

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.10 of 2024

Iritty Spices

....Petitioner(s)

Versus

Tripura Rehabilitation Plantation Corporation Ltd. and Ors.

....Respondent(s)

For Petitioner(s)	:	Mr. T.D. Majumder, Sr. Advocate Mr. T. Halam, Advocate Mr. D. Kalai, Advocate
For Respondent(s)	:	Mr. D. Bhattacharya, Sr. Advocate Mr. S. Saha, Advocate

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

ORDER

13.03.2024

Heard Mr. T.D. Majumder, learned senior counsel appearing for the petitioner and Mr. D. Bhattacharya, learned senior counsel appearing for the respondent.

A sale order was issued in favour of the petitioner on 22.12.2023 (*Annexure-3*) upon being successful tenderer in the NIT dated 14.12.2023 for sale of dried rubber sheets. He was asked to deposit total amount of Rs.1,49,73,000/- as full payment against the lots mentioned in the sale order for 3(three) enumerated categories of sheet rubber. After making the deposit of Rs.1,22,85,000/- only vide *Annexure-6*, the delivery orders were issued for 2(two) categories; (i) RSS-5 Grade Sheet Rubber-20,000kgs and (ii) RSS Ungraded Rubber Sheet-60,000kgs.

The petitioner lifted 30,000kgs of RSS Ungraded Rubber Sheet as invoice was limited for this class of sheet rubber only (*Annexure-5 dated*

22.12.2023). Since further delivery orders were not being issued, the petitioner inquired from the respondents office and came to know that a fresh NIT has been issued on 29.12.2023 and the sale order had been cancelled on 28.12.2023. The petitioner claimed to have made a representation on 27.12.2023 (*Annexure-7* to the writ petition) which remained unattended. The copy of the cancellation order was issued only on 05.01.2024. The petitioner approached this Court with a grievance that no reason for cancellation of the sale order has been communicated. The respondents have issued a fresh NIT within 15 days of the previous NIT. The impugned cancellation order is bad in law as it is without any reason and without any opportunity to the petitioner to show cause. The petitioner has suffered because of the arbitrary action of the respondents even after depositing substantial amount of money for taking the delivery orders of the specified category of grade rubber sheets.

When the matter was taken up on 10.01.2024, this Court after noticing the case of the petitioner directed learned GA to seek instruction from respondents no.1 and 2. This Court also restrained the respondents from issuing delivery orders in respect of the remaining quantum of the specified category of grade rubber sheets as per the sale order dated 22.12.2023 in favour of any other person. The respondents no.1 and 2 thereafter filed a counter affidavit. Statements were made therein that the sale order dated 22.12.2023 was cancelled by the Chairman-TRPC on 22.12.2023 but the relevant order was issued on 28.12.2023 which is Annexure-9 to the writ petition. However, this Court observed that the copy of the decision taken by the Chairman-TRPC has not been brought on record. Annexure-9 is only an intimation of the cancellation and does not contain any reason. Thereafter,

time was granted to the learned senior counsel for the respondents no.1 and 2 to file further affidavit. The petitioner has filed rejoinder to that. An additional affidavit has been filed by the respondents no.1 and 2 thereafter.

In paragraph 2, it has been stated therein that a meeting was held on 22.12.2023 at about 8:30 p.m. i.e. the day when the sale order was favoured to the petitioner and others regarding the entire tender issue. A decision regarding cancellation of sale order was taken by the tendering authority and the same was informed by Assistant Manager (Marketing) in the night after the decision in the meeting over phone as he was away from head quarter at Guwahati to Go-down In-Charge of the TRPC Ltd. 23rd to 25th of December were holidays. The formal letter was issued to all successful tenderers on 28.12.2023 regarding cancellation of the sale order dated 22.12.2023 under the signature of the Assistant Manager (Marketing) after due approval from the higher authorities. The cancellation of the tender process was made for protecting interest of the Corporation. It has been further stated that the sale order was issued by the Assistant Manager (Marketing) wherein flaws were detected in it and had error, as no lot numbers were mentioned which could have created audit issues. The cancellation order dated 28.12.2023 was made within the terms and conditions of the contract. Re-tender has been done for betterment of the Corporation. The re-tender was again recalled. This additional affidavit filed pursuant to the order dated 07.02.2024 also failed to enclose the decision of the Chairman-TRPC/the competent authority to cancel the order. Learned senior counsel for the respondents no.1 and 2 submits that the decision to cancel has been taken at the competent level and in the interest of the Corporation. The remaining balance deposited by the petitioner totaling

Rs.86,39,100/- has been refunded to the petitioner on 05.01.2024 itself. Learned counsel for the respondent has placed reliance on *South Delhi Municipal Corporation vs. Ravinder Kumar and Anr*, reported in (2015) 15 SCC 545 in support of his submission that no allegation of mala fide has been made and substantiated for interference by this Court under Article 226 of the Constitution of India. Therefore, the issue raised in the instant writ petition has been rendered academic. It may be disposed of as infructuous.

Learned senior counsel for the petitioner submits that the impugned order deserves to be interfered as it is not only arbitrary but in violation of natural justice. No reasons for cancellation have been indicated. No violation of the terms and conditions of the tender or sale order have either been indicated. The respondents no.1 and 2 are State instrumentalities whose action should conform to reason. If the order is not interfered with, the concerned respondents would be further emboldened to act at their whims and fancies.

Learned senior counsel for the petitioner has placed reliance upon a decision of the Apex Court in *State of Uttar Pradesh vs. Sudhir Kumar Singh and Ors.* reported in (2021) 19 SCC 706.

We have considered the submissions of learned counsel for the parties and taken note of the pleadings. Upon conferring anxious consideration to the rival submissions of the parties and after close scrutiny of the pleadings and relevant documents placed on record and also on perusal of the judgments cited at the bar, we are inclined to interfere with the impugned order of cancellation (*Annexure-9*) for the following reasons:

- (i) the Annexure-9 dated 28.12.2023 is only a communication by the Assistant Manager (Marketing) for the cancellation of the sale order;
- (ii) No order of the competent authority has been produced before the Court despite specific direction to that effect;
- (iii) In the absence of the order of cancellation this Court has been precluded from examining reasons for cancellation under powers of judicial review whether it satisfies the test of Wednesbury reasonableness and whether the order is arbitrary or irrational?
- (iv) Reasons are the soul of an order as held in the case of *M/S Kranti Associates Private Limited & Anr vs. Masood Ahmed Khan & Ors.*, reported in (2010) 9 SCC 496.
- (i) The decision to cancel the sale order has been taken on the same date on which the sale order was issued i.e. 22.12.2023 as per the statements made in the counter affidavit of respondents no.1 and 2 and also the intimation dated 28.12.2023 issued by the Assistant Manager (Marketing). However, no notice or opportunity to show cause was given to the petitioner to explain as to any alleged infraction of the terms and conditions of the tender or the sale order.

Therefore, the order of cancellation if any, though not on record suffers from violation of principles of *audi alteram partem*. The decision has entailed adverse consequences upon the petitioner who had made deposit of

Rs.1,22,85,000/- for lifting of specified quantity of sheet grade rubber and against which he was allowed to lift only 30,000 metric tons of sheet grade rubber. Therefore, the compliance of principles of natural justice by a show cause notice upon the petitioner before such cancellation was a *sine qua non*.

In this regard, reliance is placed upon the decision rendered by the Apex Court in the case of **Sudhir Kumar Singh (supra)** paragraphs 26 & 36 in particular, which are reproduced hereunder:

“26. It may be added that every case in which a citizen/person knocks at the doors of the writ court for breach of his or its fundamental rights is a matter which contains a “public law element”, as opposed to a case which is concerned only with breach of contract and damages flowing therefrom. Whenever a plea of breach of natural justice is made against the State, the said plea, if found sustainable, sounds in constitutional law as arbitrary State action, which attracts the provisions of Article 14 of the Constitution of India — see Nawabkhan Abbaskhan v. State of Gujarat [Nawabkhan Abbaskhan v. State of Gujarat, (1974) 2 SCC 121 : 1974 SCC (Cri) 467] , para 7. The present case is, therefore, a case which involves a “public law element” in that the petitioner (Respondent 1 before us) who knocked at the doors of the writ court alleged breach of the audi alteram partem rule, as the entire proceedings leading to cancellation of the tender, together with the cancellation itself, were done on an ex parte appraisal of the facts behind his back.

.....

36. What is important to note is that it is the court or tribunal which must determine whether or not prejudice has been caused, and not the authority on an ex parte appraisal of the facts. This has been well-explained in a later judgment, namely, Dharampal Satyapal Ltd. v. CCE [Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519] , in which, after setting out a number of judgments, this Court concluded : (SCC pp. 538-41, paras 38-40 & 42-45)

“38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only

full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

*39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing “would make no difference”—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corpn.* [*Malloch v. Aberdeen Corpn.*, (1971) 1 WLR 1578 (HL)] , who said that : (WLR p. 1595)*

‘... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.’

*Relying on these comments, Brandon L.J. opined in *Cinnamond v. British Airports Authority* [*Cinnamond v. British Airports Authority*, (1980) 1 WLR 582 (CA)] that : (WLR p. 593)*

‘... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing.’

In such situations, fair procedures appear to serve no purpose since the “right” result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of

natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of “prejudice”. The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.

42. So far so good. However, an important question posed by Mr Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in *General Medical Council v. Spackman* [*General Medical Council v. Spackman*, 1943 AC 627 (HL)] . This Court also spoke in the same language in *Board of High School and Intermediate Education v. Chitra Srivastava* [*Board of High School and Intermediate Education v. Chitra Srivastava*, (1970) 1 SCC 121] , as is apparent from the following words : (SCC p. 123, para 7)

‘7. The learned counsel for the appellant, Mr C.B. Agarwala, contends that the facts are not in dispute and it is further clear that no useful purpose would have been served if the Board had served a show-cause notice on the petitioner. He says that in view of these circumstances it was not necessary for the Board to have issued a show-cause notice. We are unable to accept this contention. Whether a duty arises in a particular case to issue a show-cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed.’

43. In view of the aforesaid enunciation of law, Mr Sorabjee may also be right in his submission that it was not open for the authority to dispense with the requirement of principles of natural justice on the presumption that no prejudice is going to be caused to the appellant since the judgment in *R.C. Tobacco [R.C. Tobacco (P) Ltd. v. Union of India*, (2005) 7 SCC 725] had closed all the windows for the appellant.

44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in *ECIL [ECIL v. B. Karunakar*, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] itself in the following words : (SCC p. 758, para 31)

'31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.'

(emphasis supplied)

A plea has been raised on behalf of respondents no.1 and 2 that no case of mala fide has made out on behalf of the petitioner calling for interference in the order of cancellation relying upon the decision of the Apex Court in the case of ***South Delhi Municipal Corporation (supra)***. The decision is however not applicable as the facts of the said decision are distinguishable. The Apex Court had the occasion to examine cancellation of the tender notice in that case and not the concluded sale order or agreement issued after finalization of the tender process. The cancellation of sale order in the present case is arbitrary and in violation of principles of natural justice. This Court in exercise of its power of judicial review is therefore inclined to interfere in such arbitrary actions of the respondent authorities who are instrumentalities of the State.

It however appears that after cancellation of the sale order the balance amount remaining in the name of the petitioner to the tune of Rs.86,39,100/- has been refunded on 05.01.2024. We are not informed as to whether the interim stay on the lifting of the remaining amount of graded sheet rubber had been adhered to or not. In case, the remaining lots of graded sheet rubber under the sale order dated 22.12.2023 has not been lifted, the respondents could allow the petitioner to lift it upon deposit of the requisite amount of money refunded to him. Otherwise, respondents could undertake fresh calculation of the amount which requires to be refunded to the petitioner if any, over and above the amount of Rs.86,39,100/- earlier refunded on 05.01.2024.

However, the cancellation of the sale order cannot be upheld in the eye of law for the aforesaid reasons. It is accordingly set aside.

This exercise be completed within a period of 4(four) weeks from the date of receipt of a copy of this order.

The writ petition is allowed in the manner and to the extent indicated here-in-above. Pending application(s), if any, also stand disposed of.

(ARINDAM LODH, J)

(APARESH KUMAR SINGH, CJ)