
(1974) 09 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 230 of 1971

Gurdial Singh

APPELLANT

Vs

Deputy Commissioner and Another

RESPONDENT

Date of Decision : 20-09-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Himachal Pradesh Municipal Act, 1968 — Section 2(1), 63, 65, 67, 87
Punjab Municipal Act, 1911 — Section 67
Rating and Valuation Act, 1925 — Section 38

Citation : (1974) 3 ILR HP 989

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

Advocate : K.D. Sud, for the Appellant; A.R. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Chet Ram Thakur, J.—The Petitioner is carrying on business of hotel and which he is running by the name and style of "Hotel White" in Lakkar Bazar, Simla. The Petitioner had taken land which is the site of the building as also some land appurtenant thereto on a lease of 50 years from Nihalu Mal Puran Chand with effect from 1-1-1947. This hotel building, was assessed by Respondent No. 2 for payment of Municipal taxes at Rs. 2,68,200/-. The Petitioner filed his objections on the assessment notice, Annexure A-3 being issued to him. By order Annexure A-5 dated 31-12-1970 the Respondent No. 2 affirmed the assessment of the hotel at Rs. 1 7,050/- net for house, ground, water and sanitation taxes for the year 1971. It appears that the Petitioner preferred an appeal to the Deputy Commissioner, viz., Respondent No. 1, who reduced this assessment to Rs. 13,900/- net by his order, dated 19-7-1971. The Petitioner feeling aggrieved against this assessment filed this petition for quashing the order on the grounds that the order has been passed by the Respondents without affording him reasonable opportunity of hearing or leading evidence in proof of his claim. Further that the Respondent had passed the order on matters wholly extraneous

to the record and by ignoring the material evidence. It was also averred that the Petitioner was not supplied with the evidence or the information collected behind his back nor was he shown the same despite requests made in that behalf. The cost of the land assessed at Rs. 50,500/- could not be added by treating the Petitioner to be the owner thereof while assessing annual value. The land was leased out to him and the entire land measuring 445 sq. yards was held by him at Rs. 500/- per annum as rent by two leases, dated 23-11-1946 for Rs. 250/- per annum and dated 19-6-1966 for Rs. 250/- per annum. The built area of the hotel was only 330 sq. yards and not 1010 sq. yards. The price of the land too had been wrongly worked out at 50 sq. yards without any basis and which was exorbitant. The Respondent while deciding the cases of assessment under the Municipal Act acted as quasi-judicial authority and as such should have decided the claim after affording the parties a reasonable opportunity and not arbitrarily. The cost of the building had also wrongly been worked out at Rs. 2,27,475/-, whereas the correct value as assessed by the Government Valuer was Rs. 90,976/-. It was also averred that Sections 63, 65 and 67 were ultra vires of the Himachal Pradesh Municipal Act, 1968 and suffer from excessive delegation as it gives powers to the Committee to impose tax. The Corporation had no jurisdiction to levy any taxes under the Himachal Pradesh Municipal Act after passing of the Capital of Himachal Pradesh (Development and Regulation) Act, 1968. The entire proceedings are without jurisdiction and as such the orders are liable to be quashed. The impugned orders are not speaking orders inasmuch as they do not disclose the reasons for arriving at the conclusion.

2. The Respondents in their preliminary objections pleaded that the petition was barred by the provisions of Sections 87 and 89 of the Himachal Pradesh Municipal Act, 1968. Further, the petition was barred by res judicata u/s 11 of the Code of Civil Procedure. The Respondents denied the other allegations and reiterated that the assessment made was quite correct, inasmuch as full and proper opportunity was granted to the Petitioner for preferring his objections and to lead evidence.

3. The first point, therefore, is whether the Petitioner has been afforded opportunity in the matter of filing his objections and leading his evidence. The Respondent issued notice, Annexure A-3, dated 26-11-1970 informing the Petitioner that the annual value of the property known as "Hotel White" for the year 1971 had been assessed at Rs. 2,68,200/- and he was told that any objections to this assessment received from him before the expiration of one month from the date of issue of the notice will be considered by the Corporation on 26-12-1970 on which date a further opportunity to support the objections will be allowed. It was also stated therein that to save correspondence enquiries regarding the proposed assessment may be made in person at the Tax Department of the office. The Petitioner filed his objections, Annexure A-4 on 26-12-1970 challenging the correctness of the assessment of the value of the building made at Rs. 2,68,200/- and in his objections he had stated that no material had been brought to his notice on the basis of which the notice was

issued to him. He further averred that the assessment should have been made as per Clauses 2(c)(ii) and 2(b)(i)(ii) of the H.P. Municipal Act, 1968 (shortly called the Municipal Act). He also further made a specific mention that he will adduce the necessary evidence in support of his objections as and when called upon. Thereafter the Respondent issued letter, Annexure A-5, dated 31-12-1970 referring to his objections and also informed him that the Municipal Corporation after due consideration had confirmed the assessment of the "Hotel White" at Rs. 17,050/- net for house, ground, water and sanitation taxes for the year 1971. There is another Annexure A-6, which pertains to the subject: Assessment of "White Hotel" and it purports to be an order made by the Administrator, but there is no date and the order says that the written objections filed by the Petitioner were considered and they were not supported by any documentary proof and according to the E.R.B's. report the cost of construction of the building works out at Rs. 2,27,475/-. The building is situate on 1011 sq. yards. The market value of the land was estimated to be Rs. 50/-per sq. yard and the total value works out at Rs. 50,550/-. The building was proposed to be assessed u/s 2(l)(c) of the Municipal Act. The annual value is to be determined by taking 5 per cent of the cost of construction and value of the land, which works out at Rs. 13,900/- against the present assessment of Rs. 17,050/-. Therefore, the same was allowed to continue for the year 1971. The Petitioner went in appeal and the order of the Deputy Commissioner is Annexure 8. The Deputy Commissioner found that the Petitioner had filed his written objections and in his objections the Appellant had not desired any opportunity to be given to him for presenting oral evidence and, therefore, adequate opportunity was given to the Appellant. In the grounds of appeal, I find that the Petitioner had averred that the order had been passed behind his back and which had resulted in serious miscarriage of justice. The order was illegal and violative of the principles of natural justice. From the perusal of all these documents it is quite apparent that the Petitioner was not afforded any opportunity for leading evidence. The reply Annexure A to the notice Annexure A-3 clearly indicates that the Petitioner had mentioned that no material had been brought to his notice on which the impugned notice was based. Further, in paragraph 5, he had specifically made a mention that he will adduce the necessary evidence to support the objections as and When called upon. But, it appears from Annexures A-5 and A-6 that he was not called upon to support his objections about the excessive estimate of the value of the building for the purposes of Municipal taxes. The authorities simply considered this Annexure A-4 which was a reply to the notice, but they lost sight of this submission of the Petitioner that he will adduce the necessary evidence for his objections as and when called upon. The Deputy Commissioner also it appears has wrongly mentioned that in his objections the Appellant did not desire an opportunity to be given to him for presenting oral evidence and that adequate opportunity was given to the Appellant. But this is falsified by the specific prayer of the Petitioner, as contained in para 5 of Annexure A-4 where in he had told the authorities that he will adduce the necessary evidence for his objections as and when called upon. Therefore, this assessment has been made by the authorities

disregarding the prayer of the Petitioner and without affording him any opportunity to support his objections. In these circumstances, this assessment arrived at by the Respondents cannot be said to be in consonance with the principles of natural justice. The authority in making the assessment of the value of the property under the Municipal Act has acted as a quasi-judicial authority and as such it was necessary for it while exercising the powers to have followed the principles of natural justice. In *A.K. Kraipak and Ors. v. Union of India and Ors.* 1969 S.L.R. S.C. 445 where the selections of gazetted officers serving in the Forest Department of the State of Jammu and Kashmir were made to the Indian Forest Service constituted in 1966, Shri Naqishbund who was Chief Conservator of Forests in that State and was a member of the Selection Board for selection of the officers to the Indian Forest Service cadre was himself a candidate for selection. The Petitioners who were not selected challenged the selection. One of the grounds was that Shri Naqishbund was himself a candidate and he was biased. The contention raised was whether the Selection Board exercised administrative powers or it was a quasi-judicial authority which was supposed to act justly and fairly keeping in view the principles of natural justice. Consequently, it was held that the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case and (2) no decision shall be given against a party without affording him a reasonable hearing. Very soon there-after a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. In the instant case also the Municipal Corporation was also to decide the matter between the Corporation on the one hand and the Assessee on the other. Therefore, the Corporation had to act in a quasi-judicial manner and it was

expected of the Corporation or the Administrator to have followed the principles of natural justice so as to afford full, opportunity to the Assessee-Petitioner to show that the assessment of the property for purposes of Municipal taxes was exorbitant and that the material which had been used by the Corporation in arriving at the assessment was not correct. The Petitioner had prayed for an opportunity to lead evidence but the opportunity had been denied to him, as can be gathered from the documents placed on the record as also from the return itself.

4. In *Kaviraj Khazan Chand v. The New Delhi Municipality* 1960 P.L.R. 97 in a similar situation it had been observed by a Division Bench of the Punjab High Court that the intention of the law cannot be that inviting of objections from persons affected by the proposed increased assessments and the provisions for the disposal of such objections are to be a mere formality, and that the objections are intended to be automatically consigned to the waste paper basket in pursuance of a decision previously arrived at. The occupiers are entitled for the proper disposal of their objections to be informed of the formula on which it was proposed to base the new assessments both for the purpose of challenging its general Validity and also its application in individual cases. In that case reference has also been made to a decision of the Court of Appeal in *R. v. Westminster Assessment Committee, ex parte Governor House Park Lane Ltd.* 1940 4 All. E.R. 132 which arose out of a rating case in which it appears that the order of the authority which was being challenged had been based to some extent on a report of which the particulars had not been disclosed to the Assessee and observations of Du Pareq L.J. at page 142 are to the following effect:

We now turn to the question as to whether or not the assessment committee has in any respect failed in its duty. In our opinion, it was entitled to seek the aid of the "competent person" whom it did in fact employ. Giles' affidavit tells us that the committee had the advantage of a general report from Mr. Eve as to the effect of the war upon the value of various classes of business premises, including hotels, and as to the factors producing such effect. We do not doubt that it is lawful to obtain such a general report under the Rating and Valuation Act, 1925, Section 38. We were told by counsel for the Appellants that the Committee obtained, or at any rate purported to obtain, Eva's report under that section, and we do not share the difficulty which Humphreys, J., felt in accepting that statement. In the absence of clear evidence, we think that we ought to assume that the committee was acting in conformity with the law. *Omnia rite esse acta*. We are clearly of opinion, however, that, having obtained the report, the committee was bound to communicate to the rating authority and to the objectors such parts of it as were relevant to the inquiry. It is obvious from the reference to the report in Giles' affidavit that at least some parts of it were so relevant. We are well content to adopt and apply to this case language used by Lord Loreburn with regard to an inquiry by the Board of Education, when he said, in *Board of Education v. Rice* (3), that the board must always give a fair opportunity to those who are parties in the controversy for correcting or

contradicting any relevant statement prejudicial to their view. These words may properly be applied, in our opinion, to any inquiry of a judicial character. Counsel for the Appellants suggested that, Lord Loreburn was preferring only to statements of fact, and not to expression of opinion, For all we know, there may have been statements of fact in Eves' report, but, even if there were not, it can hardly be doubted that expression of opinion by an expert of acknowledged experience may be as impressive and as damaging as statements of fact. In our opinion, the fact that the committee is entitled to obtain a report for its guidance does not relieve it of the duty communicating any relevant part of the report to the persons seeking a determination.

This very view was followed in *R. v. Architects Registration Tribunal, ex parte Jaggar* 1945 2 All. E.R. 131 In that case it was held:

The second point deals with the position of the Appellate tribunal under the Act as a quasi-judicial tribunal having a duty to disclose to the Applicant the contents of documents put in and upon which they propose to act. The court holds that an informal body such as the Admission Committee under the Architects' Registration Act, 1931, may properly use such information but the Appellate body must follow the procedure laid down in many decisions and give the Applicants the opportunity of considering and if necessary answering the contents of such documents. On this ground an order of certiorari to quash the judgment of the tribunal is granted.

5. In *State of Kerala v. The Mew Delhi Municipal Committee* 1965 P.L.R. 1027 a Circuit Bench of the Punjab High Court at Delhi while dealing with scope of Section 67 of the Punjab Municipal Act which is quite *pari-materia* to Section 67 of the Himachal Pradesh Municipal Act, 1968 held that Section 67 of the Punjab Municipal Act and other sections dealing with the procedure for assessing rental value of property for purposes of house tax deal with citizens right to property and such assessments have a far reaching consequence so far as the owner is concerned. Thus the Committee while determining the question of assessment or its re-vision is acting as a quasi-judicial tribunal. When an application is made to such a tribunal in accordance with law, it is not only the duty of the tribunal to decide the same but also to hear the Applicant before deciding the same.

6. There can, therefore, be no dispute that the Corporation or the Administrator of the Corporation who has decided the case of the assessment, which is impugned in this writ petition, is a quasijudicial body and it was incumbent upon it to have followed the principles of natural justice in making assessment of the property after having disclosed the documents or the evidence which it had collected for making a bases for assessment of the property of the Assessee-Petitioner so that he could rebut the same. The Petitioner had already prayed for an opportunity for leading evidence in his objections Annexure A-3, made in reply to the notice, that he would produce his oral evidence as and when so required, but the Corporation did not either give the documents or made available the evidence it had collected nor it gave any opportunity to the

Petitioner for cross-examining the witnesses. So, there was clear infraction of the principles of natural justice which cast a duty upon the quasi-judicial body to act in a just and a fair manner. Therefore, on this ground alone, the impugned order deserves to be quashed and I need not go into the other grounds. I, therefore, allow this petition and quash the assessment orders made by the Administrator as also the order of the Deputy Commissioner in appeal whereby he partly accepted the appeal of the Petitioner, and order that the Respondents shall make fresh assessment in the light of the above observations. The excess tax, if any, deposited by the Petitioner shall be refunded to him. However, I make no orders as to costs.