

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 885 of 2024

With

IA No.: CAN 1 of 2024

With

IA No.: CAN 2 of 2024

**North Suburban Wholesale Consumers' Co-operative Society Ltd. and
Anr.**

Vs.

The State of West Bengal & Ors.

For the appellants : Mr. Aniruddha Chatterjee Ld. Sr. Advocate
Mr. Sounak Sen, Advocate

For the State : Mr. Pradip Kumar Roy, Ld. Sr. Advocate
Mr. Partha Sarathi Pal, Advocate

For the respondent nos.2 and 3: Mr. Ankit Sureka, Advocate
Mr. Biplob Das, Advocate

For the respondent no.5 / : Mr. Piyush Chaturvedi, Ld. Sr. Advocate
Writ petitioner Mr. Prashant Agarwal, Advocate
Mrs. Saroj Tulsian, Advocate
Mrs. Anamika Das Maity, Advocate
Mr. Sudipta Das, Advocate

Heard & Judgment on : January 27, 2025

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated April 24, 2024 in WPA 28977 of 2013.
2. Appeal is at the behest of the Co-operative Society.
3. Appellant initiated a departmental proceeding as against the private respondent herein, which ultimately resulted in an order of dismissal from service as upheld by the Appellate Authority. Such order of the Appellate Authority was assailed by way of the writ petition in which the impugned judgment and order was passed.
4. Learned senior advocate appearing for the appellant submits that the learned Single Judge proceeded on the basis of breach of principles of natural justice at the time of conduct of the enquiry proceedings. He submits that the writ petition does not contain any averment to such effect. He points out to that, subsequent to the issuance of a charge-sheet as against the private respondent, the enquiry proceeding was undertaken. A portion of the enquiry proceeding was made subject-matter of a dispute-case under the West Bengal Co-operative Societies Act, 1983. Such dispute-case was ultimately disposed of by finding that the private respondent was guilty of causing loss to the appellant. The dispute-case quantified the loss caused by the respondent to the appellant.

5. Learned senior advocate appearing for the appellant submits that there is no challenge to the Award. According to him, therefore, the award attained finality between the appellant and the private respondent.
6. Learned senior advocate appearing for the appellant submits that, the dispute-case, therefore, established both the quantum of loss caused by the private respondent to the appellant as also the fact that the private respondent was responsible for causing loss to the appellant. He submits that one of the grounds in the charge-sheet is the loss caused by the private respondent to the appellant. Therefore, he submits, such issue stood conclusively decided in the dispute-case proceedings. Once such issue stood conclusively decided, it no longer lies in the mouth of the private respondent is to complain breach of principles of natural justice in the conduct of the enquiry proceedings on such an issue, assuming though not admitting that the private respondent raised such issue in the writ petition.
7. On the ground of breach of natural justice, the learned senior advocate appearing for the appellant relies on **(2012) 1 SCC 83 (Ashwin S. Mehta & Anr. vs. Union of India & Ors.)** and submits that, in addition to a mere breach of the principle of natural justice, the private respondent is required to establish that he suffered any prejudice. In the facts and circumstances of the present case, learned senior advocate appearing for the appellant submits that, the private respondent did not suffer any prejudice.

8. Learned senior advocate appearing for the private respondent submits that, the authorities proceeded with a closed mind as against the respondent. He submits that his client was denied the right of cross-examination at the enquiry proceedings. He submits that, the second show-cause notice is dated October 29, 1998 and the order of the disciplinary authority is dated November 16, 1998.
9. Learned senior advocate appearing for the private respondent submits, when authorities, issued the second show-cause notice on October 29, 1998, the authorities decided that all charges as against the respondent were proved. The authorities accepted the enquiry report without affording an opportunity of hearing to the respondent. He points out the second show-cause notice in this regard. He submits that since the authorities proceeded with a close mind, the entire departmental proceedings stood vitiated.
10. A departmental proceedings was initiated as against the private respondent. He was initially placed under suspension. He was granted subsistence allowance. A show-cause notice dated August 8, 1995 was issued to the private respondent. A charge sheet was issued as against him on May 19, 1997.
11. An enquiry proceeding commenced with regard to the charges levelled as against the private respondent. The enquiry proceedings resulted in an enquiry report dated September 4, 1998.

12. Authorities issued a second show-cause notice dated October 29, 1998 calling upon the private respondent to respond. In response to the second show-cause notice, the private respondent issued a letter dated November 7, 1998. Disciplinary authority passed an order of dismissal from service as against the private respondent on November 16, 1998. Appeal carried therefrom was dismissed on June 11, 2013.
13. Being aggrieved by the order of dismissal from service as upheld on appeal, private respondent filed the present writ petition in which the impugned order was passed. During the pendency of the enquiry proceedings, a dispute case was filed by the appellants as against the private respondent before the arbitrator under the West Bengal Co-operative Societies Act, 1983. Such dispute case was disposed of by an award dated July 28, 1999 passed against the private respondent.
14. In course of hearing of the appeal, we called upon the learned Senior Advocate appearing for the private respondent to draw our attention to the averments made in the writ petition as to breach of principles of natural justice during the enquiry proceedings. In response, he draws our attention to Ground-XV of the writ petition.
15. Such ground, in our view, relates to the order of dismissal of service of the private respondent and consequent dismissal of the appeal. Such ground claims that, they were done violation of the principles of natural justice.

16. There is no ground in the writ petition or any averment therein, at least attention of the Court was not drawn to any such averment or ground relating to breach of principles of natural justice at the enquiry stage.
17. **Ashwin S. Mehta and Another (supra)** deals with issue of breach of principles of natural justice in the context of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. It is of the view that, there are exceptions to the doctrine of reasonable opportunity of being heard in an administrative, *quasi-judicial* or judicial proceedings. In the facts of the present case, the private respondent did not allege violation of the principles of natural justice in the writ petition.
18. There is some justification in the contention of the private respondent that, the second show-cause notice was issued by the authorities with a closed mind. The second show-cause notice is dated October 29, 1998 and it considers the enquiry report dated September 4, 1998.
19. In that second show-cause notice, it is stated as follows:

“The Board of Directors have carefully gone through the record of the enquiry proceedings, other connected papers and findings of the Enquiry Officer in as much as that on the evidence recorded in the enquiry is of the opinion that the charges levelled against you have been sufficiently proved.

Having regard to the gravity of your misconducts the Board of Directors of the Society proposes to inflict upon you a punishment of dismissal from service.

Show cause why such dismissal order from service shall not be passed by the Board of Directors with immediate effect within 10 days from the date of receipt of this second show cause notice. You are directed to send your representation on the penalty proposal within the aforesaid time. In the event of failure to make representation within the aforesaid time, it will be presumed that you have nothing to say on the penalty proposed.”

20. The quoted portion of the second show-cause notice allows one to infer that the disciplinary authority accepted the enquiry report of the enquiry officer without affording an opportunity of hearing to the private respondent.
21. With respect, such course of action is not available to the disciplinary authority. Disciplinary authority not only proceeded to accept the enquiry report but also proceeded to quantify the punishment to be imposed again without hearing the private respondent with regard to the acceptability of the enquiry report, at all. This conduct of the disciplinary authority, in our view, discloses a closed mind.
22. Although, the private respondent superannuated from service, nonetheless, the departmental proceedings can be continued from the stage of the second show-cause notice. As noted above, we do not find substance in the contentions of the private respondent that there was breach of principles of natural justice during the enquiry proceedings stage. The enquiry report is on record. It is for the disciplinary

- authority to consider the acceptance of such enquiry report, after affording an opportunity of hearing to the private respondent.
23. Second show-cause notice dated October 29, 1998 is, therefore, quashed.
24. Departmental proceedings taken subsequent to the second show-cause notice dated October 29, 1998 are also quashed as they cannot survive the quashing of the second show-cause notice.
25. We, however, clarify that, since the second show-cause notice dated October 29, 1998 is quashed, we, permit the disciplinary authorities to issue the second show-cause notice to the private respondent within seven days from date.
26. Private respondent is at liberty to respond to such second show-cause notice within a fortnight from the date of receipt thereof.
27. Disciplinary authorities will decide on the enquiry report, the second show-cause notice and the response of the private respondent thereto within seven days from the date of receipt of the reply to the second show-cause notice.
28. In the event, the disciplinary authorities do not receive any response from the private respondent to the second show-cause notice within a period of fortnight from the date of receipt thereof by the private respondent, the disciplinary authorities is at liberty to proceed in accordance with law as against the private respondent. In the event the second show-cause notice is not issued within the time stipulated, the

impugned judgment and order of the learned Single Judge will come into operation.

29. With the aforesaid observations, the impugned judgment and order dated April 24, 2024 is modified by us.

30. **FMA 885 of 2024** along with all connected applications are **disposed of**.

(Debangsu Basak, J.)

31. I agree.

(Md. Shabbar Rashidi, J.)

(Pritam/AD)