

(2015) 06 CAL CK 0031
In the Calcutta High Court
Case No : M.A. No. 043 of 2014

Andaman and Nicobar Administration and Others APPELLANT
Vs
Avis Islands Coconut Plantation Cooperative Society Ltd. and RESPONDENT
Others

Date of Decision : 12-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 324

Citation : (2015) 06 CAL CK 0031

Hon'ble Judges : Aniruddha Bose, J; Samapti Chatterjee, J

Bench : Division Bench

Advocate : Mohammed Tabraiz, for the Appellant; Anjili Nag, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Aniruddha Bose, J.—The appellant No. 3, the Registrar of Cooperative Societies of Andaman and Nicobar Administration had passed an order on 14th October, 2011, being order No. 780 directing winding up of the affairs of the writ petitioners/respondent No. 1, the Avis Islands Coconut Plantation Cooperative Society Ltd. This order was passed in exercise of power conferred upon the Registrar under section 57(2) (b) of the Andaman and Nicobar Islands Cooperative Societies Regulations, 1973 (the 1973 Regulations). This order was preceded by a notice to show cause, to which the society had given written objection.

2. The main ground on which the society was directed to be wound-up was that the said society had ceded its autonomy and independence by entering into a joint venture agreement with a private organisation, Barefoot Resort Pvt. Ltd. Chennai. The petitioners preferred an appeal against the order of winding up before the Lieutenant Governor, who is the statutory appellate authority. By an order passed on 12th May, 2012 the Lieutenant Governor also dismissed the appeal. The Society filled a writ petition for quashing the show cause notice as

well as the above-referred orders of the Registrar and the Lieutenant Governor dated 14th October, 2011 and 12th May, 2012 respectively. This writ petition was registered as WP No. 428 of 2012. The aforesaid orders were assailed on various ground before the learned Single Judge. The only issue which was, however, addressed in the judgement delivered by the learned Single Judge was that the writ petitioner did not get a fair opportunity to present his case before the Registrar. The learned Single Judge also found that the petitioner did not get reasonable opportunity for making representation on the penalty proposed. Referring to two decisions of the Supreme Court in the cases of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, AIR 1975 SC 266 : (1975) 1 SCC 70 : (1975) 2 SCR 674 : (1974) 6 UJ 737 and Raghunath Thakur Vs. State of Bihar and Others, AIR 1989 SC 620 : (1988) 4 JT 728 : (1988) 2 SCALE 1326 : (1989) 1 SCC 229 : (1988) 3 SCR 867 Supp : (1989) 1 UJ 6 , the learned Single Judge set aside the order of the Registrar. It was held and directed by the learned Single Judge in the judgement delivered on 5th August, 2014:--

"By the order impugned, the Registrar of Co-operative Societies directed winding up of the co-operative society. The power of winding up should be taken recourse to as a last resort. The writ petitioner did not get a fair opportunity to present his case before the Registrar. The writ petitioner did not get reasonable opportunity for making representation on the penalty proposed in the background of factual position and legal implication arising there under.

The Supreme Court of India in the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, AIR 1975 SC 266 : (1975) 1 SCC 70 : (1975) 2 SCR 674 : (1974) 6 UJ 737 held that fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

The Supreme Court of India in Raghunath Thakur Vs. State of Bihar and Others, AIR 1989 SC 620 : (1988) 4 JT 728 : (1988) 2 SCALE 1326 : (1989) 1 SCC 229 : (1988) 3 SCR 867 Supp : (1989) 1 UJ 6 held that blacklisting of any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order.

I, therefore, set aside the order of the Registrar of Cooperative Societies directing winding up of co-operative society and direct the Registrar of Co-operative Societies to consider reply of the writ petitioner afresh, after giving its representative or representatives an opportunity of hearing, in accordance with law within six weeks from the date of communication of this order.

However, I clarify, by way of abundant caution, that I have not gone into the merits of the claim and the counter claim of the parties. All points are left open."

3. The Administration as well as Registrar have preferred this appeal against the

said judgement. In the judgement under appeal, it has not been specifically spelt out as to whether fair opportunity in the instant case would have implied giving opportunity of oral hearing to the society or not. But if recordal of submissions of the learned counsel for the parties in the judgement under appeal, reference to the two authorities, and in particular the judgement in the case of Raghunath Thakur (Supra) and the ultimate direction upon the Registrar to give representative of the society opportunity of hearing are compositely considered, it would be apparent that not giving opportunity of oral hearing to the society was found to be the factor by the learned Single Judge, which robbed the decision making process of fairness culminating in the direction for winding up of the society.

4. Mr. Tabraiz and Ms. Nag, learned counsel appearing for the appellants and the society respectively have addressed us primarily on the question as to whether opportunity of oral hearing was necessary to be given to the society by the Registrar, and we shall confine our examination in this appeal on this point primarily. We shall also deal with the issue as to whether it was incumbent on the Registrar to afford opportunity of making representation in relation to imposition of penalty.

5. Appearing on behalf of the appellants, Mr. Tabraiz has argued that in the 1973 Regulations there is no provision for giving opportunity of hearing to the society. For compliance of the principles of natural justice such opportunity has been given both by the authority of the first instance and the appellate authority. On this point, my attention was drawn to the provisions of section 57 of 1973 Regulations which provides:--

"57. Winding up of Co-operative societies:- (1) If the Registrar, after an inquiry held under section 50, or an inspection made under section 51, or on receipt of an application made by not less than that three-fourth of the members of a co-operative society, is of opinion that the society ought to be wound up, he may after giving the society an opportunity of making its representation, by order, direct it to be wound up.

(2) The Registrar may of his own motion make an order directing the winding up of a co-operative society-

(a) where it is a condition of the registration of a society that the society shall consist of at least ten members and the number of members has been reduced to less than ten; or

(b) where the society has not commenced working or has ceased to function in accordance with co-operative principles.

(3) The Registrar may cancel an order for the winding up of a cooperative society, at any time, in any case where, in his opinion, the society should continue to exist.

(4) A copy of such order shall be communicated by registered post to the society

and to the credit agency, if any, of which the society is a member,

(5) where an appeal against an order for the winding up of a cooperative society is not presented within the period specified under sub-section (2) of section 68, the order shall take effect on the expiry of the period.

(6) Where an appeal against an order for the winding up of a cooperative society is presented within the period specified under sub-section (2) of section 68, the order shall not take effect until it is confirmed by the Chief Commissioner and such confirmation is communicated to the society."

6. The short question which falls for determination in this appeal is as to whether under the provisions of section 57(2)(b) of the said Regulations, it was sufficient on the part of the Registrar to determine the question of winding up on considering the written representation or there was necessity to give oral hearing. Mr. Tabraiz has relied on three judgements to contend that the authority is not obliged to give oral hearing for taking any action against a person over whom such authority exercises jurisdiction in some form, in the event the statute is silent or does not specifically mandate giving opportunity of oral hearing. These are the judgements of the Supreme Court in the cases of *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, AIR 1966 SC 671 : (1966) 1 SCR 466 , *State of Assam and Another Vs. Gauhati Municipal Board*, AIR 1967 SC 1398 : (1967) 2 SCR 732 and a judgement of the Madras High Court in the case of *V.S. Shanmuga Madaliar v. State* [AIR 1951 Madras 276].

7. Before we deal with the ratio of these three authorities, we shall briefly analyse the provisions of Section 57 of the 1973 Regulations in the perspective of obligation of the Registrar before directing winding up of a society. Sub-clause (1) of the said provision contemplates exercise of such power in three situations, on the basis of which the Registrar is to form an opinion that the society is to be wound up. First is after conducting an enquiry into constitution, working and financial condition of a society. Such enquiry can be conducted suo motu or on the application of not less than one-third of the members. Second situation is upon conducting an inspection on indebtedness of the society at the instance of a creditor. The third situation when such power can be exercised is on the basis of an application of not less than three-fourth of the members of the society. Under sub-clause (2) (b), the Registrar has been vested with suo motu power to direct winding-up of a society where the society has not commenced working or has ceased to function in accordance with the co-operative principles. It is on the latter ground the Registrar has acted in this matter. The Regulations do not specify the requirement of giving to the society opportunity of making representation or hearing while the Registrar acts in terms of Section 57 (2) of the 1973 Regulations.

8. In the judgement of *M.P. Industries (Supra)* dealing with the question of rejection of application for grant of lease under the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and Minerals Concession Rules

(1966), it was held by the Supreme Court:--

"(10) As regards the second contention, I do not think that the appellant is entitled as of right to a personal hearing. It is no doubt a principal of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed, R.55 of the Rules, quoted supra, recognizes the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal. The facts of the present case disclose that a written representation would effectively meet the requirements of the principles of natural justice...."

9. The second judgement of the Supreme Court cited by Mr. Tabraiz, being the case of Gauhati Municipality (Supra) involved the question of superseding a Municipal Board by the State Government. In that case also show cause notice was issued but no opportunity of personal hearing was given. It was held by the Supreme Court in this case:--

"It is not necessary in the present appeal to decide whether the proceedings resulting in an order under S.298 of the Act are quasi-judicial proceedings or merely administrative proceedings. Assuming that the High Court is right that the proceedings are quasi-judicial proceedings, the question is whether there was any violation of the principles of natural justice in the case. What the section provides is that a notice should be given to the Board by the State Government and its explanation taken before an order under S.298 is passed. It is not disputed that the appellant had given notice to the Board and had indicated the charges on the basis of which it had formed its tentative conclusion and also had asked for an explanation from the Board. The explanation was received in August 1964 and considered by the appellant and thereafter the appellant by its order dated December 9, 1964 decided to supersede the Board. Now it is clear from these facts that the appellant acted in full compliance with the procedure provided in S. 298. Ordinarily therefore there is no reason why it should be held, when the procedure provided in S. 298 was complied with, that the principles of natural justice were violated. But the High Court was of the view that the appellant should have given an oral hearing to the Board which should also have been given an opportunity to produce materials before the appellant in support of the explanation. According to the High Court the right of hearing includes the right to produce evidence in support of an explanation and this opportunity was not given to the Board. Here again it is unnecessary to decide whether S. 298 which merely says that the State Government should give opportunity to the Board for submitting an explanation in regard to the matter envisages production

of evidence - oral or documentary - at some later stage by the Board in support of its explanation. The High Court has conceded that a personal hearing of the nature indicated above is not always a concomitant of the principles of natural justice. But it was of the view that in the present case principles of natural justice required that the Board should have been given a personal hearing and an opportunity to produce materials in support of the explanation. We should have thought that when the Board is given a notice as required by S.298 it would naturally submit its explanation supported by facts and figures and all relevant material in support thereof. However, we are definitely of opinion that the provisions of S. 298 being fully complied with it cannot be said that there was violation of principles of natural justice in this case when the Board never demanded what is called a personal hearing and never intimated to the Government that it would like to produce materials in support of its explanation at some later stage. Therefore where a provision like S.298 is fully complied with as in this case and the Board does not ask for an opportunity for personal hearing or for production of materials in support of its explanation, principles of natural justice do not require that the State Government should ask the Board to appear for a personal hearing and to produce materials in support of the explanation. In the absence of any demand by the Board of the nature indicated above, we cannot agree with the High Court that merely because the State Government did not call upon the Board to appear for a personal hearing and to produce material in support of its explanation it violated the principles of natural justice. This ground in support of the order of the High Court therefore fails."

10. In the case of V.S. Shanmuga Madaliar (supra) the writ petitioner was aggrieved as the Board of Revenue while exercising its revisional jurisdiction declined to interfere with the order of Revenue Divisional Officer levying stamp duty and penalty on a document presented before such authority, which was held to be a partition deed. Grievance made out to the High Court at Madras by the petitioner was that he was not given opportunity of oral hearing by the Board. This plea was rejected by the High Court holding:--

"There is a nothing in the Act or in the Rules framed thereunder which enjoins on the Board the duty to give an oral hearing to a person who invokes there revisional jurisdiction. All the quasi judicial Tribunals like the Board of Revenue have to do is to give sufficient opportunity to the persons who approach them for the exercise of their jurisdiction to state their case. Local Government Board v. Alridge, (1951) A. C. 120:84 L.J.K.B. 72. This opportunity has been given to the petitioner, because presumably he has stated all his grounds of objection to the order of the Revenue Divisional Officer in his revision petition. He is not entitled as of right to be heard and it cannot be said that the order of the Board passed without hearing him is contrary to principles of natural justice. We must, therefore, refuse to issue a writ of certiorari to quash the order."

11. He has also relied on the decision of the Supreme Court in the case of State Bank of Patiala v. Mahendra Kumar Singhal [(1994) Supp (2) SCC 463]. This

judgement was delivered in connection with the order of dismissal of a bank employee. This order of dismissal was quashed by the High Court on the ground that no personal hearing was given by the appellate authority to the employee. The matter was remitted to the appellate authority by the High Court. The judgement of the High Court was set aside by the Supreme Court holding:--

"No rule has been brought to our attention which requires the appellate authority to grant a personal hearing. The rule of natural justice does not necessarily in all cases confer a right of audience at the appellate stage. That is what this Court observed in *F.N. Roy v. Collector of Customs, Calcutta*. We, therefore, think that the impugned order is not valid. Our attention was, however, drawn to the decision in *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* wherein observation is made in regard to the right of hearing. But that was not a case of a departmental inquiry, it was one emanating from Article 324 of the Constitution. In our view, therefore, those observations are not pertinent to the facts of this case."

12. Ms. Nag, on the other hand referred to the judgement of the Supreme Court in the case of *Erusian Equipment and Chemicals (Supra)* as also a more recent judgement of the Supreme Court in the case of *Prakash Ratan Sinha Vs. State of Bihar and Others*, (2009) 9 SCALE 529 : (2009) 14 SCC 690 : (2010) 1 SCC(L&S) 443 . The latter decision was delivered in a service related dispute. The appellant, being the employee was appointed as a daily wager, who was subsequently made permanent in the work charge department. His case was that though he was engaged as a daily wager, he was discharging the work of Accounts Clerk because of his qualification and experience, as per direction of the authorities. He had filed an application for his promotion or reappointment to the post of Accounts Clerk and the concerned committee subsequently recommended change of his nomenclature from labourer to Accounts Clerk, subject to approval of the Chief Electrical Engineer. The person in-charge of the post of Chief Electrical Inspector approved the proposal of the committee and had issued necessary order, but thereafter the regular Chief Engineer on resumption of charge found the order to be contrary to the rules and cancelled the approval order. The employee applied before the High Court for invalidating the order of cancellation invoking the constitutional writ jurisdiction on the ground that impugned order of cancellation was passed without affording him opportunity of hearing. The petitioner was successful before the Single Judge on this count, but the Division Bench set aside the order holding that giving opportunity of hearing would have been an empty formality and even if opportunity of hearing was given, the result would have been the same. The Supreme Court found that the employee was required to be given opportunity of hearing and rejected the "useless formality theory" on the basis of which the Division Bench had sustained the employers' case. In this judgement, necessity of application of the principles of natural justice was examined by the Supreme Court and it was held:--

"13. The law in this regard has been settled by several decisions of this Court. The principle that emerge from the decisions of this Court is that, if there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such a power and that the rule of natural justice operates in areas not covered by any law validly made.

14. Corollary principles emanating from these cases are as to what particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case and that it is only where there is nothing in the statute to actually prohibit the giving of an opportunity of being heard and on the other hand, the nature of the statutory duty imposed on the decision maker itself implies an obligation to hear before deciding. These case have also observed, whenever an action of public body results in civil consequences for the person against whom the action is directed, the duty to act fairly can be presumed and in such a case, the administrative authority must give a proper opportunity of hearing to the affected person."

13. In this appeal, the statutory provision specifically does not provide for giving opportunity of hearing before an order is passed in terms of section 57(2) of the Regulations. The Registrar however issued show-cause notice calling for objection. The order of winding-up was passed on considering the objection, which the society described to be reply to the show cause notice, without affording any opportunity of oral hearing. The society also specifically did not request for an oral hearing. Whether this procedure was compatible with the principles of natural justice or not is required to be decided in this appeal. The learned Single Judge relying on the two decisions of the Supreme Court in the cases of Erusian Equipment and Chemicals (supra) and Raghunath Thakur (supra) came to the finding that this procedure was not compatible with the principles of natural justice, as the impugned order had adverse civil consequence so far the writ petitioner society was concerned. In the factual context in which these two judgements were delivered, there was no specific legal provision for giving opportunity of hearing to the person considered to be errant traders in their dealing with the State, for which they were blacklisted.

14. The requirement on the part of the quasi judicial as well as administrative authorities to comply with the principles of natural justice while dealing with a person charged with having committed breach of law has travelled a long way, since its entry into our legal system through the common law. After the judgement was delivered in the case of Maneka Gandhi v. Union of India by the Seven Judge bench of the Supreme Court [Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, AIR 1978 SC 597 : (1978) 1 SCC 248 : (1978) 2 SCR 621]. Right of opportunity of being heard before being subjected to some form of prejudicial action, has been elevated to the level of Fundamental Rights, implicit in Articles 14, 19 as also 21 of the Constitution of India. Though this judgement was not cited by any of the learned counsel appearing for the parties, in our opinion the principle enunciated in this judgement has become so

embedded into our Constitutional jurisprudence that it would be permissible for the Courts to refer to the principles laid down in this judgement and follow the same even if this authority is not specifically cited in a particular case. In this judgement, which dealt with the question of impounding of passport of a citizen without affording opportunity of hearing, it was held:--

"The question immediately arises: does the procedure prescribed by the Passports Act, 1967 for impounding a passport meet the test of this requirement? Is it "right or fair or just"? The argument of the petitioner was that it is not, because it provides for impounding of a passport without affording reasonable opportunity to the holder of the passport to be heard in defence. To impound the passport of a person, said the petitioner, is a serious matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be visited without observing the principle of audi alteram partem. Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question, if the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J. in *Cooper v. Wandsworth Board of Works*. (1863) 14 C.B.N.S. 180: "A long course of decisions, beginning with *Dr. Bentley's case* (1723) 1 Str 557 and ending with some very recent cases, establish that although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature". The principle of audi alteram partem which mandates that no one shall be condemned unheard, is part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, *Nemo Judex in Sua Causa* and audi alteram partem."

15. The Latin expression audi alteram partem, which is the foundation the principle of giving prior opportunity of hearing before adverse action is taken against a person by any action of the authorities means "hear the other side". The same Latin expression was used in the judgement of *Maneka Gandhi* (supra). If we adhere the literal meaning of this expression, then the appellant society ought to have been given opportunity of hearing before the order directing its winding up was issued. But in all cases this principle has not been construed to mean grant of oral hearing.

16. In *Administrative Law* by Sir William Wade (eighth edition, 2003 reprint by Oxford University Press) it has been commented at page 511:--

"A "hearing" will normally be an oral hearing. But in some cases it may suffice to give an opportunity to make representations in writing, provided that any

adverse material is disclosed and provided, as always, that the demands of fairness are substantially met. The House of Lords has furnished the leading example in the case of the Liverpool councillors who had failed to make a valid rate and were surcharged by the district auditor for wilful misconduct. The auditor gave them full particulars of his complaints and offered to consider their representations in writing, which they duly made without asking to be heard orally. The Court of Appeal held that this procedure fell short of fairness, since the charges were serious, they attributed bad faith, and past practice had almost invariably been to give oral hearings in surcharge cases. The House of Lords held the contrary, finding that in dealing with a group of forty-nine councillors acting collectively, none of whom asked to be heard orally, the auditors had adopted a procedure which was both suitable and fair in all the circumstances."

17. In another commentary on Administrative Law, Judicial Review of Administrative Action by De Smith, Woolf and Jowell, (fifth edition, published in 1995 by Sweet and Maxwell), it has been stated at page 437:--

"A fair "hearing" does not necessarily mean that there must be an opportunity to be heard orally. In some situations it is sufficient if written representations are considered. Where the words "hearing" or "opportunity to be heard" are used in legislation, they usually require a hearing at which oral submissions and evidence can be tendered. However, in a great many statutory contexts, a duty of "consultation" is placed upon the decision-maker. This is almost always interpreted by the courts to require merely an opportunity to make written representation, or comments upon announced proposals."

18. The three authorities referred to by Mr. Tabraiz primarily seem to have been anchored on this particular view on the question of giving prior opportunity of oral hearing in addition to written representation, which is an exception to the generally accepted view that opportunity of hearing would mean oral hearing. Neither the passages from the aforesaid authoritative commentaries on Administrative Law, nor the three judgements referred to by Mr. Tabraiz however lay down in clear terms in what context the oral hearing ought to be dispensed with. So far the society is concerned, even though the Registrar had invoked his power in terms of Section 57 (2) of the Regulations, he chose to issue notice to issue show-cause and the society had the opportunity to represent its case by filing written objection. The Regulations involved was promulgated in the year 1973, before the Supreme Court decided the case of Maneka Gandhi (supra). The aforesaid provision in any event does not expressly exclude opportunity of hearing. Thus the subject dispute cannot be clubbed with that genre of cases in which opportunity of hearing is specifically excluded. While considering the provisions of sub-clause (2) of section 57 of the 1973 Regulations, we will have to test if in this case, it would have been sufficient to give the opportunity of giving objection in writing, considering the fact that in the show cause notice the allegations against society had been clearly outlined.

19. Though the writ petition was disposed of holding that there had not been

sufficient opportunity of hearing and the issues on merit were not addressed, for the purpose of addressing the question as to whether in this case oral hearing could have been dispensed with or not, some factual details pertaining to the case would have to be narrated. The main charge against the society is that it has ceded its autonomy and independence and practically handed over the assets comprised in immovable property to a private organisation for running a tourism resort. We have been taken through records by the learned counsel appearing for the appellants as also the writ petitioner which formed part of the proceeding before the learned Single Judge. We find that before entering into the joint venture agreement on 7th July, 2008 the society had got its bye-laws amended to include in the object clause coconut tree plantation and promotion of tourism. The other notable amendment was to enable the society to enter into any agreement, deeds and contracts including joint venture agreement for the development of lands allotted to the society for tourism purpose. The society also obtained diversion of part of the land allocated to it for commercial use. The administration has objected to the clause in the joint venture agreement which grants to the private organisation right in the site in perpetuity, against which fixed fees have been stipulated. There were certain other clauses of the agreement in relation to the society's dealing with the private organisation which were found to be legally offensive by the authorities, but as in this judgement we are not dealing with or testing the action of the authorities on merit, we do not consider it necessary to deal with those aspects of the controversy in detail. These alleged irregularities had come to the notice of the Lieutenant Governor, who directed an enquiry, which was conducted by the Secretary (Agriculture) and report was submitted to the Administration. The Administration found the action of the society as well as conduct of certain officers who facilitated grant of various approvals to the society to be contrary to the applicable Regulations. The Lieutenant Governor had directed the Registrar to take immediate action against the society for its cancellation. These facts emerge from the letter of the Assistant Secretary, Vigilance dated 12th May 2011, a copy of which appears in page 209 of the Paper Book.

20. It is in this perspective we shall examine as to whether not giving opportunity of oral hearing to the society and restricting the society's right of being heard to making written representation resulted in violation of the principles of audi alteram partem or not. In this case, allegations against the society are in relation to breach of the Regulations on account of having entered into a joint venture agreement. For the purpose of establishing the charge, provisions or the clauses of the joint-venture agreement are required to be construed. The Registrar, while exercising his power to direct winding up of a society, is required to exercise discretion, as the legislative mandate upon the Registrar for using his power to direct winding up of a society in both sub-sections (1) and (2) of Section 57 of the 1973 Regulations are guided by the expression "may". This involves subjective satisfaction on the part of decision-maker through a rational and reasonable mental exercise on the basis of

materials disclosed before him. Moreover, the Registrar, in terms of sub-clause (3) of Section 57 of the said Regulations has also been empowered to revive a society by cancelling the order of winding-up. The Regulations do not provide a guideline under what conditions such power can be exercised. It would however not be an irrational inference that in cases where the society can correct the faults it is charged with-that would be one of the factors for revival of a society already directed to be wound up. The measure prescribed in provision of Section 57(2) of the 1973 Regulations is also of grave consequence, equivalent to capital punishment so far as a co-operative society is concerned.

21. The two judgements reported in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, AIR 1966 SC 671 : (1966) 1 SCR 466 and *State of Assam and Another Vs. Gauhati Municipal Board*, AIR 1967 SC 1398 : (1967) 2 SCR 732 are not authorities for the absolute proposition that oral hearing is not an essential component of fair and reasonable procedure in the field of administrative or quasi-judicial decision making process, but lay down that in appropriate cases, such a procedure may not be necessary. The passages from the two treatises on Administrative law also prescribe that opportunity of hearing would ordinarily mean oral hearing. Considering the fact that right of opportunity of being heard in a situation of this nature is an integral component of Fundamental Rights in India as contained in Part III of the Constitution, any dilution of its application would have to be subjected to strict judicial scrutiny.

22. In this background, in our opinion, oral hearing to the society ought to have been given for effective compliance with the requirement of natural justice. Oral hearing can be dispensed with in situations where fault can be identified with near-arithmetic precision, and statute provides for specific penal measure on detection of such faults. But in a situation where imposition of penalty is to be done on the basis of discretionary power, with provision for subsequent corrective measure, oral hearing, subsequent to written representation would be the proper course. Oral hearing permits the decision-maker as also the affected party or the decision seeker to clarify positions on individual points made in the written representation and on certain aspects of a dispute oral explanation may be indeed necessary to have one's stand better understood. There may be situations where mere written representation may not convey properly what the person making representation wants to convey. Some faults may be remediable, not warranting invoking the winding-up provision in the context of this appeal, and if oral hearing is given, that position could be clarified on the spot. Oral hearing is a time-tested and reliable procedure for dispute resolution, and is ordinarily the accepted procedure. Such hearing, which involves a dialogue between the decision-making authority and the person to be affected by the decision improves the quality of the decision making process, as both the parties get a chance to explain their positions on the controversy or dispute at the stage of hearing. Moreover, in our opinion, the quality of opportunity afforded to one for explaining his case ought to have direct correlation with the gravity of penal measure being contemplated against such person. In this case, since the action

contemplated was harshest form of punishment for a co-operative society, the opportunity of being heard before such punishment was imposed ought to have included oral hearing. The mere fact that the society did not ask for such hearing ought not to be construed to be waiver of such right. It is also our view that the provision for appeal could not have cured such flaw in the decision-making process on the part of the authority of the first instance, particularly since the appellate authority under the Regulations is the Lieutenant Governor. It was under direction of the Lieutenant Governor the enquiry had commenced and the Registrar had acted. Not affording opportunity of oral hearing to the society by the Registrar before issuing the direction for winding-up of the society rendered the decision making process unfair. We accordingly find no reason to interfere with the judgement and order of the learned Single Judge assailed in this appeal. In this judgement, however, we have supplemented the reasons given by the learned Single Judge for quashing the impugned decision of the Registrar.

23. The learned Single Judge has also found the impugned decision of the Registrar to be flawed as the society was not permitted to make any representation on the aspect of imposition of punishment. In our view, however, if the society is given opportunity of oral hearing, there would be no necessity of such further notice, which would have been in the nature of second show-cause notice in service jurisprudence. The show-cause notice itself disclosed that the Registrar proposed to direct winding up of the society and objection was asked for on such disclosure of intention on the part of the Registrar. If oral hearing is given, the society would be able to explain its stand on the proposal of punishment as well.

24. The appeal is accordingly dismissed, and the judgement and order of the learned Single Judge is confirmed. Time to conclude the hearing, which was specified by the learned Single Judge to be six weeks from the date of communication of the order, however, is extended. The Registrar of Cooperative Societies shall consider the reply of the society afresh, after giving its representative opportunity of hearing in accordance with law within six weeks from the date of communication of this order.

25. There shall be no order as to costs.

Samapti Chatterjee, J.

I agree.