
(1984) 09 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1969 of 1976

Jetha Ram and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-09-1984

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 4(1)

Citation : (1984) WLN 580

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—In this writ petition, the submission of the learned Counsel for the petitioner is that the notification dated September 18, 1976 altering the limits of the Municipal Board Nokha was passed without giving the petitioners an opportunity of hearing and therefore, the said notification was issued contrary to the principle of natural justice.

2. The State Government issued a notification on March 14, 1967 (Annexure 2) Under Sub-section (1) of Section 6 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as "the Act") proposing to alter the limits of the Municipal Board, Nokha by including therein some lands earlier situated within the areas of villages Jorahapur, Mohanpura Bas of Gram Panchayat Bikaner The aforesaid notification which was published in the Rajasthan State Gazette dated July 13, 1967 invited all persons who had any, objection to the proposals contained in the aforesaid notification dated March 14, 1967 to submit their objections in writing to the State Government within two months of the publication of the notification in the official Gazette. Upon the publication of the notification, the petitioners and other residents of villages Joraharpura and Mohanpura Bas of Gram Panchayat Bikaner, who were holding agricultural lands as khatader tenants thereof filed objections in respect of the proposals to alter the limits of Municipal Board Nokha by inclusion of the areas specified in the

notification (Annexure 2) dated March 14, 1967. Thereafter, by a subsequent notification dated September 18, 1976 (Annexure 5) the Government of Rajasthan altered the limits of the Municipal Board, Nokha Under Sub-section (1) of Section 4 of the Act.

3. The submission of the learned Counsel is that the notification Under Sub-section (1) of Section 4 altering the limits of the Municipal Board, Nokha was issued by the State Government without considering the objections filed by the petitioners and without afford them an opportunity of hearing.

4. The respondents along with their reply have submitted a copy of the letter written by the Collector, another (Ex. Rule 1) to the State Government expressing his views in respect of the objections received against the notification issued u/s 4(1) of the Act, proposing to alter the limits of the Municipal Board, Nokha. It appears from the copy of the aforesaid letter that the objections claims received by the State Government in respect of the notification dated March 14, 1967 were forwarded to the Collector, Bikaner for ascertaining his views. The Collector categorised the objections received and one of the categorises consisted of objections received from the cultivators of agricultural lands sought to be included within the Municipal limits. The Collector, Bikaner expressed the view that the objections had no merit and should be rejected. The Collector also obtained the views of the Deputy Town Planner, Bikaner and forwarded the same to the State Government. According to the State Government the objections and views of the Collector and the Deputy Town Planner were considered and the objections were rejected and ultimately the notification u/s 4(1) of the Act was issued on September 18, 1976, which was published in the Rajasthan Gazette extraordinary of the same date.

5. Learned Counsel for the petitioner relied upon the contents of the notification (Annexure 5) dated September 18, 1976 wherein it was stated that no objections were received in pursuance of the notification published in the Rajasthan Gazette dated July 13, 1967. As explained the explained dents in their reply, the contents of the notification (Annexure 5) are not wholly correct in as much as the objections were received, including those from the petitioners but the fact still remains that such objections were duly considered by the State Government after ascertaining the views of the Collector, Bikaner and the Deputy Town Planner. The respondent in their reply have stated that the State Government, after taking into consideration the objections and the report of the Collector Bikaner in respect thereof, issued the notification u/s 4(1) of the Act. Thus it appears from the record that the objections submitted by the petitioner's were duly taken into consideration. It is for the State Government to agree or no to agree with the submissions made by the petitioners. But the right of the petitioners is that the objections submitted by them should be considered by the State Government. Once it is found that the objections were duly considered, the petitioners can have no grievance even if the state government did not agree with the submissions made by the petitioners.

6. It was then submitted by the learned Counsel for the petitioners that the petitioners were not afforded a reasonable opportunity of being heard. It may be observed that the principles of natural justice require that in each and every case oral hearing is necessary. What is imperative is to give an opportunity to the person whose rights are likely to be affected to represent his case, but the objector may not necessarily be given an opportunity of making oral submission in such and every matter. In some matters an opportunity to file representations in writing and consideration of the written representations may be sufficient compliance with the principles of natural justice. It may be observed that the "audi alteram partem" rule is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed or other exigencies of the situation and the obligation to act fairly, it can be modified and the measure of its application can be cut short to a reasonable proportion to suit the exigencies of the situation. To do this approach is desirable on the question of form or procedure as to how the obligation of natural justice should be fulfilled, but the court must be anxious to observe the cardinal rule of "audi alteram partem" to the extent permissible in a given case. The administrative realities and other relevant factors should be taken into consideration for fixing the minimal requirements of natural justice, which could be held to be imperatives in a given situation. It is not obligatory that counsel should be allowed to appear in every matter nor it is compulsory that oral evidence should be adduced. Even oral explanation in some cases may be sufficient compliance with the requirements of natural justice. In other cases, filing of written objections or giving of written submissions may be considered (sic) as sufficient. The court must strike a pragmatic balance between the competing requirements of administrative realities and of acting fairly when such an occasion arises. Tailor made principles cannot be universally applied to fulfil the requirements of the principles of natural justice. The procedural pre-conditions of fair hearing could be modified according to the practical needs of the situation and proper remedies may be administered as may be relevant to the occasion. The cardinal principle of fair hearing is a condition for decision making in matters where rights of a party are likely to be affected, but the form and procedure according to which the hearing should take place depends on the circumstances of each given case. The principles or facets of the rule of "audi alteram partem" are:

- (i) the party likely to be affected should have notice of the case it is required to meet; and
- (ii) such party should have an opportunity to explain its side of the matter or to present its side of the picture.

7. The minimal requirements of natural justice were laid down by their lordships of the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, in the following passage:

But the decision of the State could be based upon the results of an enquiry in manner consistent with the basic concept of justice. An order by the State to the

prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justices and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under duty to give the person against whom an enquiry is held an opportunity he set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be recalled upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and lead evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the state or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed. It need not be shown to be super added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

8. In the *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, their Lordships of the Supreme Court observed that natural justice cannot be locked as a mere artifact nor we can fit natural justice into a rigid mould. The concept of reasonable opportunity is that the authority taking the final decision should not act mechanically and without applying its own mind, but must give an opportunity to the person affected to have his say. Their lordships observed as under in the aforesaid case:

Natural justice is no unruly horse, no lurking land mine, nor a judicial cute-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential procedural propriety being continued by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other features of a given case, can be exasperating. We can neither be finitical nor fanastical but should be flexible yet firm in this jurisdiction. No one shall be hit below the belt--that is the consequence of the matter.

9. Dealing with the rule of "*audi alteram partem*", which is a rule of general application, their lordships of the Supreme Court in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, observed that where a statute does not exclude the rule of prior hearing and is silent with regard to giving an opportunity at the pre-decisional stage to the person affected and the administrative decision taken by

the authority involves civil consequences of a grave nature, the course will be expressly reluctant to exclude the act of affording even a minimal hearing, shorn of all its formal trappings and dilatory features, at the pre-decisional stage.

10. The question as to before which forum the hearing should take place and what should be the nature of the hearing which should be given to the parties and as to whether the hearing should be given by allowing the parties to present their case by word of mouth or by representation in writing or it is enough that the parties should have an opportunity of making representation, whether orally or in writing, before some officer lower rank who may forward all the papers with his opinion to the authority, who has the right to decide the matter would depend upon the circumstances of the given case.

11. In the present case, where objections were invited from all persons of a locality and numerous objections are likely to be filed, it is not possible for the State Government or some other authority to give a personal hearing to all the residents of the locality, who might have filed objections against the notification issued u/s 4(1) of the Act. In such cases the requirements of the principles of natural justice would be fulfilled if the representations made by the residents of the localities, proposed to be included or excluded to the Municipal area, are considered by the State Government and after consideration thereof a notification u/s 4(1) is issued. In the present case, it appears that the minimum requirements of the principles of natural justice were fulfilled as the representations submitted by the petitioners were considered by the State Government, after obtaining the views of the Collector Bikaner and the Deputy Town Planner, Bikaner in respect thereof.

12. In this view of the matter, the writ petition has no merit and the same is dismissed.