

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

211 (2 cases)

CWP-10250-2021 (O&M)

Date of Decision: 06.07.2023

M/s Kharar Rice Mills

...Petitioner

Versus

State of Punjab and Others

...Respondents

And

CWP-10379-2021 (O&M)

M/s Vishnu Sales Corporation

...Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Daman Dhir, Advocate with
Ms. Poonam Rani, Advocate for the petitioner (in both cases)
Mr. Maninder Singh, DAG, Punjab
Mr. M.S. Bath, Advocate for respondent No.6
(in CWP-10250-2021)
Mr. Japjit Singh Johal, Advocate for respondent No.7-
PUNSUP (in CWP-10379-2021)

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, both writ petitions bearing Nos.
CWP-10250-2021 and *CWP-10379-2021* are disposed of as impugned
orders are common and involve common questions. For the sake of
convenience, facts are borrowed from *CWP-10250-2021*.

2. The petitioner, through instant writ petition under Article 226 of the Constitution of India is seeking setting aside of order dated 06.11.2020 (Annexure P-5) passed by District Allotment Committee ('DAC') whereby petitioner has been blacklisted for 3 years and order dated 05.04.2021 (Annexure P-13) passed by respondent No.1 whereby second appeal of the respondent has been allowed.

3. The brief facts of the case are that petitioner is engaged in the business of processing/converting paddy into rice. The business of the petitioner depends upon receipt of paddy from the Government Agencies. The respondent, from time to time, frames policy with respect to allotment of paddy to different rice mills through procurement agencies. For the Crop Year 2020-21, the petitioner was allotted particular quantity of paddy for conversion. The respondent-authorities on physical verification found that petitioner has stored unauthorized paddy. A show cause notice dated 03.11.2020 (Annexure P-3) came to be issued to the petitioner. In the show cause notice, there was no proposal for blacklisting the petitioner. The respondent filed its reply to aforesaid show cause notice. The show cause notice culminated into order dated 06.11.2020 (Annexure P-5) whereby not only allotment of paddy was cancelled but also the petitioner was blacklisted for 3 years. The order came to be passed by DAC. The petitioner preferred an appeal before Appellate Authority against cancellation. The petitioner did not assail blacklisting before Appellate Authority and preferred CWP

petitioner came to be allowed during the pendency of writ petition before this Court. In view of setting aside of cancellation-cum-blacklisting order, this Court vide order dated 02.03.2021 disposed of aforesaid writ petition as infructuous. The respondent preferred an appeal against appellate order which came to be allowed vide impugned order dated 05.04.2021 (Annexure P-13).

4. Mr. Daman Dhir, learned counsel for the petitioner confines his prayer qua blacklisting of petitioner. He *inter alia* contends that order of blacklisting was passed by DAC whereas competent authority was Director, Department of Food, Civil Supplies and Consumer Affairs, Punjab. As the impugned order has been passed by an incompetent authority, it deserves to be set aside on the ground of jurisdiction. In alternative, he submits that in the show cause notice, there was no proposal for blacklisting, thus, DAC was incompetent to pass order qua blacklisting the petitioner.

5. Mr. Maninder Singh, DAG, Punjab, *inter alia* contends that as per Clause 24 (c) of the Punjab Custom Milling Policy, 2021, an appeal lies before Director, Food Civil Supplies & Consumer Affairs, Punjab ('DFS') against an order passed by DAC relating to any clause of the policy, thus, DAC was quite competent to pass an order of blacklisting. The petitioner has been blacklisted invoking Clause 16(b) of the said policy, thus, authority was quite competent to pass the impugned order. With respect to absence of averment in the show cause notice qua

blacklisting, he submits that the action of blacklisting was consequential

to cancellation of allotment, thus, there is no deficiency in the impugned order as well as show cause notice.

6. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

7. A five Judge Constitution Bench of the Hon'ble Supreme Court in ***Olga Tellis and Others Versus Bombay Municipal Corporation; (1985) 3 SCC 545*** has considered question of opportunity of personal hearing and held that no order can be passed without granting an opportunity of personal hearing. It has been further held that opportunity of personal hearing cannot be denied merely on the ground that there was no prejudice to the aggrieved person. The relevant extracts of the judgment read as:-

“48. Any discussion of this topic would be incomplete without reference to an important decision of this Court in S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379, 395. In that case, the supersession of the New Delhi Municipal Committee was challenged on the ground that it was in violation of the principles of natural justice since, no show cause notice was issued before the order of supersession was passed. Linked with that question was the question whether the failure to observe the principles of natural justice matters at all, if such observance would have made no difference, the admitted or indisputable facts speaking for themselves. After referring to the decision in Ridge v. Baldwin [(1964) AC40,68; John v. Rees [1970 Ch345, 402]; Annamunthodo v. Oilfields Workers' Trade Union [(1961) 3 All ER 621, 625 (HL)] ; Margarita Fuentes

et al v. Tobert L. Shevin [32 L Ed 2d 556, 574] ; Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. v. Secretary (Food and Agriculture) Government of A.P. [(1977) 4 SCC 337, 341, 343-44 : (1978) 1 SCR 563, 567, 569-70] and to an interesting discussion of the subject in Jackson's Natural Justice (1980 Edn.), the Court, speaking through one of us, Chinnappa Reddy, J. said: (SCC p. 395, para 24)

“In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.”

These observations sum up the true legal position regarding the purport and implications of the right of hearing.”

8. In ***Khem Chand Versus Union of India; 1958 SCR 1080***

while dealing with question of compliance of principles of natural justice, in case of an inquiry against civil servant in terms of Article 311, Hon’ble Supreme Court has concluded:

“18. In our judgment neither of the two views can be accepted as a completely correct exposition of the intendment of the provisions of Section 240(3) of the Government of India Act, 1935, now embodied in Article

311(2) of the Constitution. Indeed the learned Solicitor-General does not contend that this provision is confined to guaranteeing to the government servant an opportunity to be given to him only at the later stage of showing cause against the punishment proposed to be imposed on him. We think that the learned Solicitor-General is entirely right in not pressing for such a limited construction of the provisions under consideration. It is true that the provision does not, in terms, refer to different stages at which opportunity is to be given to the officer concerned. All that it says is that the government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. He must not only be given an opportunity but such opportunity must be a reasonable one. In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite obviously necessary that the government servant should have the opportunity, to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. Both these pleas have a direct bearing on the question of punishment and may well be put forward in showing cause against the proposed punishment. If this is the correct meaning of the clause, as we think it is, what consequences follow? If it is open to the government servant under this provision to contend, if that be the fact, that he is not guilty of any misconduct then how can he take that plea unless he is told what misconduct is alleged against him? If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be

established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case.

19. To summarise : the reasonable opportunity envisaged by the provision under consideration includes—

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.”

9. A three Judge Bench of the Hon’ble Supreme Court in ***Sahara India (Firm) Lucknow Versus Commissioner of Income Tax, Centra-I and Another; (2008) 14 SCC 151***, while dealing with special audit under Income Tax Act, 1961 has held that order of special audit cannot be passed without granting opportunity of hearing. The relevant extracts of the said judgment read as under:-

“15. 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 v. Union of India [(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 ITO v. Madnani Engg. Works Ltd. (1979) 2 SCC 455.

16. *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 several decisions, His Lordship observed thus: (SCC p. 666)*

“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 principles 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.”

17. *Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action. However, in State of Orissa v. Dr. Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625] the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistent with the rules of natural justice. Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute,*

conferring power, excludes its application by express language.

18. Recently, 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 extenso, with reference to earlier cases on the subject. Inter alia, 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: (SCC pp. 331-32, para 14)

“14. 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 thereunder. 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. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression ‘civil consequences’ encompasses infraction of not

merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.”

19. *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.*

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. (See Union of India v. Col. J.N. Sinha (1970) 2 SCC 458.

21. *In Mohinder Singh Gill v. Chief Election Commr. (1978) 1 SCC 405 explaining as to what is meant by expression “civil consequence”, Krishna Iyer, J., speaking for the majority said: (SCC p. 440, para 66)*

“66. ... ‘Civil consequences’ undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.”

10. A Division Bench of this Court in ***Krishna Engineering Works Limited Versus Union of India; 2001 SCC OnLine P&H 1678***, while dealing with Rule 49 read with Rule 173G of Central Excise Rules, 2002, providing for forfeiture of fortnight facility of payment of central excise duty, has held that order of forfeiture cannot be passed without granting an opportunity of hearing. The relevant extracts of the judgment read as under:-

“10. We have given serious thought to the respective arguments/submissions. A reading of the plain language of Rules 49(1)(e) and 173G(1)(e) does not give an impression that rule of audi alteram partem is not required to be complied with before passing an order of forfeiture, but, in our opinion, the absence of express stipulation to this effect is not

sufficient to absolve the competent authority from complying with the rules of natural justice. The two main principles in which the rules of natural justice are manifested, namely, Nemo Judex in Sua Causa and audi alteram partem have been read by the courts as an integral part of the concept of rule of law and fairness in State action. The reason as to why the courts have insisted on compliance of the rule of audi alteram partem in quasi-judicial and even in administrative matters is not far to seek. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against the arbitrary exercise of power by the State and its officers. Duty to act judicially would, therefore, arise from the particular nature of the functions intended to be performed. It need not be shown to. super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice are ignored and an order to the prejudice of a person is made, such order will have to be treated a nullity.”

11. From the perusal of above cited judgments, it is quite evident that no order entailing civil or criminal consequences can be passed without granting an opportunity of hearing. Opportunity of personal hearing is not only part of principles of natural justice but is also recognized as part of fundamental right of life and liberty guaranteed by Article 21 of the Constitution of India.

12. In the case in hand, the impugned order was preceded by show cause notice, the relevant extracts of the show cause notice read as below:-

“In connection with the subject cited above, a meeting was convened by the District Allotment Committee to take a decision on the allegations contained in the surprise checking of M/s Kharar Rice Mills, Kharar conducted in terms of Letter No.R.P.4C(2443)-2020/2865 dated 02.11.2020 issued by Head Office. As per the report the Chairman Vigilance Committee-cum-Deputy Director, Food Civil Supplies and Consumer Affairs, Chandigarh, received from the Head Office with this letter, the following allegations have been made:

- 1. This mill is allotted to Punjab State Warehousing Corporation Agency during Crop Year 2020-21 and 1,11,990 bags (filled with 37.5 Kg.) bags of paddy was stored in this mill till 27.10.2020 by the concerned agency. During Physical verification, 1,11,647 bags (filled with 37.5 Kg.) of Paddy were found. Thus, 343 bags of paddy were found to be short.*
- 2. Upon de-stacking of paddy-lying under the shed in the Mill, it was found that about 5651 bags of rice (filled with 50 Kg.) were hidden below the paddy bags.*
- 3. No documents were finished by the party regarding 5651 bags of rice. The rice which is stored hidden by the party. It appears that this rice has been stored unauthorized by the party and it may also be*

used for bogus billing in the Mandi for equivalent paddy.

In view of the above facts, while issuing notice, in terms of Clauses 24(a) &(b) of the Custom Milling Policy, 2020-21, it is hereby written that you shall put your defence in writing before the District Allotment Committee on 05.11.2020 at 3:00 PM in the office of District Controller, Food Civil Supplies and Consumer Affairs, SAS Nagar. In case, you failed to do so, then it will be presumed that you have nothing to state and an exparte action will be proceeded against you in terms of Custom Milling Policy 2020-21. ”

13. The aforesaid show cause notice culminated into order dated 06.11.2020 whereby allotment of paddy to the petitioner was cancelled and petitioner was blacklisted. The relevant extracts of the aforesaid order read as under:-

“Therefore, the District Allotment Committee decided that in compliance with Clause 9 and 16b of the Custom Milling Policy for Kharif 2020-21, while cancelling, the allotment of M/s Kharar Rice Mill, Kharar for Custom Milling of Paddy purchased by Warehouse for Kharif 2020-21, the mill premises is blacklisted for three years.”

14. From the perusal of above noted extracts of the show cause notice, it stares that there was no proposal in the show cause notice qua blacklisting the petitioner, however, the committee passed order of blacklisting travelling beyond the show cause notice. Show cause notice

disclosing allegations, adverse material and proposed penalty is foremost fundamental requirement of principles of law. Penalty of blacklisting without show cause notice is contrary to rule of law. Every action which is contrary to rule of law is arbitrary and violative of Article 14 of the Constitution of India. Apart from principles of natural justice, it is further settled principle of law that an Adjudicating Authority cannot travel beyond the show cause notice. In ***Commissioner of Central Excise Versus Gas Authority of India Limited; (2007) 15 SCC 91***, a two Judge Bench of Hon'ble Supreme Court has categorically held that Adjudicating Authority cannot travel beyond the show cause notice.

15. In the absence of proposal in the show cause notice, there was no question of making submissions on the part of petitioner. The Adjudicating Authority travelling beyond the show cause notice has passed order of blacklisting, thus, order of blacklisting was passed not only contrary to the principles of natural justice but also beyond the scope and ambit of show cause notice. The blacklisting in terms of Milling Policy amounts to denial of opportunity to get paddy in the subsequent years which directly affects right of business of the petitioner, thus, impugned order not only entails civil consequences but also denies the petitioner's right to carry on its business which is entirely dependent upon paddy provided by the State Agencies.

16. In view of afore-stated facts and circumstances, the present writ petition deserves to be allowed and accordingly allowed. Impugned

(Annexure P-13) in CWP No.10250 of 2021 and impugned Order dated 06.11.2020 (Annexure P-5) and order dated 05.04.2021 (Annexure P-12) in CWP No.10379of 2021 are hereby set aside.

Pending applications also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

06.07.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>