

(2002) 04 AP CK 0120
In the Andhra Pradesh High Court
Case No : Writ Petition No. 15455 of 2000

Usha Enterprises

APPELLANT

Vs

Khadi and Village Industries, Commission and Others

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 21
Khadi and Village Industries Commission Act, 1956 — Section 15

Citation : (2002) 5 ALT 273

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P. Prabhakara Rao, for the Appellant; N. Rushendra Reddy, for Respondent Nos. 1 and 2 and E. Ajay Reddy, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The Writ Petition is filed for a writ of mandamus declaring the action of 1st respondent in issuing letter No. Bank Finance/Nodal 05. dated 26-4-2000 withdrawing the margin money kept in Fixed Deposit in the name of the petitioner with 3rd respondent-Bank and consequential letter dated 31-7-2000 of the 3rd respondent in this regard as arbitrary, illegal and against the principles of natural justice and consequently direct the respondents to credit the margin money to the loan account of the petitioner with the 3rd respondent and pass such other suitable orders.

2. The Proprietrix of the petitioner-Company had sworn to the affidavit filed in support of the Writ Petition. The facts, in brief, are as follows:

The 1st respondent is a statutory body created by an Act of Parliament called the Khadi and Village Industries Commission Act, 1956, hereinafter referred to as "Act". The 1st respondent is charged with the responsibility of planning, promotion, organization and implementation of Schemes and Programmes for the development of Khadi and other Village industries in rural areas in co-ordination with the other Agencies engaged in rural development and providing

jobs to the unemployed in the villages. In exercise of the powers u/s 15 of the Act, the 1st respondent had introduced the Scheme called Margin Money Scheme applicable to these programmes in village industries. The Scheme provides 25% of the project cost for the projects upto Rs. 10 lakhs will be provided as margin money. The Bank will sanction 95% of the project cost and shall ensure 5% of the own contribution. It is stated that once the margin money is released in favour of the loanee it should be kept in Term Deposit for two years in the Bank which sanctioned the loan and the Fixed Deposit shall be kept in the name of beneficiary and the interest accrued on such deposit will be utilized to service partial interest burden on the loan disbursed to the beneficiary. The margin money will be one time assistance from the 1st respondent and the same shall be credited to the loan account of the beneficiary after expiry of the two years from the date of the first disbursement to the borrower. It is also provided in the Scheme that the Banks will ensure that each project fulfills the criteria of per capita fixed investment, own contribution, etc., and also will appraise project technically as well as economically and take their own credit decision on the basis of viability of each project. The Proprietrix of the petitioner-company, in unemployed woman entrepreneur including to start leather footwear manufacturing unit under small scale industries in a village called Surampalli, Gannavaram Mandal, Krishna District registered its unit with the authorities and obtained certificate of registration from Commercial Taxes Department in Form-B and D in the month of July, 1997. It is further stated that having come to know of the above said Margin Money Scheme introduced by the 1st respondent, the petitioner submitted an application dated 29-1-1998 along with Project Report to the 2nd respondent who is the sole in-charge of the 1st respondent at the State level in Andhra Pradesh in order to process through, scrutinize and sponsor the loan application to the Bank for financial assistance under rural employment generation programme of the 1st respondent. After satisfying all the criteria laid down under the Margin Money Scheme and after necessary scruttnisation of the Project Report and the application made therefor, the 2nd respondent forwarded recommended the petitioner's case by letter dated 9-2-1998 for financial assistance under Margin Money Scheme of the 1st respondent by enclosing necessary circulars requesting the Bank to scrutinize and appraise the same. The said letter further states that the matter can be taken up with the 1st respondent for the realization of margin money after disbursing the first instalment of the Bank loan to the beneficiary. Thereafter, the 3rd respondent sanctioned the loan after thorough scrutiny of the Project under the Margin Money Scheme of the 3rd (sic. 1st) respondent on 6-6-1998 and the first instalment of the loan was disbursed on 13-6-1998. Subsequently on 10-7-1998 an amount of Rs. 2,97,000/- was deposited in the Fixed Deposit No. VSU/FD.198/98 in the name of the petitioner in the 3rd respondent-Bank. For the last two years as contemplated by the Scheme, the interest accrued on the said Fixed Deposit is being credited to the loan account of the petitioner to service the partial interest burden. The period of two years contemplated by the Scheme had expired on 10-7-2000 and the said Fixed Deposit amount would have to be automatically

credited to the loan account of the petitioner to discharge the loan as provided in the Scheme. On 19-7-2000, the petitioner requested the 3rd respondent through a letter even dated to credit the Fixed Deposit Amount. Thereafter, the 3rd respondent having kept quiet till 31-7-2000 served a letter on the petitioner on 1-8-2000 accompanied by the impugned letter purported to be dated 26-4-2000 of the 1st respondent addressed to the 3rd respondent stating that the Fixed Deposit amount cannot be credited to the loan account for the reasons mentioned in the enclosed letter of the 1st respondent and two other letters dated 28-2-2000 and 24-4-2000 were also enclosed to the letter dated 31-7-2000 of the 3rd respondent. It is further stated that the proceedings had been taken behind the back of the writ petitioner and it was also stated that the 3rd respondent used to visit the petitioner's premises and make an enquiry with the petitioner about the functioning of the unit under the Scheme and he is obliged to send the regular reports to the other respondents and the staff of the 3rd respondent in fact inspected the unit several times after the installation of machinery and after the functioning of the unit had started. It is further stated that the petitioner also submitted a letter dated 14-2-2000 to the 3rd respondent narrating about the functioning of the unit and the petitioner does not know what had transpired between the respondents 1 and 3 in prompting to pass the impugned proceedings and it was also further stated that if there had been an opportunity the petitioner would have explained to the satisfaction of the respondents as to how the impugned proceedings cannot be issued in the case of the petitioner and the letters dated 28-2-2000 and 24-4-2000 of the 3rd respondent or 26-4-2000 of the 1st respondent were not at all brought to the notice of the petitioner and in the said circumstances, the present Writ Petition is filed raising several grounds which had been specified in detail in paragraph 7 (A) to (I) of the Affidavit filed in support of the Writ Petition.

3. Counter-affidavits were filed by respondents 1 and 2 and also by the 3rd respondent. In substance, the stand taken by respondents 1 and 2 in the counter-affidavit is that the impugned proceedings are valid and sustainable since the petitioner had obtained the margin money to the project not fulfilling the criteria of the Margin Money Scheme and that opportunity, had been given to the petitioner to put forth its views in this behalf. The 3rd respondent in the counter affidavit had also taken a stand that the release of margin money to the petitioner firm is purely an administrative decision of the 1st respondent basing on the application submitted by the petitioner firm and hence the 3rd respondent is in no way concerned with the sanction or otherwise of the margin money by the 1st respondent. In paragraphs 3 to 9 of the counter-affidavit filed by the 3rd respondent, several details relating to different proceedings had been explained.

4. In W.P.M.P.No. 19630/2000, initially interim suspension was granted for two weeks and the same was extended until further orders subsequent thereto. But however, in W.V.M.P. No. 1590/2001, the following order was passed:

"In view of the peculiar circumstances of the case that the 3rd respondent-bank

already addressed a letter to the petitioner that it cannot credit the margin money to the credit of the petitioner's account, if the stay is not vacated the margin money would be lying idle. In view of the same, it is open to the 3rd respondent-Bank to continue to remit the money in F.D. account of the petitioner. But the same cannot be paid to the petitioner until the claim of the petitioner and 1st respondent are settled in the Writ Petition.

The vacate stay petition is ordered accordingly".

5. Sri P. Prabhakar Rao, the learned counsel representing the writ petitioner had taken me through the facts of the case and also several grounds raised in the Writ Petition and had contended that the respondents having advanced the amount under the Margin Money Scheme introduced by the 1st respondent, cannot issue the impugned proceedings without any notice and without any opportunity and also without recording any reasons, much less valid reasons. The learned counsel also would maintain that the said action is not only arbitrary but also illegal. It was further contended that the 1st respondent, at any rate is estopped from withdrawing the margin money having sanctioned it on a thorough scrutiny of the Project Report of the petitioner at several levels and even before depositing margin money into the Fixed Deposit. It was also further contended that the writ petitioner in fact had acted upon the said terms or representation and had incurred huge expenditure and in such circumstances at this distant point of time the contention of the 1st respondent cannot be upheld and the doctrine of promissory estoppel also is applicable and it operates as against the 1st respondent in contending otherwise. The learned counsel also had taken me through the correspondence relating to the same and had pointed out that this is a case where the writ petitioner is entitled to the relief as prayed for. The learned counsel also had placed strong reliance on Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.,

6. On the contrary Sri Rushendra Reddy, the learned counsel representing respondents 1 and 2 with all vehemence had contended that in the counter-affidavit filed on behalf of the 1st respondent and 2nd respondent, in paragraphs 4 to 8, the stand taken by these respondents had been well explained and hence the impugned proceedings are perfectly valid. The learned counsel also had pointed out the modalities of the Scheme and also the criteria and had submitted that the petitioner is ineligible under the said Scheme and hence the rejection of the claim by the Khadi and Village Industries Commission is in order and in conformity with the said Scheme. The learned counsel also had stated that the Khadi and Village Industries Commission is governed by the Khadi and Village Industries Commission Act, 1956 and inasmuch as the petitioner does not satisfy the eligibility criteria for getting the benefit under the Scheme, the stand taken by the respondents 1 and 2 in this regard is well justified.

7. Sri Ajay Reddy, the learned counsel representing the 3rd respondent had taken me through several details in the counter-affidavit filed by the 3rd respondent narrating all the facts in paragraphs 3 to 9 of the counter-affidavit

and stated that in the facts and circumstances, the stand taken by respondents 1 and 2 is well justified and hence the writ petitioner is not entitled to any relief prayed for in this regard.

8. Heard the counsel on record and also perused the material available on record.

9. The Khadi and Village Industries Commission, in short referred to hereinafter as "Commission", is statutory body created by an Act of Parliament in 1957 and it is charged with the responsibility of planning, promotion, organisation and implementation of programmes of the development of Khadi and other Village Industries in the rural areas in coordination with other agencies engaged in the rural development wherever necessary. The said Commission is governed by the provisions of the Khadi and Village Industries Act, 1956. It is needless to mention that the said Commission being a State or authority within the meaning of Article 12 of the Constitution of India, is expected to act fairly and reasonably and is not expected to take any arbitrary decisions in its administration.

10. On 26-4-2000, in letter No. Bank Finance /Nodal/05 the Commission had addressed a letter to the Manager, Vijaya Bank-the 3rd respondent herein, hereinafter referred to as "Bank" in short, which reads as follows:-

"Sub: Margin Money claim of Smt. K. Usha Rani....

Sir,

This refers to your letter dated 28-2-2000 on the subject cited above.

The matter has been thoroughly examined at this end and it is felt that the clarification given by the beneficiary cannot be accepted and as such if one cycle of working capital is included, the cost of project will exceed Rs. 10.00 lakhs. In view of this the beneficiary is not eligible for Margin Money, which may be refunded back immediately to the Nodal Branch under intimation to this Office.

Yours faithfully, Director (Bank Finance) Phone 6714320/Ext 295"

On 31-7-2000, the Bank had informed the petitioner as follows:

"Dear Sir,

Adjustment of your Margin Money to your SL & ML Accounts.

This has reference to your letter No.....dated...-7-00. In this connection we write to inform you that as per KVIC Mumbai letter No. Bank Finance/Nodal/05 dated 26-4-2000 you are not eligible for the Margin Money. Therefore we cannot credit the FD amount to your loan accounts. We request you to clear the arrears amount in your loan accounts.

Yours faithfully, Branch Manager."

11. These are the proceedings which are questioned in the present Writ Petition.

12. In substance the writ petitioner is aggrieved of the action of the Commission

in preventing the Bank from paying the margin money amount belonging to the petitioner into the petitioner's loan account as being arbitrary and illegal. It is also pertinent to refer to the other correspondence in this regard. The Bank had addressed the Commission on 28-2-2000, wherein it was stated as follows:

Vijaya Bank Branch /Office Vijayawada Date: 28-2-2000.

To

The Chief Executive Officer, Khadi and Village Industries Commission "Gramodaya" 3, Irala Road, Vile Parle (West) MUMBAI - 400056.

Dear Sir,

Margin Money claim of Smt. K. Usha Rani - Your letter No. BF.1109:2000 dt. 21-1-2000.

With reference to the captioned subject, please find herewith enclosing copies of letters dt. 14-2-2000 from M/s. Usha Enterprises, and 2. letter No. SO:AP:USHA:L.F.W. Manufacturing Unit: 97-98, dt.9-2-1998 of your office wherein you have forwarded the applications of M/s. Usha Enterprises for financial help of Rs. 9.40 lakhs under the total outlay of project cost of Rs. 9.90 lakhs. Taking the advantages of working capital of the party the unit has been grounded and it is running well as on date. This is for favour of your information.

Advance for building Rs. 4.80 lakhs. Advance for machinery Rs. 4.60 lakhs. We therefore request you to approve the sanction of subsidy for the unit.

Yours faithfully, (C. Narasimhappa) Branch Manager"

On 24-4-2000 the Bank had addressed a letter to the Commission which reads as follows:

"Dear Sir,

Margin Money claim of Smt. K. Usha Rani.

Your letter No. BF.1109:2000 dt.21st Jan. 2000 and our letter dt.28-2-2000.

This has further to our letter dated 28-2-2000. We wish to inform you that we have advanced to the above party as under:

Advanced to the building Rs. 4.80 lakhs. Advanced to the machinery Rs. 4.60 lakhs. This is for your information.

Yours faithfully, Branch Manager."

It may also be relevant to note the contents of the letter dated 14-2-2000 addressed to the Manager of the Bank by Usha Enterprises and the same reads as follows:

"Sir,

Sub:- Margin money claim of M/s. Usha Enterprises - Enquiry-regarding

I have submitted proposal for starting a leather footwear manufacturing unit involving a Financial help to the tune of Rs. 9.40 lakhs under rural employment generation programme of K.V.I.C. to Khadi and Village Industries Commission, State Office, Gandhi Bhavan, M.J. Road, Hyderabad-1. The total project outlay is Rs. 9.90 lakhs. The said proposal was forwarded to your Bank from K.V.I.C, Hyderabad under reference No. SO/AP/USHA L.F/W Mnfg. Unit/98-98, dt. 9-2-1998. The K.V.I.C. recommended to your Bank to consider the above said proposal under margin money scheme of K.V.I.C, Photo Stat copy of the said letter is enclosed for your kind perusal.

At the time of proposal we have submitted a letter to you regarding the working capital. I have stated the said letter that I have purchased all inputs on sufficient credit and the funds generated by this trade credit is enough to take care of working capital needs. I have also stated that I have not requested to you for any working capital limit. In fact I did not obtain any financial assistance either from your Bank or from any other financial institutions. I have been doing the business by securing the inputs on credit basis. As a matter of fact my unit has been functioning with any separate investment for working capital and in the manner stated above.

Therefore, my project cost will not exceed Rs. 10.00 lakhs. It is within the scope of margin money scheme. All these facts are considered by K.V.I.C. State Office, Hyderabad at the time of forwarding the proposal. This letter is submitted to you during the course of your personal enquiry about the scheme.

Enclosures:

- (1) Copy of K.V.I.C State Office, Hyderabad, Proposal Dt.9-2-98.
- (2) Copy of Letter given by me to you relating to the working capital.

Thanking you,

Yours faithfully, (K. USHA RANI) PROPRIETRIX"

Clause (A) of the Margin Money Scheme (MMS) through Scheduled Commercial Banks, reads as follows:

"The scheme envisages that:

25% of the project cost for the projects upto Rs. 10.00 lakhs will be provided as "Margin Money".

For projects above Rs. 10.00 lakhs and upto Rs. 25.00 lakhs, rate of Margin Money will be 25% of Rs. 10.00 lakhs plus 10% of the remaining cost of the project.

Project cost will include one cycle of Working Capital.

Margin Money Scheme is applicable for viable Village Industry Projects (Khadi and Polyvastra are kept out of its purview).

The Bank will initially sanction 90% of the Project cost in case of General Category of beneficiary/institution and 95% of the project cost in case of Weaker Section beneficiary/institution and disburse full amount suitably for setting up of the project."

Clause (B) of the Scheme deals with beneficiaries and it reads as follows:

"Individuals, Entrepreneurs for projects upto Rs. 10.00 lakhs.

Institutions/Cooperative Societies/ Trusts registered with KVIC/KVIB for projects upto Rs. 25.00 lakhs."

The modalities of the Scheme financed through Banks has been specified in Clause (C).

13. The petitioner submitted an application to the 2nd respondent-The Director, Khadi and Village Industries Commission, Gandhi Bhavan, M.J. Road, Hyderabad, on 29-1-1998 and the said application was forwarded to the 1st respondent-Commission for financial assistance and after thorough scrutiny and verification at all stages the same was approved. As can be seen from the correspondence referred to above, it is clear that the unit was commenced and it is being run on sound lines with the said financial assistance and now in view of the stand taken by the Commission that the benefit under the said Scheme is not applicable or available to the petitioner, virtually the financial benefit conferred on the petitioner after thorough scrutiny and verification of all the material, is now sought to be withdrawn by the Commission by a communication addressed to the Bank and virtually the said action was taken, as can be seen from the records without any notice or without affording any opportunity to the petitioner in this regard. The other factual details in fact had been already narrated above. In fact, the learned counsel for the petitioner had taken me through the other correspondence and also the Project Report and had submitted that the petitioner had been very clear at every point of time and the Commission after being convinced about the applicability of the Scheme only had conferred this benefit on the petitioner and having made the petitioner to invest huge amount on the unit, now the said financial benefit cannot be unilaterally withdrawn without issuing any notice or without affording any opportunity in this regard and hence it was maintained by the learned counsel for the petitioner that the proceedings are arbitrary and illegal and the said action cannot be sustained in law.

14. In the counter-affidavit filed by the respondents 1 and 2 it was specifically stated at paragraph-6 as follows:

"In reply to paras 4 and 5 of the affidavit it is submitted that the job of respondent No. 2 being the local representative of respondent No. 1 to sponsor the project to the Bank of the choice of beneficiary i.e., petitioner by ensuring

that project fulfills the criteria of rural area, Village Industries, Per Capita Fixed Investment and own contribution. As per the modalities of the Scheme the respondent No. 3 has to ensure the following criteria before sanctioning any loan under the Margin money Scheme of KVIC, and take own credit decision. (i) Village Industries, (ii) Per Capita Fixed Investment, (iii) Own contribution, (iv) Rural area.

Further, it is submitted that as per the Scheme, each project should include one cycle of the Working Capital and cost of the project should not exceed Rs. 10.00 lakhs, in case of individual beneficiary and that of Institution/ Subsidy/Trusts etc., Rs. 25.00 lakhs.

The Project of the petitioner is as under:-

Details of Project Means of Finance

A. Capital Expenditure Own Contribution 0.50 (i) Building/workshed Term Loan 9.40 = 9.90 Cash Credit -

(ii) Mac. Equipment - B. Working Capital - ----- 9.90 9.90 -----

The petitioner has submitted this project for manufacture of various types of Leather Chappals which require huge working capital for procuring raw materials. This necessity of having building workshed of Rs. 9.90 lakhs is also subject to deliberations. If one cycle of the Working Capital is included in the aforesaid Capital Expenditure, the cost of the project will exceed Rs. 10.00 lakhs, making the claim ineligible for Margin Money Scheme under the said scheme. Thus it is respectfully submitted that the rejection of the claim by the Khadi & Village Industries Commission is in order and in conformity with the provisions of the Margin Money Scheme. The Margin Money is one time assistance from the 1st respondent."

A specific stand was taken that since the petitioner does not fall under the eligibility criteria of the Margin Money Scheme and in fact opportunity had been given and then only the impugned action had been taken. In the counter-affidavit filed by the 3rd respondent, the letter addressed by the Commission to the bank had been referred to and had taken a stand that in such circumstances pursuant to the said instructions of the Commission, the Bank had neither adjusted the Fixed Deposit amount towards repayment of loan nor refunded the margin money to the 1st respondent as per the directions of this Court and hence the Bank had never acted on its own.

15. Though a vague plea was raised in the counter-affidavit of the respondents 1 and 2 that opportunity had been given to the petitioner, absolutely there is no material available on record in this regard and the correspondence appears to be between the Commission and the Bank and by virtue of the said action of withdrawal of the benefit under the scheme aforesaid, ultimately the petitioner became the prey to such an arbitrary action. It is not in dispute that the petitioner had made the application and the same was processed after following

necessary procedural formalities and on proper verification and scrutiny, the benefit was conferred on the petitioner and now unilaterally the Commission and the Bank intend to withdraw the same on the ground that the petitioner does not fall under the eligibility criteria. It is also revealed from the record that in fact the petitioner had acted upon the same and the said unit also is functioning well and in such circumstances, the Commission, at this distant point of time, having conferred the benefit, cannot unilaterally withdraw the same and in fact the Commission is estopped from contending otherwise especially in the light of the conduct of processing the application and the scrutiny of the application and after proper compliance with the necessary procedural formalities while conferring the said benefit on the petitioner. In fact, such an action is definitely arbitrary and unsustainable one. Strong reliance was placed on the decision referred (1) supra in this regard. It is pertinent to note that the impugned action had been initiated without any notice or without affording opportunity of hearing and behind the back of the petitioner and further no reasons also had been recorded even in the said internal correspondence and as such the unilateral withdrawal of the margin money benefit is arbitrary and further as referred to supra the 1st respondent Commission is estopped from withdrawing the margin money benefit having sanctioned the same after thorough scrutiny of the Project Report of the petitioner at several levels and even before depositing margin money in the Fixed Deposit, and in the light of the huge expenditure already incurred by the petitioner such a stand cannot be taken by the Commission, as already stated supra, at this distant point of time. It is also essential to note that such withdrawal cannot be made after the expiry of the period stipulated for crediting the margin money to the loan account of the petitioner. It is further pertinent to note that the petitioner did not require any working capital for the project to be set-up. In the nature of such business the Commission cannot assume the surmise that if one cycle of working capital is included the cost of the project will exceed Rs. 10 lakhs and this assumption has neither rationale basis nor a valid foundation. The Project Report of the petitioner clearly discloses that no working capital is required and in fact no investment was made towards working capital by the petitioner and when the benefit was conferred on the petitioner, in fact the petitioner had legitimately expected that the margin money subsidy would be given as promised, to pay-off the loan under the Scheme and hence viewed from any angle the said action cannot be sustained. It may also be relevant to note that when once the margin money was released and kept in the Fixed Deposit in the name of the petitioner with the Bank to be credited to the loan account of the petitioner, in the eye of law the amount belongs to the petitioner in its own right and the Commission has no power over the said Fixed Deposit and even in this view of the matter the impugned action is unauthorized and without jurisdiction and in exercise of an arbitrary power. Further, the Bank is obligated to credit the Fixed Deposit after the expiry of the stipulated period of two years even without the intervention of the Commission. Apart from the aspect of applicability of the doctrine of estoppel and also the doctrine of legitimate expectation, the most crucial aspect, even otherwise, is that the impugned action cannot be sustained

even on the ground of the violation of principles of natural justice. As already referred to supra, this is a case where under a particular Scheme after proper verification and scrutiny of the application, the Project Report and the other material, the financial benefit under the Scheme had been conferred on the ground that the eligibility criteria are satisfied and the same is being withdrawn.

16. While dealing with the aspect of principles of natural justice, in Law of Writs, 1st Edition, by me, at page 256, I had an occasion to state as follows:

"Natural Justice is one of the most essential concepts of the Constitutional Law and is of very ancient origin. This may be understood as Justice that is simple and elementary as distinct from Justice that is complex, sophisticated and technical (1969(2) AII.E.R. 274 -John v. Rees). It is also popularly known as "fair play in action", "social justice", "universal Justice", "fundamental Justice", "substantial Justice" etc. The concept of Natural Justice also differs from country to country and the principles applied are not uniform in nature though the fundamental concept of fair play in action may be the same (1929 1 Ch.D. 602 - Maclean v. Workers Union). The principles of Natural Justice are easy to proclaim but their precise extent is far less easy to define (1952 (1) AII.E.R. 226-Abdul v. Sulvion). In modern times opinions have some times been expressed to the effect that Natural Justice is so vague as to be practically meaningless but these can be regarded as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured and therefore it does not exist (1963(2) AII.E.R 66- Ridge v. Baldwin)."

In Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , it was observed as follows:-

"Now, if this be the test of applicability of the doctrine of natural justice, there can be no distinction between a quasi-judicial function and an administrative function for this purpose. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. On what principle can distinction be made between one and the other? Can it be said that the requirement of "fair play in action" is any the less in an administrative inquiry than in a quasi-judicial one? Sometimes an unjust decision in an administrative inquiry may have far more serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences....."

In State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, , it was observed as follows:

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice informing the first

respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence".

In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, it was held as follows:

"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 in the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry".

The same view was expressed in Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another, in Swadeshi Cotton Mills Vs. Union of India (UOI), and also in K.I. Shephard and Others Vs. Union of India (UOI) and Others, Mullan in Fairness: The Natural Justice, had expressed:

"Natural Justice co-exists with, or reflected, a wider principle of fairness in decision-making and that all judicial and administrative decision-making and that all judicial and administrative decision-makers had a duty to act fairly".

In Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others, it was held:

"Prof. Wade says:

"A judicial decision is made according to law. An administrative decision is made according to administrative policy. A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A quasi-judicial decision is, therefore, an administrative decision which is subject to some measure of judicial procedure, such as the principles of natural justice."

(Administrative Law by H.W.R. Wade, 6th Ed. Promotion policy, 46-47).

An administrative order which involves civil consequences must be made consistently with the rule expressed in the Latin Maxim *audi alteram partem*. it means that the decision maker should afford to any party to a dispute an opportunity to present his case. A large number of authorities are on this point and we will not travel over the field of authorities. What is now not in dispute is that the person concerned must be informed of the case against him and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken (*Ridge v. Baldwin* (1963) 2 AII.E.R. 66 *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, .

The shift now is to a broader notion of "fairness" or "fair procedure" in the

administrative action. As far as the administrative officers are concerned, the duty is not so much to act judicially as to act fairly (See: *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, ; *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, ; *Swadeshi Cotton Mills Vs. Union of India (UOI)*, and *Management of M/s. Nally Bharat Engineering Co. Ltd., v. State of Bihar* (Civil Appeal No. 1102 of 1990 decided on February 9, 1990). For this concept of fairness, adjudicative settings are not necessary, nor it is necessary to have lis inter parties. There need not be any struggle between two opposing parties giving rise to a "lis". There need not be resolution of lis inter parties. The duty to act judicially or to act fairly may arise in widely differing circumstances. It may arise expressly or impliedly depending upon the context and considerations. All these types of non-adjudicative administrative decision making are now covered under the general rubric of fairness in the administration. But then even such administrative decision unless it affects one's personal rights or one's property rights, or the loss of or prejudicially affects something which would judicially be called at least a privilege does not involve the duty to act fairly consistently with the rules of natural justice. We cannot discover any principle contrary to this concept."

17. In the light of the settled principle of law in this regard, I have no hesitation in arriving at the conclusion that the impugned action is illegal and arbitrary, being violative of Articles 14 and 21 of the Constitution of India and also the said action is vitiated for non-observance of the principles of natural justice and absence of fair play in action and viewed from any angle, not only on this ground, even on the ground of estoppel and the doctrine of legitimate expectation, the said action of the Commission and the Bank is totally unsustainable.

18. In view of the reasons recorded supra, in detail, the writ petitioner is entitled to the relief prayed for and accordingly the Writ Petition is allowed. But however, in the peculiar facts and circumstances of the case, no order as to costs.