

(2014) 06 SHI CK 0125
High Court of Himachal Pradesh
Case No: CMPMO No. 64 of 2014

Municipal Corporation		APPELLANT
	Vs	
Rattan Sharma		RESPONDENT

Date of Decision: June 24, 2014

Hon'ble Judges: Dharam Chand Chaudhary, J

Bench: Single Bench

Advocate: Hamender Chandel, Advocate for the Appellant; Neeraj Gupta, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Dharam Chand Chaudhary, J.

Challenge herein is to an order passed by learned District Judge-cum-Appellate Authority, Shimla in an appeal u/s 253(2) of Municipal Corporation Act in case No. 39-S/14 of 2013/12, whereby while quashing the order dated 24.3.2012 passed by learned Commissioner, Municipal Corporation Shimla in the proceedings initiated u/s 253 against the respondent, has directed as under:

8. In view of my findings on point No. 1 above appeal is partly allowed and order of learned Commissioner Municipal Corporation is set aside and case is remanded back to learned Commissioner Municipal Corporation for limited purpose only. Cost to the tune of Rs. 3,000/- (Three thousands) is imposed upon appellant as appellant has not filed any reply despite several opportunities granted by Id. Commissioner Municipal Corporation. Learned Commissioner Municipal Corporation will receive the reply of appellant and thereafter learned Commissioner will record the statement of J.E. & A.P. on oath and thereafter Id. Commissioner will give opportunity of cross-examination to appellant. Thereafter Id. Commissioner Municipal Corporation will record the statement of appellant and his witnesses if any on oath and thereafter learned Commissioner will give due opportunity to Municipal Corporation to cross-examine the oral evidence adduced by appellant and thereafter Id. Commissioner will dispose of case expeditiously on day today basis.

2. Respondent Rattan Sharma has constructed a house at Sanjauli within the limits of Municipal Corporation, Shimla. One Ms. Poonam Sharma lodged a complaint against him with the respondent-Corporation that he has raised the construction of "Chajja" in the dimension, as detailed in the show cause notice Annexure P-1 of his house unauthorizedly. On the receipt of the complaint, so made with the respondent-Corporation, he was served with a show cause notice Annexure P-1. He entered appearance on 15.1.2011 and sought time for placing on record drawings along with other relevant papers of the projection/chajja so constructed by him. He, however, failed to do so on the date(s) so fixed next i.e. 30.4.2011, 18.6.2011, 20.7.2011 and 15.10.2011, therefore, when the case was listed before learned Commissioner, Municipal Corporation, Shimla on 24.3.2012, the following order came to be passed:

Case called. Present AP, JE for the MC Shimla & Mr. Rattan Sharma the respondent in person. A notice No. 272 dated 16.12.2010 was issued to the respondent for constructing projection/chajja unauthorizedly measuring 30.05 sq. mtrs. A written complaint has also been received from Mrs. Poonam Sharma in this regard. Several opportunities have been given to the respondent to file reply, but no reply has been filed. The respondent is trying to drag the case on one or other pretext, just to gain time. This sad state of affairs cannot be allowed to be continued. Therefore, the respondent is directed to remove the unauthorized construction as stated above within a period of four weeks, failing which the same shall be removed by the AP Branch at the risk, cost and responsibility of the respondent. The case to come up on 02.06.2012 for monitoring compliance.

3. Aggrieved by the order *ibid*, the respondent preferred an appeal before learned District Judge-cum-Appellate Authority under the Municipal Corporation Act. Learned Appellate Authority on hearing the parties on both sides arrived at a conclusion that due opportunity of being heard has not been given to the respondent and also that he should have been allowed to examine the Junior Engineer and Architect Planner, who have prepared the report regarding unauthorized construction and also resorted to the relevant provisions under the Evidence Act to prove the documents placed on record. With such observations, learned Appellate Authority has quashed the order dated 24.3.2012 and remanded the case to learned Commissioner for fresh disposal in the light of the directions already reproduced in this judgment *supra*.

4. The respondent-Corporation, aggrieved by order Annexure P-4 has questioned the legality and validity thereof in this petition on the grounds *inter-alia* that the Commissioner, Municipal, a quasi judicial authority and the proceedings summary in nature, neither the provisions under the Evidence Act nor those under the CPC are strictly applicable to the proceedings u/s 253 nor is there any requirement to record the evidence in a manner as in the Civil Court and also that the proceedings being summary in nature required to be conducted by learned Commissioner summarily,

of course by adhering to the bare minimum requirement of principles of natural justice.

5. Mr. Hamender Chandel, learned counsel has urged that in the event of the directions issued by learned Appellate Authority are allowed to remain in force, it will not be practically possible to learned Commissioner to have adhered to the same that too by converting itself into a civil Court, which, according to Mr. Chandel, is not contemplated u/s 253 of the Act. Mr. Hamender Chandel, however, is in agreement that due opportunity of being heard in such matter is required to be afforded to both parties by the Commissioner in the discharge of the jurisdiction, quasi judicial in nature vested in him u/s 253 of the Act.

6. Mr. Neeraj Gupta, learned counsel representing the respondent has very fairly submitted that in an proceedings under the section ibid, the interest of justice would met in case the respondent is given an opportunity to file reply and also to place on record the documents in support thereof and also the opportunity of being heard before passing appropriate order.

7. A plain reading of Section 253 of the Municipal Corporation Act makes it crystal clear that the Commissioner may pass any order qua demolition of the construction, if any, raised unauthorizedly by serving the person, who allegedly raised unauthorized construction with a notice in the manner as he deemed appropriate and also affording a reasonable opportunity to show cause as to why construction so raised by the said person is not ordered to be demolished. In the case in hand, admittedly the respondent has been served with a show cause notice i.e. Annexure P-1, pointing out therein categorically the construction of projection/chajja, he allegedly raised unauthorizedly and also calling upon the respondent to show cause as to why the same is not demolished. As already taken note of, the respondent entered appearance and sought time on five occasions, however, failed to file reply to the show cause notice and place on record the documents. Learned Commissioner, therefore, proceeded to pass the order with regard to demolition of the projection/chajja constructed by the respondent vide order passed on 24.3.2012. The order so passed, of course is without taking on record the version of the respondent. Although, five opportunities were given to the respondent to file reply, yet without any order issuing a caution that on his failure to file the reply or placing on record the documents, his defence will be struck off and the proceedings decided on the basis of the material available on record. Therefore, the present at the most was a case which should have been remanded to learned Commissioner below for fresh decision after affording opportunity to the respondent to file reply and produce documents in support thereof. I am in agreement with learned counsel that the provisions contained under the CPC and also the Evidence Act are not applicable to the proceedings, quasi judicial in nature. The ends of justice in the instant proceedings would met in case an opportunity to show cause is given and reply and other material, if placed on record is taken into consideration. The support in this

behalf can be drawn from the judgment of the Hon"ble Apex Court in [A.S. Motors Pvt. Ltd. Vs. Union of India \(UOI\) and Others,](#) , which reads as under:

8. Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the Courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognized that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the Tribunal and the rules and regulations under which it functions. A Court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are a legion. We may refer to only some of the decisions on the subject which should in our opinion suffice.

9. In [Suresh Koshy George Vs. University of Kerala and Others,](#) , this Court while examining the content and the sweep of the rules approved the view expressed in Russel v. Duke of Norfolk, in the following words:

7. The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.

8. In Russel v. Duke of Norfolk, [1949] 1 All ER 118 D-F, Tucker, L.J., observed:

There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.

10. In [The Keshav Mills Co. Ltd. and Another Vs. Union of India \(UOI\) and Others,](#) this Court extracted with approval the observations of Lord Reid in Ridge v. Baldwin and said:

8. ... We do not think it either feasible or even desirable to lay down any fixed or rigorous yard-stick in this manner. The concept of natural justice cannot be put into a straight-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. [See, for instance, the observations of Lord Parker in *H.K. (an infant)*]. It only means that such measure of natural justice should be applied as was described by Lord Reid in *Ridge v. Baldwin* case (*supra*) as "insusceptible of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances". However, even the application of the concept of fair-play requires real flexibility. Everything will depend on the actual facts and circumstances of a case. As Tucker, L.J., observed in *Russell v. Duke of Norfolk*:

The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth.

11. Reference may also be made to [P.D. Agrawal Vs. State Bank of India and Others](#), , where this Court approved the observations made by Mukharji, J. in *Charan Lal Sahu v. Union of India*, in the following words:

30. The principles of natural justice cannot be put in a straitjacket formula. It must be seen in circumstantial flexibility. It has separate facets. It has in recent time also undergone a sea change.

31. In [Ajit Kumar Nag Vs. General Manager \(P.J.\), Indian Oil Corporation Ltd., Haldia and Others](#), a three-Judge Bench of this Court opined: (SCC pp. 785-86, para 44)

44. We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are also conscious of the general principle that pre-decisional hearing is better and should always be preferred to post-decisional hearing. We are further aware that it has been stated that apart from laws of men, laws of God also observe the rule of *audi alteram partem*. It has been stated that the first hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten the forbidden fruit. (See *R. v. University of Cambridge*). But we are also aware that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated: "To do a great right" after all, it is permissible sometimes

"to do a little wrong"." [Per Mukharji, C.J. in [Charan Lal Sahu Vs. Union of India, .](#)] While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. In our opinion, the approach of the court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential".

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39. Decision of this Court in S.L. Jagmohan, whereupon Mr. Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice as noticed hereinbefore, have undergone a sea change. In view of the decisions of this Court in State Bank of Patiala v. S.K. Sharma and Rajendra Singh v. State of M.P. the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle/doctrine of audi alteram partem, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principle. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straitjacket formula. (See Viveka Nand Sethi v. Chairman, J & K Bank Ltd. and State of U.P. v. Neeraj Awasthi, See also Mohd. Sartaj v. State of U.P.)

(emphasis supplied)

12. In Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi & Ors., this Court while reiterating the legal position observed:

22. The omnipresence and the omniscience (sic) of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances.

13. In Maharashtra State Board of Secondary and Higher Secondary Education & Anr. v. Paritosh Bhupeshkumar Sheth & Ors., this Court reiterated the observations made by Matthew, J. in Union of India v. Mohan Lal Kapoor that:

56..... it [was] not expedient to extend the horizons of natural justice involved in the audi alteram partem rule to the twilight zone of mere expectations, however great they might be.

14. We may finally refer to the decision of this Court in *Aligarh Muslim University v. Mansoor Ali Khan*, where this Court with approval quoted the following observations of Sir Willam Wade:

24... .."31.... it is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth.

(emphasis in original)

8. The Commissioner, a quasi judicial authority is not required to sit over the matter and to conduct proceedings like in a case before the Civil Court as the learned Appellate Authority has directed him to do. Therefore, that part of the order, which directs the Commissioner to follow the provisions contained under the Evidence Act in the matter of recording evidence, the examination and cross-examination of the witnesses being not legally sustainable is hereby quashed and set aside. The only direction to the learned Commissioner in the peculiar facts and circumstances of this case would be to afford one more opportunity to the respondent to place on record the reply and documents in support thereof, on a date to be fixed by the Commissioner. After taking on record the reply to the show cause notice and also rejoinder, if any, thereto, the Commissioner shall proceed to hear the matter and decide the same in accordance with law. The parties through learned counsel representing them are directed to appear before learned Commissioner on 17th July, 2014.

9. The impugned order, therefore, shall stand modified accordingly. This petition is disposed of in the aforesaid terms. Pending application(s), if any, shall also stand disposed of.