
(2004) 03 MP CK 0090
In the Madhya Pradesh High Court
Case No : Writ Petition No. 12153 of 2003

Y.N. Mishra

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Citation : (2004) 3 MPLJ 478

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : A.P. Shroti, for the Appellant; K.S. Thakur, for the Respondent

Judgement

Dipak Misra, J.

The petitioner was appointed as Tracer in Public Works Department (B and R) Region-I, Hoshangabad by order dated 13-4-1964. He was transferred to P.W.D. Sub-Division Pachmarhi. With the passage of time, he was promoted to the post of Assistant Draftsman by order dated 27-6-1994 and was transferred and posted at Public Works Department, Sub-Division No. 1, Harda from Pachmarhi. He was relieved from Pachmarhi on 2-8-1994. As pleaded at the time of his transfer, his daughter was studying in Class-DC at the Government Girls Higher Secondary School at Pachmarhi. As the admissions for the academic year 1994-95 had closed at Harda, the petitioner retained the Government quarter at Pachmarhi and he submitted an application on 23-11-1994 for permission to retain the quarter beyond stipulated period of six months. According to the writ petitioner, the Sub Divisional Officer did not forward the application to the Executive Engineer for necessary orders but issued a memo dated 1-12-1994 (Annexure-A4), stating that the petitioner had made erroneous statement with regard to his daughter studying in the aforesaid school. Certain allegations have been made with regard to vindictive attitude of the Sub-Divisional Officer. It is contended in the petition that the Executive Engineer informed him on 12-6-1996 (Annexure.A6) that the petitioner did not vacate the quarter after his transfer to Harda in accordance with the instructions as contained in memo dated

21-5-1993, therefore, he was liable to pay market rate fixed for H-type quarter with effect from 3-8-1994 and accordingly a sum of Rs. 7,863/- would be realized from him. It is urged that no order was passed on application dated 9-1-1995. After receipt of the communication from the Executive Engineer, the petitioner wrote to the Executive Engineer on 12-6-1996 expressing the reasons how he needed the quarter at Pachmarhi and the difficulties faced by him in regard to education of his daughter. He submitted the representation dated 25-4-1997 assailing the recovery of Rs. 7,863/- vide Annexure-A8 and prayed that the rent be computed as per Fundamental Rules 45-B and balance be refunded to him. Certain allegations have been made in the petition which need not be stated being irrelevant for the purpose of the case. Emphasis has been laid on fundamental Rule 45-B; and in that backdrop, a prayer has been made for quashing the order of recovery dated 12-6-1996.

A reply has been filed by the answering respondent contending inter-alia that the petitioner was promoted by order dated 24-6-1994 and he was relieved and posted at Harda on 3-8-1994. It is submitted that an application was made by the petitioner for giving permission to retain Government accommodation upto July 1995 on the ground that his daughter was studying. On verification, it was found that the name of the petitioner's daughter was removed from the School on 22-11-1994 and accordingly, the petitioner was served with the show cause notice marked as Annexure-R2. Thereafter, for the reasons set forth in the return that there is no circular which enables an employee to retain quarter after his transfer. Other allegations made in the petition have also been replied to by the respondents.

Heard Mr. A. P. Shrotri, learned counsel for the petitioner and Mr. K. S. Thakur, learned counsel for the State.

It is submitted by Mr. A. P. Shrotri that the petitioner was not asked to show cause but the order of recovery, which is sufficiently adverse in nature, was passed against him and the same being against the principles of nature justice cannot withstand scrutiny. He has referred to paragraph 2 of the return to show how the respondents state that there has been notice to show cause. The said communication can never be construed as a show cause notice as it is an interdepartmental correspondence a copy of which was supplied to the petitioner intimating the petitioner the result of strict determination.

Mr. K. S. Thakur, learned counsel for the State, in his turn, submitted that the petitioner had unauthorisedly occupied the premises without prior permission of the competent authority and he was asked to show cause and, therefore, the order of recovery cannot be found fault with.

The aforesaid contention being the contentious issue, what is to be seen is whether the petitioner was visited with an adverse order without following the principles of natural justice. Learned counsel for both the parties relied on Annexure-R2. On a scrutiny of the same, it is clear that the petitioner was not

asked to show cause. What was communicated to him was that there had been representation at his behest and, therefore, he would be liable to pay difference with regard to market rent. There can be no trace of doubt that the principles of natural justice were not followed in the instant case. The issue does not end here. Mr. Shrotri impressed upon this Court that once there has been violation of the principles of natural justice, the order of recovery passed vide Annexure-A6 should be quashed and he should be refunded the amount recovered from him. Thereafter, proceedings for the purposes of the determination of quantum of rent can be taken up. To bolster his submission, he has placed reliance on the decision rendered in the case of *Canara Bank v. Debasis Das and Others*, AIR 2003 (4) SC 557. Learned counsel has commended to paragraph 15 of the aforesaid decision, which reads as under :

The adherence to principles of natural justice as recognised by all civilized States as of supreme importance when a quasi judicial body embarks on determining the 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 apprise the party determinatively of 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 time 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 the natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth, Board of Works*, the principle was, thus stated :

(E)ven God himself did not pass 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 shouldst not eat?" Since then, the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has a day light and luminosity to the concept, like polishing of a diamond." Principles of natural justice are applied with a view to check the statutory procedure adopted by judicial and administrative authorities while making an order affecting fundamental rights. These rules are intended to contain injustice. It is noteworthy to mention here that in the said decision, the Apex Court also laid down two conceptions regarding pre-decisional hearing and post-decisional hearing. It was held by their Lordships that a post-decisional hearing cannot always be a substitute for pre-decisional hearing. While saying so, their Lordships also observed that prejudice to the party on account of denial

of pre-decisional hearing can be compensated by post-decisional hearing. The concept of post-decisional hearing is not new to basic service jurisprudence.

True it is, in the case of Canara Bank (*supra*), emphasis has been laid on pre-decisional hearing but in certain cases prejudice is not caused on account of non-grant of pre-decisional hearing. Hearing can be given by applying the doctrine of post-decisional hearing. In the present case, recovery of dues has already been effected. Judicial notice can be taken of the fact that the Government servant had not vacated the quarter after his retirement or transfer. Pleas numerous in nature are taken for retaining the accommodation, sometimes it is education of children and sometimes certain other difficulties. A Government employee is expected to leave the quarter within the period as prescribed under the rules. In the present case, definitely the petitioner retained the quarter beyond the prescribed period whether it was justifiable or not, that can always be determined and for such determination pre-decisional hearing cannot always be adhered to. In my considered opinion, in the case at hand, the doctrine of post-decisional hearing can always be invoked. Though the principles of natural justice cannot be treated to be an empty formality, yet there have to be some play or some allowance in certain matters and the present case is one such. Though the contention of Mr. Shrotri that the petitioner was not given hearing before order of recovery was passed has some force, I am not disposed to quash the order of recovery on that ground, I am inclined to direct that the petitioner shall be issued a show cause notice within a period of 8 weeks from the date of receipt of the order passed today. He shall file his reply within a period of 4 weeks thereafter. The competent authority shall hear him and decide the matter, as per rules. Be it noted, the authorities would not act in an obstinate manner and give the stamp of approval to the previous order. They should objectively assess the massing and consider the plea in a most promptitude manner.

With the aforesaid directions, the writ petition stands disposed of. There shall be no order as to costs.

C.C. as per rules.