

(2018) 04 MP CK 0164
In the Madhya Pradesh High Court
Case No : W.P. No.20178 OF 2017

Yatish Pandey

APPELLANT

Vs

Commissioner, Indore Municipal Corporation

RESPONDENT

Date of Decision : 26-04-2018

Acts Referred:

Citation : (2018) 04 MP CK 0164

Hon'ble Judges : S.C. SHARMA, J

Bench : Single Bench

Advocate : Manuraj Singh, Lucky Jain

Judgement

The petitioner before this Court has filed the present petition being aggrieved by the order dated 21.03.2017 passed by the respondent terminating the services of the petitioner.

The facts of the case reveal that the petitioner was appointed on 07.03.1998 as daily wager and has continued upto 21.03.2017, with Indore Municipal

Corporation. The petitioner's job is to collect fees from the residents under the Swachh Bharat Abhinyam and a show cause notice was

issued on 19.01.2017 to the petitioner. The show-cause notice reveals that it has been issued for violation of M.P. Civil Services (Conduct) Rules,

1965. In the show cause notice it has also been stated that as to why his services should not be put to an end by inflicting a punishment as provided

under M.P. Civil Service (Classification, Control and Appeal) Rules, 1966.

The petitioner categorically denied the allegation made in the show-cause notice and has submitted a reply on 20.01.2017 stating that he was collecting

the fee, as directed by the Municipal Corporation and the report lodged against him is false and frivolous. Thereafter, his services have been put to an

end by an order dated 21.03.2017. The order is certainly stigmatic order, as in the order it has been stated that the petitioner has misbehaved with

certain person and spoiled the image of the Municipal Corporation, Indore.

The respondents have certainly filed a reply and they have stated that M.P. Civil Services (Conduct) Rules, 1965 are not applicable in the case of the

petitioner and the petitioner is having alternative remedy and based upon the misconduct committed by the petitioner, his services have been put to an

end.

In the present case, the petitioner is certainly not a regular employee, he is a daily wager, and therefore, in the considered opinion of this Court, the

stand of the respondent that M.P. Civil Services (Conduct) Rules, 1965 were not applicable is justified. Not only this M.P. Civil Service (Classification,

Control and Appeal) Rules, 1966 are also applicable in case of the petitioner.

The respondents in spite of the aforesaid, issued a notice taking shelter of Rules of 1965 and 1966. However, mere mention of the Rules of 1965 and

1966 will not make the notice as void. Wrong mentioning of rules does not mean that the respondent was not competent to issue a show cause notice

to the petitioner, as has been done on 19.01.2017. However, the important aspect of the case is that the services of the petitioner have been put to an

end by a stigmatic order.

The petitioner, in response to the notice has categorically denied the misconduct and in all fairness, an opportunity should have been given to the

petitioner in the matter. The respondent has not held any inquiry and merely on the basis of some complaints made by the residents and on the basis of

some statement made behind back of the petitioner, his services have been put to an end by stigmatic order and no inquiry at any point of time was

held with the participation of the petitioner.

Resultantly, as the order is stigmatic in nature and is violative of natural justice and fair play, it is certainly bad in law. The principal of natural justice

and fair play have been dealt by this Court in the case of *Kansa Vs. State of Madhya Pradesh & Ors* 2015 (3) J.L.J. 29 and the relevant paragraphs

reads as under:-

“6. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into

the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

7. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

8. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasijudicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.

10. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

12. Lord Wright referred to the leading cases on the subject. The most important of them is the Board of Education v. Rice (1911 AC 179:80 LKKB

796), where Lord Loreburn, L.C. observed as follows:

“Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of

deciding or determining questions of various kinds. It will, I suppose usually be of an administrative kind, but sometimes, it will involve matter of law as

well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to

ascertain the facts. I need not and that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying upon everyone

who decides anything. But I do not think they are bound to treat such a question as though it were a trial....The Board is in the nature of the arbitral

tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either

that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to

determine, then there is a remedy by mandamus and certiorari”.

13. Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they

think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial

to their view”. To the same effect are the observations of Earl of Selbourne, LO in *Spackman v. Plumstead District Board of Works* (1985 (10) AC

229:54 LJMC 81), where the learned and noble Lord Chancellor observed as follows: “No doubt, in the absence of special provisions as to how the

person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in

the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must

give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons

to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if

there were anything of that sort done contrary to the essence of justice”. 14. Lord Selbourne also added that the essence of justice consisted in

requiring that all parties should have an opportunity of submitting to the person

by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase

“justice should not only be done, but should be seen to be done”.

15. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in

a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of

natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that

case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered

away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression “civil

consequences” encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and nonpecuniary

damages. In its wide umbrella comes everything that affects a citizen in his civil life.

16. Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew v. Drew and Lebura* (1855(2) Macg. 1.8,

Lord Cranworth defined it as “universal justice”. In *James Dunbar Smith v. Her Majesty the Queen* (1877-78(3) App. Case 614, 623 JC) Sir

Robert P. Collier, speaking for the judicial committee of Privy council, used the phrase “the requirements of substantial justice”, while in *Arthur*

John Specman v. Plumstead District Board of Works (1884(10) App. Case 229, 240), Earl of Selbourne, S.C. preferred the phrase “the substantial

requirement of justice”. In *Vionet v. Barrett* (1885(55) LJRD 39, 41), Lord Esher, MR defined natural justice as “the natural sense of what is

right and wrong”. While, however, deciding *Hookings v. Smethwick Local Board of Health* (1890 (24) QBD 712), Lord Fisher, M.R. instead of

using the definition given earlier by him in *Vionet*’s case (supra) chose to define natural justice as “fundamental justice”. In *Ridge v.*

Baldwin (1963(1) WB 569, 578), Harman LJ, in the Court of Appeal countered natural justice with “fair-play in action” a phrase favoured by

Bhagawati, J. in *Maneka Gandhi v. Union of India* (1978 (2) SCR 621). In *re R.N.*

(An Infant) (1967 (2) B 617, 530), Lord Parker, CJ, preferred to describe natural justice as "a duty to act fairly". In *Fairmount Investments Ltd. v. Secretary to State for Environment* (1976 WLR 1255) Lord Russell of Willowan somewhat picturesquely described natural justice as "a fair crack of the whip" while Geoffrey Lane, LJ. In *Regina v. Secretary of State for Home Affairs Ex Parte Hosenball* (1977 (1) WLR 766) preferred the homely phrase "common fairness".

17. How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" as stated in (1605) 12 Co.Rep.114 that is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa quia non potest esse judex at pars" (Co.Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur at altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" (See *Bosewell's case* (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done".

What is known as "useless formality theory" has received consideration of this Court in *M.C. Mehta v. Union of India* (1999(6) SCC 237). It

was observed as under:

“Before we go into the final aspect of this contention, we would like to state that cases relating to breach of natural justice do also occur where all

facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief

can be refused even if the court thinks that the case of the applicant is not one of “real substance” or that there is no substantial possibility of his

success or that the result will not be different, even if natural justice is followed (See *Malloch v. Aberdeen Corpn*: (1971) 2 All ER 1278, HL) (per

Lord Reid and Lord Wilberforce), *Glynn v. Keele University*: (1971) 2 All ER 89; *Cinnamond v. British Airports Authority*: (1980) 2 All ER 368, CA)

and other cases where such a view has been held. The latest addition to this view is *R v. Ealing Magistrates’ Court, ex p. Fannaran* (1996 (8)

Admn. LR 351, 358) (See de Smith, Suppl. P.89 (1998) where Staughton, L.J. held that there must be “demonstrable beyond doubt” that the

result would have been different. Lord Woolf in *Lloyd v. McManis* (1987 (1) All ER 1118, CA) has also not disfavoured refusal of discretion in

certain cases of breach of natural justice. The New Zealand Court in *McCarthy v. Grant* (1959 NZLR 1014) however goes halfway when it says that

(as in the case of bias), it is sufficient for the applicant to show that there is “a real likelihood-not certainty- of prejudice”. On the other hand,

Garner Administrative Law (8th Edn. 1996. pp.271-72) says that slight proof that the result would have been different is sufficient. On the other side

of the argument, we have apart from *Ridge v. Baldwin* (1964 AC 40: (1963) 2 All ER 66, HL), *Megarry, J. in John v. Rees* (1969 (2) All ER 274)

stating that there are always “open and shut cases” and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but

for the authority to consider. Ackner, J has said that the “useless formality theory” is a dangerous one and, however inconvenient, natural justice

must be followed. His Lordship observed that “convenience and justice are often not on speaking terms”. More recently, Lord Bingham has

deprecated the “useless formality theory” in *R. v. Chief Constable of the Thames Valley Police Forces, ex p. Cotton* (1990 IRLR 344) by giving

six reasons (see also his article “Should Public Law Remedies be Discretionary?” 1991 PL. p.64). A detailed and emphatic criticism of the

â??useless formality theoryâ?? has been made much earlier in â??Natural Justice, Substance or Shadowâ?? by Prof. D.H. Clark of Canada (see

1975 PL.pp.27-63) contending that Malloch (supra) and Glynn (supra) were wrongly decided. Foulkes (Administrative Law, 8th Edn. 1996, p.323),

Craig (Administrative Law, 3rd Edn. P.596) and others say that the court cannot prejudge what is to be decided by the decisionmaking authority. De

Smith (5th Edn. 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the

court. Wade (Administrative Law, 5th Edn. 1994, pp.526-530) says that while futile writs may not be issued, a distinction has to be made according to

the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of

opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can

prove a â??real likelihoodâ?? of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that

even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their

â??discretionâ??, refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet

another line of cases as in State Bank of Patiala v. S.K. Sharma (1996 (3) SCC 364), Rajendra Singh v. State of M.P. (1996 (5) SCC 460) that even

in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and

where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

We do not propose to express any opinion on the correctness or otherwise of the â??useless formality theoryâ?? and leave the matter for decision in

an appropriate case, inasmuch as the case before us, â??admitted and indisputableâ?? facts show that grant of a writ will be in vain as pointed by

Chinnappa Reddy, J.â??

In light of the aforesaid, as it can be safely gathered that the respondent has violated principle of natural justice and fair play, the impugned termination

order, which is stigmatic dated 21.03.2017 deserves to be set aside and is accordingly set aside. The respondent is directed to reinstate the petitioner

forthwith in service.

Certified copy as per rules.