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**(2022) 03 MP CK 0108**

**In the Madhya Pradesh High Court**

**Case No :** First Appeal No.2487, 2661, 2733, 4231, 4543 Of 2022????

Kamni Tripathi And Others

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

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**Date of Decision :** 30-03-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 21

**Citation :** (2022) 03 MP CK 0108

**Hon'ble Judges :** Sujoy Paul, J; Dwarka Dhish Bansal, J

**Bench :** Division Bench

**Advocate :** Anoop Ji Choudhary, June Choudhary, M.P. Shukla, Ekta Choudhary, Janhavi Pandit

**Final Decision :** Allowed

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## Judgement

Sujoy Paul, J

1. Regard being had to the similitude of the questions involved, on the joint request of the parties, the matters were analogously heard and decided by this common order. This common order will dispose of W.P. Nos. 2661/2022, 2733/2022, 4231/2022 & 4543/2022. In these batch of petitions, the petitioner have called in question the legality, validity and the propriety of the order dated 20.01.2022 whereby under the order of Health Commissioner, the respondents decided to cancel the allotment of seats pursuant to second counselling for the singular reason that in the allotment of second round of counselling for 'certain reasons' reservation roster has not been followed.

2. Draped in brevity, the relevant facts are that the petitioners submitted applications for four years graduation course of nursing for the year 2020-2021. After becoming successful, they were permitted to participate in the second round of counselling. In the second counselling, they were duly selected. Institutions were allotted to them. In turn, they took admission in the concerned Institution and started attending their classes.

3. It is common ground that the impugned order of cancellation of second counseling dated 20.01.2022 Annexure P-4 came as a bolt from blue whereby the second counselling and consequently admission of petitioners were cancelled.

4. Shri Anoop G. Choudhary, learned Senior Advocate submits that this Court passed a detailed bi-parte order on 11.02.2022 and considered all the relevant facets of the matter and stayed the effect and operation of the impugned order dated 20.01.2022 (Annexure P/4) with further direction to permit the petitioners to continue in the relevant course and attend their classes.

5. Shri Choudhary, learned Senior Advocate submits that the reasons mentioned in the interim order passed by this Court still holds the field but in the interest of justice it is necessary to elaborate the same. To elaborate, learned senior counsel submits that the four years' course is followed by a job to be given to the petitioners. Thus, all the petitioners have a right to livelihood which is recognized under Article 21 of the Constitution and the Apex Court in the case of Smt. Mareddy Seetharathnam vs. Siruvuri Venkatarama Raju and others 2011 (5) SCC 576 has considered this aspect in sufficient details. This right of livelihood is taken away by passing the impugned order without following the principles of natural justice. The impugned order entails civil consequences and could not have been passed without following the doctrine of audi alteram partem.

6. In absence of following the principles of natural justice, the impugned order suffers with unreasonableness and arbitrariness. Reliance is placed on Cantonment Board, Dinapore and others Vs. Taramanidevi 1992 Supp. (2) SCC 501, Union of India and others Vs. Dinesh Engineering Corporation and another (2001) 2 SCC 386, Om Kumar v. Union of India (2001) 8 SCC 491 and Lakshmi Precision Screws Ltd. Vs. Ram Bahagat (2002) 6 SCC 552. Reference is made to Delhi Development Authority and another Vs. Joint Action Committee, Allottee of SFS flats and others (2008) 2 SCC 672 by contending that principles of natural justice, reasonableness and fairness is heart and soul of decision making process and if process flouts the said salutary principles, it hits Article 14 of the Constitution.

7. The next reliance is placed on Sanatan Gauda Vs. Berhampur University and others (1990) 3 SCC 23 to bolster the submission that after having allotted the seat by following the due process, it was no more open to the respondents to cancel the counselling process and admission etc. Respondents are bound by the principle of estoppel.

8. Learned counsel for the petitioners submits that two sets of Rules, (both perhaps do not have any statutory backing) are in vogue. The first Rule is Annexure P-2, which is called शासकीय बी.एस.सी. नर्सिंग महाविद्यालयों में प्रशिक्षण हेतु चयन के नियम (Selection Rules).

9. Shri Choudhary, learned Senior counsel submits that Rule 17 of this Rule provides a specific procedure cancelling the admission. If a specific method is prescribed to do a thing in a particular manner, the other methods are forbidden.

Reliance is placed on Dipak Babaria and another Vs. State of Gujrat and others (2014) 3 SCC 502. It is urged that mandate of Rule 17 is not followed and cancellation of counselling is bad in law.

10. The next reliance is on another set of Rules which are called as M.P. Online } kjk dkmalfyax izfd;k ds fy;s fu;ekoyh (Annexure P/2) (Niyamawali). Learned Senior Counsel placed reliance on Clause 10 of these Rules and contended that these Rules are special rules applicable for the purpose of counselling. These special rules, in no uncertain terms makes it clear that after first round of counselling, if certain seats remain vacant, in second counselling, such unfilled seats be included and filled up by open category. Learned Senior Counsel submits that it is trite that when there are special rules, it will prevail over the general rules. As per Rule 10, no fault can be found in the selection process even if the reservation roster was not followed.

11. Criticizing the return filed and document dated 25.1.2022 filed with the return, it is urged that on 25th January, 2022 only the Directorate decided to delete the Clause 10 from the "Niyamawali". When the order impugned was passed, the said Clause 10 was very much there in the Niymawali. Thus, it is an afterthought in order to justify and give legitimacy to the impugned order dated 20th January, 2022. The Constitution Bench Judgment of Supreme Court in Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others AIR 1978 SC 851 is relied upon to contend that validity of an order of an authority is to be judged on the grounds mentioned therein and it cannot be supplemented by filing affidavit or counter affidavit in the Court. Any reason supplemented by way of pleadings cannot justify the impugned order, which is based on different set of reasons.

12. Lastly, Umaji Keshao Meshram and ors. Vs. Radhikabai 1986 Suppl. SCC 740 is relied upon to urge that in this case even ineligible students' admission were not interfered with by the Supreme Court because students were not at fault and sole sin of illegality was committed by the college management. The petitioners have already prosecuted their studies for few months and if the impugned order is upheld, it will hamper their future prospect very badly.

13. Per contra, Smt. Janhvi Pandit, leaned Deputy Advocate General supported the impugned order. She placed reliance on Clause 7.1 of the Selection Rules and urged that the constitutional mandate regarding reservation, which is reduced in writing in the shape of मध्यप्रदेश लोक सेवा (अनुसूचित जातियों अनुसूचित जातियों और अन्य पिछड़ा वर्गों के लिए आरक्षण (अधिनियम) 1994 (Adhiniyam) mandates that reservation is to be provided in the selection process. For this purpose, Clause 8.1, 9.4 and 14 are relied upon. Rule 14(6)(ii) is referred to submit that it was for the students to ensure before obtaining admission whether as per rules they are eligible or not.

14. Learned Deputy Advocate General submits that Rule 10 of Niymawali was deleted by order dated 25.1.2022 and therefore, petitioners cannot take any advantage of the same. Lastly, learned Deputy Advocate General placed reliance

on the judgment of the Supreme Court in Aligarh Muslim University and others Vs. Mansoor Ali Khan (2000) 7 SCC 529 and Ashok Kumar Sonkar Vs. Union of India and others (2007) 4 SCC 54 for the proposition that theory of useless formality will apply in a case of this nature, therefore, principles of natural justice have no role to play.

15. Learned Deputy Advocate General referred Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and others (1999) 8 SCC 16 for the purpose that if impugned order is set aside, it will perpetuate the illegality and no useful purpose would be served.

16. Shri Anoop G. Choudhary, learned Senior Counsel in his rejoinder submission contended that it is a peculiar thing that in Rule 14(6)(ii) of Rules 20, the entire burden is shifted on the students to examine their eligibility. He submits that impugned order nowhere shows that petitioners were found to be 'ineligible'. Thus, this Rule cannot be pressed into service. He also pointed out the contradictions/discrepancies in two sets of return/reply filed in W.P. No. 4231/2022 and in W.P. No. 2733/2022. In addition, it is submitted that when Rule provides that Government is the 'competent authority', it is only the Government (as per the Business Rule) which can pass appropriate order and Head of the Department cannot substitute himself in place of the State Government.

17. Parties confined their arguments to the extent indicated above.

18. We have heard the parties at length and perused the record.

19. Indisputably, the applicants preferred application for taking admission in the course in question. After becoming successful in the examination and counselling process, seats were allotted to them and they started their studies in the concerned colleges. By impugned order, the second counselling process was cancelled. We find substance in the argument of learned Senior Counsel that this order suffers from following illegalities-

I. The impugned order dated 20 January, 2022 entails civil consequences and takes away a right already created in favour of the petitioners to their detriment. Such an order could not have been passed without following the principles of natural justice. If impugned order is given stamp of approval and principles of natural justice are ignored, in our view, great prejudice will be caused to the petitioners. In that case, theory of useless formality cannot be pressed into service. Thus, judgments cited by the State in this regard are of no help to the State. Theory of Useless Formalities cannot be pressed into service in these cases because :-

(a) It cannot be said that if the petitioners would have been put to notice before passing the impugned order, they would not have any defence at all.

(b) The impugned order causes serious prejudice to the petitioners.

II. The principles of natural justice are definitely applicable in a case of this nature. The impugned order which cancels the second round of counselling and consequential admissions is unreasonable and unfair in nature. It is settled that fairness is an integral part of good administration. Since the impugned order is unfair and arbitrary, it cannot sustain judicial scrutiny. The Apex Court in *Neelima Mishra v Harinder Kaur Paintala* (1990) 2 SCC 746 held as under :-

"Principles of natural justice are to some minds burdensome but this price - a small price indeed-has to be paid if we desire a society governed by the rule of law."

This is also a very beautiful saying about the principle of natural justice that :-

".....even God himself did not pass [a] sentence upon Adam before he was called upon to make his defence. Adam (says God), where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?...."

The Apex Court in catena of judgments has emphasized the importance of principles of natural justice, which are reproduced here as under:-

In *Lloyd v. McMahon* (AC pp.702 H-703 B), it was held as under:-

"My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates. In particular, it is well established that when a statute has conferred on any body the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness."

The Apex Court in *Radhy Shyam v. State of U.P.*, reported in (2011) 5 SCC 55 held as under:-

"45. The amplitude, ambit and width of the rule of *audi alteram partem* was lucidly stated by the three-Judges Bench in *Sayeedur Rehman v. State of Bihar* ((1973) 3 SCC 333) in the following words:

"11..... This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties."

46. In *Mohinder Singh Gill v. Chief Election Commr.* ((1978) 1 SCC 405), Krishna

Iyer, J. speaking for himself, Beg, C.J. And Bhagwati, J. highlighted the importance of the rule of hearing in the following words:

"43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy Government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adamand of Kautilyas Arthashastra the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

47. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise."

In the judgments cited by learned Senior Counsel, the same principle is reiterated by the Supreme Court.

III. For the purpose of cancellation, a specific Rule 17 was introduced. Admittedly, the procedure prescribed in Rule 17 has not been followed while cancelling the admissions. Rule 17 reads as under :-

This runs contrary to settled legal position (See Sri Baru Ram Vs. Smt. Prasanni and others AIR 59 Supreme Court 93, Dhananjaya Reddy Vs. State of Karnataka 2001 (4) SCC 9, Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others 2002 (1) SCC 633 and Dipak Babaria and another Vs. State of Gujarat and others 2014 (3) SCC 502).

IV. The Rule 10 of the Niyamawali makes it clear that in the second round of counselling, the unfilled seats of first round, can be added and seats can be filled up by open category candidates. This was followed by the respondents. Rule 10 was not deleted when impugned order was passed. Any subsequent deletion cannot have any retrospective effect and therefore, in the light of Constitution Bench Judgment of Supreme Court in Mohinder Singh Gill (Supra), validity of the impugned order is to be tested :-

(i) for the reason stated therein

and

(ii) As per the rule/legal position prevailing at that point of time.

20. We also find substance in the argument of learned counsel for the petitioners that first set of Rules were prepared only for the purpose of selection whereas the Niyamawali contains special provision made for the purpose of counselling. The impugned order relates to counselling and, therefore, Niyamawali will hold the field. As per Rule 10 of Niyamawali, the action of department in selecting the petitioners was in accordance with law.

21. So far argument of learned Deputy Advocate General that setting aside of impugned order will result into perpetuating the illegality is concerned, we are only inclined to observe that the judgment of Supreme Court in Maharaja Chintamani Saran Nath Shahdeo vs. State of Bihar and Ors. (1999) 8 SCC 16 was passed in the peculiar fact situation of the said case and the observations made in para-38 are relating to and confined to the said case. No general principle of law is laid down that an illegal order cannot be set aside, otherwise it will perpetuate the illegality.

22. In view of foregoing analysis, the impugned order cannot sustain judicial scrutiny. Resultantly impugned order dated 20.01.2022 in all the writ petitions is set aside.

23. The petitions are allowed without any order as to costs.