HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

1	**Case No.**	WP No.15521/2020
2	**Parties Name**	Sayaji Hotels Ltd. Vs. Indore Municipal Corporation & Ors.
3	**Date of Judgment**	11/11/2020
4	**Bench constituted of**	Hon'ble Shri Justice Prakash Shrivastava
5	**Judgment delivered by**	Hon'ble Shri Justice Prakash Shrivastava
6	**Whether approved for reporting**	**Yes**
7	**Name of counsels for parties.**	Shri Vijay Asudani, learned counsel for petitioner. Shri Rishi Tiwari, learned counsel for respondent No.1 to 4.
8	**Law laid down**	An authority empowered to hear the appeal is required to hear the parties himself and decide it. If one authority hears the appeal and other authority decides it, then such a decision is faulty and not in consonance with the principles of natural justice.
9	**Significant paragraph numbers**	Paragraphs 11 to 14.

(PRAKASH SHRIVASTAVA)
J u d g e

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(S.B.: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

WRIT PETITION No.15521/2020

Sayaji Hotels Ltd

Vs.

Indore Municipal Corporation & Ors.

Shri Vijay Asudani, learned counsel for petitioner.

Shri Rishi Tiwari, learned counsel for respondent No.1 to 4.

Whether approved for reporting :

O R D E R

(Passed on 11th November 2020)

By this writ petition, the petitioner has challenged the order dated 9/2/2016 in respect of the levy of penalty and the appellate order dated 4/2/2020 as also the order passed by the respondent No.3 dated 5/2/2018.

[2] The case of the petitioner is that in the proceeding relating to the property tax, the order dated 9/2/2016 was passed whereby penalty of five times on account of more than 10% difference in the measurement of the area was maintained. Against this order petitioner had preferred appeal before the Mayor-in-Council u/S.138(4) of the Municipal Corporation Act,

1956 (for short “the Act”) and the Committee constituted by the Mayor-in-Council had heard the petitioner and passed the impugned order dated 5/2/2018 and whereupon the Mayor-in-Council had passed the consequential order dated 4/2/2020.

[3] Though, in the writ petition various grounds have been raised, but counsel for petitioner has mainly argued the ground that the Committee constituted by the Mayor-in-Council had heard the petitioner whereas the final order was passed by the Mayor-in-Council without giving any opportunity of hearing, therefore, the order of the Mayor-in-Council suffers for the defect of non compliance of principles of natural justice.

[4] The stand of the counsel for respondents is that the Committee was constituted by the Mayor-in-Council in accordance with the provisions of the Act and the said Committee had given an opportunity of hearing to the petitioner and thereafter had passed the order dated 5/2/2018 which was followed by the order of the Mayor-in-Council dated 4/2/2020, therefore, the principles of natural justice has been adequately followed.

[4] Having heard the learned counsel for parties and on perusal of the record, it is noticed that the appeal was preferred by the petitioner against the penalty order dated 9/2/2016 before the Mayor-in-Council u/S.138(4) of the Act. The

relevant provisions contained in sub section (3) and (4) of Sec.138 are reproduced below:-

> "138(3) The variation up to ten percent on either side in the assessment made under sub-section (2) shall be ignored. In cases where the variation is more than ten percent, the owner of land or building, as the case may be, shall be liable to pay penalty equal to five times the difference of self assessment made by him and the assessment made by the Corporation.
>
> (4) An appeal shall lie to the Mayor-in-Council against the orders passed under sub-section (3)."

[5] Sub-section (4) clearly provides that the appeal lies before the Mayor-in-Council . Rule 11 of the Madhya Pradesh Municipality (Determination of Annual Letting Value of Building/Lands) Rules, 1997 also provides for the limitation and hearing of the appeal against the order of penalty and reads as under:-

> "11- **Scrutiny of the return**.-- If on the scrutiny of return received under [Rule 10], it is found by the Municipal Officer that any information mentioned therein is not correct or is doubtful or he deems it necessary to reassess the annual letting value due to any reasons, then the Municipal Officer may take action for the reassessment of the annual letting value under the provisions of the Act.
>
> Provided that in the reassessment, the variation up to ten percent on either side shall be ignored but where the variation is more than ten per cent, the owner of land or building, as the case may be, shall be liable to pay such penalty which will be equal to five times of the amount of difference of self assessment made by such owner and the reassessment made by the Municipality.

> Provided further that against the order passed by the Municipal Officer under the first provision, an appeal may be filed before the Mayor-in-Council in case of a Municipal Corporation and President-in-Council, in case of a Municipal Council or Nagar Panchayat within thirty days from the date of passing the orders, on which the Mayor-in-Council or President-in-Council, as the case may be, after hearing the parties concerned, shall give its decision, which shall be final."

[6] In terms of the aforesaid Rule, the Mayor-in-Council is required to to give its decision in appeal after hearing the concerned parties.

[7] The reliance of the counsel for Municipal Corporation is on Sec.45 of the Act which reads as under:-

> "45. **Power of Mayor-in-Council to appoint sub-committees**.-- The Mayor-in-Council may appoint one or more sub-committees from amongst its members, which shall consist of such number of members as it may fix and may refer to it any matter pending before it for enquiry and report or opinion."

[8] In terms of Sec.45, the Mayor-in-Council is empowered to appoint a Committee and refer any matter pending before it to the Committee for "enquiry and report or opinion". In the present case, record reflects that the appeal was preferred by the petitioner before the Mayor-in-Council and the Mayor-in-Council had referred the matter to the Three Member Committee and Three Member Committee had given the hearing to the petitioner and thereafter by Annexure P/9 dated

5/2/2018 had formed the opinion against the petitioner and sent back the matter to the Mayor-in-Council for decision.

[9] It is not in dispute that no opportunity of hearing was given by the Mayor-in-Council to the petitioner and Mayor-in-Council vide order dated 4/2/2020 on the basis of the opinion of the Committee has dismissed the appeal.

[10] The aforesaid facts clearly reveals two important aspects of the matter. Firstly though the opportunity was given to the parties before the Committee constituted by the Mayor-in-Council, but no opportunity was given to the parties before the Mayor-in-Council which was the appellate authority and secondly the Committee was only empowered to give its opinion which the Committee had forwarded and the Mayor-in-Council had mechanically agreed with the opinion and dismissed the appeal.

[11] If one Authority, person or Committee hears the appeal and the other person, Authority or Committee decides it without any further hearing, then such a procedure and decision is violative of the fundamental principles of natural justice. Such a decision cannot be approved and held to be in consonance with the principles of *audi alteram partem*. The Constitution Bench of the Supreme Court in the matter of **Gullapalli Nageshwara Rao and others Vs. Andhra Pradesh State Road Transport**

Corporation & another **AIR 1959 SC 308** considering the similar issue has held:-

> "31- The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes and empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure."

[12] In the matter of **Automotive Tyre Manufacturers Association Vs. Designated Authority and Others (2011) 2 SCC 258** in a case where designated authority had conducted the proceedings and thereafter successor designated authority had passed the order without giving an opportunity of hearing, the Hon'ble Supreme Court has found such an order to be vitiated on account of non compliance of the basic principles of *audi alteram partem* by holding that if one person hears and another decides, then personal hearing becomes an empty formality. In the above case Hon'ble Supreme Court has held that:-

> "83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in *Gullapalli*, if one person hears and other decides, then personal hearing becomes an empty formality.
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> 84. In the present case, admittedly, the entire material had been collected by the predecessor of the DA; he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants herein. In our opinion, the final order passed by the new DA offends the basic principle of natural justice. Thus, the impugned notification having been issued on the basis of the final findings of the DA, who failed to follow the principles of natural justice, cannot be sustained. It is quashed accordingly."

[13] Similarly in the matter of **Kanachur Islamic Education Trust (R) Vs. Union of India and Another (2017) 15 SCC 702** the Supreme Court taking note of the Rule of fair hearing has held that this rule castes an obligation on the adjudicator to ensure fairness in procedure and action. In this regard it has been held that:-

> In the predominant factual setting, noted hereinabove, the approach of the respondents is markedly incompatible with the essence and import of the proviso to Section 10A(4) mandating against

> disapproval by the Central Government of any scheme for establishment of a college except after giving the person or the college concerned a reasonable opportunity of being heard. Reasonable opportunity of hearing which is synonymous to “fair hearing”, it is not longer res integra is an important ingredient of audi alteram partem rule and embraces almost every facet of fair procedure. The rule of “fair hearing” requires that the affected party should be given an opportunity to meet the case against him effectively and the right to fair hearing takes within its fold a just decision supplemented by reasons and rationale. Reasonable opportunity of hearing or right to “fair hearing” casts a steadfast and sacrosanct obligation on the adjudicator to ensure fairness in procedure and action, so much so that any remiss or dereliction in connection therewith would be at the pain of invalidation of the decision eventually taken. Every executive authority empowered to take an administrative action having the potential of visiting any person with civil consequences must take care to ensure that justice is not only done but also manifestly appears to have been done.”

[14] In the present case the appellate authority Mayor-in-Council was required to hear the parties and decide the appeal, but the Mayor-in-Council without hearing the parties merely on the basis of the opinion of the Committee constituted u/S.45 has dismissed the appeal, therefore, the principles of natural justice has been clearly violated. The Rules requiring hearing has also been given a go by, therefore, the order of the Mayor-in-Council dated 4/2/2020 cannot be sustained and is hereby set aside. The appellate authority is now required to hear the concerned parties and pass a fresh order in the appeal

in accordance with law. It is pointed out that in the mean while the Mayor-in-Council has been superseded by the Administrator. Counsel for parties have no objection if the appeal is heard by the Administrator.

[15] Having regard to the above analysis, the **writ petition is partly allowed** to the extent indicated above.

(Prakash Shrivastava)
Judge

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