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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 808 OF 2015

M/s Sri Salsar Cargo Movers ... Petitioner
Vs.
Union of India ... Respondents

WRIT PETITION (L) No. 978 OF 2015

Yespal Keval Singh Chandi ... Petitioner
Vs.
Union of India & Ors. ... Respondents

Mr. Rohan Cama a/w Arvind Kumar Dubey, for the Petitioner in WPL 808/2015.

Mr Suresh Kumar, for Respondent in WOL No. 808/2015.

Ms. Ankita Singhania a/w Arvindkumar Dubey for Petitioner in WPL 978/2015.

Mr. Chetan Agrawal, for Respondent Nos. 1 to 3 in WPL 978/2015.

CORAM : V. M. KANADE, &
B. P. COLABAWALLA, JJ.

DATE : JUNE 25, 2015

PC.

1. Both these petitions can be conveniently disposed of by this common judgment and order. The Petitioner in both the petitions are challenging the termination of contract by the Railway. It is submitted that appeals are preferred by the Petitioners in both the

petitions, as provided under the contract. However, after the reply was given by the Petitioners to the show-cause notice, without giving any hearing to the Petitioners, the concerned authority has dismissed the appeal.

2. Learned counsel appearing on behalf of the Petitioners has submitted that it is a clear case of violation of the principles of natural justice, and therefore, the petition is maintainable under Article 226 of the Constitution of India.

3. On the other hand, the learned counsel appearing on behalf of the Railway has submitted that the Petitioners in one petition have admitted that they have committed default of overloading of goods, and therefore, the question of giving hearing to the Petitioner does not arise. Secondly, it is submitted that Petitioners have an alternate remedy of invoking arbitration clause.

4. We have perused the impugned order passed by the appellate authority. It is not in dispute that hearing was not given to the Petitioners by the concerned authority. It is well settled position that even quasi-judicial authority who has appellate powers is

expected to give personal hearing to the Petitioners. It is further well settled that whenever any adverse consequences follow after an order is passed by the quasi-judicial authority, then in such case personal hearing has to be given. The Apex Court in the case of – *Kesar Enterprises Vs. State of U. P. & Ors.* [2011(13) SCC 733] has in terms held that :

“17. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i. e. fair play in action. As observed by this Court in *A.K. Kraipak and Ors. v. Union of India and Ors.* [(1969) 2 SCC 262] the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. They do not supplant the law but supplement it. (Also see *Income Tax Officer and Ors. v. M/s. Madnani Engineering Works Ltd. Calcutta* [(1979) 2 SCC 455].

18. In *Swadeshi Cotton Mills v. Union of India* [(1981) 1 SCC 664] R.S. Sarkaria, J., speaking for the majority in

a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to a catena of decisions, his Lordship observed thus:

Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (i) *audi alteram partem* and (ii) *nemo judex in re sua*. The *audi alteram partem* rule has many facets, two of them being (a) notice of the case to be met; and (b) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle--as distinguished from an absolute rule of uniform application--seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the *audi alteram partem* rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and

no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

(Emphasis added)

19. In *Canara Bank v. V. K. Awasthy* [(2005) 6 SCC 321] the concept, scope, history of development and significance of principles of natural justice have been discussed in extensor, with reference to earlier cases on the subject. Inter alias, observing that the 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, the court said:

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 there under. 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.

20. The question with regard to the requirement of an opportunity of being heard in a particular case, even in the absence of provisions for such hearing, has been considered by this Court in a catena of cases. However, for the sake of brevity, we do not propose to refer to all these decisions. Reference to a recent decision of this Court in *Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Central-I and Anr.* [(2008) 14 SCC 151] would suffice. In that case, the question for adjudication was whether in the absence of a provision in the Income Tax

Act, 1961, an opportunity of hearing was required to be given to an Assessee before an order under Section 142(2A) of the said Act, directing special audit of his accounts was passed? A Bench of three Judges, speaking through one of us (D.K. Jain, J.), explaining the concept of "natural justice" and the principles governing its application, summed up the legal position as under:

Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial."

5. In this view of the matter, the impugned orders passed by the appellate authority in both petitions are quashed and set aside. We remand the matter back for further hearing, and for deciding the appeals afresh. Since the Chief Commercial Manager is the appellate

authority, who has terminated the contract, we direct that any other officer of the same rank shall decide the appeals after giving personal hearing to the Petitioners. The said appeal shall be decided on merits and in accordance with law within 4 weeks.

6. We are informed that fresh tender-bid is issued and technical bid has been opened. Without prejudice to the rights and contentions of the Petitioners and the Respondents, we direct the Respondents to accept the tender-bid submitted by the Petitioners, which shall be decided subject to the result of the appeal. All contentions of both the parties in both petitions are kept open. Both petitions are disposed of in the aforesaid terms. It is clarified that if the bids are already opened and the contract has been awarded, then those contracts shall be subject to the result of the appeals.

Sd/-

[B. P. COLABAWALLA, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemth