
(2008) 12 AHC CK 0034
In the Allahabad High Court
Case No : Writ Petition No. 3098 (MS) of 2008

Vijay Narain Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Citation : (2008) 12 AHC CK 0034

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Heard learned Counsel for the petitioner and Mr. H.G.S. Parihar, learned Counsel appearing for the opposite parties.

2. With the consent of learned Counsel for the parties, the writ petition is being disposed of at the admission stage itself.

3. The grievance of the petitioner is that three persons made a complaint dated 4.5.2008, a copy whereof is Annexure CA2 on record. Out of these three persons, one Mr. Sanjiv Kumar has been appointed to conduct the enquiry. On the basis of the enquiry report, the impugned order dated 12.9.2008 (Annexure No. CA12) has been passed.

4. Brief facts of the petitioner's case are that Bhaironath Inter College was established in the month of July, 1973 which was received grant-in-aid in the year 1995. After the death of petitioner's father in the year 1994, the petitioner was nominated as Member of the General Body in the year 2004. The College was subsequently extended upto Intermediate Classes. The petitioner was again elected as Manager of the Committee on 9.5.2008. The District Inspector of Schools attested the signature of the petitioner on 22.5.2007. Three joint bank accounts were opened. On 13.6.2008, the opposite party No. 3 informed the bank that the petitioner has been expelled from the post of Manager on the ground of financial irregularities. When no action has been taken by the opposite

party No. 2, he preferred a representation dated 18.6.2008.

5. Learned counsel for the petitioner further submits that the impugned order dated 11/12.6.2008 has been passed by the District Inspector of Schools without holding an enquiry and without affording any opportunity of hearing to the petitioner, ignoring the fact that the opposite party No. 2 himself attested the signature of the petitioner by letter dated 22.5.2007. The petitioner's expulsion from the post of Manager has been passed in violation of Rule 3 (E) of the bye-laws which provides that a member can be expelled by the Committee after having two-third majority. After expulsion of the petitioner, no meeting was held.

6. Further submission of the learned Counsel for the petitioner is that neither the order dated 12.9.2008 has been served upon the petitioner nor any opportunity of hearing was afforded.

7. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

8. Besides, natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary.

9. The Hon''ble Supreme Court in umpteen cases has reiterated that a person who is put to any harm, he shall first be afforded adequate opportunity of showing cause. In D.K. Yadav Vs. J.M.A. Industries Ltd., the Supreme Court while laying emphasis on affording opportunity by the authority which has the power to take punitive or damaging action held that orders affecting the civil rights or resulting civil consequences would have to answer the requirement of Article 14. The Hon''ble Apex Court concluded as under:

The procedure prescribed for depriving a person of livelihood would be liable to be tested on the anvil of Article 14. The procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. Article 14 has a pervasive procedural potency and versatile quality, equalitarian in its soul and principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable, and not arbitrary, fanciful or oppressive.

10. In National Buildings Construction Corporation Vs. S. Raghunathan and Others, it was observed by the Apex Court that a person is entitled to judicial review, if he is able to show that the decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he is informed the reasons for withdrawal and the opportunity to comment on such reasons.

11. At this juncture it would be relevant to produce relevant portion of paragraph

34 of the judgment rendered in State Bank of Patiala and others Vs. S.K. Sharma, Though this decision was given in a service matter but the Hon''ble Apex Court has dealt with the principles of natural justice and the result if it is not followed:

(1) Where the enquiry is not governed by any rules/regulations/ statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e. between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e. in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice, in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(2) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

12. Accordingly, the writ petition is allowed and the orders dated 11/12.6.2008 and 12.9.2008 are hereby quashed. However, it will be open for the opposite parties to conduct a fresh enquiry, in accordance with law.