

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.14812 OF 2022

Javed Sardar Shaikh .Petitioner  
Vs.  
The Municipal Commissioner  
Solapur Mun.Corpn.,Solapur & ors. .Respondents

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Mr. Anant Vadgaonkar for Petitioner.  
Mr. Anand S.Kulkarni for Respondent No.1 to 4 (Solapur Municipality).  
Ms. M.S.Srivasava AGP for the Respondent No.5/State.

CORAM : SUNIL B. SHUKRE AND  
M. W. CHANDWANI, JJ.

DATE : 10th JANUARY 2023

JUDGMENT:- (Per : SUNIL B. SHUKRE,J)

1. Heard Rule. Rule made returnable finally by Consent.
2. Case of the petitioner is that he runs the business of operating Lathe Machine from Plot No.1, Kumthe, Taluka-North Solapur, Dist.Solapur. He submits that this place of business is situated in a residential locality. He further submits that he possesses permission of the Corporation to carry on his business of operating the Lathe Machine. According to the petitioner, his neighbours had given their consent to him for carrying on his business of operating the Lathe Machine. It is his contention that the Corporation has suddenly and without giving him any

opportunity of hearing, passed order of closure of his business, in an arbitrary manner which is impugned herein.

3. While there is no dispute about the factual situation, the dispute is about the contention that impugned order is illegal and arbitrary. Case of the Corporation is that when it received some complaints from some neighbours that the noise generated by the operation of Lathe Machine is of unbearable nature and it caused nuisance to them, it issued Show Cause Notices to the petitioner to explain his stand in the matter or else, face closure of his business. Corporation further submits that reply of petitioner was not satisfactory and the petitioner did not take any steps to curtail the noise pollution, and therefore, impugned order of closure of business was passed.

4. It appears that two Show Cause Notices were issued to the petitioner and each time petitioner gave his explanation to the effect that he had taken appropriate measures for controlling noise level. The Corporation, however, was not satisfied and therefore, Officers of the Corporation visited the place of business of the petitioner and obtained

noise samples from that place, and it was done in presence of the petitioner. It was found that the noise level was above the permissible limit. Therefore, Corporation decided to direct the closure of the business of the petitioner.

5. Learned counsel for the petitioner submits that the impugned order is illegal for the reason that, it is based upon vague notices. He submits that though two Show Cause Notices were issued to the petitioner, none of these notices made any mention of the fact that action was proposed to be taken against the petitioner under Section 376A of the Maharashtra Municipal Corporation Act (For short 'Act 1949'). He further submits that the impugned order which has been passed under Section 376A of the Act, 1949, involves consequences of civil nature and has the effect of stopping of business of the petitioner, which is a source of livelihood for the petitioner, and it has been passed without following any rules of natural justice. He submits in a case like this, pre-decisional hearing is also required to be granted, which was not afforded to the petitioner. He relies upon Judgment of Supreme Court in the case of *Sahara India (Firm) Lucknow Vs. Commissioner of Income Tax Central-I*

***and Another (2008) 14 Supreme Court Cases 151.***

6. Learned counsel for Respondent/Corporation supports the impugned order and submits that even though the Show Cause Notice did not make any mention of Section 376 of the Act of 1949, contents of the Show Cause Notices are sufficient to give appropriate notice to the petitioner and what he was required to do in the matter and therefore, just because reference to a particular section under which order would be eventually passed is not made, it would not vitiate the order which is impugned here. He also submits that sufficient opportunity of hearing had been granted to the petitioner.

7. On going through the Show Cause Notices, impugned order and also Inspection report dated 30/7/2022, jointly signed by the Officers of the Corporation and the petitioner, we are of the view that there is no substance in the argument of learned counsel for the petitioner and that there is merit in the argument of learned counsel for Respondent/Corporation.

8. It is true that the Show Cause Notices did not make any mention of Section 376A of Act of 1949. But, as rightly stated by the learned counsel for the Respondent, such non-mentioning of the Section under which the impugned order has been subsequently passed has not vitiated the impugned order as such.

Reason being that Show Cause Notices in question contained all the details of the issue involved in the case and what was required to be done by the petitioner. Ultimately, the purpose of Show Cause Notice is to make the person aware of what is likely to be in store for him, if he does not comply. This object of Show Cause Notice is seen to be fulfilled by the details given in the Show Cause Notices in question. Therefore, absence of any reference to Section 376A of the Act 1949, has not really caused any prejudice to the petitioner. Ultimately, the Show Cause Notice is meant for preventing causing of any prejudice to a party which prejudice may arise either from keeping a party against whom the action is proposed in the dark about the material against him or by making incorrect statement of facts. Such is, however, not the case here. Then the petitioner never raised any objection before the corporation that the Show Cause Notices were vague because of non-mentioning of any Section under which action was proposed. This would also show that the petitioner was not prejudiced in any way here. Therefore, we find no substance in the argument of learned Counsel for the petitioner that the Show Cause Notices are incomplete and vague and this has adversely affected passing of impugned order by the Corporation.

9. As regards the submission that principles of natural justice have not been followed in the present case, we find that it is not true. In our opinion,

sufficient opportunity of hearing has indeed been granted to petitioner and it is not the law that, in every case compliance with the principles of natural justice would only mean granting of a pre-decisional hearing. Principles of natural justice can be followed and complied with in different ways, depending upon the fact situation of every case and rules applicable to that situation, if any. Ultimately the aim is that the person is not made to face any civil consequence without getting any opportunity to explain his stand; to defend himself; to justify his acts, words, actions. Such opportunity can be afforded in a given case by letting that person submit his written explanation and/or proof of his bonafide or legal action and not anything beyond that. Some times, it may also require, apart from written explanation, a pre-decisional hearing. In another case pre-decisional hearing and post-decisional hearing or only pre-decisional hearing or only post-decisional hearing (if any urgency to take decision first is involved), can be the requirement. This is the reason why in paragraph 20 of the judgment in the case of *Sahara India (supra)*, the Supreme Court has observed that no general rule of universal application can be laid down as to the applicability of the principle of *audi alteram partem*, in addition to the language of the provision. These observations, for convenience, are reproduced as below:

*“20. We may however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the*

*provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power, the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined.”*

10. Of course, we must make it clear here that the decision impugned herein is drastic in nature and it does involve civil consequence and therefore, such a decision can not be passed without following principles of natural justice. But, the question is whether principles of natural justice are followed here or not in the sense that “any hearing was granted to the petitioner or not”. Our answer to the question is in the affirmative. The notion of hearing to be granted as meaning only actual hearing of oral submissions of the party, held by the learned counsel for the petitioner, we must say, is not correct for all times and in all situations. The word “hearing” has to be understood in the light of the object of the principles of natural justice. The object is to prevent prejudice to prevent

injustice resulting from not knowing the adverse material, so that the other side of the issue, which in fact could be the proper and legal side of the issue would come to the fore. Such being the object of rules of natural justice, the word “hearing” must be ascribed a wider meaning taking within its fold not only its aspect of audibility perceived through ears and mind upon listening to words, but also its aspect of intelligibility comprehended through reading of a paper. From this perspective, which we feel to be consistent with the object of rules of natural justice, the word “hearing” may mean actual hearing in a given case or may mean opportunity to submit written explanation or reply in another case and may also mean both, in some other case, depending upon the facts of each case and rules or law applicable to that case.

11. Coming back to the facts of the case, we find that petitioner in the present case was issued two Show Cause Notices and the petitioner also gave his reply to these notices, it is further seen that a joint inspection of place of business of the petitioner was carried out in the presence of the petitioner and the Joint Inspection Report was also issued by the Officers of the Corporation. This Joint Inspection Report bore signatures of not only the Officers of Corporation, but also of the petitioner. This report, has a bearing upon the order impugned herein as it establishes on record a material fact pertaining to the noise pollution obtaining at the place of business of the petitioner. The report

shows that at the relevant time noise level generated by operating of the Lathe Machine was found to be in the range of 71.2DB and 70.6DB . These ranges, it is further seen, were above permissible noise level limit. It is not in dispute that permissible noise limit in a residential locality is of 55DB during day time and 45 DB during night time. Undisputedly, noise level present at the place of business of the petitioner at the time of inspection was much above permissible noise level limit. This was inspite of the fact that the petitioner had installed glass doors and had taken some noise reduction steps at the place of his business. The petitioner had also stated in his reply to the Show Cause Notices about the measures initiated by him for reducing noise level causing noise pollution at his place of business but those steps taken by petitioner, as seen from the findings recorded in the Inspection Report about which there is no dispute, were insufficient to eliminate noise pollution obtaining at the place of business of the petitioner. That was the reason why the impugned order was passed and it was after consideration of the explanation given by the petitioner and also the Joint Inspection Report. It is also not in dispute that at the time of carrying out of the Inspection, petitioner was very much present at his place of business. With such facts present on record, it cannot be said that no opportunity of hearing was granted to the petitioner and that no principles of natural justice were followed. The hearing granted to the petitioner in the present case was in the nature of giving an opportunity to the petitioner to submit his explanation in the matter,

and to be a party to the inspection of place of business jointly carried out by the Officers of the Corporation and the petitioner and this opportunity was availed of by the petitioner. The petitioner has not given any answer to the findings recorded in the Joint Inspection Report. There is no defence offered by the petitioner to the findings of the Joint Inspection Report either. In the circumstances, the argument of learned advocate for petitioner that no opportunity of hearing was granted to the petitioner and no rules of natural justice were followed cannot be accepted and it is rejected.

12. Learned counsel for petitioner has submitted that the Corporation did not consider in any manner the steps taken by the petitioner to reduce noise pollution, reference to which was made by the petitioner in the written explanation submitted by him to the corporation. It is true that the impugned order is not reflective of any consideration of these steps taken by the petitioner, but we are of the opinion that absence of any reference to them in the impugned order has not rendered it illegal. Ultimately, impugned order has been passed after giving adequate opportunity of hearing to the petitioner to explain his stand in the matter and inspite of the opportunity so given, the petitioner has not offered any convincing answer to counter the findings of joint inspection report. The argument is therefore, without any merit.

13. In the circumstances, we are of the view, there is no substance in the petition and it deserves to be dismissed. The petition stands dismissed. However liberty is granted to the petitioner to make a fresh application for grant of license to operate his Lathe Machine from his place of business, and if such application is made, same shall be considered by the respective in accordance with law.

( M. W. CHANDWANI, J. )

( SUNIL B. SHUKRE, J. )