
(1999) 08 GAU CK 0031
In the Gauhati High Court
Case No : Writ Appeal No. 453 of 1995

Assam Apex Handicraft and Marketing Co-operative Society Ltd. and Another APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2000 Guw 35 : (1999) 3 GLT 220

Hon'ble Judges : Brijesh Kumar, C.J;D.N. Chowdhury, J

Bench : Division Bench

Advocate : B.K. Sarma, B.K. Talukdar, P.K. Tewari and S. Sarma, for the Appellant; A.M. Buzarbaruah, Government Advocate Assam, for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—Non-interference by the learned single Judge in the order dated April 2, 1994 passed by the Registrar of Co-

operative Societies, Assam under Section 65(2)(iv) of the Assam Co-operative Societies Act, 1949, cancelling the registration of the petitioner-

appellant society gave rise to the present appeal.

2. The main question for consideration rallies around the point as to whether it was necessary to provide an opportunity of hearing to the

petitioner-appellant society before passing the order cancelling its registration or not.

3. We have heard Shri P.K. Tewari, learned counsel appearing for the petitioner-appellants and Shri A.M. Buzarbaruah, learned counsel

appearing for the State.

4. A perusal of the order passed by the Registrar of Co-operative Societies dated

April 14, 1994 indicates that as a consequence of an enquiry held u/s 60 of the Assam Co-operative Societies Act, 1949 (hereinafter to be referred as "the Act"), it appeared to the Registrar on the basis of the report that the registration of the society was obtained on false information and forged documents and forged balance sheet was also submitted in the office of the Registrar for obtaining financial assistance of the Government of India, hence continuation of the society was not in the interest of the cooperative movement. Therefore, the Registrar of Co-operative Societies exercised his power vested u/s 65(2) (iv) of the Act, and cancelled the registration of the Assam Apex Handicraft & Marketing Cooperative Society Limited. Apart from others, a copy of the order was also endorsed to the Superintendent, Government Press for publication in the next issue of the Gazette.

5. We have perused the order passed by the learned single Judge. In the beginning it is recorded that the petitioner did not press the first relief for striking down Clause (iv) of Sub-section (2) of Section 65 of the Act. Hence the case was considered on the question of validity of the order passed by the Registrar of Co-operative Societies cancelling the registration of the petitioner society. After quoting the order passed by the Registrar, the learned single Judge quoted the provisions contained u/s 65 of the Act as well as Rule 79 of the Co-operative Societies Rules. It appears that the learned single Judge perused the enquiry report which was placed before the Court from the record of the office of the Registrar of Co-operative Societies and on looking to the report it was observed that the Court was satisfied that there was fraud on the part of the society to derive benefit, hence the Court was not inclined to issue any writ or direction. It is also observed that alternative remedy by filing statutory appeal u/s 80 Of the Act was also available. Hence the petition was rejected. Learned single Judge also found that under proviso to Rule 79(2) of the Rules, examination of any particular register and registers may be carried out by the Registrar including verification of cash balance and securities without previous intimation to the society. From the observation, as referred to above, the learned single Judge seemed to be of the view that no opportunity of hearing was required to be given before passing of the order by the Registrar u/s 65 of the Act.

6. According to the appellants, they were never informed of any charges or allegations against the society, nor any enquiry was held in those

charges associating the appellants, in any manner. It is further submitted that the order cancelling the registration has been passed in flagrant

violation of the principles of natural justice which plea was vehemently urged before the learned single Judge also. No finding is recorded that any

kind of information or opportunity of hearing was ever afforded to the appellants before passing of the order.

7. That fact thus which is not in dispute is that the order of cancellation of registration of the petitioner society was passed behind the back of the

petitioner-appellants without affording any opportunity.

8. The learned State counsel has made two fold submissions. First, that no opportunity of hearing is envisaged before passing an order u/s 65(2) of

the Act and secondly, that the order passed under Sub-section (2) of Section 65 of the Act is subject to review under the statutory provision

whereafter alone it is given effect to, it provides sufficient safeguard by way of post-decisional hearing in such matters. Hence, it was not necessary

to afford any opportunity of hearing before passing of the impugned order.

9. To consider the above question it would be necessary to look into the relevant provisions under the Act and the Rules, Section 60 of the Act

relates to enquiry by the Registrar. It reads as follows :

60. Inquiry by Registrar. (1) The Registrar may, at any time, of his own motion or shall at the request of the administrative head in charge of the

Civil Sub-division or other administrative area, hold an inquiry or direct some person authorized by him by order in writing in this behalf, to hold an

enquiry into the constitution, working and financial condition of a registered society.

(2) Such an inquiry shall also be held on the application of--

(i) the affiliating society, if any, of which the society is a member and a debtor;

(ii) a majority of the members of the managing body;

(iii) one-third of the members of the society, who shall have deposited such security for costs, if any, as the Registrar may direct;

(iv) creditors representing not less than one-half of the borrowed capital of the society, who shall deposit such security for costs, if any, as the

Registrar may direct.

(3) The Registrar shall communicate the result of any inquiry under this section to the society and to the person at whose request such enquiry was made.

A reading of the above provisions will indicate that enquiry can be ordered by the Registrar suo motu or at the instance of others as indicated

under Sub-section (2) of Section 60 of the Act. It is also the requirement that the Registrar would communicate the result of enquiry to the society

and to the person at whose request such enquiry was made. Rule 79 of the Assam Co-operative Societies Rules, 1953 provides for the procedure

for enquiries u/s 60 and inspection u/s 61 of the Act. Rule 79 reads as follows :

79. Procedure of enquiry u/s 60 and inspection u/s 61. (1) Unless the Registrar otherwise directs, the enquiry regarding the affairs of a co-

operative society u/s 60 shall be conducted in its registered office.

(2) Timely intimation shall be given to the society before the enquiry is held :

Provided that the verification of the cash balance and securities or the examination of any particular register and registers may be carried out

without any previous intimation to the society.

(3) The officers, employees and other members shall furnish all information required by the inspecting officer for the completion of the enquiry and

for this purpose they shall prepare such statements and take such action as may be necessary for the verification and examination of society's

records as required by him to look into its constitution, working and financial condition u/s 60 or Section 61.

(4) (i) The Registrar or any person authorised by him under Sections 45, 55, 60, 61 and 76 of the Act shall have power to require by summons the

production at a convenient place of any books, documents or accounts relating to the affairs of a society or of cash belonging to the society by the

person in possession of such books, documents or cash.

(ii) Such summons may be sent by registered post or served in the manner prescribed by Rule 98 (2).

(iii) Any person duly summoned under Sub-rule (i) above to appear or to produce any document or cash shall be liable to the same penalties as

provided in Rule 105.

A perusal of the above Rule indicates that only requirement is that timely intimation is to be given to the society before enquiry is held and that too would not be necessary under proviso to Sub-rule (2) of Rule 79, for the purposes of verification of cash balance and securities or examination of any particular register and registers.

Section 65 of the Act reads as under :--

65. Cancellation of registration. (1) If the Registrar, on receipt of an application made upon a resolution adopted in a meeting of the General

Assembly by a three-fourth majority of the members present at the meeting provided that the notice of dissolution was included in the circulated

agenda of the meeting, is of opinion that the society ought to be dissolved, he may, by an order in writing, cancel the registration of the society.

(2) The Registrar, after an enquiry has been held u/s 60 or after an inspection has been made u/s 61, may cancel the registration of a society

which--

(i) has not commenced working; or

(ii) has ceased working; or

(iii) has ceased to comply materially with any condition as to registration in this Act, rules or bye-laws; and

(iv) In his opinion ought to be dissolved.

(3) A copy of the order cancelling the registration of a society shall forthwith be published in the official Gazette by a notice which shall be

communicated to the society and to any affiliating society concerned by registered post. The notice shall contain the name of the liquidator

appointed u/s 66, who shall take full charge of the society forthwith and shall require all claims against the said society to be made to the liquidator

within two months of the publication of the notice. All liabilities recorded in the account books of the society shall be deemed ipso facto to have

been so claimed.

(4) When the cancellation of the registration of a society takes effect, the society shall cease to exist as a corporate body, but shall vest in the

liquidator.

(5) Any member of the society may, within two months, from the date of publication of the order of cancellation, appeal to the State Government

from such order.

(6) Where no appeal is presented within two months from the publication of an order cancelling the registration of the society, the order shall take effect on the expiry of that period.

(7) When an appeal is presented within two months of an order of cancellation, the order shall not take effect until it is confirmed by the State

Government and such confirmation is communicated to the society by registered post.

A perusal of Sub-section (2) of Section 65 of the Act quoted above, shows that after an enquiry is made u/s 60, the Registrar may cancel the

registration, Inter alia, on the ground that in the opinion of the Registrar the society ought to be dissolved.

As provided under Sub-section (3) of Section 65, the order of cancellation of the registration shall be forthwith published in the official gazette. An

order passed cancelling the registration can be appealed against before the State Government within two months as envisaged under Sub-section

(5). Sub-section (6) provides that where no appeal is presented within two months from the publication of the order of cancellation, the order shall

take effect on expiry of that period or where an appeal is filed, the order shall not take effect until it is confirmed by the State Government and such

confirmation is communicated to the society by registered post as provided under Sub-section (7).

10. On the basis of Sub-sections (5) to (7) of Section 65, the learned State Counsel made an effort to build up an attractive argument that the said

provisions provide for a post decisional hearing in the matter, inasmuch as, an appeal is provided to the State Government within two months of the

order of cancellation and the order has to take effect on expiry of the said period, if no appeal is filed or after confirmation in appeal. Hence, the

order of cancellation of registration does not take effect on its passing but is subject to its confirmation in appeal. Therefore, it could not be urged

that the appellants were necessarily entitled for any pre-decisional hearing in the matter.

11. We may first consider as to whether any hearing is envisaged prior to passing of the order of cancellation and next it may be considered how

far the requirement of providing opportunity of hearing before passing of the

order is meted out by Sub-sections (5) to (7) of Section 65 of the Act.

12. So far the statutory provisions are concerned. It may at the outset be indicated that there is no specific provision indicating that before passing an order of cancellation of registration any show cause notice is to be issued to the society calling upon it to show cause as to why the registration be not cancelled. Under Sub-section (2) of Section 65 of the Act, the Registrar may, on the basis of an enquiry made u/s 60 of the Act, cancel the registration of a society, if in his opinion the society ought to be dissolved as provided under Clause (iv) of Sub-section (2) of Section 65 of the Act. As indicated earlier Rule 79 of the Rules lays down the procedure for conducting such enquiry u/s 60 of the Act. It also does not provide that the society is to be associated with the enquiry in the allegations or charges against the society. Only a timely intimation is provided to be given before enquiry is held. The right of prior intimation is also taken away under proviso to Sub-rule (2) of Rule 79 under which verification of cash balance and securities or the examination of any particular register and registers may be carried out without any previous intimation to the society. Therefore, it is clear that there is no explicit provision for providing any hearing before passing the order. There is not even a provision calling upon the society to send its comments, reply or explanation or representation against the enquiry report. So far on facts this case is concerned, the petitioners' case is that they received the order of cancellation straightway and knew nothing about any enquiry or report. Section 60(3) provides that the Registrar shall communicate the result of the enquiry to the society and the person at whose instance the enquiry was held. There is nothing to indicate that any compliance of the said provision was made by providing a copy of the enquiry report as against the petitioner-appellants. In any case it would reasonably be expected that before acting upon an enquiry report the Registrar would have the version of the society as well, failing which it would be nothing more than one sided picture of the whole thing depriving the society of any chance of explaining the facts and circumstances or findings recorded against it in any enquiry made u/s 60 of the Act. The procedure for conducting such enquiries does not provide for associating the society with the enquiry or affording any opportunity to it to

explain to the officer any Circumstance or document which may be taken into consideration against the society.

13. It is well settled that the principles of Natural Justice are omnipotent. The hearing can no doubt be excluded by any explicit provision. A

scrutiny of the provisions contained in Sections 60 and 65 of the Act does not show that these provisions exclude the application of the principles

of Natural Justice before passing an order of cancellation of registration. Such principles or provisions have to be read in between the lines, but that

would depend upon the consequences and adverse effect upon the person against whom an order is passed. Needless to emphasise that before a

person can be indicted or any order may be passed casting stigma, it is imperative that before passing such an order a hearing must be provided to

the person to meet out the charges. The seriousness of the order passed cancelling registration of a society can well be seen from the

consequences which flow from the order. On cancellation of the registration a Liquidator is appointed u/s 66 of the Act to take full charge of the

society forthwith. On the order of cancellation taking effect the society ceases to exist as a corporate body and it vests in the liquidator. The effect

is harsh and serious enough to liquidate a society. It ceases to exist immediately on the order taking effect. Full charge of the society is taken over

by the liquidator. Matters where such drastic consequences follow from the passing of an order, it is idle to contend that it would not be necessary

to provide hearing before passing such an order. In such a situation, application of the principles of Natural Justice have to be read in between the

lines of the provision itself. In this connection we may refer to a decision reported in C.B. Gautam Vs. Union of India and Others, The provisions

of Chapter XX-C of the Income Tax Act, 1961 were under consideration which provide for making an order for compulsory purchase of

property u/s 269UD of the Act where it appeared that the property was being sold out undervaluing it so as to evade liability of tax. There was no

specific provision for giving an opportunity of hearing before passing the order of compulsory purchase. The Court in paragraph 28 held as follows

:

It must, however, be borne in mind that Courts have generally read into the provisions of relevant sections a requirement of giving a reasonable

opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be

particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity.

It has further been observed in paragraph 30 as follows :

In the light of what we have observed above, we are clearly of the view that the requirement of a reasonable opportunity being given to the

concerned parties, particularly, the intending purchaser and the intending seller must be read into the provisions of Chapter XX-C. In our opinion,

before an order for compulsory purchase is made u/s 269UD, the intending purchaser and the intending seller must be given a reasonable

opportunity of showing cause against an order for compulsory purchase being made by the appropriate authority concerned.....As we have already

pointed out the provisions of Chapter XX-C can be resorted to only where there is a significant under valuation of property to the extent of 15 per

cent or more in the agreement of sale, as evidenced by the apparent consideration being the lower than the fair market value by 15 per cent, or

more. We have further pointed out that although a presumption of an attempt to evade tax may be raised by the appropriate authority concerned in

case of the aforesaid circumstances being established, but such a presumption is rebuttable and this would necessarily imply that the parties

concerned must have an opportunity to show cause as to why such a presumption should not be drawn.

From what has been observed by the Hon"ble Supreme Court in the case of C.B. Gautam Vs. Union of India and Others, it is clear that such a

provision of providing an opportunity before passing an order may well be read in the relevant provision where the order has adverse civil

consequences for the parties affected and where in absence of such a provision the validity of the provision Itself may seriously be in doubt. Yet

another consideration to hold as above was that order of compulsory purchase raises a presumption of attempted evasion of tax. There fore, an

opportunity must be provided to rebut such imputation of attempted evasion of tax. Yet another decision on the point is reported in State Bank of

India Vs. Rajendra Kumar Singh and Others, The question for consideration was whether in absence of any provision for issuing any notice before

disposal of property in criminal case it was necessary to provide a hearing before passing an order. It was held that though the statute was silent,

but in the eye of law by necessary implication it was required that parties adversely affected should be heard before the Court passes an order for

return of the seized property.

14. From the proposition of law as laid down in the above noted two decisions of the Hon"ble Supreme Court it is clear that depending upon the

consequences which flow from the order passed, provision for providing a hearing before passing such an order can well be read in the provision

itself. In the present case we find that serious consequences flow from the order cancelling registration of the society. Apart from those serious and

civil consequences as provided in Section 65 of the Act, we also find that the order of cancellation is passed on the ground that registration of the

society was obtained by furnishing false information and forged documents and a forged balance sheet was submitted to obtain financial assistance

from the Government. The order on the face of it is stigmatic. Such a stigma has been cast without even informing the society of the allegations and

charges against it or requiring it to submit its explanation to the charges or even to the report said to be obtained u/s 60 of the Act. The effect of the

order passed is that the whole charge is taken by the liquidator and on coming into force of the order the society ceases to exist and vests in the

liquidator such consequences impel us to read a provision of providing an opportunity of hearing in the section itself providing for cancellation of

registration.

15. Next we come to the contention raised on behalf of the State that a post-decisional hearing is provided under Sub-sections (5) to (7) of

Section 65 of the Act. Hence the appellants cannot complain of violation of Audi Alteram Partem rule. Shri A.M. Buzarbaruah, learned counsel

appearing for the State has taken pains to substantiate the above argument and cited before us the authority of De Smith on Judicial Review of

Administrative Action, 4th Edition, page 193 and submitted that post-decisional hearing is permissible under the law. He has drawn our attention to

the following passage from the judicial Review of the Administrative Action by De Smith :

A prior hearing may be better than a subsequent hearing, but a subsequent

hearing is better than no hearing at all; and in some cases the Courts have held that statutory provisions for an administrative appeal or even full Judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings. Although it ought not to be adopted as a general rule.....

We quote one more relevant part from the book of De. Smith as observed at pages 193-194 :

.....certain social security benefits and some licensing applications) are normally made without any "hearing" and on the strength of written submissions or applications (occasionally supplemented by an informal interview), subject to a right to be heard on appeal to a special tribunal. If, of course, the initial decision is only provisional in the sense that it does not take effect at all until a prescribed period for lodging objections has expired, the opportunities thus afforded to a person aggrieved are in substance a right to an antecedent hearing.

(Emphasis laid by us)

16. The Hon"ble Supreme Court in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, had an occasion to consider the question of pre-decisional and post-decisional hearing and after referring to a passage as quoted above from De. Smith on Judicial Review of Administrative Action held as follows :

In short, the general principle -- as distinguished from an absolute rule of uniform application -- seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority

Involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, Courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a

minimal hearing shorn of all its formalappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fairplay "must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands". The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

17. In K.I. Shephard and Others Vs. Union of India (UOI) and Others, ex post facto hearing was sought to be given and on that ground order

throwing out the employees out of the employment without affording an opportunity of prior hearing was sought to be justified. The Hon"ble

Supreme Court negated the plea and it was held as follows :

15. Fair play is a part of the public policy and is a guarantee for justice to citizens. In our system of Rule of Law every social agency conferred with

power is required to act fairly so that social action would be just and there would be furtherance of the well-being of citizens. The rules of natural

justice have developed with the growth of civilisation and the content thereof is often considered as a proper measure of the level of civilisation and

Rule of Law prevailing in the community. Man within the social frame has struggled for centuries to bring into the community the concept of fairness

and it has taken scores of years for the rules of natural justice to conceptually enter into the field of social activities. We do not think in the facts of

the case there is any justification to hold that rules of natural justice have been ousted by necessary implication on account of the time frame. On

the other hand we are of the view that the time limited by statute provides scope for an opportunity to be extended to the intended excluded

employees before the scheme is finalised so that a hearing commensurate to the situation is afforded before a section of the employees is thrown

out of employment.

16. We may now point out that the learned single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation

but that has been vacated by the Division Bench. For the reasons we have

indicated, there is no justification to think of a post-decisional hearing.

On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now

represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of

employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of

employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above

as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a

representation may not really yield any fruitful purpose.

18. In the light of what has been discussed above, the part of the contention raised on behalf of the State by learned counsel Shri A. M.

Buzarbaruah is undoubtedly acceptable that in all the cases and all the matters it may not be necessary to provide a prior hearing before passing an

order adversely affecting a person. A post-decisional hearing may be sufficient to meet the principle of fair-play and observance of the principles of

natural Justice. But, in our view, post-decisional hearing or provision of an appeal after passing of the order may not in all cases justify an order

without prior hearing.

We find that the following principles emerge relating to law of post-decisional hearing :

(i) Opportunity of prior hearing before passing an order adverse to a person is a general rule,

(ii) post-decisional hearing is an exception to the general rule,

(ii) post-decisional hearing may meet the requirement of observance of principles of natural justice where the consequences flowing from the order

are trivial in nature and the injury, if caused, is insignificant and no civil consequences flow from the order,

(iv) where it is impracticable to afford a prior hearing due to existence of certain circumstances justifying the plea of impracticability of holding an

enquiry without affording an opportunity,

(v) where statutory or judicial review of an order is provided without giving effect at all to the offending order before finalising the appellate

remedy, that is to say, the decision is only provisional and remains unimplemented,

(vi) In a case where the sense of urgency is to the extent that it would defeat the purpose itself of taking any such step of passing the adverse order,

if time is allowed to lapse for providing even minimal hearing before passing the order.

19. In our view, except in the above noted exceptional circumstances, or other similar circumstances, as a general rule, principles of natural justice

imperatively require that a prior hearing must be afforded to a person against whom an adverse order resulting in civil consequences is passed.

20. In the case in hand, undoubtedly there is a provision for filing an appeal against an order passed u/s 65(2) of the Act and the order of

cancellation of registration is given effect to on expiry of the period of two months or on disposal of the appeal, if filed before the Government. We

may now proceed to examine the provisions of law and non-implementation of the order for a period of two months or till disposal of the appeal.

21. We have already quoted the provisions of Section 65 along with the Sub-sections thereof. Sub-section (5) of Section 65 makes a provision

that within two months from the date of publication of the order of cancellation, any member of the society may file an appeal to the State

Government, Sub-section (6) provides that if no appeal is filed within two months, the order shall take effect on expiry of that period and Sub-

section (7) provides that where an appeal is filed within two months, the order shall not take effect until it is confirmed by the State Government

and such confirmation is communicated to the society. So far the consequence of taking effect of the order of cancellation of the registration is

concerned, it is provided under Sub-section (4) of Section 65 which says that when the cancellation of registration takes effect, the society ceases

to exist as a corporate body, but it shall vest in liquidator. It will then be necessary to consider Sub-section (3) of Section 65 which reads as

follows :

(3) A copy of the order cancelling the registration of a society shall forthwith be published in the official Gazette by a notice which shall be

communicated to the society and to any affiliating society concerned by registered post. The notice shall contain the name of the liquidator

appointed u/s 66 who shall take full charge of the society forthwith and shall require all claims against the said society to be made to the liquidator

within two months of the publication of the notice. All liabilities recorded in the account books of the society shall be deemed ipso facto to have

been so claimed.

From the above it is clear that the order of cancellation is to be published in the official Gazette forthwith. It shall also contain the name of the

liquidator. Yet another consequence is that the liquidator will take full charge of the society. So the sequence of consequences as contained in Sub-

sections (3) to 7 is that the order of cancellation is forthwith published in the official gazette and full charge of the society is taken over by the

liquidator forthwith. Under Sub-section (5) a member of the society gets a right to file an appeal against the order of cancellation within two months

from the date of publication of the order of cancellation. If no appeal is filed against the order of cancellation, it takes effect on expiry of two

months and where an appeal is preferred, it takes effect after confirmation of the order by the State Government. We further see that the

consequence of taking effect of the order of cancellation of registration is that the society ceases to exist as a corporate body, but it vests in the

liquidator. Thus the last formality of merging of the society or the society ceasing to exist and vesting in the liquidator, remains, rest of the

consequences take effect immediately on passing of the order. It is essential to publish the order forthwith in the official Gazette. In the instant case,

publication of the order of cancellation stating that the society obtained registration by giving false information and using forged documents and

submitted false balance sheet for obtaining financial assistance from the Government results in highly adverse consequences affecting the society. In

the official Gazette it is declared to be a fraud and an organisation forging the documents. Such a stigmatic order is given wide and official

publication. We feel that it is a very serious consequence which flows immediately on publication of the order of cancellation in the official gazette

forthwith. Yet another drastic consequence which immediately takes effect is that the official liquidator takes full charge of the society forthwith. An

opportunity of appeal is provided only after the above two consequences as provided under Sub-section (3) already take effect. Therefore, it is

not correct to contend on behalf of the respondents that the order of cancellation takes effect only after expiry of two months or its confirmation in

case an appeal is filed. As indicated earlier, whatever part of the consequences remains after the order taking effect is that formally the society

ceases to exist as a corporate body and vests in the liquidator, rest of the adverse consequences have happened before order taking effect in the

sense it is indicated under Sub-sections (4), (5) and (6) of Section 65. One of the conditions justifying negation of prior hearing is that the offending

order does, not take effect at all, but here we find it to be otherwise. For all practical purposes the order in substance takes full effect only

formality remains.

22. We also find that the other test which may justify a post-decisional hearing is also not fulfilled in this case. Nothing could be indicated on behalf

of the State in what circumstances it is considered in all such cases where question of cancellation of registration of society is Involved that it would

be impracticable to hold an enquiry providing a hearing to the society. Therefore, any such general provision would not meet the requirement of

prior hearing, nor in general it can be said that by providing prior hearing the purpose of the provision Itself would stand defeated. In the above

circumstances we hold that the contention raised on behalf of the State, though attractive, is difficult to uphold that provision of appeal as contained

under Sub-section (5) of Section 65 of the Act provides a post-decisional hearing curing the violation of general rule of providing a hearing prior to

passing of an adverse order Cancellation of registration of society which ultimately results in extinction of the society as a corporate body and

before that its full charge being taken by official liquidator and a publication to that effect being made in the official Gazette is a matter which results

in serious consequence and would not fall in one of those matters where it can be said that the consequences which flow are trivial or insignificant.

23. In view of the discussions held above and the decisions referred to in the earlier part of the judgment, namely, C.B. Gautam Vs. Union of India

and Others, and State Bank of India Vs. Rajendra Kumar Singh and Others, a provision of prior hearing u/s 65 of the Cooperative Societies Act

will have to be read and an opportunity is necessary to be afforded before an order of cancellation of registration is passed. Such a requirement of

affording prior hearing is to be taken as inherent part of the whole scheme of the section failing which the action taken is vitiated or else the validity

of the provision will be open to real and serious challenge and Jeopardy under the law.

24. One of the objections raised on behalf of the State is that the petitioner-appellants should have resorted to the alternative remedy as available

before the State Government Instead of filing a writ petition in this Court. We feel it need not detain us long since it is a well recognised principle

that where an order is passed in flagrant violation of the principles of natural justice, alternative remedy would be no bar. On the said point,

however, a decision which has been relied upon by the learned counsel for the petitioner-appellant is reported in Baburam Prakash Chandra

Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, In the facts and circumstances of the present case as indicated above,

where such serious consequences flow from the impugned order passed in flagrant violation of the principles of natural justice, the petitioner could

not be thrown put on the ground of availability of alternative remedy.

Chowdhury, J.

25. I entirely agree with the Hon'ble the Chief Justice and would only like to add a few observations on one aspect of the matter as to whether the

existence of a provision for appeal be a good substitute for denial of principles of natural justice at the initial stage.

26. The principle of natural justice has universal application. "Whether he be in the right or in the wrong, give the devil his due" -- paraphrased the

statement of John F Dillon in Law of Jurisprudence of England and America. "First Justitia Ruat Coelum" -- let justice be done though heavens fall.

Justice is sublime, it is not the product of intellect but of spirit. The nearest we can get to defining justice is to say that it is what the right-minded

members of the community -- those who have the right spirit within them -- believe to be fair." (recalled Alfred Denning from "The Road to

Justice").

The Assam Co-operative Societies Act, 1949 and the rules framed thereunder provided on the authority the power of registration of a society as

well as with the power of dissolution of a society including that of cancellation of registration. Chapter XI of the Act, 1949 deals with the

dissolution of society. The Registrar of Co-operative Societies is assigned with the legal authority to cancel registration of a society after an enquiry

has been held u/s 60, or an inspection has been made u/s 61 of the Act, 1949 on the ground that the society (i) has not commenced working; or

(ii) has ceased working or (iii) has ceased to comply materially with any condition as to registration in the Act, rules, bye-laws, and (iv) In his

opinion the society ought to be dissolved (Section 65(2) of the Act, 1949).

The power of cancellation of registration of a society would arise only in the case when any of the conditions set out in Clauses (i), (ii) and (iii)

indicated in Sub-section (2) of Section 65 exists and when the Registrar is of the opinion that the society ought to be dissolved, Whether the

society has commenced working or not or has ceased working or has ceased to comply materially with any condition as to registration under the

Act, rules or bye-laws, are questions of fact which is/are to be adjudicated by the Registrar on the basis of the materials available. The observance

of principles of natural justice is implicit. Before cancellation of registration, under the scheme of the Act, the society is entitled to know the ground

of cancellation and/or the allegations against the society as well as the right to counter the allegation(s) and the right to defend its case effectively. In

other words, a fair opportunity of hearing what is alleged against him and presenting his own case is implicit and fundamental.

27. Referring to Sub-section (5) of Section 65 of the Act, 1949 which contains the provision of appeal, Mr. Bujarbaruah, the learned Government

Advocate, vehemently argued that breach of the principles of natural justice at the initial stage will not amount to failure of justice when the Statute

provided for review of the order on appeal. The nature and effect of the order of cancellation of registration and the consequent prejudice upon a

registered society is succinctly dealt in the judgment of the Hon"ble the Chief Justice.

Revocation of registration turned the society inoperative and non-functional. Before preferring the appeal, the image of the society is already

blackened Indicating therein that the society obtained registration by furnishing false Information and by the use of forged documents and submitted

false balance sheet to obtain financial assistance. Principle of natural justice is operative at all stages. If the allegations are not made known at the

initial stage and disclosed only at the appellate stage, it may not always conform to the required yard stick of fair-play-in-action. The right of appeal

is not always the replacement of fairness-in-action. "If natural Justice is violated at the first stage," as observed by Sri William Wade and

Christopher Forsyth in the 7th Edn of "Administrative Law" (pp. 545), "the right of appeal is not so much a true right of appeal as a corrected initial

hearing : instead of a fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial." There is a marked difference

between the initial decision making process and the decision making process at the appellate stage.

In a case of this nature, the order of cancellation is to be published in the Official Gazette which contains the name of the Liquidator and the

Liquidator is to take charge of the society forthwith. The person aggrieved is conferred with a right to prefer an appeal but at the same time bear

the burden of the adverse decision which is reached behind his back. "If a man has never had a fair trial by the appropriate trial body, is it open to

an appellate body to discard its appellate functions and itself give the man the fair trial that he has never had?", observed Sri Robert Edgar

Megarry, J in Leary V. National Union of Vehicle Builders (1971) 1 Ch 34. The learned Judge further observed :

That is not all, if one accepts the contention that a defect of natural Justice in the trial body can be cured by the presence of natural Justice in the

appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give

the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal?

Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to

expel him. I cannot think that natural Justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will

nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a

deprivation would be a powerful result to be achieved by what in law is mere nullity; and it is no mere triviality that might be justified on the ground

that natural justice does not mean perfect Justice. As a general rule, at all events. I hold that a failure of natural justice in the trial body cannot be

cured by a sufficiency of natural justice in an appellate body.

28. Justice is the thematic content of the Indian Constitution. Article 14 of the Constitution is a shield against arbitrariness. What is fanciful and

capricious, is arbitrary and what is arbitrary cannot be Just, reasonable and fair and, therefore, incongruous and invidious to Article 14 of the

Constitution of India. What is devoid of fairness is inequitable and partial and, therefore, obnoxious and discriminatory. Article 14 - the great

egalitarian clause of the Constitution, is the fierce adversary of arbitrariness. That which is arbitrary is also despotic and, therefore, tyrannical which

does not conform to the norms set down in the Constitution.

Whether a provision of appeal can serve the procedural fairness and cure the wrong or inequity, will naturally depend on a number of factors like

the severity of the likely consequences of the order or decision, gravity of the wrong, the extent of the transgression of the right affected by the

breach of the principles of natural justice, the appearance of injustice due to the non-observance of a fair procedure and like other factors.

A fundamental aspect of the legal policy is that law should be Just and the decision of a Court of law should accelerate the cause of justice. It is

also to be presumed that the Legislature does not, in the absence of contrary intention, authorise the exercise of power in violation of the principles

of natural Justice. The Courts are always concerned to see that there is no rationing of Justice. The legal policy, equity and fairness will supply the

omission of the Legislature. The Registrar is the person clothed with the legal authority to determine the question affecting the rights of the individual

society. In that view of the matter, it is by necessary implication, the Registrar is required to observe the principles of natural justice while exercising

the said authority and if he falters or disregards, it will invalidate the purported decision as well as the decision making process. In this situation, one

may recall the following observation of Lord Diplock in *RV Commission for Racial Equality exp. Hillingdon, LBC*, reported in (1982) AC 779 :

Where an Act of Parliament confers upon an administrative body functions which involve its making decisions which affect to their detriment the

rights of other persons or curtail their liberty to do as they please, there is presumption that Parliament intended that the administrative body should

act fairly towards those persons who will be affected by their decisions.

In the conspectus of the provisions of the statute in-question, the efficacy and the out- come of the order of revocation of Registration and legal

policy, it can be legitimately held that a pre-decisional hearing is ingrained and inbred in Sub-section (2) of Section 65 of the Assam Co-operative

Societies Act, 1949. 29. In the result, the appeal is allowed and the order of the learned Single Judge and the order passed by the Registrar of

Co-operative Societies dated April 2/4, 1994 as contained in Annexure-5 to the Civil Rule are quashed. It is, however, clarified that this order will

not bar the respondents to proceed against the petitioner-appellant afresh in accordance with law, if thought necessary.

There would be no order as to costs.