

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9857-2020 (O&M)

Date of decision:25.08.2020

Ajay

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.R.K.Malik, Sr. Advocate with
Mr. Sandeep Dhull, Advocate for the petitioner

Mr. Samarth Sagar, Addl. AG, Haryana

Mr. Shekhar Verma, Advocate for respondent No.5

ANIL KSHETARPAL, J.

The challenge herein is to the orders dated 11.6.2020 (Annexure P-9) passed by the Chief Registrar granting the permission to cancel the birth entry of the petitioner and the order dated 17.6.2020 (Annexure P-10) passed by the Registrar cancelling an entry of date of birth of the petitioner in the Register of births and deaths.

The question which needs consideration is “*whether it is mandatory to follow the principles of natural justice before passing the order affecting the rights of someone either by quasi-judicial tribunal or by an administrative authority?*”

Although, learned counsel for the parties have addressed the arguments at length on the merits of the case while referring to voluminous record produced in support of their submissions, however,

for the purpose of decision of the present case, in the considered opinion of this Court, it would not be appropriate to evaluate the evidentiary value of the documents produced particularly when this Court is of the opinion that the order under challenge is required to be set aside for violation of the principles of natural justice i.e, “audi alteram partem”.

It is not in dispute between the learned counsels representing the parties that before passing the order Annexure P-10, no opportunity of hearing was granted to the petitioner or his guardian.

The Registration of births and deaths is governed by a Central Act, i.e. The Registration of Births and Deaths, 1969 (hereinafter referred to as 'the 1969 Act'). Section 15 of the 1969 Act enables the Registrar to correct or cancel an entry in the Register of Births and Deaths for various reasons specified therein, which is extracted as under:-

“15. Correction or cancellation of entry in the register of births and deaths.—If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.”

The State Government in exercise of its powers conferred by Section 30 of the 1969 Act has framed rules with the approval of the Central Government known as ‘The Haryana Registration of Births and Deaths Rules, 2002’. Twice there has been amendments in the rules,

however, not relevant for the decision of the present case. Rule 11 of the Rules of 1962 lays down the procedure to be followed by the Registrar before correcting any clerical or formal errors and for cancelling any entry which is extracted as under:-

“11. (1) If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall send an extract of the entry showing the error and how it has been corrected to the State Government or the District Registrar.

(2) In the case referred to in sub-rule (1) if the register is not in his possession, the Registrar shall make a report to the District Registrar and call for the relevant register and after enquiring into the matter, if he is satisfied that any such error has been made, make the necessary correction.

(3) Any such correction as mentioned in sub-rule (2) shall be countersigned by the District Registrar when the register is received from the Registrar.

(4) If any person asserts that any entry

in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by him and supported by two creditable persons having knowledge of the facts of the case.

(5) Notwithstanding anything contained in sub-rule (1) and sub-rule (4) the Registrar shall make report of any correction of the kind referred to therein giving necessary details to the Chief Registrar through the District Registrar.

(6) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details of the officer authorized by the Chief Registrar by general or special order in this behalf under section 25 and on leaving from him take necessary action in the matter.

(7) In every case in which any entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under section 8 or section 9.”

On the one hand side, the petitioner claims that he was born

on 15.4.2004 and hence, the entry in the register of births and deaths mentioned by the Registrar was correct, whereas on the other hand side, respondents claim that the petitioner was in fact born on 10.1.2001. It is alleged that the parents of the petitioner have got an entry made in the Register of Births and Deaths on 15.4.2013 i.e after a period of long delay from the birth of the petitioner. The petitioner was born on 10.1.2001 as recorded in the admission form of the petitioner submitted by his parents in Govt. Primary School, Muklan.

It is relevant to point out here that the respondents also claim that the petitioner, after concealing the record of his admission and leaving the Govt. Primary School, Muklan, got admitted in a Govt. school at Chandigarh on the basis of an affidavit and a forged school leaving certificate allegedly issued by Adarsh Sr. Sec. School Chaudhariwas, Hisar. It is also pleaded by the respondent that the petitioner has been claimed to be of younger age in order to claim the benefit under C.H.A.R.T. program run by the Chandigarh Lawn Tennis Association which enables him to play and compete in the group of younger children than his actual age and thus, ensure prizes/trophies at national level and smooth income from corporate sector in the form of donations/sponsorship running in crores. It may be noted here that a criminal case arising from an FIR under the Protection of Children from Sexual Offences Act, 2012 is also stated to be pending against the petitioner where he, on basis of an entry in the register of births and deaths, has claimed himself to be juvenile. Thus, the correct age of the petitioner is being fiercely contested.

The principles of natural justice are required to be followed before taking administrative or quasi judicial decisions which affects the rights of someone. The law on this aspect has developed steadily with the passage of time and by now, it is well settled that the rules of natural justice which include rule of “audi alteram partem” is required to be read into all the statutes unless specifically or inevitably excluded. In other words, unless the Act or the Rules applicable, either specifically or by inevitable implication excludes the application of rules of natural justice, the Court would read the requirement of following the principles of natural justice in all other cases. Reference in this regard can be made to a famous judgment of the Hon’ble Supreme Court in **‘Swadeshi Cotton Mills vs. UOI’ (1981) 1 SCC 664**. The relevant discussion on this aspect is extracted as under:-

“26. Well then, what is “natural justice”? The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula. Historically, “natural justice” has been used in a way “which implies the existence of moral principles of self-evident and unarguable truth”. [Paul Jackson : Natural Justice, 2nd Edn., p 1] In course of time, Judges nurtured in the traditions of British jurisprudence, often invoked it in conjunction with a reference to “equity and good conscience”. Legal experts of earlier generations did not draw any distinction between “natural justice” and “natural law”. “Natural justice” was considered as “that part of natural law which relates to the administration of justice”. 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.

27. But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of Latin tags these twin principles are: (i) audi alteram partem and (ii) nemo iudex in re sua. For the purpose of the question posed above, we are primarily concerned with the first. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred in *Medea* that it is unjust to reach a decision without a full hearing. In *Maneka Gandhi case* [(1978) 1 SCC 405 : (1978) 2 SCR 272] , Bhagwati, J. emphasised that audi alteram partem is a highly effective rule devised by the courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

28. During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch-making decision of the House of Lords in *Ridge v. Baldwin* [(1969) 2 SCC 262 : (1970) 1 SCR 457] it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose, whenever a breach of the rule of natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision, dated February 7, 1967, of this Court in *Dr Bina Pani Dei case* [(1974) 2 SCC 121 : 1974 SCC (Cri) 467 : (1974) 3 SCR 427] ; wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and administrative decisions,

which was perceptibly mitigated in Dr Bina Pani Dei case [(1974) 2 SCC 121 : 1974 SCC (Cri) 467 : (1974) 3 SCR 427] , was further rubbed out to a vanishing point in A.K. Kraipak v. Union of India [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] , thus: (SCC p. 272, para 20)

“If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries.... Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.”

29. *In A.K. Kraipak case [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619] , the court also quoted with approval the observations of Lord Parker from the Queen's Bench decision in In re H.K. (Infants) [AIR 1967 SC 1269 : (1967) 2 SCR 625] ; which were to the effect, that good administration and an honest or bona fide decision require not merely impartiality or merely bringing one's mind to bear on the problem, but acting fairly. Thus irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied, because the presumption is that in a democratic polity wedded to the rule of law, the State or the legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.*

30. *In the language of V.R. Krishna Iyer, J. (vide Mohinder Singh Gill case [(1970) 2 Guj LR 361]): “... subject to certain necessary limitations natural justice is now a brooding omnipresence*

although varying in its play ... Its essence is good conscience in a given situation; nothing more — but nothing less.” (SCC p. 434, paras 47 and 48)

31. The rules of natural justice can operate only in areas not covered by any law validly made. They can supplement the law but cannot supplant it (per Hedge, J. in A.K. Kraipak [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619]). If a statutory provision either specifically or by inevitable implication excludes the application of the rules of natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. (see Union of India v. Col. J.N. Sinha [(1969) 2 All ER 1207])

32. The maxim audi alteram partem has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Lore-burn's oft-quoted language, is “a duty lying upon everyone who decides something”, in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, “convenience and justice” — as Lord Atkin felicitously put it — “are often not on speaking terms [General Medical Council v. Spackman, 1943 AC 627, 638] ”.

33. The next general aspect to be considered is: Are there any exceptions to the application of the principles of natural justice, particularly the audi alteram partem rule? We have already noticed that the statute conferring the power, can by express language exclude its application. Such cases do not present any difficulty. However, difficulties arise when the statute conferring the

power does not expressly exclude this rule but its exclusion is sought by implication due to the presence of certain factors: such as, urgency, where the obligation to give notice and opportunity to be heard would obstruct the taking of prompt action of a preventive or remedial nature. It is proposed to dilate a little on this aspect, because in the instant case before us, exclusion of this rule of fair hearing is sought by implication from the use of the word “immediate” in Section 18-AA(1). Audi alteram partem rule may be disregarded in an emergent situation where immediate action brooks no delay to prevent some imminent danger or injury or hazard to paramount public interests. Thus, Section 133 of the Code of Criminal Procedure, empowers the Magistrates specified therein to make an ex parte conditional order in emergent cases, for removal of dangerous public nuisances. Action under Section 17, Land Acquisition Act, furnishes another such instance. Similarly, action on grounds of public safety, public health may justify disregard of the rule of prior hearing.”

With the passage of time, the scope of applicability of principles of natural justice has been expanded by the Courts so as to ensure fairness in the procedure followed.

At this stage, it would be appropriate to note that from the reading of the 1969 Act and the Rules framed thereunder, this Court has come to a conclusion that neither by explicit provision nor by necessary implication, the applicability of the doctrine of “audi alteram partem” stand excluded. Learned counsel for the respondents failed to draw attention of the Court to any statutory provision excluding the applicability of principles of natural justice. Learned counsel for the respondents have although submitted that the statute does not provide for

the right of being heard, however, as noticed above, in absence of a statutory provision either specifically or by inevitable implication excluding the application of principles of natural justice, it must be held that the rules of natural justice are ingrained in the Act and rules.

To be fair to the learned counsel for the respondents, it may be noted that the learned Additional Advocate General, Haryana has relied upon a judgment passed by the Hon'ble Supreme Court in **'Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati and others' (2015) 8 SCC 519**. He has stressed on what has been laid down in para 38 and 39 of the judgment. The Supreme Court in Dharampal Satyapal Limited (supra) was considering the validity of an order of recovery passed by the revenue department. In the facts of that case, the Supreme Court held that since, the decision of the Revenue Department was based upon a previous inter parties decision of the Supreme Court and hence, in the facts of the case, the Court came to a conclusion that the grant of opportunity would make no difference as the appellant before the Supreme Court has not suffered any prejudice. In para 38 it has been held that the principles of natural justice are very flexible and are based on the doctrine of procedural fairness. The Court also examined as noted above, the requirement of opportunity of hearing or prior notice on the touch stone of the fact that whether it would make any difference or whether any prejudice has been caused or not? In the considered view of this Court, the aforesaid judgment does not as a 'ratio decidendi' lays down that the principles of natural justice are required to be followed.

Mr. Shekhar Verma, Advocate, who appears for respondent No.5 has relied upon a judgment of the Supreme Court in **‘Union Of India and others vs. Bishamder Dass Dogra’ (2009) 13 SCC 102**. In the aforesaid judgment, the delinquent employee was not supplied a copy of the report submitted by the enquiry officer in disciplinary proceedings. The Court examined this aspect in the context of prejudice caused due to non furnishing of a copy of inquiry report to the delinquent employee before passing an order imposing penalty. The Court in the facts of the case, ultimately, held that the delinquent employee failed to satisfy that some real prejudice has been caused to him on account of non-supply of the report of the enquiry. In these circumstances, the aforesaid judgment also does not help the respondent. Mr. Verma has also relied upon a judgment of the Supreme Court in **‘Dr. Umrao Singh Chaudhary vs. State of M.P and another’ (1994) 4 SCC 328**. In that case, the Hon’ble Supreme Court after examining the facts found that the principles of natural justice stand excluded by implication in the scheme of that Act. Hence, the aforesaid judgment also does not advance the case of the respondent.

Keeping in view the aforesaid discussion, this Court has come to a conclusion that the order (Annexure P-10) which has admittedly been passed without following the doctrine of “audi alteram partem” is required to be set aside and hence, is set aside. However, learned counsel for the respondents have made a passionate appeal for directing the Registrar to take a decision on the controversy within a short time, keeping in view the facts of the present case. Learned senior

counsel appearing for the petitioner also has no objection thereto. In view thereof, while setting aside the order, Annexure P-10, the Registrar (Births & Deaths), Chaudhariwas, Hisar –respondent no.4, who is the competent authority as per Section 16 of the 1969 Act, is directed to take the decision afresh within a month after granting opportunity of being heard to all the parties. Learned counsel for the parties have assured the Court that the parties would cooperate in expeditious disposal of the matter. The Registrar would be competent to proceed with the matter if it is satisfied that any of the party is unnecessarily delaying the proceedings.

In the facts of the present case and in the interest of justice, it is ordered that till the Registrar takes a final decision, the setting aside of the order i.e Annexure P-10 by this court on account of technical flaw, shall not be used by the parties to their advantage. The parties through their respective counsels are directed to appear before respondent no. 4 in his office on 01.09.2020 at 10.30 AM.

25.08.2020

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)**JUDGE**

Yes / No

Yes / No