel the coal depot of the depot-holder. Paragraph 11 declares that if any person obtain a depot by giving wrong facts in his application, then without prejudice to any other punishment to which he may be liable, the District Magistrate may for reasons to be recorded in writing cancel his coal depot. As the express mention of one thing implies the exclusion of another, the express mention of the fact that a depot may be cancelled only under certain circumstances implies that it may not be cancelled under any other circumstances.

Mr. C. L. Aggarwal, who appears for the petitioner, contends that there are two reasons and

two reasons alone for which the depot of his client could be cancelled, namely (1) if he had contravened any of the provisions of the Order or any other instructions of the Director or the District Magistrate, or (2) if he had obtained a depot by giving wrong facts in his application. His client's depot was not cancelled on either of these two grounds, for he had been working to the complete satisfaction of the district authorities. His depot was cancelled on a ground which is wholly unauthorised by law, namely that Government had decided to revoke the policy concerning allotment of depots which was being followed in the past and had adopted a policy of giving out depots on merit. There is in my opinion considerable force in this argument. As the powers exercisable by the State Government are no larger than the powers exercisable by the District Magistrate or by the Director of Industries, Punjab, it was not within the competence of the State Government to cancel the depot on any ground other than a ground mentioned in paragraph 10 or paragraph 11 of the Order of 1955.

The question now arises whether the rights of the petitioner can be enforced by the issue of the coercive writ of mandamus. A mandamus can issue only if the Court is satisfied that the petitioner has a specific legal right to the performance of the act sought to be enforced and that the respondent has a legal duty to perform the said act. The right must be so clear and certain as not to admit of any reasonable doubt and the duty must be a duty specially enjoined by law. If the right be doubtful or the duty discretionary the writ will be refused. Mandamus lies to compel an act which the party against whom it is directed must perform.

There is not the slightest suggestion that the petitioner in the present case had obtained his

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depot by false pretences or that he had contravened any of the provisions of the Order of 1955 or that he had failed to comply with any instruction issued by competent authority. It seems to me, therefore, that he had a clear legal right to continue to hold the depot without let or hindrance. A corresponding legal duty devolved on the State to refrain from cancelling his coal depot. The State Government has failed to perform the duty which has been imposed on it by law and it seems to me, therefore, that the petitioner has a right to the enforcement of the said duty by the issue of a writ of mandamus.

For these reasons I would allow the appeal, set aside the order of the learned Single Judge and require the State Government to pass an order in conformity with the provisions of law. As this appeal is being allowed on the ground that the order of the State Government was in excess of the jurisdiction conferred upon it by law and as the question of jurisdiction was not raised before the learned Single Judge, I would leave the parties to bear their own costs.

GROVER, J.—I agree.

B.R.T.

REVISION CRIMINAL.

Before Capoor, J.

SHRIMATI GURDIAL KAUR,—Petitioner.

versus

JANG SINGH,—Respondent.

Criminal Revision No. 1318 of 1956.

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Code of Criminal Procedure (V of 1898)—Section 488—Application for maintenance—Compromise between the parties—Whether such compromise ipso facto ousts jurisdiction of Magistrate to take action under the section—“Mutual Consent”—Meaning of—Husband having a second wife—First wife choosing to live separately—Whether such separate living the result of mutual consent.