

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1142 OF 2024

Jay Kowli

.....Petitioner

Vs.

Secretary-General,

Boxing Federation of India and Ors.

.....Respondents

Ms. Nikita Jacob a/w Mr. Utkarsh Pawar i/b S. K. Legal Associates
LLP for Petitioner.

Dr. Abhinav Chandrachud a/w Ms. Heta Desai a/w Ms. Ashu
Thakar i/b Ashu Thakar & Associates, for Respondent No.3

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

RESERVED ON : 10th JANUARY 2025.

PRONOUNCED ON : 27th JANUARY 2025.

JUDGMENT:-

1. Rule. Rule is made returnable forthwith. With consent of all parties, the matter is being finally heard.

2. The Petitioner seeks quashing of order dated 20th January 2022 placing him under suspension and debarring him from any boxing activities in the Respondent No.3-Federation and its affiliated units till further orders. He also seeks quashing

of a purported resolution dated 10th January 2022 passed by the Respondent Nos.1 and 2 and the finding of the Disciplinary and Disputes Commission ('DDC') of the Respondent No.3 dated 8th January 2022.

3. The Petitioner is the erstwhile Secretary-General of the Respondent No.3 Boxing Federation of India for the period 25th September 2016 to 2nd February 2021. The Respondent No.1 is the present elected Secretary-General of the Respondent No.3-Federation, and the Respondent No.2 is its Executive Council.

4. It is the case of the petitioner that he was issued a Memorandum of Charges/Show Cause Notice dated 7th December 2021 calling upon him to respond as to why disciplinary action should not be taken against him for certain acts of misconduct as set out in the notice. The said notice was issued by the Chairman of the Disciplinary and Disputes Commission of the Federation ("DDC"). The Petitioner by e-mail dated 13th December 2021 replied to the Show Cause Notice.

5. By an e-mail dated 27th December 2021 a specific response was sought by the Chairman of the DDC to which the

Petitioner replied by email dated 4th January 2022. It is the case of the Petitioner that the impugned order is passed without following the principles of natural justice, inasmuch as, he was not given a personal hearing despite his request for the same. It is also his case that the procedure contemplated under Clause Z-A is not followed. It is this order which is assailed by the Petitioner in the present petition.

6. Ms. Nikita Jacob, learned counsel appeared for the Petitioner and Dr. Abhinav Chandrachud, learned counsel represented the Respondent No.3.

7. Ms. Jacob brought to our attention Article Z-A of the Federation and stated that principles of natural justice as required by the said Article were not followed while passing the impugned order. She contended that instead of following the procedure, without any forewarning, the Respondents No.1 and 2 took the illegal and extreme measures for placing him under suspension and left him remediless. She further stated that the Respondents have violated principle of '*audi alteram partem*' and the Petitioner was not afforded any opportunity of personal hearing. She thus

urged the court to quash the impugned order dated 20th January 2022 following a purported resolution dated 10th January 2022 of the Federation and the findings of the DDC dated 8th January 2023. In the alternative, she seeks a direction to the Respondents to afford the Petitioner a personal hearing and to then decide the issue afresh equitably and in a time bound manner. Ms. Jacob, has also placed on record her written submissions.

8. Dr. Chandrachud, on the other hand, advanced 5 propositions. He says that *(a)* the Constitution of the Respondent No.3-Federation does not contemplate any personal hearing/oral hearing being granted to the Petitioner prior to an order of suspension being passed by the Executive Council; *(b)* the principles of natural justice do not require a personal hearing to be given by any authority and that an opportunity to give a representation in writing, prior to a reasoned order being passed, is sufficient compliance of principles of natural justice; *(c)*, the Petitioner never requested a personal hearing and hence he cannot now complain in that regard; *(d)*, the order impugned is only an interim order of suspension and hence only a modicum of residual natural justice is required to be observed and *(e)*, where

no prejudice is caused to a party due to failure to observe the principles of natural justice, the impugned order cannot be set aside for a mere failure to observe the principles of natural justice. Dr Chandrachud in his written submissions has adumbrated the said propositions and placed reliance on various decisions of the Supreme Court and this Court as under: -

- i. *State of Maharashtra v. Lok Shikshan Sanstha* ¹
- ii. *Comunidade of Chicalim v. Income Tax Officer & Ors.* ²
- iii. *Union of India & Anr. v. Jesus Sales Corporation* ³
- iv. *Sopan Maruti Thopte v. Pune Municipal Corporation* ⁴
- v. *Shree Rani Sati Investment and Finance Ltd. v. Union of India & Anr.* ⁵
- vi. *Satyanarayan R. Dubey v. State of Maharashtra* ⁶
- vii. *Patel Engineering Ltd. v. Union of India* ⁷
- viii. *Union of India v. Prabhu Diwan Lute* ⁸
- ix. *Prakash Ganesh Parab v. State of Goa* ⁹
- x. *JK Paper Limited v. SEBI* ¹⁰
- xi. *Raju v. Inspector General of Police & Ors.* ¹¹

1 (1971) 2 SCC 410

2 1991 SCC OnLine Bom 629

3 (1996) 4 SCC 69

4 1996 SCC OnLine Bom 46

5 2004 SCC OnLine Bom 101

6 2006 SCC OnLine Bom 1227

7 (2012) 11 SC 257

8 2017 SCC OnLine Bom 9468

9 2019 SCC OnLine Bom 1459

10 2020 SCC OnLine Bom 1378

11 2022 SCC OnLine Bom 148

- xii. Rajiv Saxena v. Commissioner of Income Tax*¹²
- xiii. Nirma Industries Ltd. v. SEBI*¹³
- xiv. Roshan Lal Mehra v. Ishwar Dass*,¹⁴
- xv. Liberty Oil Mills v. Union of India* ¹⁵
- xvi. Ramavatar Pareek v. Rajasthan Public Service Commission*¹⁶
- xvii. Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati* ¹⁷

Analysis-

9. Considering the propositions raised by Dr. Chandrachud, two issues arise for our determination. *Firstly*, whether the Order impugned can be termed as an ‘interim order’ requiring observation of only a small degree of natural justice; and *secondly*, whether refusal of an opportunity of personal hearing renders the Order invalid in the facts of the present case.

10. A bare perusal of the order impugned herein indicates the following procedure being followed by the Respondents: -

- i. DDC served a Memorandum to the Petitioner on 7th December 2021 calling upon him to show cause on the charges contained therein,

12 2024 SCC OnLine Bom 2775

13 (2013) 8 SCC 20

14 (1961) SCC Online SC 87

15 (1984) 3 SCC 465

16 (2014) 13 SCC 385

17 (2015) 8 SCC 519

- ii. Written reply dated 13th December 2021 and 4th January 2022 was issued by the Petitioner,
- iii. DDC submitted its finding to the Executive Council on 8th January 2022 recommending interim action to be imposed on the Petitioner,
- iv. Executive Council passed a resolution on 10th January 2022 considering and accepting the recommendation of the DDC,
- v) Order dated 20th January 2022 impugned herein was passed.

11. We have also perused the Constitution of the Respondent No.3-Federation laying down the procedure ensuring discipline amongst the members in the Federation. The relevant Clauses read as thus:

“(Z). DISCIPLINE

1. The Executive Council on the recommendation of the President or Secretary General may suspend any Member on any of the following grounds:

(a) non-observance of the decisions of the Boxing Federation of India;

(b) breach of any provision of these rules and regulations or AIBA Regulations;

(c) unsatisfactory or failure to conduct a State/Board Championship as per LTDP submitted/proposal submitted without any valid reason;

(d) not holding elections, whenever due and non-submission of accounts when requested to do so by the

Boxing Federation of India;

(e) Lack of activities or non-participation in three consecutive Nationals

2. The suspension of a Member will be maintained by simple majority vote of the Executive Committee and would be reported to the General Council however Disaffiliation of a Member will be by 2/3 majority of the members present at the General Council.

3. The Boxing Federation of India shall have in place a Code of Conduct and Disciplinary Code that shall bind all Members, Officials, Boxers and all the organs of the Boxing Federation of India. The AIBA Code of Conduct and the AIBA Disciplinary Code shall form part of the Boxing Federation of India's Code of Conduct and Disciplinary Code.

(Z-A) DISCIPLINARY COMMISSION

1. The Executive Council shall appoint an independent Disciplinary Commission

2. The Disciplinary Commission shall ensure the observance of and adherence to these rules and regulations and bye laws, Code of Conduct and Disciplinary Code of the Boxing Federation of India.

3. Before arriving at its decision, the Disciplinary Commission will follow principles of natural justice, and will accord any person accused of violating any Code, an opportunity to defend him or herself.

4. The Disciplinary Commission shall notwithstanding anything to the contrary contained in the these Rules and Regulations may impose the following sanctions upon Members, Officials, boxers and organs of the Boxing Federation of India;

(a) Cautions;

(b) Warning;

(c) Suspension for specified period of time;

(d) In the event of serious misconduct the commission/Executive Committee may recommend the General Council for expulsion of any member.”

12. Proposition (d) and (e) advanced by Dr Chandrachud, presumes the Order to be an interim order. His argument contemplates operation of clause (Z) whereby the EC has used the powers vested in it, to place a member under suspension on the recommendation of the President or Secretary General *pending an inquiry* by the DDC. However, the Order indicates that a Memorandum of Charge/SCN was issued by the DDC to the Petitioner. Reply was sought by the DDC and given by the Petitioner. DDC submitted its findings and recommendations to the EC and EC passed a resolution placing the Petitioner under suspension till further orders. Thus, the entire Disciplinary procedure set out in (Z-A) and not (Z) has played out. Nothing more remains to be done by any authority. Furthermore, Clause Z-B provides for an appeal to the EC against Orders passed by the DDC, to be addressed to the Secretary-General. Admittedly, the Petitioner has preferred an appeal to the EC under Clause Z-B by depositing the required fee of Rs. 25,000/-. Thus, even all parties concerned have treated the Order as a Final Order and

not an interim order. The EC acted on the recommendation of the DDC and not that of the President or the Secretary General in their individual capacity and cannot be said to have acted in pursuance of Clause (Z). Moreover Clause (Z) merely sets out the grounds on which power is vested in the EC to suspend a member *albeit* on the recommendation of the President or Secretary-General. Such an order may perhaps be construed as an interim order *pending an inquiry* by the DDC. The submissions of Dr. Chandrachud in this regard that the DDC is yet to make its final recommendations to the EC and the Petitioner has chosen not to appear before the DDC are contrary to the statements in the Order itself. The operative part of the Order impugned at (b) and (c) directing the Petitioner to appear before the DDC to enable it to submit a final recommendation are bereft of any meaning as the EC has already acted on the finding and recommendation of DDC. The DDC has already wielded the power vested in it to impose sanction on the Petitioner, post an inquiry and affirmed by the EC and hence we have no reason to treat it as an interim order *pending further inquiry* by DDC.

13. Clause Z-A (3) specifically postulates the DDC to

follow principles of natural justice, and accord any persons accused of violating any Code, an opportunity to defend him or herself, before arriving at its decision. Since we have already held the Order to be a Final Order passed under Clause Z-A, the DDC is bound to afford a personal hearing to the Petitioner before arriving at its finding as mandated by its own constitution. Paragraphs 18-20 in the case of *Liberty Oil Mills (Supra)* relied upon by Dr. Chandrachud has no applicability to the facts in the present case as we have already held the order to be a final order and not pending an inquiry. The sanction of debarring the Petitioner in the present case is *until further orders* and not *pending an inquiry*. The sanction of being debarred from all boxing activities of the Respondent Federation and its allied units is of penal nature and not merely a ‘sanction pending inquiry’ wherein strict observance of the principles of natural justice may be dispensed with having regard to the requirements and facts of a particular case. We thus answer issue no. 1 in the negative.

14. Dr. Chandrachud has placed a plethora of decisions of the apex court and this Court to canvass his other propositions that principles of natural justice do not require a personal hearing

and that if an authority grants an opportunity to a party to make its representation in writing and thereafter passes a reasoned order, it is sufficient compliance with the principles of natural justice. We have carefully combed through the decisions. In the relied upon paragraph 5 of the decision in *Jesus Sales Corporation (Supra)* the apex court has pointed out that under different situations and conditions the requirement of compliance of the principles of natural justice vary. The apex court held that it is in a particular context especially relating to taxation and revenue matters that if the principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. In the present case, the provisions of the constitution of the Federation do not leave much discretion to the DDC. In fact, it specifically provides for affording the accused person an opportunity to defend him/herself. Moreover, since an open-ended sanction to debar the Petitioner from all boxing activities is of penal nature, it necessitates a strict compliance of principles of natural justice, including a personal hearing as sought by the Petitioner.

15. In paragraph 13 of the decision in the case of *Sopan Maruti Thopte (Supra)* this Court in the context of action required to be taken against unauthorized constructions carried out without permission of law held that requirement of natural justice and doctrine of hearing is not extended to every case. Relying upon a decision of the Supreme Court in the matter of *Union of India vs W.N Chadha*,¹⁸ this Court further concluded that the rule of *audi alteram partem* cannot be applied to defeat the ends of justice or to make law lifeless, absurd, stultifying and self-defeating or plainly contrary to the common sense of the situation and this rule may be jettisoned in very exceptional circumstances where compulsive necessity so demands. Thus, once again, the ratio of the court in *Sopan Maruti Thopte (Supra)* is also pertaining to the facts in that case. The settled law in this regard can thus be understood to mean that observance of the principles of natural justice does not give a strait jacket formula that in all cases personal hearing is a *sin qua non* but depends on the facts of each case. In the present case, where the sanction being of penal nature and open-ended giving rise to prejudicial

18 AIR 1993 SC 1082

consequences to the Petitioner, we are of the view that in the fact of this case, a personal hearing ought to have been afforded to the Petitioner.

16. Some of the other decisions cited by Dr. Chandrachud follow the ratio in *Jesus Sales Corporation (Supra)* and reiterate the settled law that requirement of compliance with the principles of natural justice can vary in different situations and conditions and even when opportunity of hearing is required it does not in all circumstances mean a personal hearing. Thus, all the decisions cited are in the context of specific facts of the respective case. There is however no decision cited which specifically lays down that principles of natural justice do not entail a personal hearing in all or any case. In consonance with the settled position of law, we hold that considering the prejudicial consequences of the debarment order passed against the Petitioner, personal hearing ought to have been acceded to by the Respondent before reaching a finding of guilt of the Petitioner. Clause Z-A (3) provides as much and when the constitution specifies a certain thing to be done in a certain manner, it should be done in that manner or not at all. In any case, clause (b) and (c) of the operative order accepts

that the DDC will hear the Petitioner personally though treating the order to be 'interim' and hence obviously there is no prejudice to the Respondents if a personal hearing is given to the Petitioner. We accordingly answer issue No.2 in the affirmative.

17. In view of the aforesaid discussion, we have no hesitation in quashing and setting aside the findings and recommendation of the Dispute & Disciplinary Commission dated 8th January 2022, the Resolution passed by the Executive Council in its meeting dated 10th January 2022 relating to the suspension of the Petitioner and the Order dated 20th January 2020 debarring the Petitioner from any boxing activities in the Respondent No.3 Federation and its allied units and they are accordingly set aside. We make it clear that we have not expressed any opinion on the merits of the allegations against the Petitioner and have limited our determination to the issues framed by us in paragraph no. 8 hereinabove.

18. Needless to state that the Respondents are at liberty to initiate inquiry afresh against the Petitioner against infractions, if any, committed by him and take the same to its logical

conclusion by following the due process of law as prescribed in its Constitution and after observing principles of natural justice, including but not limited to grant of a personal hearing to the Petitioner.

19. Rule is accordingly made absolute. There will be no orders as to costs.

20. All the parties to act on the authenticated copy of this order.

(DR. NEELA GOKHALE, J.) (REVATI MOHITE DERE, J.)

21. After the judgment was pronounced, learned counsel for the Respondent No.3 requests for stay of the order passed today. Considering the findings recorded in the order the request is rejected.

(DR. NEELA GOKHALE, J.) (REVATI MOHITE DERE, J.)