THE HIGH COURT OF MADHYA PRADESH BENCH

AT GWALIOR

SINGLE BENCH

Writ Petition No.5424/2024

Lakhan Singh

Vs.

The State of M.P. and another

Shri D.S. Raghuwanshi – Advocate for the petitioner.

Shri Ravindra Dixit – Government Advocate for the respondents/State.

And

Writ Petition No.4521/2024

Surendra Singh Rawat

Vs.

The State of M.P. and another

Shri D.S. Raghuwanshi – Advocate for the petitioner.

Shri M.S. Jadoun – Government Advocate for the respondents/State.

Present: Hon'ble Shri Justice Anand Pathak

O R D E R

[Delivered on day of July, 2024]

Heard on admission.

Regard being had to the similitude of the controversy, both the matters are being heard analogously and decided by this common order. For convenience sake, facts of writ petition No.5424/2024 are taken into consideration

2. The present petition under Article 226 of the Constitution has been preferred by the petitioners seeking following reliefs:-

> "(i) That, the impugned order dated 15.02.2024 (Annexure P/1) passed by the respondent No.2 may kindly be quashed and set aside.
>
> (ii) That, other relief which is just and proper in the facts and circumstances of the case may also be granted."

3. Precisely stated facts of the case are that petitioner (In W.P. No.5424/2024) is holding the post of Panchayat Secretary and petitioner (In W.P. No.4521/2024) is holding the post of Sarpanch and both were posted at Gram Panchayat Dhobat, Janpad Panchayat Bhitarwar, District Gwalior w.e.f. 2024 at the relevant point of time. In the year 2021, an inquiry was conducted against the petitioners based upon certain complaints filed. In the said inquiry, misappropriation of funds and corruption was found. It

was found that recovery of certain amount is required to be made against the petitioners. On the basis of aforesaid, notice dated 15.03.2021 was issued to the petitioner (In W.P. No.5424/2024) by Chief Executive Officer, Zila Panchayat Gwalior purportedly under the **Madhya Pradesh Panchayat Sewa (Discipline and Control) Rules 2011 and revised Rules, 2017.** Chief Executive Officer, Zila Panchayat vide order dated 15.03.2021 (Annexure P/3 in W.P. No.4521/2024) gave show cause notice to the petitioner (In W.P. No.4521/2024) purportedly under the provisions of Adhiniyam 1993 and directed him to give reply. Petitioners replied the aforesaid notices by way of filing of reply dated 26.03.2021 (Annexure P/4) and dated 26.08.2022 (Annexure P/6 attached with W.P. No.4521/2024). In reply, petitioners admitted their guilt /misconduct and informed the authority that they have already deposited Rs.40,000/- **each** in the Nodal A/c No.3092514 of Zila Panchayat and prayed for depositing the remaining part in installments. Thereafter, it appears that another notice dated 15.06.2022 was issued to the petitioners purportedly under Section 92 of the **Madhya Pradesh Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993** (hereinafter referred as 'Adhiniyam, 1993'). In the said show cause notice, reference of an inquiry report was referred, which was a four member committee, which inquired and thereafter came to a conclusion about alleged misconduct of petitioners. Thereafter, petitioners appeared in the proceedings and

submitted their reply. After submission of reply, hearing was conducted and thereafter impugned order dated 15.02.2024 (Annexure P/1) has been passed, therefore, petition has been preferred.

4. It is the submission of learned counsel for the petitioners that no proper opportunity of hearing was provided to the petitioners because Sections 89 and 92 of the Adhiniyam, 1993 contemplates reasonable opportunity of hearing. Before Proceedings under Section 89, no opportunity of hearing was given. On merits, petitioners submitted that job cards were not prepared by the petitioners whereas same were prepared by the private company, therefore, petitioners are innocent and falsely implicated. Cattle shades were found to be in order in inquiry, however; the recovery of cattle shades have been ordered in the matter. Therefore, petitioner preferred this petition.

5. Learned Government Advocates for the respondents/State opposed the prayer and submitted that impugned order dated 15.02.2024 (Annexure P/1) has been passed purportedly under Sections 40, 89, 92 of the Adhiniyam, 1993, against the petitioners who were working as Panchayat Secretary and Sarpanch respectively. Therefore, it cannot be said that it is an order in respect of Section 92 of the Adhiniyam, 1993 only. It is a joint order and in the said proceedings, opportunity of hearing was provided to the petitioners. As per the relevant circulars, Chief

Executive Officer, Zila Panchayat is entitled to pass impugned order. Therefore, there is not illegality and arbitrariness in passing the impugned order. Petitioners are facing serious allegations in which embezzlement of public money is involved. Complaints against the petitioners are many-fold and on many counts, petitioners failed in their duties to perform as Panchayat Secretary as well as Sarpanch. Therefore, Government Advocate supported the impugned order and prayed for dismissal of this petition.

6. Heard the learned counsel for the parties and perused the documents appended thereto.

7. This is a case where petitioners are facing wrath of impugned order dated 15.02.2024 which has been passed by the competent authority after giving opportunity of hearing in detail to the petitioners.

8. Show cause notice was given to the petitioners on 07.02.2023. In pursuance thereof, on 10.02.2023 petitioners submitted their reply and accepted that recovery is proposed against them. They have already deposited the amount on 07.02.2023 in the account of Zila Panchayat, thereafter, petitioners requested the authorities to drop the proceedings against them. Said fact finds place at internal page No.30 of impugned order (Page 32 of Paper Book). In the said impugned order, it is further mentioned that another show cause notice was given in respect of inquiry report dated 26.12.2022 in respect of certain allegations, in which

petitioners filed their reply on 13.04.2023. They admitted their misconduct and again they have referred the fact that certain amount has been deposited by them. Therefore, it is not a case where petitioners were never given any opportunity of hearing in proceedings under Section 89 of the Adhiniyam, 1993. Initially, a four members committee enquired into the complaint received against conduct of petitioners and inquiry report reveals the misconduct of petitioners. Thereafter, proceedings under Section 89 of the Adhiniyam, 1993 was undertaken, in which they admitted their misconduct/guilt and referred the fact that they have already deposited the said amount. Therefore, it is not a case of non-affording any opportunity of hearing to the petitioner.

9. Even otherwise, Sections 89 and 92 of the Adhiniyam, 1993 are inter-related in a manner that Section 89 ascertains the liability of Panch/Panchayat Secretary for loss/misappropriation caused to the Panchayat and Section 92 of the Adhiniyam, 1993 is in the nature of execution of the said recovery ordered by the authority under Section 89 of the Adhiniyam, 1993. Section 92 gives power to execute for recovery of record, article and money from the persons, who are held guilty. Once preliminary inquiry was held in which liability was ascertained, thereafter, show cause notices were issued, in which petitioners admitted their guilt and deposited the amount which, according to them, was allegedly misappropriation (although they denied any misappropriation) and when detail order

has been passed, that too incorporating the provisions of Section 89 read with Section 92 of the Adhiniyam, 1993, then no case is made out for interference especially looking to the serious nature of allegations of misappropriation of public funds caused by the petitioners.

10 From the perusal of inquiry report submitted in Writ Petition No.4521/2024 which appears to be detail inquiry in which every job cards numbers and individual have been verified and thereafter inquiry report was submitted for consideration. Both the petitioners nowhere raised any doubt over the inquiry report and did not rebut the contentions of it. Therefore it was categorical admission of both the petitioners about their guilt.

11. The Hon'ble Apex Court in the matter of **Poonam Vs. State of Uttar Pradesh and others, (2016) 2 SCC 779** held that principle of *Audi Alteram Partem* has its own sanctity but the said principle of natural justice is can always put in straitjacket formula. That apart, a person or an authority must have a legal right or right in law to defend or assail. Natural justice is not an unruly horse. Its applicability has to be adjudged regard being had to the effect and impact of the order and the person who claims to be affected and that is where the concept of necessary party becomes significant. This aspect has also been taken care of by Division Bench of this Court **{See: Vikas Gupta Vs. Smt. Merra Singh and others, 2007(2) EFR 46}**.

12. The concept of principle of Natural Justice or *audi alteram partem* doctrine although is required to be complied with but at the same time it has some exceptions. In catena of judgments including the judgment rendered in **A.P. Social Welfare Residential Educational Institutions Vs. Pindiga Sridhar, (2007) 13 SCC 352, Haryana Financial Corpn. Vs. Kailash Chandra Ahuja, (2008) 9 SCC 31, State of Chhattisgarh Vs. Dhirjo Kumar Senger, (2009) 13 SCC 600, Indu Bhushan Dwivedi Vs. State of Jharkhand, (2010) 11 SCC 278, Natwar Singh Vs. Director of Enforcement, (2010) 13 SCC 255** and **Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati and Ors, (2015) 8 SCC 519,** all discussed in detail on the different facets of said doctrine of Audi Alteram Partem, Principle of Natural Justice/Opportunity of Hearing quotient and discussed the exceptions also in detail. In **Natwar Singh (Supra),** Supreme Court held in following words:-

> ***"26. Even in the application of the doctrine of fair play*** *there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth. Can the Courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, Courts can insist and require additional steps as long as such steps*

would not frustrate the apparent purpose of the legislation."

27. *In Lloyd Vs. McMahon, Lord Bridge observed: (AC pp. 702 H-703 B) "My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a* ***decision which will affect the rights of individuals*** *depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well-established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness".*

28. As Lord Reid said in Wiseman Vs. Boardman: (AC *p.308C)*

> *"....For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose..."*

29. It is thus clear that the extent of applicability of principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry.

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48. *On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the adjudicating authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a notice. Even the principles of natural justice and concept of*

> *fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework.*
> *49. Hegde, J. speaking for the Supreme Court propounded: "In other words, they (principles of natural justice) do not supplant the law of the land but supplement it" [see A.K. Kraipak Vs. Union of India14]. Its essence is good conscience in a given situation; nothing more but nothing less (see Mohinder Singh Gill Vs. Chief Election Commr..)*

13. In **Dharampal Satyapal Ltd. (Supra)** Supreme Court held in following words:-

> *"40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.*

The same analogy has been reiterated by the recent judgment of Division Bench of this Court in the case of **Manoj Singh Tomar Vs. State of M.P. and Ors. 2024 SCC Online 1833.**

14. As an alternative argument of petitioner, it appears that if authority has undertaken proceedings under Section 89 read with Section 92 of the Adhiniyam, 1993, jointly even then it does not prejudice the cause of petitioners, if reasonable opportunity of hearing is given to them.

15. In the cumulative analysis and looking to the facts and circumstances of the case, when petitioners themselves admitted their conduct by depositing certain money and when adequate opportunity of hearing was given earlier in proceedings of Section 89 also, then no case is made out for interference. Therefore, petition *stands* **dismissed**.

(ANAND PATHAK)
JUDGE

Rashid