

**IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA.**

**CWP No. 449/2007**

**Decided on:29.10.2010**

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**Vinod Kumar.**

**...Petitioner.**

**Versus**

**State of Himachal Pradesh and others. ...Respondents.**

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**Coram:**

**Hon'ble Mr. Justice Rajiv Sharma, Judge.**

**Whether approved for reporting?<sup>1</sup> Yes.**

**For the petitioner : Mr. Ramakant Sharma, Advocate.**

**For the Respondents: Mr. P.M. Negi, Deputy Advocate General  
with Mr. R.P. Singh, Asstt. Advocate General.**

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**Justice Rajiv Sharma, Judge (oral).**

Core issue involved in this petition is: whether the quasi-judicial authority could exercise the power of review without the same being specifically provided for under the statutes/rules and that too without hearing the parties.

2. The mutation, bearing No. 116, was attested on 28.9.1985 whereby proprietary rights were conferred under section 104 (3) of the Himachal Pradesh Tenancy and Land

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<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment? Yes.

Reforms Act, 1972. Respondent No. 2, on the basis of report of the Tehsildar dated 15.2.2005, reviewed the mutation vide Annexure P-6 on 6.7.2005.

3. Mr. Ramakant Sharma has strenuously argued that there is no power of review available to the statutory authorities exercising quasi-judicial functions under Chapter-X of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. He then contended that the parties were not heard before the issuance of office order dated 6.7.2005. According to him, order dated 6.7.2005 (Annexure A-6) is a nullity.

4. Mr. P.M. Negi, learned Deputy Advocate General appearing on behalf of respondents has justified the order dated 6.7.2005.

5. I have heard the learned counsel for the parties and have perused the pleadings carefully.

6. The parties have not been heard before passing of office order dated 6.7.2005. They have suffered civil and evil consequences. It was necessary for respondent No.2 to hear the parties before passing order dated 6.7.2005. In para 8 of the reply, it is admitted by the respondent-State that parties were not called to represent their cases before

ordering the review of mutations. The parties were issued notices only after passing of order dated 6.7.2005. The Court is of the considered view that the parties ought to have been heard prior to passing of order dated 6.7.2005.

7. Their Lordships of the Hon'ble Supreme Court in ***Rajesh Kumar and others versus Dy. CIT and others***, (2007) 2 SCC 181 have held that when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed. Their Lordships have held as under:

**26. Effect of civil consequences arising out of determination of lis under a statute is stated in State of Orissa v. Dr. (Miss) Binapani Dei and Others [AIR 1967 SC 1269: (1967) 2 SCR 625]. It is an authority for the proposition when by reason of an action on the part of a statutory authority, civil or evil consequences ensue, principles of natural justice are required to be followed. In such an event, although no express provision is laid down in this behalf compliance of principles of natural justice would be implicit. In case of denial of principles of natural justice in a statute, the same may also be held ultra vires Article 14 of the Constitution.**

**27. K.J. Shetty, J. in Swadeshi Cotton Mills Company Limited v. Commissioner of Income-Tax and Another [171 ITR 634] succinctly laid down the import of the said provision in the following terms:**

**"The exercise of power to direct special audit depends upon the satisfaction of the Income-tax Officer with the added approval of the Commissioner. But he must be**

satisfied that the accounts of the assessee are of a complex nature, and, in the interests of the Revenue, the accounts should be audited by a special auditor. The special auditor is also an auditor like the company's auditor, but he has to be nominated by the Commissioner and not by the company. The accounts are again to be audited at the cost of the company.

This is the substance of the statutory provisions. The power thereunder cannot, in our opinion, be lightly exercised. The satisfaction of the authorities should not be subjective satisfaction. It should be based on objective assessment regard being had to the nature of the accounts. The nature of the accounts must indeed be of a complex nature. That is the primary requirement for directing a special audit. But the word "complexity" used in Sub-section (2A) is a nebulous word. Its dictionary meaning is:

" The state or quality of being intricate or complex 'or' that is difficult to understand."

However, all that are difficult to understand should not be regarded as complex. What is complex to one may be simple to another. It depends upon one's level of understanding or comprehension. Sometimes, what appears to be complex on the face of it, may not be really so if one tries to understand it carefully. Therefore, special audit should not be directed on a cursory look at the accounts. There should be an honest attempt to understand the accounts of the assessee."

28. We may, however, notice that the learned Judge referred to the guidelines of the Central Board of Direct Taxes and having regard to the facts and circumstances of the case opined that the exercise of the power was not arbitrary.

29. The applicability of the principles of natural justice, on the other hand, has been highlighted in

**Peerless General Finance & Investment Co. Ltd. (supra), West Bengal Co-Op. Bank Ltd (supra) Bata India Limited v. CIT [2002 (257) ITR 622], Joint Commissioner of Income Tax v. I.T.C. Ltd. and Another [239 ITR 921] and Muthootu Mini Kuries v. Deputy Commissioner of Income-Tax and Another [250 ITR 455].**

**30. In Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664], Chinnappa Reddy, J., in his dissenting judgment summarized the legal position in the following terms:**

**"106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by Binapani, Kraipak, Mohinder Singh Gill, Maneka Gandhi etc. etc. They are now considered so fundamental as to be 'implicit in the concept of ordered liberty' and, therefore, implicit in every decision making function, call it judicial, quasi-judicial or administrative. Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced."**

**31. In Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others [1991 Supp (1) SCC 600], Ray, J. opined:**

**"It is now well settled that the 'audi alteram partem' rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally."**

**[See also Basudeo Tiwary v. Sido Kanhu University and Others, (1998) 8 SCC 194 and Upton India Ltd. v. Shammi Bhan, (1998) 6 SCC 538]**

**Some exceptions to the applicability of the principle is stated in Jagdish Swarup's Constitution of India, 2nd Edition, page 289 in the following terms:**

**"Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by the Apex Court in J. Mohapatra and Co. v. State of Orissa. So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion, nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need**

for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi's case."

[See also Haji Abdul Shakoor & Co. v. Union of India and Others, (2002) 9 SCC 760]

33. Exceptions, therefore, are required to be provided for either expressly or by necessary implication."

8. Similarly, their Lordships of the Hon'ble Supreme Court in ***Sahara India (Firm), Lucknow versus Commissioner of Income Tax, Central-I and another***, (2008) 14 SCC 151 have reiterated that where the exercise of power under a statutory provision leads to serious civil consequences and such provision neither expressly provides for, nor does it bar, affording of pre-decision hearing, principles of *audi alteram partem* have to be read in such a provision. Their Lordships have held as under:

18. Recently, in **Canara Bank Vs. V.K. Awasthy**, the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject. Inter alia, observing that the principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights, the Court said :

"Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice

are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil 'liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.

21. In *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.*, explaining as to what is meant by expression 'civil consequence', Krishna Iyer, J., speaking for the majority said:

"'Civil Consequences' undoubtedly cover infraction of not merely property or personal rights but of civil



**liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence." (emphasis supplied)**

**30. As already noted above, the expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non pecuniary damages. Anything which affects a citizen in his civil life comes under its wide umbrella. Accordingly, we reject the argument and hold that since an order under Section 142 (2A) does entail civil consequences, the rule audi alteram partem is required to be observed."**

9. Mr. P.M. Negi has failed to point out any provision under Chapter-X of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 on the basis of which order dated 6.7.2005 could be reviewed.

10. Their Lordships of the Hon'ble Supreme Court in ***Kalabharti Advertising versus Hemant Vimalnath Narichania and others***, JT 2010 (7) SC 382 have held that unless the statutes/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. Their Lordships have held as under:

**"12. It is settled legal proposition that unless the statutes/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review**

**could not be made and the order in review, if passed is ultra vires, illegal and without jurisdiction. (Vide: Patel Chunibhai Dajibha v. Narayanrao Khandero Jambekar and another. [ AIR 1965 SC 1457] and Harbhajan Singh versus Karam Singh and others (AIR 1966 SC 641))”**

11. The matter is also required to be considered from another angle. The mutation was attested on 28.9.1985. The same was reviewed after a period of 19 years. It is settled law by now that even if the mistake is to be rectified, the same should be done as expeditiously as possible. The parties were put in possession on the basis of mutation attested on 28.9.1985 and at this belated stage settled things cannot be permitted to be unsettled.

12. Accordingly, in view of the observations made hereinabove, the petition is allowed. Annexure P-6 dated 6.7.2005 is quashed and set aside. There shall, however, be no order as to costs.

**(Rajiv Sharma),  
Judge**

29.10.2010

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