

(2016) 05 JH CK 0043

JHARKHAND HIGH COURT

Case No: W. P. (C) No. 4797 of 2014

Tarsem Singh

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: May 4, 2016

Acts Referred:

- Bihar Societies Registration Rules, 1965 - Rule 2
- Constitution of India, 1950 - Article 14, 226
- Societies Registration Act, 1860 - Section 23

Citation: (2016) 4 AIRJharR 242 : (2016) 4 JCR 792 : (2016) 3 JLJR 249

Hon'ble Judges: Mr. Aparesh Kumar Singh, J.

Bench: Single Bench

Advocate: M/s. V.P. Singh, Senior Advocate & Rama Kant Tiwari, Advocate, for the Petitioner; Mrs. C.C. Sinha, J.C to A.A.G, for the State; Mr. Rajesh Kumar, Advocate, for the Respondent No. 6; M/s. Anil Kumar Sinha, Senior Advocate & Vandana Singh, Advocate, for th

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. Aparesh Kumar Singh, J.—Heard learned counsel for the parties.

2. The Society, namely, Gurudwara Shree Guru Singh Sabha, Chas, Bokaro was registered under the Society Registration Act, 1860 as such on 15.12.2011 on an application made in the prescribed format under Rule 4 of Bihar Society Registration Rules, 1965 by the order of I.G Registration, Government of Jharkhand. On a complaint made by the present petitioner and some others that the registration has been obtained by practicing fraud and use of forged signatures of certain members, the matter was inquired through Deputy Commissioner, Bokaro vide letter no. 129 dated 21st January, 2012. The Deputy Commissioner, Bokaro through his letter no. 1046 dated 15th March, 2012 confirmed the forgery in signatures found during the

course of inquiry by Executive Magistrate and also recommended for cancellation of registration. The office bearers of Society including President, Secretary and Treasurer were issued show cause through letter no. 229 dated 14th May, 2012 enclosing therewith a copy of inquiry report asking them to explain. In the reply grounds were taken by the President of the Society that proper inquiry has not been done from the relevant records by the Executive Magistrate. The matter was again inquired through Deputy Commissioner, Bokaro vide letter no. 276 dated 27th June, 2012. The second inquiry was conducted through another Executive Magistrate, Mahabir Singh, who again confirmed the forgery committed in the signatures of proposed President, Harbhajan Singh Dosanjh and Treasurer, Raghubir Singh in the application made for registration. This led to cancellation of registration of the Society by the order dated 24th July 2013 bearing Memo no. 957 (Annexure 3 to the writ application) by I.G. Registration. Respondent no.8 preferred an appeal as Secretary of the Society before Member, Board of Revenue against the said cancellation under the relevant provisions of Society Registration Act read with Bihar Amendment. Learned Member, Board of Revenue has by the impugned order Annexure-5 set aside the order of cancellation of registration dated 24th July, 2013 passed by I.G. Registration.

3. Petitioner has assailed the same inter alia on the following grounds:

(i) That petitioner was not impleaded as a party nor any notice was issued upon him though it was on his complaint before I.G, Registration that led to cancellation of registration of Society on the grounds of fraud.

(ii) It is also submitted that Respondent no. 6, who posed himself as the President of the Society while making an application for registration, had challenged the cancellation of registration before this Court in Writ Petition (C) No. 5104 of 2013 and withdrawn the same as recorded in the order dated 16th May, 2014 (Annexure 4).

(iii) The findings in the appellate order amounts to stigma against the petitioner behind his back though he was not noticed or heard in the matter. It is submitted that if the registration of Society itself was found to be vitiated by fraud the I.G. Registration was well within his power to annul the same.

4. Reliance has been placed upon relevant provisions of Sections 21 of The General Clauses Act 1897 and Section 24 of the Bihar and Orissa General Clauses Act. It is submitted that the Society has been functioning since 1973 before its registration in 2011 and petitioner was intimately connected with the affairs of running the Organization/Society as would also be evident from the impugned order itself. Petitioner, therefore, is a person who has a definite locus standi and interest in the matter and any order passed casting stigma upon him should have preceded with an opportunity of hearing. This has been denied by the Appellate Authority, therefore, the order requires interference.

5. Counsel for the State has filed a counter affidavit. The averments made in the counter affidavit have been relied upon to show that the cancellation of the registration of the Society in question was at the behest of the applicant/petitioner and some others. Respondent nos. 6 as well as 7, who posed themselves as the President and Treasurer of the proposed Society, their signatures were found to be forged during inquiry conducted through Deputy Commissioner, Bokaro; Annexure-C dated 15th March, 2012 and Annexure-H dated 14th April, 2013 to the counter affidavit, are relied upon in support of the aforesaid contentions. Learned counsel for the State submits that if cancellation of the society was obtained by virtue of application which contained forged signatures, the I.G. Registration was well within his power to annul the same. It is submitted that copies of the inquiry reports have been duly furnished to the office bearers of the Society along with show cause notice and only after consideration of their reply, the registration was cancelled by the order of I.G Registration Annexure 3 dated 24th July, 2013.

6. The averments made in the counter affidavit on behalf of respondent nos. 1, 3 and 6, Department of Registration and I.G Registration, only go to show that it contains stand of the said respondents. The Respondent/State, in their counter affidavit, have refrained from commenting upon the appellate order passed by the Member, Board of Revenue.

7. Learned Senior Counsel appearing on behalf of respondent no. 8 submits that provisions of Section 23 of Society Registration Act, 1860 only provide for cancellation of registration on the grounds indicated therein, inter alia, if the activities of the Society are found to be subversive of its aims and objects. The I.G Registration has gone beyond his jurisdiction in cancelling the registration on the complaint made by the petitioner of forgery in the signatures of some applicant. Assumingly there were few signatures which did not match the signatures of those applicants, the requirement of Rule 4 is met as signature of 7 persons/applicants were only required along with their details for making an application for registration. If those signatures are excluded from the purview of consideration, then also the application was proper in the eye of law and registration should not have been cancelled. It is further urged that the inquiry conducted through Deputy Commissioner, Bokaro is in violation of principles of natural justice as the respondents were never given an opportunity before the Executive Magistrate who conducted the enquiry. The petitioner has no locus standi to be heard before appellate forum in any case. He does not have any legal interest or right which was being injured to be defended in the appellate proceeding.

8. Reliance has been placed upon the judgments rendered by the Apex Court in the cases of **Ravi Yashwant Bhoir v. District Collector, Raigad and others reported in (2012) 4 SCC 407**, paragraphs 58 to 60; **Poonam v. State of Uttar Pradesh and others reported in (2016) 2 SCC 779** paragraph 17 in support of the aforesaid contention.

9. Learned counsel has also relied upon the judgment rendered by the Apex Court in the case of **Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar & ors. reported in (1999) 8 SCC 16** para 13, to submit that if the exercise of writ of certiorari to quash the appellate order results in revival of an illegal order passed by the I.G. Registration cancelling the registration, then this Court would refrain from exercising its discretionary remedy as it would revive an illegal order. It is further urged that larger perspective requires that the Society in question be allowed to function with its elected officer bearers who were discharging duty and conducting the affairs of the Society in its best interests. The functioning of the Society would get seriously affected if the impugned order is set aside.

10. Counter affidavit has been filed on behalf of respondent no. 6, who was the person posed as the President of the Society at the time of making application and whose signatures were found to be forged during the inquiry conducted through Deputy Commissioner, Bokaro. Counter affidavit on the part of the said respondent has opposed the stand of respondent no. 8, though, later on, a prayer has been made through Interlocutory Application no. 2747 of 2016 to withdraw the said counter affidavit. The same respondent had earlier preferred a writ petition no. 5104 of 2014 against the order of cancellation of registration which was withdrawn on his behalf as per order at Annexure 4 referred to herein above. The respondent no. 6 therefore seems to be taking a shifting stand at every point of time. Reference of his conduct has also been made in the appellate order.

11. In the wake of the observations recorded herein above in respect of respondent no. 6, this Court does not consider it proper to allow him to withdraw the counter affidavit filed on his behalf.

12. I have considered the submissions of the parties and gone through the pleadings on record including the judgments cited. In the entire gamut of facts and chronology of events discussed herein above, it is to be taken note of that the Society in question admittedly has been functioning since 1973 much before 2011 when it obtained a registration under the Society Registrations Act, 1860. There is a sanctity attached to any proceedings and statutory acts done in furtherance of any law enacted by the Legislature. In the instant case, on an inquiry made through Deputy Commissioner, Bokaro on the complaint made by the petitioner and some other persons the I.G. Registration found that the signatures of very person who posed themselves as the proposed President and Treasurer of the Society while making an application for seeking registration were forged. There are two inquiries conducted by Deputy Commissioner, Bokaro through different Executive Magistrates both of which came to the same conclusion. The second inquiry is rather more comprehensive and appears to have been conducted after examination of the available records relating to signatures of those persons. The inquiry report was part of the show cause furnished to the office bearer of the Society including the President, Secretary and Treasurer to reply as to why the registration obtained

by practicing fraud and use of forged signatures be not annulled. The I. G. Registration found that the issuance of registration on the basis of such application was vitiated by practicing fraud and use of forged signatures.

13. Nothing more needs to be observed at this stage as it might prejudice the case of parties before the Learned Member Board of Revenue where the matter is proposed to be remanded. The inquiry reports were furnished along with show cause notice to the officer bearers of the Society before taking any adverse decision on the question of cancellation of registration.

The submission of the learned counsel for respondent no. 8 that petitioner does not have a locus standi to defend himself before the appellate forum as he did not suffer from any legal injury is also not worthy of acceptance. In the first place it was at the instance of the petitioner himself who as per the impugned order itself was the President of the Society from its inception in 1973 till 2010 that these acts of use of forged signatures while making an application for registration were brought to the notice of I.G. Registration. Secondly, reading of the entire impugned appellate order shows that the learned Member, Board of Revenue has rendered specific findings of fact against the petitioner Tarsem Singh and others of having conspired to get the registration of the Society annulled after being removed as the officer bearers of the society. It is therefore apparent that the petitioner on whose instance the entire proceedings relating to cancellation of registration started, was neither made a party by the respondent no. 8 in the appeal nor was noticed by learned Appellate Forum before allowing the appeal and setting aside the order of cancellation of registration passed by I.G. Registration.

14. In that context of the present matter and the facts and circumstances of the case, reliance of the respondent no. 8 on the judgments rendered by Apex Court referred to herein above would not be of any help. The Apex Court in the case of **Poonam v. State of Uttar Pradesh & others reported in (2016) 2 SCC 779** after considering the precedents on the issue relating to the test for determining locus-standi and impleading a party in a proceeding held that no order can be passed behind the back of the person adversely affecting him. Necessity of impleadment of a party is based on principles of natural justice. The Hon"ble Court however held at para 50 that if he or she who holds the post because of the vacancy having arisen is allowed to be impleaded as necessary party or allowed to assail the order where by the earlier post holder or allottee succeeds, it will only usher in the reverse situation an anarchy in law. There is subtle distinction in a case where for example land having vested under any Statue in the State is distributed to different land less persons who upon such delivery of possession and allotment in their favour must be treated as a necessary party as held in the case of **Ram Swarup v. S.N. Maira reported in (1999) 1 SCC 738**. It does not relate to post or position which one holds in a fortuitous circumstance.

The Apex Court have also held that application of principles of natural justice are to be determined in the context and it must depend to a great extent upon the facts and circumstances of that case. In the case of *Poonam v. State of UP.* (supra) the appellant was the allottee of fair price shop falling vacant on cancellation of allotment of the original allottee. In the proceedings initiated by the original allottee assailing his cancellation, the Appellant was allowed to put her stand in the appeal but Apex Court held that she was neither necessary or proper party. Her participation before the Appellate Forum would not confer any legal status on her.

15. In the case of **Radhey Shyam v. State of Uttar Pradesh & Ors. reported in (2011) 5 SCC 553**, the Hon"ble Supreme Court has relied upon the judgment in *Ridge v. Baldwin* rendered by the house of Lords on the universality of the right to a fair hearing whether it concerns the property or tenure of an office or membership of an institution. The relevant extract contained in para 42 is quoted hereunder:

"Para 42: In *Ridge v. Baldwin* Lord Reid emphasised on the universality of the right to a fair hearing whether it concerns the property or tenure of an office or membership of an institution. In *O'Reilly v. Mackman* Lord Diplock said that the right of a man to be given a fair opportunity of hearing, what is alleged against him and of presenting his own case is so fundamental to any civilised legal system that it is to be presumed that Parliament intended that failure to observe the same should render null and void any decision reached in breach of this requirement.

16. The principles of natural justice have a sound jurisprudential basis. Since the function of the judicial and quasi judicial authorities is to secure justice with fairness, these principles provide great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The Hon"ble Supreme Court in the case of **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Gauhati and others reported in (2015) 8 SCC 519** has expatiated on the underlying jurisprudential basis and held that the procedural fairness cannot be a matter of secondary importance in the decision making process. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised.

The principles of natural justice have developed over a period of time and are still in vogue and valid i.e., (i) rule against bias i.e. *nemo debet esse judex in propria sua causa*; and (ii) opportunity of being heard to the party concerned i.e. *audi alteram partem*. To these principles a third principle is added, which is of recent origin. It is the duty to give reasons in support of decision, namely, passing of a " reasoned order". The Apex court traced the genesis of the evolution of the principles of natural justice. Reference has been made to the opinion of the learned authors at para 25 of the report i.e., "each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve the general good in that case". Whenever a complaint is made before a Court that some principle of natural justice has been contravened,

the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The validity of the order has to be decided on the touchstone of prejudice. The ultimate test is always the same viz, test of prejudice or the test of fair hearing. The illuminating opinion of the Apex Court is being quoted hereunder:

Paras : 19 What is the genesis behind this requirement? Why it is necessary that before an adverse action is taken against a person he is to be given notice about the proposed action and be heard in the matter? Why is it treated as inseparable and inextricable part of the doctrine of principles of natural justice?

20. Natural justice is an expression of English Common Law. Natural justice is not a single theory-it is a family of views. In one sense administering justice itself is treated as natural virtue and, therefore, a part of natural justice. It is also called "naturalist" approach to the phrase "natural justice" and is related to "moral naturalism". Moral naturalism captures the essence of commonsense morality-that good and evil, right and wrong, are the real features of the natural world that human reason can comprehend. In this sense, it may comprehend virtue ethics and virtue jurisprudence in relation to justice as all these are attributes of natural justice. We are not addressing ourselves with this connotation of natural justice here.

21. In Common Law, the concept and doctrine of natural justice, particularly which is made applicable in the decision making by judicial and quasi-judicial bodies, has assumed a different connotation. It is developed with this fundamental in mind that those whose duty is to decide, must act judicially. They must deal with the question referred both without bias and they must give (sic an opportunity) to each of the parties to must give (sic an opportunity) to each of the parties to adequately present the case made. It is perceived that the practise of aforesaid attributes in mind only would lead to doing justice. Since these attributes are treated as natural or fundamental, it is known as "natural justice". The principles of natural justice developed over a period of time and which is still in vogue and valid even today are: (i) rule against bias i.e. *nemo debet esse judex in propria sua causa*; and (ii) opportunity of being heard to the party concerned i.e. *audi alteram partem*. These are known as principles of natural justice. To these principles a third principle is added, which of recent origin. It is the duty to give reasons in support of decision, namely, passing of a "reasoned order".

22. Though the aforesaid principles of natural justice are known to have their origin in Common Law, even in India the principle is prevalent from ancient times, which was even invoked in Kautilya's Arthashastra. This Court in *Mohinder Singh Gill v. Chief Election Commr.* explained the Indian origin of these principles in the following words: (SCC pp. 432-33, para 43): (at p. 1853, para 20 of AIR)

"43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life.

It has many colours and shades, many forms and shapes and, save where valid law excludes, it applies when people are affected by acts of authority. It is the bone of healthy Government, recognised from earliest times and not a mystic testament of Judge-made law. Indeed from the legendary days of Adam and of Kautilya's Arthashastra the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these depths for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

24. The principles have a sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide a great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take an administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of Code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision-making that a decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

25. This aspect of procedural fairness, namely, right to a fair hearing, would mandate what is literally known as "hearing the other side". Prof. D.J. Galligan attempts to provide what he calls "a general theory of fair treatment" by exploring what it is that legal rules requiring procedural fairness might seek to achieve. He underlines the importance of arriving at correct decisions, which is not possible without adopting the aforesaid procedural fairness, by emphasising that taking of correct decisions would demonstrate that the system is working well. On the other hand, if mistakes are committed leading to incorrect decisions, it would mean that the system is not working well and the social good is to that extent diminished. The rule of procedure is to see that the law is applied accurately and, as a consequence, that the social good is realised. For taking this view, Galligan took support from Bentham who wrote at length about the need to follow such principles of natural justice in civil and criminal trials and insisted that the said theory developed by Bentham can be transposed to other forms of decision-making as well. This jurisprudence of advancing social good by adhering to the principles of natural justice and arriving at correct decisions is explained by Galligan in the following words:

"On this approach, the value of legal procedures is judged according to their contribution to general social goals. The object is to advance certain social goals, whether through administrative processes, or through the civil or criminal trial. The law and its processes are simply instruments for achieving some social good as

determined from time to time by the law-makers of the society. Each case is an instance in achieving the general goal, and a mistaken decision, whether to the benefit or the detriment of a particular person, is simply a failure to achieve the general good in that case. At this level of understanding, judgments of fairness have no place, for all that matters is whether the social good, as expressed through laws, is effectively achieved."

Galligan also takes the idea of fair treatment to a second level of understanding, namely, pursuit of common good involves the distribution of benefits and burdens, advantages and disadvantages to individuals (or groups). According to him, principles of justice are the subject-matter of fair treatment.

However, that aspect need not be dilated upon.

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Whenever a complaint is made before court that some principle of natural justice has been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.

21. In *Board of Mining Examination v. Ramjee*, the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The courts cannot look at law in the abstract or natural justice as mere artefact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "prejudice". The ultimate test is

always the same viz. the test of prejudice or the test of fair hearing".

(Underline supplied to add emphasis, not part of the original text)

17. In the context of facts and circumstances of the present case, it is to be noted as per the impugned order itself, and that the present petitioner was the President of the unregistered society from 1973 to 2010. It was at his instance that the I.G Registration found use of fraud and forged signature in the registration of the Society granted on 15.12.2011. This led to the cancellation of the registration by the I.G Registration. The Appellate Authority instead of testing the order of cancellation of registration on its own merit and whether the registration itself was obtained by use of forged signature by persons who posed themselves as President and Treasurer of the Society proceeded to trace the inter se rivalry and dispute between persons who held post of office bearer of the Society like the petitioner and others with the appellant, who is a General Secretary of the Society. It came to conclusion that the petitioner Tarsem Singh and others who had been removed as office bearer of the Society have conspired to get its registration annulled by resorting to complaint.

18. In such state of facts and circumstances, can it be said that petitioner did not have any locus to be heard in an appellate proceeding, more so when the conclusion of the appellate authority does not appear to be based on due consideration of the very question relating to use of forged signature for registration of the society but is based upon adverse findings against the person like petitioner being influenced by the previous inter se dispute and rivalry between the parties. The significance of the context cannot be lost sight of. The present matter relates to a Society with laudable socio-religious objectives concerning a community and public at large which is being sought to be governed on the basis of registration under the statutory cover of the Act of 1860, having a legal sanctity attached to it.

19. Having dealt with the grounds urged on, behalf of counsel for the parties on the issue, this Court is of the considered opinion that the impugned order of learned Member, Board of Revenue dated 5th August, 2014 passed in Bokaro Case No. 15/2014 is vitiated on the grounds of violation of principles of natural justice and fair play and having failed to apply its mind to the relevant material factors germane to the issue in controversy. Hence, the impugned order dated 5th August, 2014 passed in Bokaro Case No. 15/2014 by learned Member, Board of Revenue is quashed. The matter is remanded to the learned Member, Board of Revenue to consider it afresh in accordance with law after due notice to the parties. Considering the issues involved, it would be proper that learned Member, Board of Revenue decides the matter expeditiously preferably within a period of 8 weeks from the date of receipt of a copy of this order. Let it be made clear that the discussions made herein above are only for the purposes of testing the legality and correctness of the impugned order passed by the learned Member, Board of Revenue. Any observations made herein above would not prejudice the case of the parties before the learned

Member, Board of Revenue.

It would be open to the Deputy Commissioner, Bokaro to constitute an ad hoc Committee for the purposes of running the society, if required in the interregnum, in the interest of the community and for the reasons that the social activities carried out by it are not affected.

20. Accordingly, the writ petition is allowed in the manner and to the extent indicated herein above.