

**HIGH COURT OF JUDICATURE MADHYA PRADESH,
JABALPUR**

WRIT PETITION NO. 5261 OF 2016

Matsya Udyog Sahakari Samiti Maryadit

Vs.

State of Madhya Pradesh and others

Present :-

Shri K.C. Ghildiyal, Advocate for the petitioner.

Shri G.P. Singh, Government Advocate for the respondents/State.

Shri Sankalp Kochar, Advocate for the respondent No.5.

ORDER

(Passed on this the 25th day of October, 2017)

In the present case, this petition has been filed by Matsya Udyog Sahakari Samiti Maryadit, District Chhatarpur against the order dated 18.1.2016 (Annexure P/7) passed by the respondent No.3/ Joint Registrar, Cooperative Societies, Sagar Division, Sagar.

2. In brief the facts of the case are that the petitioner is challenging the order dated 18.1.2016 passed by the respondent No.3 whereby the registration of the petitioner-society as

Matsya Udyog Sahakari Samiti Maryadit by the orders of respondent No.4/Deputy Director, Cooperative Societies, Chhatarpur vide order dated 24.9.2015 has been cancelled.

3. The petitioner's contention is that the registration of the petitioner-society has been cancelled on an application filed by the respondent No.5 which is only a proposed society and it is further submitted that the impugned order has been passed without giving any notice and opportunity of hearing to the petitioner-society in gross violation of principles of natural justice.

4. The petitioner's case is that the State Government has formulated a policy for fish farming activities to be undertaken in the State of Madhya Pradesh and the provisions of registration of Cooperative Societies for the said purpose has been incorporated in the said policy. It is further provided that the persons belonging to *Machhua* community shall be given preference while registration of said Cooperative Societies.

5. The petitioner's contention is that there are 190 members in their society and an application for registration of the same was submitted on 2.2.2015 before the respondent No.4/Deputy Director, Cooperative Societies, Chhatarpur who after being satisfied regarding the petitioner's credentials ordered for registration of the society vide order dated 24.9.2015. The petitioner's further case is that the respondent No.5 also applied for registration of society on 17.8.2015 and since the petitioner's application was filed on 2.2.2015 only, hence there was no occasion for the respondent No.4 Deputy

Registrar to pass any order of registration on the application of the respondent No.5 which also relates to the same area. Since no orders were passed by the Deputy Registrar for registration of the respondent No.5-Society, a revision was filed by the respondent No.5 before the respondent No.3/Joint Registrar, Cooperative Societies, Sagar Division, Sagar challenging the registration of the petitioner-society. The respondent No.3 without issuing any notice to the petitioner has passed the order on 18.1.2016 cancelling the registration of the petitioner society and simultaneously ordered the respondent No.4/Deputy Registrar, Cooperative Societies to decide the matter afresh by giving an opportunity of hearing to the respondent No.5 as also the petitioner.

6. The petitioner has assailed the aforesaid order dated 18.1.2016 on the ground that the order has been passed without even issuing notice to the petitioner-society and without affording an opportunity of hearing to them. It is further contended by the counsel for the petitioner that the registration of the petitioner-society was made in accordance with the policy of the State and as such it should not have been disturbed in the manner in which the respondent No.3 has done.

7. On the other hand, Shri Sankalp Kochar, learned counsel appearing on behalf of respondent No.5 has submitted that though the impugned order has been passed by the respondent No.3 without giving notice to the petitioner but in the aforesaid order also the Joint Registrar has remanded the matter back to the Deputy Registrar, who is the competent

authority to decide the dispute regarding the registration of society and while doing so the Joint Registrar has directed the authority to give an opportunity of hearing to both the parties concerned and pass an appropriate order. This order was passed taking note of the fact that the petitioner's application which was submitted for registration was found to be filed in dubious circumstances, thus instead of deciding the issues raised by the parties, the Joint Registrar has only sent the matter to the Deputy Registrar and hence the same does not call for any interference.

8. Heard learned counsel for the parties and perused the record.

9. From a bare perusal of the impugned order dated 18.01.2016, it can be discerned that before passing of the same, the respondent No.3/Joint Registrar has not issued notice to the petitioner and as such no opportunity of hearing has been provided to the petitioner society but whether on this ground alone the impugned order is liable to be set aside is a question to be decided by this Court.

10. On a closure scrutiny of the impugned order, this Court finds that the respondent No.3 has also made certain observations regarding the manner in which the petitioner's application for registration was accepted and allowed by the respondent No.4/Deputy Registrar and thus instead of deciding all the issues himself the respondent No.3 has relegated the matter to the original authority who was responsible for passing the order of registration in favour of the petitioner. In the

considered opinion of this Court although the impugned order has been passed by the learned respondent No.3 in rather haste by not affording any opportunity of hearing to the petitioner but that itself cannot be a ground to quash the same if the order is read in totality and the final directions made therein. Reference in this regard may be had to the decision of Apex Court in the case of **Chief General Manager, Calcutta Telephones District, Bharat Sanchar Nigam Limited and Others vs Surendra Nath Pandey and others, (2011) 15 SCC 81**, para 28, 29, 31 and 32 reads as under :

“28. We are of the considered opinion that the procedure adopted by the appellants cannot be said to be unfair or arbitrary. It was a reasonable and fair procedure adopted in the peculiar circumstances of the case. It cannot be said to be in breach of rules of natural justice. It must be remembered that rules of natural justice are not embodied rules. They cannot be put in a straitjacket. The purpose of rules of natural justice is to ensure that the order causing civil consequences is not passed arbitrarily. It is not that in every case there must be an opportunity of oral hearing.

29. We may notice here the observations made by this Court in *Bihar School Examination Board v. Subhas Chandra Sinha* wherein a similar plea with regard to breach of rules of natural justice was examined. In this case, the appellant Board had cancelled the examination upon detection of mass copying without affording the affected candidates the right to be heard. This Court rejected the plea of breach of rules of natural justice, as follows: (*Subhas Chandra case*, SCC p. 652, para 13)

“13. This is not a case of any particular individual who is being charged with adoption of unfair means but of the conduct of all the examinees or at least a vast majority of them at a particular centre. If it is not a question of charging any one individually with unfair means but to condemn the examination as ineffective for the purpose it was held. Must the Board give an opportunity to all the candidates to represent their cases? We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled. The Board had not charged any one with unfair means so that he could claim to defend himself. The examination was vitiated by adoption of unfair means on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfair means. The examination as a whole had to go.”

(emphasis supplied)

31. We may also make a reference here to the observations made by this Court in *Union of India v. Anand Kumar Pandey*. In this case, the Railway Recruitment Board, Patna invited applications for selection and recruitment of various posts of Non-technical Popular categories in the Eastern Railway. The selection was to be made on the basis of a written examination followed by a viva voce test. A large number of candidates appeared in the written test from various centres in the city of Katihar. The respondents in the appeal had appeared in the written examination and duly qualified. They had also qualified in the viva voce

test and their names were included in the panel of selected candidates, which was published. On a complaint of mass copying at Centre No. 115, the Railway Authorities conducted an enquiry and found the complaint to be correct. The Railway Authorities decided to subject the 35 candidates, who had qualified the written test from Centre No. 115, to a fresh examination. CAT set aside this decision of the Railway Authorities as being violative of rules of natural justice.

32. It was held in *Anand Kumar Pandey* that a panel of selected candidates having been prepared and published, the same could not be cancelled without assigning any reason and without affording opportunity to the empanelled candidates. On appeal by the Union of India, this Court set aside the decision of the Tribunal. It was held that the Tribunal was wholly unjustified in interfering with the order of the appellants, calling on the respondents to sit in the written examination again. In para 9 of the aforesaid judgment, it is observed as follows: (SCC pp. 666-67)

“9. This Court has repeatedly held that the rules of natural justice cannot be put in a straitjacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. Out of the total candidates who appeared in the written test at the centre concerned only 35 candidates qualified the test. In that situation the action of the Railway Authorities in directing the 35 candidates of Centre No. 115 to appear in a fresh written examination virtually amounts to cancelling the result of the said centre. Although it would have been fair to call upon all the candidates who appeared

from Centre No. 115 to take the written examination again but in the facts and circumstances of this case no fault can be found with the action of the Railway Authorities in calling upon only 35 (empanelled candidates) to take the examination afresh. The purpose of a competitive examination is to select the most suitable candidates for appointment to public services. It is entirely different than an examination held by a college or university to award degrees to the candidates appearing at the examination. Even if a candidate is selected he may still be not appointed for a justifiable reason. In the present case the Railway Authorities have rightly refused to make appointments on the basis of the written examination wherein unfair means were adopted by the candidates. No candidate had been debarred or disqualified from taking the exam. To make sure that the deserving candidates are selected the respondents have been asked to go through the process of written examination once again. We are of the view that there is no violation of the rules of natural justice in any manner in the facts and circumstances of this case."

(emphasis supplied)

Thus, from the aforesaid dictum of the Apex court the principles of natural justice cannot be said to be an all pervasive prescription which can be made applicable in all the situation. In fact, what is to be seen is that whether there is a substantial injury caused to the person who claims violation of principles of natural justice or such claim is merely a technical one causing no prejudice to the parties concerned.

11. Even assuming that what the petitioner has contended is true that they filed their application for registration on 02.02.2015 and the respondent No.5 filed their application for registration subsequently on 17.08.2015 and the order on petitioner's application was passed by the respondent No.4 on 24.09.2015, in that case also it was incumbent upon the respondent No.4 to decide both the applications dated 02.02.2015 and 17.08.2015 simultaneously on their own merits as they relate to the same area but instead the respondent No.4 decided the application dated 02.02.2015 filed by the petitioner only which, by no stretch of imagination can be said to be just and proper procedure adopted to discharge ones duty.

12. It is rather surprising that on one hand when the petitioner's application for registration was allowed by the respondent No.4 without giving any heed to the respondent No.5's application they had no issues with its propriety but on the other hand when the respondent No.3 has passed the impugned order of remand without issuing notice to the petitioner, suddenly the petitioner has realized that there is a gross violation of principles of natural justice, the petitioner appears to have forgotten the old saying that 'the chickens always come home to roost' i.e. one should always be ready to face the consequences of one's own deeds.

13. In the final result, on the basis of the discussion as aforementioned this Court does not find any illegality in the order dated 18.01.2016 passed by the respondent No.3, hence the petition is hereby **dismissed** with no order as to costs.

However, the respondent No.4 is directed to decide both the applications on their own merits without being influenced by the observations made either by the respondent No.3 or by this Court in the present order within a period of four weeks from the date of receipt of certified copy of this order by giving due opportunity of hearing to both the parties.

(Subodh Abhyankar)

Judge

25/10/2017

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