

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7355 of 2022

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VIRANI ENTERPRISE
Versus
STATE OF GUJARAT
=====

Appearance:

MR PANKAJ S CHAUDHARY(3269) for the Petitioner(s) No. 1
MR KM ANTANI, ASST.GOVERNMENT PLEADER for Respondents No. 1,2
=====

**CORAM:HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

**Date : 04/05/2022
ORAL ORDER**

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

1. Though the matter is listed for admission, by consent of learned advocates appearing for the parties, it is taken up for final disposal, since it lies in a narrow compass.

2. We have heard Shri Pankaj Chaudhary, learned counsel appearing for the petitioner and Shri K.M.Antani, learned Assistant Government Pleader appearing for the respondent State and perused the records.

3. The facts in brief which has led to the filing of this petition can be crystallized as under.

3.1 Second respondent published an advertisement in the daily newspaper 'Divya Bhaskar' on 06.03.2021 inviting tenders to decide service provider agency through outsourcing for the activities to be carried out in 'Jan Seva Centers' under the offices of the District Collector, Surat. Petitioner applied for the same along with seven other agencies and out of the seven bidders, five are qualified and petitioner being lowest bidder, second respondent assigned the contract in favour of petitioner by order dated 23.04.2021 for the period 01.05.2021 to 30.04.2023, subject to further extension on satisfaction of the work. Undisputedly, there are 14 Jan Seva Centers falling within the jurisdiction of the District Collector, Surat, all of which are said to be run by petitioner since 03.06.2021. Petitioner has also appointed various operators at these Jan Seva Centers in consonance with the contract dated 23.04.2021.

3.2 During the subsistence of the said contract, a show cause notice dated 27.10.2021 was issued to the petitioner relating to a false income certificate generated

from Jan Seva Center, Kamrej, which was replied to by petitioner, resulting in order dated 03.12.2021 being passed whereunder the show cause notice came to be disposed of by accepting the clarification offered by the petitioner.

3.3 On 14.03.2022, an order came to be passed by the respondents terminating the services of petitioner by forfeiting the deposit and also blacklisting petitioner vide Annexure-A. Being aggrieved by the same, present application has been filed.

4. It is the contention of Shri Chaudhary, learned counsel appearing for petitioner that impugned order is not preceded by any show cause notice nor personal hearing was offered and the material used against petitioner is on the basis of a complaint lodged on 08.03.2022, the copy of which is also not furnished to petitioner and hence order dated 14.03.2022 being in violation of principles of natural justice, it is liable to be quashed. Hence, he prays for Special Civil Application being allowed.

5. Per contra, Shri K.M.Antani, learned Assistant Government Pleader appearing for the State would support the impugned order by contending that on account of an FIR having been registered against petitioner and the employee of petitioner having indulged in large scale illegal activities in issuing income certificates, the termination order has been passed as per the contract and as such, he would support the impugned order. He would alternatively contend that in the event of this Court were to arrive at a conclusion that there is violation of the principles of natural justice, liberty may be granted to the petitioner to submit his reply by treating the order dated 14.03.2022 as show cause notice and after affording a personal hearing to the petitioner, necessary orders would be passed by the respondent and as such, he prays for suitable orders being passed in this regard on this Special Civil Application.

6. Having heard the learned advocates appearing for the parties and on perusal of the records, we notice that undisputedly the impugned order dated 14.03.2022 is not preceded either by a show cause notice or personal

hearing was offered to petitioner. The principles of natural justice protects a citizen from arbitrary administrative actions whenever his/her right to person or property is jeopardized. One of the objectives of giving a hearing in application of principles of natural justice is to see that any illegal action or decision does not take place. Any wrong order may adversely affect a person and it is essentially for this reason that a reasonable opportunity requires to be granted before passing an administrative order. The principles of *audi alteram partem* is the basic concept of the principles of natural justice. However, if the legislature specifically authorizes an administrative action without hearing, then except in cases of recognized exception, such action would be violative of principles of fair hearing and it has to be read into Articles 14 and 21 of the Constitution of India. The Hon'ble Apex Court in the case of **State of U.P. vs. Vijay Kumar Tripathi**, reported in **1995 Supp. (I) SCC 552** has held that though the rules permit award of censure entry without notice and hearing, yet the principles of natural justice should be read into such rules and no

censure entry can be awarded without any notice and hearing. The principles of *audi alteram partem* is *sine qua non* of every civilized society. Corollary deduced from this rule is *qui aliquid statuerit parte inaudita altera, aequum licet dixerit, haud aequum facerit* (he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right).

7. As has been frequently observed, the benefit of *audi alteram partem* principle was even extended to Adam and Eve, even by God before they were punished for disobeying His command. This signifies that even if the authority already knows everything and the person has nothing more to tell, even then this rule of natural justice is attracted, unless application of this rule would be a mere empty formality. The exception to this rule is the applicability of doctrine of useless formality theory which has been reiterated by the Hon'ble Apex Court in the case of **Aligarh Muslim University and others vs. Mansoor Ali Khan**, reported in **AIR 2000 SC 2783**, vide paragraphs 28, 32 and 34 as under :

“28. On the above facts, the absence of a notice to show cause does not make any difference for the employee has already been told that if his further overstay is for continuing in the job in Libya, it is bound to be refused.

32. Another important aspect of the matter is that no new reason has been projected in the Writ petition of Mr. Khan for his seeking further extension earlier while in Libya. The only reason stated is that he had obtained further extension in job. It is not a case where there is a plea in the Court that there were different grounds or reasons which he could have put in his explanation, if called for, such as ill health etc. Indeed, if the reasons could have been somewhat different, - as may perhaps be disclosed or proved in subsequent writ petition - such as his own failing health, one can understand. But so far as leave for purposes of job continuance in Libya, is concerned, he has been fully put on advance notice that no further extension will be given. It must be held that no prejudice has been caused even though no notice is given under Rule 5(8)(i).

34. Thus, in our view, in the above peculiar circumstances, the only conclusion that can be drawn is that even if Mr. Mansoor Ali Khan had been given notice and he had mentioned this fact of job continuance in Libya as a reason, that would not have made any difference and would not have been treated as a satisfactory explanation under Rule 5(8)(i). Thus, on the admitted or undisputed facts, only one view was possible. The case would fall within the exception noted in S.L.Kapoor's case. We, therefore, hold that no prejudice has been caused to the officer for want of notice under Rule 5(8)(i). We hold against Mr. Mansoor Ali Khan under Point 5.”

8. Keeping the aforesaid authoritative principles enunciated by the Hon'ble Apex Court in mind, when we

turn our attention to the facts on hand in general and particularly the impugned order dated 14.03.2022, it leaves no manner of doubt in us that impugned order smacks of arbitrariness inasmuch as the civil consequences which has flowed from such order has not only resulted in the valuable rights of the petitioner being stifled or being taken away by virtue of petitioner having been blacklisted and the money of petitioner being forfeited under impugned order. Thus, impugned order which is in violation of principles of natural justice cannot be sustained.

9. The Hon'ble Apex Court in the case of **Rajesh Kumar vs. CIT**, reported in **2007 (2) SCC 181**, has held that in any event when civil consequences ensue, there is hardly any distinction between an administrative order and a quasi-judicial order, and principles of natural justice are attracted in both the situations.

10. In the matter of **M/s.Ashoka Smokeless Coal Ind. P. Ltd. and others vs. Union of India and others**, reported in **2007 (2) SCC 640**, the Hon'ble Apex Court

has held that some right which is likely to be affected by any act of the administration, including a legitimate expectation if attracted to the facts of a case would necessarily be held as in violation of principles of natural justice if such action was not preceded by personal hearing or issuance of show cause notice.

11. Thus, from the aforesaid analysis of case-laws, two principles would emerge namely (i) *Nemo in propria causa judex, esse debet* - no one should be made a judge in his own cause or the rule against bias and (ii) *Audi alteram partem* - hear the other party or the rule of fair hearing, or the rule no one should be condemned unheard. In the instant case, the authority which has passed the impugned order has relied upon the complaint dated 08.03.2022 to blacklist the petitioner which notice had been replied by petitioner and reply was also accepted by the authority. Yet, for reasons best known, respondent has reiterated the contents of the said notice in the impugned order and same is used against petitioner while passing the impugned order. In other words, petitioner did not have the opportunity to explain

the circumstances or narrate the sequential facts, so as to stave off the consequences flowing from the proposed action of the respondent. In the absence of any material being available on record and the fair submission made by Shri K.M.Antani, learned Assistant Government Pleader that there was no show cause notice issued and hearing afforded to petitioner before the impugned order came to be passed, we have to necessarily hold that the impugned order has been passed in violation of principles of natural justice.

12. For the reasons aforesaid, we proceed to pass the following

ORDER

- (i) Special Civil Application is allowed.
- (ii) Order dated 14.03.2022 (Annexure-A) is quashed. Same is ordered to be treated as a show cause notice and petitioner shall submit his reply to the same within 10 days from today and the respondent authority shall adjudicate the same by affording a personal hearing to petitioner and

conclude the proceedings expeditiously at any rate within an outer limit of 4 weeks from today.

(iii) It is made clear that quashing of the impugned order would not entitle petitioner to commence or continue with the activities entrusted to him under the office order dated 23.04.2021 and it would be subject to the decision that would be taken by the respondent authority.

(iv) No orders as to costs.

(ARAVIND KUMAR, CJ)

(ASHUTOSH J. SHASTRI, J)

GAURAV J THAKER

THE HIGH COURT
OF GUJARAT

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