HIGH COURT OF M. P. PRINCIPLE SEAT : JABALPUR
Review Petition No.166/2016

Chetram Meena
Vs.
State of Madhya Pradesh and another.

For applicant : Shri Piyush Bhatnagar, Advocate.
Respondent/State : Shri Prakash Gupta, Panel Lawyer.

O R D E R

(Passed on 11.5.2016)

PER S. K. Gangele J.

1. This review petition has been filed for review of the order dated 17.6.2015, passed in W. P. No.5940/2015. The court dismissed the petition of the petitioner.

2. The petitioner was appointed in the year 1985 as Sub-Inspector in the Police Department from reserve category candidate on the ground that he belongs to Meena Caste i. e. Schedule Tribe. He was promoted to the post of Inspector and finally on the post of Dy. Superintendent of police in the year 2013. The petitioner retired from service on 30.4.2014. Some complaints were received by the department in regard to caste certificate submitted by the petitioner to the effect that petitioner does not belong to Meena Caste Scheduel Tribe. He got employment by submitting forged caste certificate. An inquiry was conducted by the CID and the complaint was found true. Thereafter, matter was referred to the High Level Scrutiny Committee. The petitioner had submitted his reply on 17.1.2015 before High Level Scrutiny Committee. A show cause notice was issued to the petitioner to appear before the Committee on 26.2.2015. Notice was served on the petitioner. In spite service of notice petitioner does not appear before High Level Scrutiny Committee. After considering evidence and reply of the petitioner High Level Scrutiny Committee vide decision dated 16.2.2015 has held that petitioner procured a forged caste certificate of Meena Case i. e. Schedule Tribe. He does not belong to aforesaid caste and his certificate is hereby cancelled. Against the aforesaid order the petitioner filed a writ petition before this Court, which was dismissed.

3. Being aggrieved by the aforesaid order the petitioner filed a writ appeal. Division Bench of this Court granted liberty to the petitioner to file review petition. The Division Bench observed as under:

> "To overcome this situation, counsel for the appellants submit that one indulgence be given to the appellants who may go back before the same Court either by way of application for speaking to the minutes of the order or by way of review, as may be advised - in which proceedings the issue can be dealt with appropriately. We have no difficulty in showing this indulgence to the appellants, in the interest of justice.
>
> As a result, we permit the appellants to withdraw these appeals and to resort to such other remedy as may be permissible in law. All questions in that behalf are left open.
>
> Counsel for the appellants submit that since the appellants will go back before the learned Single Judge, the appellants be protected for a period of two weeks to enable the appellants to move the same Court by way of appropriate proceedings within such time and if that decision is adverse to the appellants, to approach by way of intra-Court appeal. This submission, no doubt, is opposed by the counsel for the State. However, in our opinion, if such permission is not granted, the appellants may face fait accompli situation, if the authority was to act upon the orders impugned in the writ petition or decision of the Committee which has been impugned in the writ petition."

4. Thereafter present review petition has been filed. The main contention of the review petition is that the High Level Scrutiny Committee passed the order without affording opportunity of hearing to the petitioner. Hence, the decision of the High Level Scrutiny Committee is in violation of Rules of natural justice and same argument has been made by the learned counsel for the petitioner.

5. It is well settled principle of law that observance of Rules of natural justice is not mere formality. A person has to establish some fact that he has some right which is infringe or he has some ground to

substantiate his claim and non-observance of Rules of natural justice has adversely affected his case.

6. The apex Court in the matter of Aligarh Muslim University and others Vs. Mansoor Ali Khan reported in (2000) 7 SCC 529 held as under:

> 21. As pointed recently in M.C. Mehta Vs. Union of India (1999 (6) SCC 237), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary.Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao vs. Government of Andhra Pradesh [1966 (2) SCR 172 = AIR 1966 SC 828], it is not necessary to quash the order merely because of violation of principles of natural justice.
>
> 22. In M.C.Mehta it was pointed out that at one time, it was held in Ridge vs. Baldwin (1964 AC 40) that breach of principles of natural justice was in itself treated as prejudice and that no other 'defacto' prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In S.L. Kapoor Vs. Jagmohan (1980 (4) SCC 379), Chinnappa Reddy, J. followed Ridge vs. Baldwin and set aside the order of supercession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.
>
> 23. Chinnappa Reddy, J. in S.L.Kapoor's case, laid two exceptions (at p.395) namely, " if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.
>
> 24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi Vs. State Bank of India (1984(1) SCC 43), Sabyasachi Mukherji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be

proved. It was observed: quoting Wade Administrative Law, (5th Ed.PP.472-475) as follows: (para

31) "....it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent ....There must have been 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 facts and 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".

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala Vs. S.K. Sharma (1996(3) SCC 364). In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in Rajendra Singh Vs. State of M.P. (1996(5) SCC 460).

25. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above,- there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

7. In the present case it is an admitted fact that High Level Scrutiny Committee issued a show cause notice to the petitioner. The petitioner filed his reply, that has been taken into consideration by the Committee. A notice was issued to the petitioner to appear before the Committee. In spite of service of notice the petitioner did not appear before the Committee. As per report of S.D.O.P. there was no record in the office of Tahsildar Sironj that any caste certificate was issued in favour of the petitioner by the Tahsildar. Apart from this the petitioner submitted a photocopy of the caste certificate issued by the Tahsildar. In the

aforesaid photocopy of caste certificate there was no mention of serial number or date. The Committee further observed that the petitioner received caste certificate at the time of employment. His father was died at Village Semri Harchand Tahsil Sohagpur District Hoshangabad. He received his school education from village Semri including 5th 8th and 12th . He received his graduation degree from Sohagpur. The petitioner claimed that his father was working as labour and was residing at Sironj District Vidisha but he did not submit any proof in this regard.

8. These facts have not been controverted by the petitioner in the writ petition or review petition, only it is contended that petitioner has not been afforded an opportunity of hearing. In my opinion, an opportunity was given by the Committee to the petitioner, he failed to appear before the Committee. He filed his reply. His reply was considered by the Committee. In such circumstance no prejudice is caused to the petitioner. Petitioner received a forged certificate and he any how wants to prolong the proceedings.

9. The Supreme Court in the case of Kamlesh Verma Vs. Mayawati and others reported in **(2013) 8 SCC 320** has laid down the following principles when the review is not maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications;

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected by lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the fact of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.

10. In this view of the matter, in my opinion there is no error apparent on the face of the record. I do not find any merit in this review petition. It is hereby dismissed. No order as to costs.

(S.K.Gangele)
Judge

kkc

HIGH COURT OF M. P. PRINCIPLE SEAT : JABALPUR
Review Petition No.166/2016

Chetram Meena
Vs.
State of Madhya Pradesh and another.

For applicant : Shri Piyush Bhatnagar, Advocate.
Respondent/State : Shri Prakash Gupta, Panel Lawyer.

O R D E R

Post it for 11.5.2016

(S.K.Gangele)
Judge