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**(1995) 03 GAU CK 0002**  
**In the Gauhati High Court**  
**Case No : Writ Appeal No. 208 of 1994**

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| Ng. Pashot Devi and Others       | Vs | APPELLANT  |
| L. Sulochana Devi and Seven Ors. |    | RESPONDENT |

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**Date of Decision :** 14-03-1995

**Acts Referred:**

Manipur Co-operative Societies Act, 1976 — Section 78A

**Citation :** (1995) 3 GLR 85

**Hon'ble Judges :** P.K. Ghosh, J;D.N. Baruah, J

**Bench :** Division Bench

**Advocate :** N. Kerani Singh, for the Appellant; N. Surjamani Singh and Lalitkumar for Respondent Nos. 1 to 4 and A. Jagat Chandra, for Respondents 5 to 8, for the Respondent

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## Judgement

D.N. Baruah, J.—This appeal is directed against the judgment and order dated 22.11.94 passed by a learned Single Judge in Civil Rule No. 1030/94 setting aside the Annexure-A/9 order dated 13.9.94 passed by the Additional Chief Secretary to the Government of Manipur.

2. The facts of the case for the purpose of this appeal may be stated as follows:

The present Appellants are the Directors of a co-operative society known as Manipur State Handloom Weavers Co-operative Society Ltd., a society registered under the Manipur Co-operative Societies Act. The said Appellants along with Ors. were elected members of the Board of Directors. The 1st and 2nd Respondents were elected President and Vice-President respectively. Life of the Board was three years, to expire on 24.4.95. Certain allegations of mis-management, malpractice and misuse of Society's fund were brought to the notice of the Registrars. Four members of the Board of Directors out of total seven numbers meanwhile submitted their resignations on 28.6.94 before the 7th Respondent - Registrar of Co-operative Societies alleging the corrupt practice adopted by the President and the Vice-President i.e. 1st and 2nd Respondents and urged the 7th Respondent to take appropriate action in accordance with law.

7th Respondent by letter dated 26.8.94 addressed to the Additional Chief Secretary (Coop.), Government of Manipur - Respondent No. 6 requested him to take action and to dissolve the Board as per the provisions of law. On receipt of the said request the 6th Respondent passed the impugned order. Being aggrieved, the 1st and 2nd Respondents along with two other directors of the Board Approached this Court by filing writ application (Civil Rule No. 1030/94) The said Civil Rule was disposed of by a learned Single Judge setting aside they Annexure-A/9 order passed by the 6th Respondent. Hence the present appeal.

3. We have heard Mr. N. Kerani Singh, learned Counsel appearing on behalf of the Appellants, Mr. N. Surjamani Singh, learned Counsel appearing on behalf of Respondents 1 to 4 and Mr. A. Jagat Chandra, learned Counsel appearing on behalf of Respondents 5 to 8.

4. Mr. N. Kerani Singh learned Counsel appearing on behalf of the Appellants submits before us that the learned Single Judge illegally set aside the Annexure-A/9 order only on the ground of violation of the principles of natural justice. According to him, the writ Petitioners are not entitled to be heard in view of the fact that the matter relates to public interest.

5. Mr. N. Surjamani Singh, on the other hand, submits that Respondent Nos. 1 to 4 were duly elected as members of the Board of Directors and they had right to continue till the end of the period. The 6th Respondent at the request of 7th Respondent issued the Annexure-A/9 order dissolving the Board without giving any opportunity of hearing. By the above dissolution order Petitioners right to continue as members of the Board has been curtailed which has a civil consequence. Therefore, according to the learned Counsel, learned Single Judge has rightly set aside the said order. Mr. A. Jagat Chandra supports the Annexure-A/9 order.

6. As per the provisions of Section 78A of the Manipur Co-operative Societies Act, 1976 (for short, the Act), the State Government may, by notification in the official gazettee, suspend the Board, if the conditions mentioned in the said section are fulfilled. We quote Section 78A:

78 A. Notwithstanding anything contained in this Act, if the State Government on receipt of a report from the Registrar, Co-operative Societies or otherwise is satisfied that the management of a Society has not been in accordance with the provisions of the Act and creditors of the societies have, for justifiable reasons, raised repeated objections to the method and manner of the management and further that, the management of society, if allowed to continue as such may likely cause irreparable loss and injury to the society and the public in general, the State Government may, by a notification in the Official Gazettee suspend the board for a period not exceeding 12 months at a time and three years in the whole or dissolve the Board:

Provided that when the Board is suspended or dissolved, or where term of such a Board becomes expired, the State Government may appoint an Administrator to

exercise and perform the powers and duties of the Board during the period of suspension or till a new Board is reconstituted as the case may be.

7. On a close reading of Section 78A it appears that the State Government must be satisfied on receipt of some report from the Registrar of Co-operative Societies or otherwise to the effect that the management of the Society has not been in accordance with the provisions of the Act and creditors of the societies have, for justifiable reasons, raised repeated objections to the method and manner of the management and further that, the management of the society if allowed to continue as such may likely cause irreparable loss and injury to the society and the public in general. This opinion has to be formed on the basis of material and if an opinion is formed that the dissolution of the Board is necessary, definitely the Board of Directors will be affected. For that purpose it is necessary for the Registrar or the Government to give an opportunity of hearing to the persons likely to be affected before taking an action.

8. In *Liberty Oil Mills and Others Vs. Union of India (UOI) and Others*, the Apex Court held that the procedural fairness embodying natural justice was to be implied whenever action was taken affecting the rights of the parties. It might be that the opportunity to be heard might not be pre-decisional, it might necessarily have to be post-decisional where the danger to be averted or where the action to be prevented was emergent in nature. Again in *K.L. Tripathi v. State Bank of India and Ors.* reported in AIR 1984 SC 275, the Apex Court observed thus-

It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice...

9. Principles of natural justice are fundamental in the constitutional set up of this country. No man or man's right should be, affected without an opportunity to ventilate his views. Justice is a psychological yearning, in which men seek acceptance of their view point by having an opportunity of vindication of their view point before the forum or the authority enjoined or obliged to take a decision affecting their right. Yet, in a particular situation, one has to bear in mind how an infraction of that should be sought to be removed in accordance with justice See *Charan Lal Sahu Vs. Union of India*,

10. The phrase "natural justice" is not capable of static and precise definition. However, a duty to act fairly, i.e. in consonance with the fundamental principles of substantive justice, is generally implied, irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial. But the rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant, it. If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring

the power, the nature of the power, the purpose of which it is conferred and the effect of the exercise of that power. Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves Rules of audi alteram partem is a highly effective rule devised by the court to ensure that a statutory authority arrives at a just decision. It is calculated to act as healthy check and misuse of power.

11. Natural justice generally requires that persons, liable to be directly affected by proposed administrative acts, decisions of proceedings be given adequate notice of what is proposed so that they may be in a position to make representations on their own behalf or to appear at a hearing or enquiry and effectively to prepare their own case and to answer the case they have to meet.

12. In This case, admittedly the action taken by 6th Respondent as per Annexure-A/9 order on the basis of the report given by 7th Respondent entails civil consequences and writ Petitioners' right to continue as members of the Board of Directors till the end of the term was affected. Therefore, before passing Annexure-A/9 order the affected persons ought to have been heard and they should have been given an opportunity to place their case. This has not been done.

13. In view of the above Annexure-A/9 is violative of the principles of natural justice and the action taken by the 6th Respondent cannot be said to be just and fair. Accordingly, we are in respectful agreement with the views taken by the learned Single Judge and, therefore, the present appeal fails.

14. In the facts and circumstances of the case, we make no order as to costs.