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# Manish @ Dal Vishwakarma and Another Vs State of Madhya Pradesh and Others

## None

**Court:** Madhya Pradesh High Court

**Date of Decision:** April 9, 2009

**Acts Referred:**
Madhya Pradesh Rajya Suraksha Adhiniyam, 1990 â€" Section 12, 5, 6

**Citation:** (2009) 5 MPHT 305 : (2009) 2 MPLJ 658

**Hon'ble Judges:** Sushma Shrivastava, J; K.K. Lahoti, J

**Bench:** Division Bench

**Final Decision:** Allowed

## Judgement

@JUDGMENTTAG-ORDER

This petition is directed against order dated 15-4-2008 by District Magistrate, Seoni in Criminal Case No. 17/2003 by which the petitioner No. 1

was externed under Sections 5,6 and 12 of the M.P. Rajya Suraksha Adhiniyam, 1990 (hereinafter referred to as "Adhiniyam" for short).

Learned Counsel for petitioners submitted that the Collector, Seoni vide order dated 26-2-2008 called a report in respect of activities of petitioner

No. 1 from Superintendent of Police, Seoni. The aforesaid information was furnished to the District Magistrate, Seoni by the Superintendent of

Police on 27-3-2008 and the Collector, Seoni while passing order (Annexure P-1) took into consideration the aforesaid report in Paras 7 and 8 of

the impugned order. It was submitted that without extending an opportunity to explain the aforesaid circumstances appearing in the report, the

order was passed by which the petitioner No. 1 was externed vide order Annexure P-I for a period of one year. The petitioner preferred an

appeal before the Commissioner, Jabalpur Division, but vide order Annexure P-2 it was dismissed. It was submitted that the order (Annexure P-1)

which has been passed without following the principles of natural justice, may be quashed.

Shri Vinod Mehta, learned Govt. Advocate, produced the record of District Magistrate Seoni and from the perusal of record we find that the

entire record has been produced.

The learned Counsel for petitioners has produced the photocopy of the report of Superintendent of Police as Annexure P-6, in which certain

allegations were made against the petitioner. The District Magistrate, Seoni while considering the case of petitioner under the Adhiniyam in Paras 7

and 8 of the order considered the report of Superintendent of Police dated 27-3-2008.

As the petitioner was not extended any opportunity to explain the allegations in respect of subsequent report dated 27-3-2008 by the

Superintendent of Police and the order (Annexure P-l) of the District Magistrate is based on consideration of such report, such order is not

sustainable under the law. The District Magistrate before passing such an order ought to have extended an opportunity to the petitioner to explain

such report or to submit his explanation in this regard, without which the orders (Annexure P-l and Annexure P-2) cannot be sustained under the

law. Principles of natural justice are to be followed in the case where personal liberty of a person is in jeopardy. The material which was used

against the petitioner while passing an order of externment ought to have been noticed to the petitioner and in case such material was used against

the petitioner without any opportunity to the petitioner to explain it, this by itself is a ground to invalidate the order of externment. Apex Court in

Nawabkhan Abbaskhan Vs. The State of Gujarat, , considering the question held thus:

7. Unfortunately, Counsel overlooked the basic link-up between constitutionality and deviation from the audi alteram partem rule in this jurisdiction

and chose to focus on the familiar subject of natural justice as an independent requirement and the illegality following upon its non-compliance. In

Indian Constitutional Law, natural justice does not exist as an absolute jural value but is humanistically read by Courts into those great rights

enshrined in Para III as the quintessence of reasonableness. We are not unmindful that from Seneca''s Medea, the Magna Carta and Lord Coke to

the constitutional norms of modern nations and the Universal Declaration of Human Rights it is a deeply rooted principle that ""the body of no free

man shall be taken, nor imprisoned, nor disseised, nor outlawed, nor banished nor destroyed in any way"" without opportunity for defence and one

of the first principles of this sense of justice is that you must not permit one side to use means of influencing a decision which means are not known

to the other side.

In view of aforesaid, we find merit in the contention of the petitioners. This writ petition is allowed. The orders (Annexure P-l and Annexure P-2)

are found unsustainable under the law and accordingly quashed with no order as to costs.