

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT  
JABALPUR**

**Writ Petition No.6633/2019**

Ashutosh Rasik Bihari Purohit

Versus

The Indian Red Cross Society & Others

Date of Order	29.07.2019
Bench Constituted	Single Bench
Order delivered by	Hon'ble Shri Justice Sanjay Dwivedi
Whether approved for reporting	Yes
Name of counsel for parties	For Petitioner : Shri Amit Kumar Singh, Advocate.  For Respondents No.1 & 2 : Shri Samdarshi Tiwari, Advocate.
Law laid down	(1) The elected person cannot be removed from the post by adopting the method which is not prescribed under the respective statute. (2) Natural Justice – implied applicability – Reiterated, unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, any exercise of power prejudicially affecting another must be in conformity with the rules of natural justice.
Significant Para Nos.	12 to 15, 19

**Reserved on : 04.07.2019**

**Delivered on : 29.07.2019**

**(ORDER)  
(29.07.2019)**

Considering the last order-sheet as also the issue involved in the case and with the consent of parties, the matter is heard finally.

2. By the instant petition, the petitioner has assailed the legality, validity and propriety of the order dated 08.03.2019 (Annexure-R/4) whereby the petitioner has been removed from the post of Chairman of the respondent-Society i.e. Indian Red Cross Society M.P. State Branch.

3. The challenge is founded mainly on the ground that before passing the order of removal or taking action against the petitioner, he has not been given any opportunity of hearing and therefore, the order suffers from violation of the principle of natural justice.

4. Learned counsel for the petitioner has contended that the charges, on the basis of which, the petitioner has been removed, do not fall under the basic fundamental rules as described in the Rules namely Indian Red Cross Society Branch Committee Rules, 2017 (in short "Rules of 2017"). He further submits that so far as the allegation of misconduct is concerned, that requires determination by an independent agency and for which, an Enquiry Committee has been constituted and that the Committee has yet to submit it's report and take a decision in respect of committing misconduct by the petitioner. But the impugned decision has been taken by the

respondents before submitting the report by the said Enquiry Committee. He has also contended that as per the requirement of Rules of 2017, the meeting of Managing Committee needs 21 days prior notice and that requirement has not been fulfilled by the respondents. It is also contended by the petitioner that the quorum required for conducting the meeting of the Managing Committee was not there and thus, the decision taken by the Committee is illegal. He has also raised a ground that in the so-called meeting of the Managing Committee, there was no agenda regarding removal of the petitioner from the post of Chairman of the Society and in absence of any such agenda, if any discussion is made in the meeting, the same cannot be said to be proper and no decision on the said discussion can be taken. He further submits that if the overall conduct of the respondents is seen, it goes without saying that they have acted maliciously and have taken a decision for removal of the petitioner from the post of Chairman. It is also alleged by the petitioner that the respondents have not supplied any document, not even the complaint, on the basis of which, his powers have been suspended.

5. *Per contra*, learned counsel appearing for the respondents opposes the contentions of learned counsel for the petitioner and submits that as per the Rules of 2017, the power is vested with the Managing Committee to take a decision in respect of

removal of the Chairman. He submits that the minimum requisite requirements for convening a meeting of Managing Committee has been fulfilled. As per the Rules, 10 days prior notice to the member of the Committee is required and that has been followed. He has also annexed the copy of notice dated 25.02.2019. He submits that the quorum which was required to convene a Managing Committee meeting was also there and that stand has been taken by them in their reply in Paragraphs-17 and 21 of the main return, which was not denied by the petitioner in his rejoinder. Accordingly, the stand taken by the respondents can be considered to be true and admitted. He further submits that since the Rules do not provide any provision for following the principle of natural justice or prior opportunity before taking decision for removal of the Chairman by the Managing Committee, the action taken by the respondents cannot be held to be illegal only because the principle of *audi alteram partem* has not been followed. He submits that it is gathered from the minutes of the meeting held on 08.03.2019 that several issues were discussed and the issue regarding removal of the Chairman has also been discussed and the majority of members present in the meeting, have taken unanimous decision for removal of the Chairman. He has also pointed out towards the minutes of the meeting to substantiate that the nature of the allegations made and supported by the members available in the said meeting, clearly

constitute the misconduct on the part of the petitioner and his conduct can be considered to be detrimental to the reputation of the Society. He has contended that it is the power of the President to discuss the issue even though that is not under the agenda prescribed and as such, if in the given agenda, issue regarding removal of Chairman is not there but that has been discussed in the meeting of Managing Committee and decision has been taken thereof, it cannot be said to be illegal. He submits that prior to the meeting of the Managing Committee, an extraordinary Annual General Meeting was conducted on 23.02.2019 headed by the President, in which, several issues were discussed including the issue in respect of irregularities and illegalities committed by the petitioner.

He further submits that the decision taken by the Managing Committee is not dependant upon the decision of report of the Enquiry Committee because the scope of enquiry for which report is yet to come, there were different issues, therefore, if report is not submitted by the Committee, the decision taken by the Managing Committee cannot be held to be illegal. He has relied upon a decision reported in **AIR 1998 AP 205** parties being **Samala Jayaramalah v. Government of Andhra Pradesh and Others**.

6. I have heard the arguments advanced by the learned counsel for the parties and perused the record.

7. It is apposite to venture through the facts for disposal of this case that the instant petition has been filed initially challenging the order dated 23.07.2019 (Annexure-P/1) whereby, in the meeting of the Managing Committee, a decision has been taken for suspending the power and authority of the petitioner as Chairman of the Society till the High Level Committee appointed by the Society concludes its enquiry on the assigned issues. Further, the order dated 08.03.2019 (Annexure-R/4) was also challenged whereby in a meeting of the Managing Committee convened on 08.03.2019, a decision was taken to remove the petitioner from the office of Chairman of the Society. The order dated 08.03.2019 was annexed by the respondent No.1 and 2 in their preliminary reply and then in a rejoinder filed by the petitioner, the said order is also challenged. The Society was formed under the provisions of Indian Red Cross Society Act, 1920 (hereinafter referred to as the 'Act, 1920'). The President of India is the President of the Society. The objective of the Society is to contribute to the improvement of health, the prevention of the disease and maternity and child care in the community. There is a State Branch of the Society which is governed by the M.P. State Branch Regulations, 1988 (hereinafter referred to as the 'Regulations, 1988'). The Governor of the State is the President of the Society of the State Branch. A notification was issued on 02.09.2019 supplemented the provisions of the

Regulations, 1988. The petitioner contested the election as stipulated in the Regulations, 1988 and was declared elected for the said post. As per the certificate issued, the term of the Chairman of the Society was of three years. A list of all elected committee members for the State Branch was also issued vide Annexure-P/6. The meeting of the Society of State Branch was held on 09.01.2019. In the said meeting a resolution has been passed for cancelling the tenders whereby, number of Pharmaceutical Companies were allotted contract for sale/distribution of the medicines through outsourcing as the said decision was taken as there was no Managing Committee in existence. In the said meeting, it is also resolved that the procedure followed for allotting the work of sale and distribution of medicines to be inquired about and the report be placed before the Executive Committee and thereafter, a report to the EOW be also made. The Chairman, Vice Chairman and In-charge General Secretary have been asked to conduct the enquiry and submit a report in the next meeting of the Executive Committee. A complaint was made by respondent No.5 to the respondent No.2 against the petitioner alleging irregularities committed by the petitioner and to take appropriate action against him. It is also requested in the said complaint that the enquiry be conducted to ascertain the correctness of the charges and till the enquiry is completed, the powers of the Chairman be suspended so that he

may not interfere in the enquiry. The said complaint is available on record as Annexure-P/8. Thereafter, a letter was issued from the office of respondent No.2 on 25.01.2019 asking explanation regarding alleged irregularities. The petitioner filed a detailed reply on 30.01.2019. From the office of respondent No.1 a notice was issued on 11.02.2019 apprising the petitioner that the Annual General Meeting of the Society of the State Branch had to be convened on 23.02.2019 at about 11.30 am in which, it is mentioned that the President has given his consent, therefore, it was instructed to issue notice to all concerned taking part in the meeting and forward the agenda of the meeting with the list of the members participating in the said meeting be forwarded. In response to the said letter, the petitioner sent a letter on 12.02.2019 apprising to the office of respondent No.1 that as per the requirement of Regulation 2009, notice for convening the Annual General Meeting has to be issued minimum 21 days before the date of meeting. It is also informed that as per the available documents for some of the district level branches the tenure of three years of the Managing Committee is over and the name of new elected representatives are still awaited. Thus, advice was sought that in the said circumstance what should be done. Thereafter, the office of respondent No.1 intimated the petitioner vide letter dated 13.02.2019 that instead of proposed meeting of annual general body an extra ordinary annual general



meeting would be convened on 23.02.2019 in the Governor's house and, therefore, asked to invite the members of the Managing Committee. Again the office of the petitioner issued a letter on 14.02.2019 to the office of respondent No.1 seeking guidance raising some sort of queries therein. The meeting was convened on 23.02.2019 in which a decision has been taken considering the complaint made against the petitioner that a committee be constituted for conducting an enquiry and till the report of the said committee comes, the power and authority of the petitioner as a Chairman be suspended and Mohit Shukla Vice Chairman was assigned the additional charge of the post of the Chairman.

8. Copy of the order i.e. 23.02.2019 was not supplied to the petitioner and since there were no complaints on requisite requirements, therefore, he challenged the said action by filing the writ petition i.e. W.P. No.4053/2019. The said petition was disposed of vide order dated 12.03.2019 directing the respondents to supply the copy of order if any passed within a period of seven days. Thereafter, the petitioner was supplied a copy of the impugned order dated 23.02.2019, however, the minutes of the meeting of 23.02.2019 were not supplied to the petitioner and as per the petitioner, the proceedings held on 23.02.2019 were totally illegal and the resolution passed therein is also liable to be quashed.

9. In response to the petition, a preliminary reply was filed by the respondents as there was a caveat on their behalf in which, they have also annexed the copy of the order dated 08.03.2019 apprising that the meeting of Managing Committee was also held on 08.03.2019 in which, a decision was taken to remove the petitioner from the post of the Chairman of the Society of the State Level Branch. The petitioner thereafter, made amendment in the petition stating that convening the meeting on 08.03.2019 of the Managing Committee is arbitrary, illegal and contrary to the provisions of rules and the decision taken by the respondents is in flagrant violation of principle of natural justice.

10. *Per contra*, the learned counsel for respondent Nos.1 and 2 initially filed the preliminary reply taking the stand therein that in a meeting of Managing Committee convened on 08.03.2019, a decision has already been taken for removal of the petitioner from the post of the Chairman. They have stated that such decision is in accordance with law and the petitioner may challenge the order of his removal. Thereafter, they have filed a detailed reply to the amended petition. The main contention made by the respondents is that the Regulation, 1988 does not exist as the same has been superseded and revised by the Rules of 2017 duly framed by the managing body of the Society with the provisional approval of the President of the Society (the Hon'ble President of India) in exercise

of the powers conferred by the sub-clauses (e), (f) and (j) of subsection (1) of Section 5 of the Indian Red Cross Society Act, 1920. As per the respondents, Rule 11 of the Rules of 2017 prescribes the composition powers and tenure of the members of the Managing Committee in Schedule-II. It is stated that as per Clause-5 the extra ordinary annual general meeting of the Branch to be convened at any time by the President of the State Branch for the purposes connected with and in the interest of the Branch. The Hon'ble Governor being the President of the State Branch does not require any prior notice of specified period. Though the basic procedure to inform all the members through the General Secretary is forwarded. It is also stated that the basic requirement of availability of requisite quorum was also followed. In the reply, it is also stated that as to what irregularities were committed by the petitioner showing total negligence in discharging his functions. It is also stated in the reply that in an extra ordinary annual general meeting held on 23.02.2019 various issues have been discussed on the agenda already formulated and other issues with the permission of the President. It is also stated that looking to the seriousness of the complaints and the issues raised in the meeting, the President thought it appropriate to hold a high level enquiry on all such issues. It is also stated by the respondents that in the order passed by the Court in a petition preferred by the petitioner, there was a direction

to supply the copy of the order but not the minutes of the meeting. Proving the illegalities committed by the petitioner, the respondents have taken a shelter of Clause-7 of Schedule-II prescribing quorum of 30% of the eligible members present while holding the Annual General Meeting. As per the respondents in extra ordinary annual general meeting called by the President as per Clause-5 of Schedule-II, 62 out of 164 eligible members were present and voted. The presence of these members as per the respondents is more than the required number. It is also stated that the petitioner was also present in the meeting and had actively participated therein. It is also stated by the respondents that the petitioner was elected as a Chairman in June, 2018 but immediately thereafter, he started undue favouring of the wrong doers and then a letter was issued on 20.02.2019 from the office of respondent No.1 for convening an emergency extra ordinary general meeting. In the reply, the respondents have stated that the meeting of the Managing Committee was done after complying the requirements as per the Rules, 2017 and no irregularities as pointed out by the petitioner, were available. The respondents have also stated that the plea of violation of the principle of natural justice is misconceived. They relied upon Clause-2(d) of Schedule-III authorizing the Managing Committee to remove the Chairman in case of grave misconduct. The grave misconduct has also been defined. As per the

respondents, the removal of the Chairman by the Managing Committee by the vote of majority is a democratic process. As per the respondents holding the post by an elected member is not a fundamental right but it is only a statutory right and after elected members have lost the confidence of the house then by way of no confidence motion if the majority of members reach to an opinion to remove the elected person then, there is no necessity to follow the principle of natural justice. As per the respondents since majority was against the petitioner and they voted against him, therefore, his removal is according to law. As per the respondents, majority decision by voting is not like *quasi judicial* proceeding and, therefore, it is not required to follow the principle of natural justice. As such, they have stated that there is no illegality in the decision taken by the respondents and the petition deserves to be dismissed.

11. Considering the arguments advanced by the learned counsel for the parties and as per their stand taken, the following questions are required to be determined:-

- (i) Whether, there is any provision for keeping the petitioner under suspension and as to whether the order of suspension passed against the petitioner is in accordance with law?
- (ii) Whether, the respondents have followed the procedure for convening the meeting as prescribed under the Rules of 2017?
- (iii) Whether the procedure adopted by the respondents for removing the petitioner from the post of Chairman of State

Branch taking a decision unanimously by the majority votes of the Managing Committee is available and if not, then its impact?

(iv) Whether, the action taken by the respondents for removing the petitioner from the post of Chairman of State Branch suffers from violation of the principle of natural justice?

12. **Regarding question No.(i)** – The learned counsel for the petitioner has contended that the respondents in view of the annual general meeting held on 23.02.2019 resolved to conduct an enquiry to ascertain the correctness of the allegations in the complaint made by Neelesh Shukla. In pursuance to the complaint, a decision was taken in the annual general meeting held on 23.02.2019 to conduct high level enquiry and to appoint enquiry committee and until the report of said enquiry committee submitted, the petitioner's power as Chairman has been suspended and in his place Vice Chairman was handed over the charge and directed to perform the work of Chairman. Initially the said order was assailed by the petitioner by filing petition challenging the action of the respondents on diverse grounds but mainly on the ground that the power of suspension is not available and therefore the order is illegal. As per the reply submitted by the respondents in paragraph 5 of the main return, they have admitted that Regulation, 1988 does not exist and has been superseded. It is also stated that the Regulation, 1988 has been replaced by the Rules of 2017 in exercise of power conferred

by sub-clause (e), (f) and (j) of Subsection (1) of Section 5 of the Act of 1920. Now, it is clear that the power for suspending the petitioner who is the elected Chairman of the Society, should be available in the provisions of Rules of 2017. Despite specific ground and contention raised by the counsel for the petitioner that the power of suspension is not available with the respondents, no reply has been given neither during the course of arguments nor in the reply submitted by the respondents. As per their own admission that the provisions of Rules of 2017 are governed with the business of the State Level Society and also govern the other conditions of the office bearers. The provisions of Rule of 2017 are available on record. The petitioner as well as the respondents both have filed the same and after perusal of the same, nowhere it is provided that the Chairman of the State Level Society can be placed under suspension and its power can be suspended by the respondents especially respondent No.1. The original petition challenged the said action of the respondents with a specific ground that the Rules of 2017 do not contain any such provisions and as such the order dated 23.02.2019 is beyond the prescribed rules and regulations and sought quashment of the same. In response to the petition, a preliminary reply on behalf of respondents No.1 and 2 was filed, but the petition was filed on some other grounds, however, nowhere it is stated that as to under which authority, the petitioner has been

placed under suspension and his power of Chairman has been withdrawn. Though there were several irregularities alleged and for which enquiry Committee was constituted but that does not mean that the power of the petitioner of Chairman could be withdrawn and he could be placed under suspension and the said power could be assigned to the Vice Chairman. Accordingly, without any specific provision under the Rules of 2017 and without disclosing the source of authority by the respondents to suspend the power of the Chairman and to place him under suspension, such an action cannot be given seal of approval by this Court and accordingly that order is held to be illegal, contrary to the provisions of the law and therefore is not sustainable in the eyes of law.

13. **Regarding question No.(ii) :-** It is clear from the minutes of the meeting that the respondents have supplied the same in which they have also attached the agenda of the meeting dated 08.03.2019, which is Annexure-R/3 filed alongwith the main return. From the said agenda, it is clear that there was no such agenda of the said meeting that the allegations against the petitioner or a proposal for his removal had to be discussed. In absence of any such agenda, the decision for removing the petitioner cannot be taken. The petitioner has pleaded and also the learned counsel for the petitioner has contended during the course of the arguments that in absence of any such agenda, the decision for removal of the



petitioner cannot be taken that too when the petitioner was not given an opportunity to participate in the meeting and to be heard before taking such decision. The learned counsel for the respondents submits that it was the prerogative of the President of the Society to take-up any issue which is also not a part of the agenda. But, I am not satisfied with the same because if overall conduct of the respondents is seen, then it is clear that their conduct is arbitrary and such a decision cannot be taken. Accordingly, in my opinion the action of the respondents taking decision in respect of the removal of the petitioner is contrary to the procedure prescribed under the Rules of 2017.

14. **Regarding question No.(iii)** :- As per the stand taken by the respondents in their main return and admitted in paragraph 4 that the order dated 08.03.2019 has been issued in pursuance to the unanimous majority votes of the Managing Committee following the procedure prescribed for removing the petitioner from the office of Chairman of State Branch as he lost the faith of the majority and further in paragraph 23 of the reply, they have admitted that the petitioner has been removed from the post of Chairman by the votes of majority which is a democratic process. For this purpose, the respondents are also relying upon the decision in the case of **Samala Jayaramalah** (supra) and also stated that if such a decision is taken by the majority of votes then the authority is not required to

follow the principle of natural justice. A perusal of the record available and especially the provisions of the Rules of 2017, it is something surprising as to why such procedure can be adopted by the respondents whereas the Rules are totally silent and no such mechanism is available under the Rules for removal of the petitioner from the post of Chairman. The only procedure which is available for removing the elected Chairman of State Level Branch i.e. sub-clause (d) of Clause 2 of Schedule-III, which reads thus:

“(d) In case of grave misconduct, the Managing Committee shall have the powers to remove the Chairman or Treasurer as the case may be. Grave misconduct for the purpose of removal is defined as the display of character or morality incompatible with the Fundamental Principles or engagement in activities which are detrimental to the reputation or the activities of the National Society.”

The above sub-clause provides the power of Managing Committee to remove the petitioner from the post of Chairman but that too under a special circumstance when grave misconduct as per 7 Fundamental Principles as provided under the Rules are proved or engagement in activities which are detrimental to the reputation or the activities of the National Society. In the present case, so far as 7 Fundamental Principles as contained in Rule 3 of the Rules of 2017 are concerned, there is nothing found proved against the petitioner and even otherwise for alleged irregularities when High Level Enquiry Committee was constituted and was making enquiry and before the report was submitted, the petitioner was suspended, then

as to how such decision can be taken, finding alleged irregularity proved against the petitioner. It is something surprising as to how such decision can be taken against the petitioner by following the procedure i.e. majority of votes of the members of the Managing Committee whereas no such procedure is available. It is worth noting that in the agenda there was no such proposal to be discussed in the meeting of Managing Committee scheduled on 08.03.2019 and the members were never informed about such discussion, therefore, the said decision in my opinion is contrary to the law and without any competence and it can be easily inferred that the decision has been taken in a very hurried way. As far as the case law relied upon by the respondents is concerned, the Supreme Court has dealt with Section 245(1) of the Andhra Pradesh Panchayat Raj Act, 1994, which reads thus;-

“245. Motion of no confidence in Upa-Sarpanch, President or Chairperson: (1) A motion expressing want of confidence in the Upa-Sarpanch or President or Vice-President or Chairperson or Vice-Chairperson may be made by giving a written notice of intention to move the motion in such form and to such authority as may be prescribed, signed by not less than one-half of the total number of members of the Gram Panchayat, Mandal Parishad, or as the case may be the Zila Parishad and further action on such notice shall be taken in accordance with the procedure prescribed:

Provided that no notice of motion under this section shall be made within two years of the date of assumption of office by the person against whom the motion is sought to be moved:

Provided further that no such notice shall be made against the same person more than once during his term of office.

Explanation:- For the removal of doubts, it is hereby declared that for the purpose of this section the expression “total number of members” means, all the members who are entitled to vote in the election to the office concerned inclusive of the Sarpanch, President or Chairperson but irrespective of any vacancy existing in the office of such members at the time of meeting:

Provided that a suspended office-bearer or member shall also be taken into consideration for computing the total number of members and he shall also be entitled to vote in a meeting held under this section:

(2) if the motion is carried with the support of two thirds of the total number of members in the case of a Upa-Sarpanch, the Commissioner shall and in the case of the President or Vice-President or Chairperson or Vice-Chairperson, the Government shall by notification remove him from office and the resulting vacancy shall be filled in the same manner as a casual vacancy.

[Explanation: For the purposes of this section, in the determination of two-thirds of the total number of members, any fraction below 0.5 shall be ignored and any fraction of 0.5 or above shall be taken as one.]”

For moving the no confidence motion against the chairperson and that was moved and decision was taken in the meeting of members for removal of chairperson then the Supreme Court has observed that in such situation following the principle of natural justice is not required. As already discussed hereinabove in the present case there is no such procedure available for moving the no confidence motion against the Chairman and the Rules of 2017 provide the power for removal of the Chairman only under the circumstance when charge of grave misconduct is proved against him or his

activities are found detrimental to the reputation of the Society. Accordingly, the procedure adopted by the respondents i.e. majority of votes is in violation to the provisions of Rules of 2017 and also for the members of the Managing Committee. Thus, the same cannot be accepted and in any manner cannot be considered to be valid and accordingly that action of the respondents is also not sustainable.

15. **Regarding question No.(iv):-** Further, it is to be seen whether the conduct of the respondents is in violation of the principles of natural justice or not. The learned counsel for the petitioner has contended that there is gross violation of the principles of natural justice taking action against the petitioner and not only that but it is alleged that the respondents have acted arbitrarily and with *mala fide* intention just to remove the petitioner from the post of Chairman. If the events of this case are seen from very inception, it would reveal that the respondents acted arbitrarily and violated the principles of natural justice. They have placed the petitioner under suspension without any competence and without following any procedure for placing him under suspension and not only that but the order of suspension was also not supplied to the petitioner and that was supplied only after the order passed by the High Court in a petition preferred by the petitioner. In the said petition, the High Court had directed the respondents to supply the

copy of order dated 23.02.2019 but even though the petitioner was not supplied with the copy of minutes in which the decision to place the petitioner under suspension was taken. Then again, the order dated 08.03.2019 was not given to the petitioner, but he came to know about the order of his removal only when the preliminary objection to the petition was filed and that order was annexed as Annexure-R/4. The petitioner has alleged that the notices were not issued to the members of the Managing Committee for convening the meeting on 08.03.2019 and no such decision could be taken therein and even though, if the decision was taken as to why the copy of the order dated 08.03.019 was not communicated to the petitioner. It is something surprising when the decision had already been taken to remove the petitioner from the post of Chairman then Annexure-R/2 an order issued on 15.03.2019 by respondent No.1 was issued without mentioning the fact that the Chairman had already been removed, even the enquiry officer issued notice on 20.03.2019 addressing the petitioner as a Chairman of the Managing Committee State Red Cross Branch. I find substance in the contention raised by the petitioner that everything was done behind his back. There is no proof available on record to show that the notice of meeting dated 08.03.2019 was served to the petitioner although the respondents alongwith their reply have annexed the dispatch register showing that the notices were issued to the

members of the Managing Committee and also annexed the paper showing that a notice was dispatched to the petitioner but that cannot be considered to be a proof of issuance of notice to the petitioner. When the petitioner came with a stand that no notice was issued to him then it was obligatory for the respondents to come with a specific stand that notice of meeting dated 08.03.2019 was issued to the petitioner and despite that he has not attended the meeting. It is something surprising that when every action was being taken against the petitioner why the orders were not supplied to him. It is also apparent that the respondents have adopted the procedure for removing the petitioner from the post of Chairman whereas such procedure is not available under the Rules of 2017. When enquiry committee was constituted to enquire about the allegations and in pursuance to the said enquiry, the petitioner was placed under suspension, then how the charges of misconduct found proved against the petitioner and decision was taken to remove him without giving him any opportunity to explain whether those charges were correct or not. The Supreme Court in series of decisions reported in **(1978) 1 SCC 248 (Mrs. Maneka Gandhi v. Union of India and another)**; **(1969) 2 SCC 262 A.K.Kraipak and Others v. Union of India and Others** and **(1978) 1 SCC 405 Mohindhr Singh Gill and another v. Chief Election Commissioner, New Delhi and Others** has clearly laid down that in every action of the authority which

carries civil consequences, the principle of natural justice has to be followed unless it is exclusively excluded or by implication under the requisite Rules.

16. In the latest decision, the Supreme Court, in the case of ***Dharmpal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati and others [(2015) 8 SCC 519]***, has been observed as under :-

“It, thus, cannot be denied that the principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken.

In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass orders which have civil consequences, affecting the liberty



or property of an individual but the statute may not contain a provision for prior hearing. But, what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any statutory provision or not. The opportunity to provide hearing before making any decision is considered to be a basic requirement in the court proceeding. Later on, this principle has been applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. If the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries.”

17. Further, in the case of ***Gorkha Security Services vs. Government (NCT of Delhi) and others [(2014) 9 SCC 105]***, the Supreme Court has dealt with the implied applicability of the principle of *Audi Alteram Partem* and has observed as under :-

“No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by

necessary implication excludes the application of any rules of natural justice, any exercise of power prejudicially affecting another must be in conformity with the rules of natural justice. When it comes to the action of blacklisting which is termed as "civil death" it would be difficult to accept the proposition that without even putting the notice to such a contemplated action and giving him a chance to show cause as to why such an action be not taken, final order can be passed blacklisting such a person only on the premise that this is one of the actions so stated in the provisions of NIT.

The impugned order passed by the respondents blacklisting the appellant without giving the appellant notice thereto, is contrary to the principles of natural justice as it was not specifically proposed and, therefore, there was no show-cause notice given to this effect before taking action of blacklisting against the appellant. However, it is clarified that it would be open to the respondents to take any action in this behalf after complying with the necessary procedural formalities delineated above.”

18. Further in the case of ***Nisha Devi vs. State of H.P. and others, [(2014) AIR (SCW) 1611]***, the Supreme Court has observed as under :-

“5. Trite though it is, we may yet again reiterate that the principle of audi alteram partem admits of no exception, and demands to be adhered to in all circumstances. In other words, before arriving at any

decision which has serious implications and consequences to any person, such person must be heard in his defence. We find that the High Court did not notice the violation and infraction of this salutary principle of law. Accordingly, on this short ground, the impugned Judgments and Orders required to be set aside, and are so done. The matter is remanded back to the Divisional Commissioner for taking a fresh decision after giving due notice to the Appellant and affording her an opportunity of being heard. The Divisional Magistrate, Kullu, shall complete the proceedings expeditiously, and not later than six months from the date on which a copy of this Order is served on him.”

Here in the present case, it clearly reveals that in every step, the respondents have violated the principle of natural justice and taken action against the petitioner without following the principle of *audi alteram partem*.

19. In view of the above discussion, it is clear that the action of the respondents of not only placing the petitioner under suspension but his removal from the post of Chairman is absolutely without jurisdiction, contrary to law and is clear example of arbitrary exercise on the part of the respondents that too in clear violation to the principle of natural justice.

20. Accordingly, the petition filed by the petitioner is **allowed** and the orders dated 23.02.2019 and 08.03.2019 held illegal, are

hereby quashed. The respondents are directed to allow the petitioner to work as a Chairman of M.P. State Branch Red Cross Society and if at all the respondents are still inclined to take action, then they are at liberty to take the same after following the due procedure of law.

**(Sanjay Dwivedi)**  
**Judge**

shukla