

**HIGH COURT FOR THE STATE OF TELANGANA**

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**WRIT PETITION No.19083 of 2019**

**Between:**

Ramoji Film City (Usha Kiran Movies Ltd)  
Staff and workers union

... Petitioner

**AND**

1. The Additional Registrar of Trade Union  
cum Joint Commissioner of Labour, Ranga Reddy Zone;  
and another

.... Respondents

Date of Judgment pronounced : 04<sup>th</sup> February, 2020

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

1. Whether Reporters of Local newspapers  
May be allowed to see the judgments? : Yes / No
2. Whether the copies of judgment may be marked  
to Law Reporters/Journals: : Yes / No
3. Whether The Lordship wishes to see the fair copy  
Of the Judgment? : Yes / No

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**CHALLA KODANDA RAM, J**

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM****WRIT PETITION No.19083 of 2019**

% 04.02.2020

# 1. Ramoji Film City (Usha Kiran Movies Ltd)  
Staff and workers union

... Petitioner

**Versus**

1. The Additional Registrar of Trade Union  
cum Joint Commissioner of Labour, Ranga Reddy Zone;  
and another

... Respondents

< **GIST:**

> **HEAD NOTE:**

! Counsel for the Petitioner : Sri K.V. Satya Rama Chandra Rao

^ Counsel for the Respondents : G.P. for Labour (for R-1)  
Sri C.R. Sridharan, Senior Counsel,  
appearing on behalf of Sri Salloori  
Ramesh, counsel on record for R-2

? **Cases referred**

- 1) 2001 (1) L.L.N. 104
- 2) (2001) 8 SCC 604
- 3) (1997) 3 SCC 246
- 4) AIR 1998 Mad 127
- 5) AIR 1970 Cal 391
- 6) 1975 (31) FLR 421
- 7) (1996) 4 SCC 69
- 8) 2014 (3) ALT 265 == 2014 (2) ALD 573
- 9) (1980) 4 SCC 379
- 10) (1978) 2 SCR 272

**THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM**

**WRIT PETITION No.19083 of 2019**

**ORDER:**

This writ petition is filed seeking the following relief:

**“ ... to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Certiorari, calling for the records in File No.C/180/2016 on the file of the 1<sup>st</sup> respondent and set aside the order dated 18.07.2019 as arbitrary, illegal, violation of principles of natural justice, violation of the order passed in W.P.No.17240 of 2009 of this Hon'ble Court and contrary to the law laid down and pass ... ”**

2. Brief facts of the case, as per the averments in the writ affidavit, are as follows:

The petitioner is a union of workers working in the 2<sup>nd</sup> respondent. The petitioner conducted a general body meeting on 10.09.2008 and submitted the Minutes of Meeting and other material in prescribed forms to the 1<sup>st</sup> respondent- Additional Registrar of Trade Union-cum-Joint Commissioner of Labour, Ranga Reddy Zone, Hyderabad (for short, 'the Joint Commissioner'), requesting to register the petitioner as a Trade Union under the Trade Unions Act. On receipt of the prescribed forms from the petitioner, the Joint Commissioner directed the Deputy Commissioner of Labour to cause enquiry and submit a report. Thereafter, on the basis of the report submitted by the Deputy Commissioner, the Joint Commissioner registered the petitioner as a Trade Union by issuing Certificate of Registration No.A-4406 dated 27.09.2008.

3. After registration of Trade Union, on behalf of the workers, certain demands were made by submitting a request to the Joint Commissioner, and the Joint Commissioner issued a notice to the 2<sup>nd</sup> respondent proposing to conduct a meeting. The 2<sup>nd</sup> respondent objected to granting of registration in favour of the

petitioner. Further, the 2<sup>nd</sup> respondent filed W.P.No.17240 of 2009 seeking annulment of Certificate of Registration No.A-4406 dated 27.09.2008 issued in favour of the petitioner.

3. This Court by order dated 23.12.2015 disposed of the writ petition by directing the 2<sup>nd</sup> respondent to submit a fresh representation to the Registrar within three weeks from the date of that order, and also directed the Registrar to decide the representation that may be submitted by the 2<sup>nd</sup> respondent, along with the representations of the petitioner dated 06.01.2009 and 15.01.2009 strictly in accordance with law.

4. In accordance with the order of this Court dated 23.12.2015 in W.P.No.17240 of 2009, the 2<sup>nd</sup> respondent submitted a representation dated 27.01.2016 to the Joint Commissioner. The Joint Commissioner issued a letter dated 24.02.2016 to the petitioner, by enclosing the representation of the 2<sup>nd</sup> respondent dated 27.01.2016, and called for remarks of the petitioner within seven days.

5. In response to the letter of the Joint Commissioner dated 24.02.2016, the petitioner furnished a detailed reply on 14.03.2016. Thereafter, there was no communication from the Joint Commissioner, except passing of the impugned order No.C/180/2016 dated 18.07.2019, canceling the Certificate of Registration No.A-4406 dated 27.09.2008. Aggrieved thereby, the petitioner union is before this Court with this writ petition.

6. The submissions were made by Sri K.V. Satya Rama Chandra Rao on behalf of the petitioner; Sri Sri C.R.Sridharan, learned Senior Counsel on behalf of the 2<sup>nd</sup> respondent; and the learned Government Pleader for the 1<sup>st</sup> respondent.

7. Learned Senior Counsel for the 2<sup>nd</sup> respondent fairly submits that as the learned counsel for the petitioner has confined challenge to the order on the sole ground of principles of natural justice, without adverting to the merits of the case, he would also confine himself to the said aspect and accordingly submits that the factual aspects need not be dealt with by this Court. It is for this reason, the factual aspects mentioned in the respective affidavits are not being referred to, confining only to the point urged by the counsels.

8. The 2<sup>nd</sup> respondent, who is on Caveat, was served with the papers, filed a detailed counter affidavit. The averments in the counter affidavit, briefly and so far relevant, are that though the petitioner is urging the ground of non-providing of opportunity before passing the impugned order, as a matter of fact, a Show Cause Notice dated 20.06.2016 in prescribed Form-D under Clause (b) of Section 10 of the Trade Unions Act, was issued to the petitioner, and the petitioner union has chosen not to reply to the said Show Cause notice, and the said factum has been suppressed by the petitioner. It is also averred that the statute requires only issuance of notice and not an opportunity of hearing. It is further averred that the members of petitioner union are from different constituent entities of Ramoji Group, and not from Ushakiron Movies Ltd alone as sought to be projected, and therefore there is no illegality in the impugned order canceling the registration of the petitioner union.

9. Sri K. V. Satya Rama Chandra Rao, learned counsel for the petitioner, submits that the impugned order is in violation of principles of natural justice, and also in violation of orders of this Court in W.P.No.17240 of 2009 dated 23.12.2015. This Court, while disposing of the W.P.No.17240 of 2009 filed by the 2<sup>nd</sup> respondent challenging the certificate of registration dated 27.09.2008, observed as under:

**“For the aforesaid reasons, this court is satisfied that the writ petition can be disposed of with the following directions. The Writ Petitioner, if it so desires and if so advised, may, within a period of three (03) weeks from the date of the receipt of a copy of this order, submit an application afresh with all its submissions to the Registrar concerned under the Trade Unions Act with a request to withdraw or cancel the registration of the 2nd respondent Trade Union. On receipt of such application, the Registrar concerned shall take up that application and also the representations of the employees dated 06.01.2009 and 15.01.2009 already submitted and proceed to make a due enquiry in strict accordance with the procedure established by law and make a decision in regard to either withdrawal or cancellation of the registration of the 2nd respondent Trade Union as contemplated under law. It is made clear that even in the absence of any representation submitted by the writ petitioner afresh, the 1<sup>st</sup> respondent shall dispose of the aforesaid representations of the employees in accordance with the procedure established by law. It is made clear that the Registrar shall proceed in the matter in accordance with law uninfluenced by the observations, if any, in this order as this Court has not gone into the merits of the matter and has not expressed any views on any of the contentions of the parties.”**

10. Pursuant to the order of this Court in W.P.No.17240 of 2009 dated 23.12.2015, the 2<sup>nd</sup> respondent submitted its representation dated 27.01.2016 to the 1<sup>st</sup> respondent which was made available to the petitioner on 24.02.2016 granting seven days time for filing their remarks, objections etc.

11. A detailed reply was submitted by the petitioner on 14.03.2016. There is no dispute that after 14.03.2016, there was no communication to the petitioner, however, from the record which is produced by the 1<sup>st</sup> respondent, an enquiry report was called from the Assistant Commissioner and the Assistant Commissioner submitted a report on 21.08.2017. For a good period of two years, there was no action on the part of the 1<sup>st</sup> respondent on the report. On 18.07.2019, the impugned order of cancellation was passed, and the same was communicated to the petitioner, informing about the cancellation of registration certificate with immediate effect.

12. Learned counsel for the petitioner has placed on record the judgment of the learned single Judge of this Court in **Coromandal Cement Factory Employees Union v. Deputy Registrar of Trade Unions and Deputy Commissioner of Labour, Kurnool, and others**<sup>1</sup>, wherein it was held that an opportunity of hearing had to be given before withdrawing the Registration Certificate granted to a Trade Union.

13. On the other hand, learned Senior Counsel Sri C.R.Sridharan, appearing on behalf of the 2<sup>nd</sup> respondent, in his usual thorough manner, copiously making reference to various judgments of the Supreme Court, would assert that in the impugned order, there is no illegality or irregularity, and the allegation of violation of principles of natural justice is not correct. He would further submit that Clause (b) of Section 10 of the Trade Unions Act does not provide or contemplate giving of an opportunity of hearing, and even this Court, while disposing of the W.P.No.17240 of 2009 by order dated 23.12.2015, had only directed the application of 2<sup>nd</sup> respondent and the applications of the petitioner are to be disposed of by strictly following due process of law.

14. It is also contended that the impugned order passed by the 1<sup>st</sup> respondent is a speaking order and the 1<sup>st</sup> respondent had considered the specific objections raised by 2<sup>nd</sup> respondent; more particularly, the petitioner union of this nature could not have been registered with respect to the workers / employees of different establishments which are independent legal entities.

15. It is also contended that the petitioner was given an opportunity to submit its objections with respect to the representation dated 27.01.2016 submitted by the 2<sup>nd</sup> respondent, and the petitioner submitted its objections / reply dated

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<sup>1</sup> 2001 (1) L.L.N. 104

14.03.2016, and it is evident in the impugned order that all the objections were considered.

16. To support his contention, the learned Senior Counsel had placed reliance on the following judgments:

- (1) **Groscons Pharmaceuticals (P) Ltd v. State of U.P.**<sup>2</sup>.
- (2) **State of Orissa v. Krishna Stores**<sup>3</sup>
- (3) **M/s G.K.T. Bus Service, Palani v. State Transport Appellate Tribunal, Madras**<sup>4</sup>
- (4) **M/s Ondal Coal Co. v. M/s Sonepur Coal Fields**<sup>5</sup>
- (5) **Orissa Pipe and Water Workers' Union v. Registrar of Trade Unions-cum-Labour Commissioner, Orissa**<sup>6</sup>
- (6) **Union of India v. Jesus Sales Corporation**<sup>7</sup>

17. Having considered respective submissions, this Court called for the file relating to the report dated 21.08.2017 of Assistant Commissioner, which was placed before this Court. The file discloses that after the judgment of this Court in W.P.No.17240 of 2014, a notice dated 25.06.2015 was issued to the petitioner, receipt of which was initially denied by the petitioner, but the file discloses the same was received by the deponent of the writ petition on 23.07.2016. So far as petitioner is concerned, they had not submitted any further objections nor offered any remarks, except the ones submitted on 14.03.2016. However, the 2<sup>nd</sup> respondent submitted their remarks vide their letter dated 17.09.2016. There is no information whether the same having been made available to the petitioner calling for their comments, if any. Thereafter, vide letter dated 31.01.2017, the 1<sup>st</sup> respondent directed the Assistant Commissioner of Labour, Ranga Reddy, to enquire and submit a report on the points; **(1) Whether “Ramoji Film City” is a name of place/location or denotes a group of establishments; (2) (a) verify the genuineness or otherwise of the representations dated 06.01.2009 given**

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<sup>2</sup> (2001) 8 SCC 604

<sup>3</sup> (1997) 3 SCC 246

<sup>4</sup> AIR 1998 Mad 127

<sup>5</sup> AIR 1970 Cal 391

<sup>6</sup> 1975 (31) FLR 421

<sup>7</sup> (1996) 4 SCC 69

**by certain employees of Ushakiron Movies Ltd and some other organizations located in Ramoji Film City; (b) whether or not above said workers participated in the general body meeting before the application is made seeking registration by the Ramoji Film City (Ushakiron movies Ltd) Staff and Workers Union.** A report was submitted by the Assistant Commissioner on 21.08.2017.

18. To a specific query of this Court that whether the report dated 21.08.2017 of the Assistant Commissioner was made available to the petitioner, learned Government Pleader, on going through the file, fairly concedes that the same was not made available to the petitioner. It is also conceded that there was neither a notice nor opportunity of hearing given to the petitioner before passing the impugned order of cancellation of registration.

19. In the background of the above undisputed and admitted facts, the question which falls for consideration is whether the impugned order is liable to be set aside on the sole ground of violation of principles of natural justice, i.e., not furnishing the report of Assistant Commissioner based on which the impugned order was made, and not providing of opportunity of hearing before passing the impugned order.

20. To come to a just conclusion, the judgments cited by the respective counsels, and the guidance provided by the Courts in the decided cases, is required to be considered.

21. At the outset, it may be stated that there are two judgments of two learned Judges of this Court, directly on the point, holding that the material that is to be relied on has to be supplied to the affected party, and further an opportunity of hearing has to be provided as, otherwise, the order is liable to be set aside.

Unless this Court is inclined to take a contrary view for weighty and valid reasons, this Court is bound by the judgments hereinafter referred to.

22. Reference may be made to the judgment of this Court in **MRF Mazdoor Sangh v. Commissioner of Labour and Four Others**<sup>8</sup>, on the facts of the present case. Firstly, the enquiry report gathering certain information by the Assistant Commissioner which was made available to the 1<sup>st</sup> respondent through a report dated 21.08.2017 was not furnished to the petitioner, thereby the petitioner had no opportunity to submit its objections / view with respect to the information gathered by the Assistant Commissioner. The impugned order extensively relies on the report of the Assistant Commissioner in coming to a decision with respect to the representation of the 2<sup>nd</sup> respondent dated 27.01.2016 seeking cancellation of the Trade Union registration granted in favour of the petitioner. Secondly, there was no opportunity of hearing given to the petitioner. Further, it may be noted that the officer who originally granted the Trade Union registration in favour of the petitioner was not the officer who had called for information from the Assistant Commissioner and the one who had passed the impugned order dated 18.07.2019, and there was a gap of two years after the objections and counter objections were filed by the petitioner as well as the 2<sup>nd</sup> respondent.

23. The **MRF Mazdoor Sangh** case succinctly discusses and analyses various provisions of the Act, and the approach that is required to be adopted in considering an application made under Section 10 of the Act. The distinction between Section 10(b), 10(c) and the approach required to be adopted has also been discussed. In the present case, except forwarding the representations and correspondence made, the notice dated 25.06.2016 itself is vague, as, what all the

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<sup>8</sup> 2014 (3) ALT 265 == 2014 (2) ALD 573

said notice does is forwarding the representation of the 2<sup>nd</sup> respondent. In other words, the respondent by itself, based on the representations made, had not come to even a prima facie conclusion as to for what reasons and in what circumstances, the registration granted in favour of the petitioner deserves to be cancelled.

24. In this context, in **MRF Mazdoor Sangh** case, it was held in **paragraph 32 under Sub-Heading (f) THE ORDER, CANCELLING THE REGISTRATION OF A TRADE UNION, CANNOT BE PASSED ON GROUNDS EXTRANEIOUS TO THOSE REFERRED TO IN THE NOTICE ISSUED UNDER THE PROVISIO TO SECTION 10 OF THE ACT:** as under:

“The show cause notice should reflect the jurisdictionalfacts based on which the final order is proposed to be passed. The person proceeded against would then have an opportunity to show cause that the authority had erroneously assumed existence of a jurisdictional fact and, since the essential jurisdictional facts do not exist, the authority does not have jurisdiction to decide the other issues.”

The observation would squarely apply to the present facts of the case on hand.

25. Further, with respect to the argument advanced by the learned counsel for the 2<sup>nd</sup> respondent that an opportunity of hearing need not be provided, the Court held **in paragraph 36 under Sub-Heading (a) on PRINCIPLES OF NATURAL JUSTICE: ITS APPLICATION TO STATUTES WHICH AFFECT FUNDAMENTAL RIGHTS: under Serial No.III pertaining to VIOLATION OF PRINCIPLES OF NATURAL JUSTICE,** as under:

“As a group of citizens have the fundamental right, under Article 19(1)(c) of the Constitution, to form themselves into a Union, cancellation of registration would result in denial of such a fundamental right and, consequently, the Registrar can exercise his discretion to cancel registration only in compliance with the principles of natural justice –

giving an opportunity of hearing to the Trade Union (Nagda Rashttra Sevak Karmachari Congress v. Industrial Court, 1997 77 FLR 139).

26. Further, in **MRF Mazdoor Sangh**, in paragraph 37 under Sub-Heading (b) under PRINCIPLES OF NATURAL JUSTICE MUST BE READ INTO THE UNOCCUPIED PROVISIONS OF A STATUTE, it was held that:

“In the absence of any express provision excluding its application, principles of natural justice must be read into the provisions of Section 10 of the Act, including its proviso, since cancellation of registration not only has civil consequences but would also result in the fundamental rights of citizens (a section of the workmen in the establishment), under Article 19(1)(c) of the Constitution of India to form a Union, being unreasonably curtailed.”

27. Further, in **MRF Mazdoor Sangh**, in paragraph 38 under Sub-Heading (c) on INFORMATION OBTAINED BY THE REGISTRAR CANNOT BE USED TO CANCEL REGISTRATION OF A TRADE UNION UNLESS IT IS MADE AVAILABLE TO THE UNION AND THEY ARE GIVEN A REASONABLE OPPORTUNITY OF BEING HEARD IN THIS REGARD, it was held as under:

“The obligation which the law casts on the authority is that they should not act on information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. Rules of natural justice are violated, and the proceedings would stand vitiated, if the authority concerned acts upon information collected by it and the said information has not been disclosed to the party against whom the material has been used. (State of Assam v. Mahendra Kumar Das (1970) 1 SCC 709).”

28. In the light of the above, providing of an opportunity of hearing would not have caused prejudice to the 2<sup>nd</sup> respondent as held by this Court in the judgment in **MRF Mazdoor Sangh** (8 supra). The granting of Trade Union registration is a valuable right to the body of employees / workers, and it is the right which falls within Article 19(1)(c) of the Constitution of India.

29. It is to be noticed that in cases under Article 14 of the Constitution when an allegation of arbitrariness is made by the petitioner, it is for the petitioner to prove its allegation; however, on the contrary, when a complaint is made with respect to violation of rights guaranteed under Article 19 of the Constitution, the burden is heavy on the State to justify its action as falling within the reasonable restrictions.

30. Here is a case where the rights guaranteed to the petitioner under Article 19(1)(c) under the Trade Unions Act, with respect to registration as a trade union, are sought to be taken away by the 1<sup>st</sup> respondent. In this context, we may notice Section 10 of the Trade Unions Act. In the context of the Registrar recording a satisfaction that a registration granted earlier requires to be cancelled, the requirements that are required to be considered before such cancellation of the registration which has been granted, particularly in terms of section 10(b) and 10(c) leave no manner of doubt that an enquiry is required to be conducted with regard to the same for which it cannot be said that the opportunity of hearing is not required to be provided to the trade union.

31. Section 10 of the Trade Unions Act, 1926 reads as under:

**Cancellation of registration: - A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar –**

- (a) On the application of the Trade Union to be verified in such manner as may be prescribed.**
- (b) If the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has willfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6;**
- (c) If the Registrar is satisfied that a registered Trade Union of workmen ceases to have the requisite number of members;**

Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

32. Now, we may consider the judgments cited by the learned Senior Counsel. The judgments cited by the learned Senior Counsel are either distinguishable or not applicable for the following reasons.

33. In **Grosons Pharmaceuticals (2 supra)**, challenge was to the blacklisting of the petitioner therein with a specific contention that the order was in violation of principles of natural justice. On the facts of the said case, the Supreme Court held that the relationship being contractual and not governed by any statutory rules which require giving of an opportunity of hearing, however, accepted that an order of blacklisting of an approved contractor results in civil consequences, and in such a situation, in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principles of *audi alteram partem* which is one of the facets of principles of natural justice.

34. In **Krishna Stores (3 supra)**, the case relates to re-assessment of an assessment order. The Supreme Court held that there is no violation of principles of natural justice, for the reason, the appeals filed against the re-assessment order were dismissed as defective, and in spite of repeated notices, the defects were not removed. Thereafter, under Rule 80 of Orissa Sales Tax Rules, the Commissioner proposed revising the assessment orders on the ground that the assessee was under-assessed and much of the turnover had escaped assessment, and after several adjournments, and after providing reasons for proposing to revise, and after consideration of objections, a detailed order was passed re-assessing the original assessment orders. Challenging those orders, writ petitions were filed on the ground of, (1) commissioner lacking jurisdiction and, (2) not

having been given reasonable opportunity of hearing. The High Court allowed the writ petitions. Before the Supreme Court, it was contended on behalf of the assessee that on account of the earlier appeals having been dismissed on account of the disputes, no revision could be made by the Commissioner. This contention of the assessee was rejected by the Supreme Court for the reason that the assessee failed in curing the defects which curing was mandatory under the Rules. So far as the violation of principles of natural justice is concerned, it was held in paragraph 16 that in spite of fixing the date for hearing as 07.05.1995, the assessee though appeared on 07.05.1995 was content by making written submissions and there was no request for personal hearing. In other words, in the said case, as a matter of fact, there was ample compliance with the requirement of providing adequate opportunity, including fixing the date for personal hearing, however, the opportunity was not availed by the assessee therein. The said case is therefore clearly distinguishable from the facts of the present case.

35. In **M/s G.K.T. Bus Service (4 supra)**, a learned Single Judge of the Madras High Court had held that Section 60 of the Motor Vehicles Act did not contemplate personal hearing to be held, and only contemplated an explanation to be furnished by the affected party. It may be noted that the case relates to cancellation of a permit for violation of the conditions of permit, and in the context of the case, the Madras High Court held in paragraph 23 as under:

**“In these two matters, on what had been analysed in the earlier part of this order whatever relevant materials require to be placed, had been put forth in written explanations given by them, and there being no offer extended to examine any witnesses, and at no point of time prior to the presentation of the revision petition, such a request having been ever made a personal hearing to be given the facts and circumstances of these cases do not in any manner show that there had been any violation of the principles of natural justice in not extending personal hearing to the respective petitioners.”**

36. The case in **M/s G.K.T. Bus Service (4 supra)** is distinguishable from the facts of the present case, for the reason that in the present case, in terms of Section 10 of the Trade Unions Act, there is a host of factual data that requires to be considered, which data was in fact sought and gathered by the 1<sup>st</sup> respondent by calling for a report from the Assistant Commissioner. Further, the report / material collected was not made available to the petitioner to enable the petitioner furnish objections with regard to the same; and, ironically, the impugned order is entirely based on the contents of the report of the Assistant Commissioner.

37. Further, in the very judgment in **M/s G.K.T. Bus Service (4 supra)** cited by the learned Senior Counsel, the judgment of the Supreme Court in **S.L. Kapoor v. Jagmohan**<sup>9</sup> was referred wherein one principle which is established in paragraph 10 of the judgment reads as under:

“ ... One of the submissions of the learned Attorney General was that when the question was one of disqualification of an individual member, Sec. 16 of the Punjab Municipal Act expressly provided for an opportunity being given to the member concerned whereas Sec. 238(1) did not provide for such an opportunity and, so, by necessary implication, it must be considered that the principle Audi Alteram Partem was excluded. We are unable to agree with the submission of the learned Attorney General. It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences ... ”

This was also the view taken in **Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi & Ors**<sup>10</sup>, where it was observed:

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<sup>9</sup> (1980) 4 SCC 379

<sup>10</sup> (1978) 2 SCR 272

"We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Art 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation".

Another submission of the learned Attorney General was that Sec. 238(1) also contemplated emergent situations where swift action might be necessary to avert disaster and that in such situations if the demands of natural justice were to be met, the very object of the provision would be frustrated. It is difficult to visualise the sudden and calamitous situations gloomily foreboded by the learned Attorney General where there would not be enough breathing time to observe natural justice, at least in a rudimentary way. A Municipal Committee under the Punjab Municipal Act is a public body consisting of both officials and non-officials and one cannot imagine anything momentous being done in a matter of minutes and seconds. And, natural justice may always be tailored to the situation. Minimal natural justice, the barest notice and the 'littlest' opportunity, in the shortest time, may serve. The authority acting under Sec. 238(1) is the master of its own procedure. There need be no oral hearing. It is not necessary to put every detail of the case to the Committee: broad grounds sufficient to indicate the substance of the allegations may be given. We do not think that even minimal natural justice is excluded when alleged grave situations arise under Sec. 238. If indeed such grave situations arise, the public interest can be sufficiently protected by appropriate prohibitory and mandatory action under the other relevant provisions of the statute in Sections 232 to 235 of the Act. We guard ourselves against being understood as laying down any proposition of universal application. Other statutes providing for speedy action to meet emergent situations may well be construed as excluding the principle *audi alteram partem*. All that we say is that Sec. 238(1) of the Punjab Municipal Act does not.

38. Though **S.L. Kapoor (9 supra)** was referred to, it was not stated as to how the same was not applicable to the present case. At any rate, it is too late in the day for the writ Courts to hold that in spite of the order resulting in civil consequences, an opportunity of hearing need not be provided, as the same is no more *res integra*.

39. Likewise, in **M/s Ondal Coal Co. (5 supra)** of the Calcutta High Court cited by the learned Senior Counsel, the question which fell for consideration is

determination of whether the petitioner was the owner within the meaning of Rule 39(2) of the Rules. Yet another question for consideration was whether the Rule provides for an opportunity of hearing. In the ultimate analysis, in paragraph 15, the appeal came to be allowed in favour of the petitioner therein by affirming the trial Court's order on the ground that the Board did not supply the information asked by the petitioner, yet the same was made use of based on such material and on that ground the order in appeal was upheld.

40. It may be noted that non-providing of information, and basing decision on the same, is yet another facet of violation of principles of natural justice. In the present case on hand, as noted supra, the 1<sup>st</sup> respondent having called for a report from the Assistant Commissioner, without supplying the same to the petitioner, extensively relied on the same in passing the impugned order. In those circumstances, the judgment supports the petitioner's case rather than the respondents' case. Apart from that, from 1970 to the present day, as observed by the Supreme Court in **Jesus Sales Corporation (7 supra)**, a practice has developed holding that even in the absence of a provision providing for an opportunity of hearing, such a provision is required to be read into the Rules governing the case, particularly, when an order being made is likely to have civil consequences. Thus, there is a change in the approach by the Courts tilting in favour of providing an opportunity of hearing.

41. In **Jesus Sales Corporation (7 supra)**, the same view was taken by observing as under:

**“The Appellate authority may dispense with such deposit in its discretion. The proviso relating to the condonation for delay in filing the appeal is more or less on the pattern of Section 5 of the Limitation Act. Some how, a practice has grown throughout the country that before rejecting the prayer for condonation of delay in filing the appeal or application, opportunities are given to the appellants or petitioners, as the case may be, to be heard on the question whether such delay be condoned.**

Opportunities to be heard are also the contesting respondents in such appeals. In different statutes where power has been vested in the Appellate authority to condone the delay in filing such appeals or applications, there are no specific provisions in those statutes saying that before such delays are condoned the appellants or the applicants shall be heard, but on basis of practice which has grown during the years the courts and quasi-judicial authorities have been hearing the appellants and applicants before dismissing such appeals or applications as barred by limitations. It can be said that courts have read the requirements of hearing the appellants or the applicants before dismissing their appeals or applications filed beyond time on principle of natural justice, although the concerned statute does not prescribe such requirement specifically.”

42. In **Jesus Corporation case (7 supra)**, while the general observations making reference to the issue as a general discussion, in the facts of the said case, it was held that there was no violation of principles of natural justice. It was held in paragraph 5 (facitum g) as under:

“In this background, it is difficult to hold that if the appellate authority has rejected the prayer of the appellant to dispense with the deposit unconditionally or has dispensed with such deposit subject to some conditions without hearing the appellant, on perusal of the petition filed on behalf of the appellant for the said purpose, the order itself is vitiated and is liable to be quashed being violative of the principles of natural justice.”

43. In **Orissa Pipe and Water Workers (6 supra)**, before the Full Bench of Orissa High Court, the objection of the nature herein was not in issue and as such the said judgment has no application to the facts of the present case.

44. Having considered the rival contentions and the judgments relied upon by both the learned counsel, the sum and substance of various judgments on the principles of natural justice is to the effect that wherever an order is likely to result in civil consequences, though the statute or provision of law, by itself, does not provide for an opportunity of hearing, the requirement of opportunity of hearing has to be read into the provision. Further, so far as this aspect is

concerned, under the very Trade Unions Act, a learned single Judge of this Court painstakingly had dealt with these aspects and held to the effect that an opportunity of hearing had to be read into the provision as, otherwise, the principle of *audi alteram partem* would be violated.

45. In those circumstances, the writ petition deserves to be allowed for violation of principles of natural justice and, accordingly, the writ petition is allowed, setting aside the impugned order dated 18.07.2019, with a further direction to respondent No.1 to consider the case afresh by providing an opportunity of hearing to the petitioner as well as the 2<sup>nd</sup> respondent, and pass appropriate orders on merits. It is needless to mention that the report dated 21.08.2017 of the Assistant Commissioner shall be made available to the petitioner and, if the petitioner chooses, it may file clarifications / objections with respect to the said report. No costs.

Miscellaneous petitions, if any pending, shall stand disposed of.

**04<sup>th</sup> February, 2020**

KSM

**CHALLA KODANDA RAM, J**

**THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM**



**WRIT PETITION No.19083 of 2019**

**04<sup>th</sup> February, 2020**

**KSM**