

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3329 OF 2020

PETITIONER :- Coal City Social Club, Majari,
Tah.Bhadrawati, District Chandrapur,
P.T.R No.F-10339[C] having its office at
C/O Uddhav Devgade, village Sumthana,
Tah.Bhadrawati, District
Chandrapur,through its President
Shri.Dnyaneshwar S/o Uddhav Devgade
aged about 43 yrs, Occup.Business,

...VERSUS...

RESPONDENT :- The Assistant Charity Commissioner,
Chandrapur.

Mr R.S.Thengre counsel for the petitioner.
Mr.N.S.Rao, AGP for respondent.

CORAM : SUNIL B.SHUKRE &
G.A.SANAP, JJ.

DATE : 23.09.2022.

O R A L J U D G M E N T (Per :Sunil B.Shukre, J.)

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally
by consent of the learned counsel appearing for the parties.

3. The learned counsel for the petitioner submits that the impugned order dated 21.07.2020 has been passed by the learned Assistant Charity Commissioner, Chandrapur without any opportunity of hearing to the petitioner and therefore, it is bad in law.

4. The learned AGP for the respondent submits that as per the reply filed by the respondent, it appears that no notice was sent to the petitioner giving any opportunity of hearing to the petitioner for the reason that the impugned order has been passed by the respondent in *suo motu* enquiry.

5. So, it is clear that the impugned order has been passed without giving any opportunity of hearing to the petitioner. But, the question is whether giving of prior opportunity of hearing in every case is a mandatory requirement or whether it is an empty formality or whether it has some object to be fulfilled. Our answer to these questions is that it is not necessary that in every enquiry, prior opportunity of hearing must be granted to the person against whom any adverse order or any order of moment is passed. After all, giving of such a prior hearing is not an empty formality. It's object is to enable the noticee to show cause and

explain as to why the proposed action cannot be taken against him. But, if there is no cause to be shown by the noticee and from the very nature of the act, indulged in by the noticee, it is seen that the act is impermissible, illegal or criminal, no purpose would be served by giving any prior opportunity of hearing to such a noticee and in such a case at the most, the noticee can ask for a post decisional hearing whereby, a noticee can bring some facts before the authority to persuade the authority to modify the order or reduce the rigour of the order or grant some time to make corrections in the matter.

6. In the present case although, we are of the view that no prior hearing was necessary and the injustice which is perceived to be suffered by the petitioner can be remedied by affording the petitioner a post decisional opportunity of hearing, we would prefer not to adopt this course of action. The reason being that in the identical matter, a Co-ordinate Bench of this Court on this very ground, had remanded the matter back to the Assistant Charity Commissioner, Chandrapur for taking a fresh decision after giving proper opportunity of hearing to the petitioner.

7. In view of above, we allow the writ petition and quash the impugned order. The matter is remanded back to the respondents for a fresh decision in accordance with law after giving proper opportunity of hearing to the petitioner. The petitioner is directed to appear before the respondent on 27.09.2022 at 11.00 a.m. The respondent is directed to decide the matter within two weeks from the date of the appearance of the petitioner in accordance with law. The petitioner shall co-operate with the respondent and shall not seek any unnecessary adjournments till fresh decision is taken and the petitioner shall refrain from allowing playing of cards, in it's premises.

8. The learned Assistant Charity Commissioner shall not be influenced by the observations made above, which have been made only for the purpose of deciding the petition.

9. Rule is made absolute in the above terms. No costs.

(G.A.SANAP,J)

(SUNIL B. SHUKRE,J)