1969 KHC 56
Kerala High Court
V. R. Krishna Iyer, J.
IBRAHIM KUNJU v. STATE OF KERALA AND OTHERS
O. P. No. 5325 of 1968
19 February, 1969

Natural Justice - Authority deciding must consider on the merits and not merely act on recommendations of subordinates -- Principles of Natural justice -- Opportunity to explain allegations should be real and non ritualistic, effective and not illusory and must be followed by a fair considerations of explanation offered -- Failure to give reasons ordinarily voids the order -- Cooperative Societies Act, 1952 (T. C.) S.42, S.49, S.50. (Para 2, 6, 7, 8)

1960 KLT 1304; 1963 KLT 1051; 1965 KLT 803; 1969 KLT 96 FB.; 1964 AC 40; AIR 1967 SC 1269; 1723-1 Strange 557; AIR 1963 SC 1430; AIR 1967 SC 1606; Referred to

Natural Justice - Administrative law -- Appeal before Government granting of adjournment is purely discretionary matter and exercise of that discretion cannot be dissected by the Writ Court -- If counsel, engaged by party, without informing his client, requests for an adjournment which is turned down, the dismissal of appeal visits a punishment on the party which may be neither fair nor just -- Cooperative Societies Act, 1952 (TC.) S.50 -- Constitution of India, Art.226. (Para 9)

Shahul Hameed; P. P. Mathew; For Petitioner
Government Pleader; For State
K. Sudhakaran; For 4th Respondent

JUDGMENT

1 This writ petition, which I propose to allow, underscores the need of the administrator to be aware of the new frontiers of natural justice, now more than ever before, since on the one hand a welfare oriented, activist government does, and has necessarily to, exercise powers affecting the civil rights of the citizen in a plurality of ways, and on the other, our democratic Constitution entitles every member of the community, to expect observance, of the rule of law which implies the essential norms of administrative propriety summed up in the expressive, though hackneyed, phrase natural justice.

2 The facts, relevant to explain the issues raised in the present petition, are few. A Cooperative Society whose affairs were committed to the management of a Board, was faring ill and so the Deputy Registrar, after a preliminary probe, submitted a report which revealed several serious irregularities in the functioning of the society. Alerted thus, the Joint Registrar, who has statutory responsibilities of supervisory action, proceeded to supersede the Board under S.42 of the Travancore - Cochin Cooperative Societies Act. In response to his notice (Ext. P1) to the affected party, the Board, an explanation was submitted refuting the charges seriatim (Ext. P2)

which, however, did not satisfy the authority and he therefore passed the order Ext. P3. This order is impugned in the writ petition. It bodily reproduces the irregularities set out in Ext. P1, the 'show cause' notice, and runs on:
"The explanation filed by the President on behalf of the committee to the notice that as first paper above is found to be not at all satisfactory. The explanation on the various points are either false or unreasonable. From the above facts it is clear that the committee of the Society has been, and is. mismanaging the affairs of the Society. Further, I am convinced that the present committee is not functioning properly and that any attempt to set right matters with the present committee, in office, will do no good. The Deputy Registrar of Cooperative Societies, Trivandrum have recommended to supersede the present committee at an early date.
In the circumstances do hereby order under S.49(1) of the T. C. Cooperative Societies Act, 1951 (Act X of 1952) that the committee of the Palose Service Cooperative Society Ltd., No. 792 be super aged for a period of six months from the date of this order." (The mistakes are seen in the exhibits marked).

Although the facts set out in Ext. P1 are controverted in Ext. P2 no further enquiry is seen conducted nor additional material collected and put to the delinquent Board. The 'item by item' consideration of the charges and the indication of the conclusion on each are absent. Nor are any reasons given why the charges are held proved and the explanation unacceptable. The officer merely dismisses the Board's pleas on the various points by four indifferent, indolent and unconvincing words 'either false or unreasonable'. Which are false and why? Which unreasonable and how? Such an unspeaking order is clearly insufficient when we see serious accusations made in Ext. P1 against presumably responsible persons. The graver the charges the greater the circumspection and to act quickly is not to act carelessly. What is more, there is a dark reference to the Deputy Registrar having recommended supersession. Therefore? The authority which decides must consider on the merits and not merely act on recommendations of subordinates; more serious is the violation when it is asserted by the petitioner that a copy of this report has not been furnished to the Board and there is no reference to it in Ext. P1 (show cause notice).

3 Anyway, the aggrieved petitioner appealed to the Government, through advocate, under S.50 of the Act whereupon notice (Ext. P4) was given to the advocate that his appeal had been posted for hearing by the concerned minister on 11-12-1968 at 11 a.m. However, the advocate sent in a written request dated 11-12-1968 (Ext. P6) couched in the following words:
"*Since I am laid up I am unable to appear and argue the appeal. Hence it is prayed that an adjournment be given*."

One of the members of the Society, anxious to save the institution from the harmful grip of the delinquent Board, chose to petition Government to implead and hear him through advocate. This request was allowed, but the appellant's prayer for adjournment was rejected. Eventually, the appeal was dismissed by order dated 16-12-1968 (Ext. P7) which I may usefully read here:

"*This is an appeal petition filed by Shri A. Ebrahim Kunju, President of the Palode Service Cooperative Society Ltd. No. 792 against the orders of the Joint Registrar of Cooperative*

Societies (Credit) No. CR3-55042/67 dated 1-11-1968 superseding the Managing Committee of the Palode Service Cooperative Society Ltd. No. 792 for a period of 6 months and appointing a Rectification Officer for the said period Shri K. Krishnan, a Member of the Society, has filed a petition opposing the appeal petition.

This case was taken up for hearing. Neither the appeal petitioner nor his advocate was present. The advocate for the petitioner has sent a petition requesting for an adjournment. The request is declined. Shri K. Krishnan a member of the Society opposed the appeal petition. His counsel appeared and argued the case on his behalf. His arguments were heard and the records were perused.
It is seen that the committee of the Society was ordered to be superseded by the Joint Registrar of Cooperative Societies in his proceedings dated 1-11-1968 for very grave irregularities detected in the working of the Society including misappropriation from the funds of the Society. Government do not therefore consider it necessary to interfere with the orders passed by the Joint Registrar of Cooperative Societies appealed against. The stay granted in letter No. 82722/C2/68/AD dated 8-11-68 against the implementation of those orders is vacated. The appeal petition is dismissed."

4 This order is attacked by the petitioner on several grounds in the above O. P. Primarily his contention is that Ext. P3 is a nullity, being violative of natural justice and Ext. 7 also is void for similar reasons. So, the contours of this canon require to be clearly delineated to see if there is any contravention.

5 What are the defects urged against Exts. P3 and P7? The Joint Registrar's order (Ext. P3) is bad because (1) it relies on no materials to prove the alleged irregularities, (2) it fails to consider the explanation of the affected party, (3) it relies on a report or recommendation of Deputy Registrar without furnishing a copy thereof to the Board against which it was perhaps used, (4) it fails to give reasons to support the order. Likewise, Ext. P7 is void because (1) it does not advert to the merits of the charges, (2) gives no reasons to uphold the order (3) unjustly and arbitrarily declined an adjournment requested by the advocate, giving no opportunity to the party to engage another advocate. Let me consider the merits of these contentions.

6 I may permit myself a prefatory observation. However irritating to the administrator the application of this expansive doctrine may be, the battle for natural justice in administrative actions has already been fought and won in the Courts of countries where the rule of law is respected so that we may take it as well settled in India also as part of the humanist discipline of the executive authorities who affect rights of citizens by their acts. This obligation has to be tattooed on the administrator's conscience, as it were. If doubts existed on the question they have been dispelled by the rulings in Ridge v. Baldwin (1964 AC 40), State of Orissa v. Dr. (Miss) Binapani Dei (AIR 1967 SC 1269) and Appukuttan Nair v. State of Kerala (1969 KLT 96 FB). The wide observations in Guptan v. State of Kerala (1963 KLT 1051), set out in Para.6 thereof viz., "An important question of administrative law is whether some principles of procedure are not so universal as to apply to all wielding of power, whether judicial or administrative. And the answer that the Courts have given over the years is that even when an

executive body is given the power to decide something in its discretion the courts would still keep it in the leading strings of fair procedure" are not an over statement of the law, in the light of the rulings of the House of Lords, the Supreme Court of India and the Full Bench of the Kerala High Court referred to above. The principles of natural justice are neither new nor limited in their applicability and indeed even God, and certainly therefore civilised man made after his image is bound by it. Fortescue J. in R. v. Chancellor of Cambridge (1723-1 Strange 557) (I quote from Marshal on Natural Justice, pp. 17, 18) observes:
"*The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man upon such an occasion, that even God himself did not pass sentence upon Adam, before he was called upon to make his defence. Adam (says God) where art thou? Hast thou not eaten of the tree, whereof I commanded thee that thou shouldst not eat? And the same question was put to Eve also*."

Of course, opportunity to explain has preceded Exts. P3 and P7; but such opportunity should be real and not ritualistic, effective and not illusory and must be followed by a fair consideration of the explanation offered and the materials available, culminating in an order which discloses reasons for the decision sufficient to show that the mind of the authority has been applied relevantly and rationally and without reliance on facts not furnished to the affected party.

7 Natural justice, I must warn, cannot be perverted into anything unnatural or unjust and cannot therefore be treated as a set of dogmatic prescriptions applicable without reference to the circumstances of the case. The question merely is, in all conscience have you been fair in dealing with that man? If you have been arbitrary, absent minded, unreasonable or unspeaking, you cannot deny that there has been no administrative fair play.

8 Certainly, natural justice operates in the field of administrative action, ordinarily, only when there is a duty to act judicially.

'The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences.. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case." (AIR 1967 SC 1269).

If this be the law, what facets of natural justice have been violated in the present case? The contention that there has been no application of the mind to the explanation submitted by the Board sounds in natural justice, as has been pointed out in Appukutty v. Sales Tax Officer, Kozhikode (1965 KLT 803). Neither Ext. P3 nor Ext. P7 indicates, ex facie, consideration of the materials or the explanation furnished by the Board nor have reasons been given in these two orders as to why the alleged irregularities are held to have been proved. Ext. P7 merely

states that the Joint Registrar has ordered the committee of the Society to be superseded for very grave irregularities and that "Government do not therefore consider it necessary to interfere with the orders passed by the Joint Registrar of Cooperative Societies appealed against." This is an abdication of the appellate power rather than an exercise of it and from the point of view of the appellant it is doing injustice to natural justice. Quasi judicial obligation involves giving of reasons for orders, since justice is not expected to wear the inscrutable face of a sphinx. A Division Bench of the Kerala High Court in Joseph v. Superintendent of Post Offices (1960 KLT 1304) spoke emphatically and at length on this point, as follows: -

"*That apart, there are judicial pronouncements, which insist on administrative orders assigning reasons for the conclusions, and such pronouncements have received legislative recognition. Thus, in the United States S.8(b) of the American Administrative Procedure Act, requires administrative decisions to be accompanied by findings and conclusions, as well as the reasons or basis thereof, upon all the material issues of law or facts presented on the record. Also S.12 of the English Tribunals and Inquiries Act, 1958, requires reasons for such a decision as is mentioned in paragraph (a) or (b) of sub-s.(1) of the section, whether given in pursuance of that sub-section or of any other statutory provision, which reasons shall be taken to form part of the decision and accordingly to be incorporated in the record. It follows that when R.4 requires findings and the grounds thereof to be given by the punishing authority, it is providing for what has become the accepted rule of administrative procedure. Even where there be no express provisions, and administrative authorities be discharging quasi-judicial functions, judicial pronouncements insist on reasons being given for the order. There are a series of such observations in America. Thus, in Wichita Railroad & L. Co., v. Public Utilities Commission, 67 Law Ed. 124 at p. 130, it has been held that a valid order of the commission under the Act, must contain a finding of fact after hearing and investigation, upon which the order is founded and that, for lack of such a finding, the order in the case was void. So the absence of a finding by the requisite officer, in Mahler v. Eby, 68 Law Ed. 549 at p. 550, on the undesirability of residents sought to be deported as undesirable aliens, was held fatal to the validity of the warrant for deportation. In Florida v. United States, 75 Law Ed. 291, it was held that the Interstate Commerce Commission must have appropriate finding upon evidence to be supported. Again, it was held in United States v. Chicago M. St. P. & P. R. Co., 79 Law Ed. 1023 at p. 1032 that the Court must know that a decision means before the duty becomes theirs to say whether it is right or wrong. The English rule we find not to be different; for, Lord Cairns in Overseers of the Poor of Walsall v. London and North Western Railway Co., 1878 (4) AC 30 at p. 40, has observed:*

'But supposing that the Court of Quarter Sessions did not adopt that course, there was still another mode by which any question of law which appeared to the court of Quarter Sessions doubtful, might be left open for the exercise of the judgment of a higher Tribunal. All that was necessary was that the Court of Quarter Sessions, in making its order should not make it unspeaking or unintelligible order, but should, in someway state upon the face of the order, the elements which had led to the decision of the Court of Quarter Sessions. If the Court of Quarter Sessions stated upon the face of the order by way of recital, that facts were so and so, and the grounds of its decision were such as were so stated, then the order became upon the face of it,

a speaking order; and if that which was stated upon the face of the order, in the opinion of any party, was not such as to warrant the order, then that party might go to the Court of Queen's Bench and point to the order as one which told its own story, and ask the Court of Queen's Bench to remove it by certiorari, and when so removed to pass judgment upon it, whether it should or should not be quashed.'

"Speaking order" in the aforesaid observation, has been explained by Lord Goddard, C. J. in Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw, 1951 (1) KB 711 at p. 718, in these words:

"When Lord Cairns, L. C., speaks of an unspeaking or unintelligible order he obviously means an order which gives no reasons, or does not explain in any way why the court made the order but simply states that the court made such and such a conviction, order for removal or for quashing the poor rate, or other order of that sort, giving no reasons for doing so. It may not be unintelligible in one sense, but it is unintelligible in that it does not tell the superior court why the inferior court made that order." In this country, Subba Rao J., has in M. U. M. Services Ltd. v. R. T. Authority, Malabar AIR 1953 Mad. 59, held that order under S.57(7) of the Motor Vehicles Act, requires reasons to be given for issuing a permit and in such a manner that an Appellate Court may in a position to canvass the correctness of the reasons given. In M. Ramayya v. State of Andhra AIR 1956 Andhra 217, it was held that the orders of the tribunals must 'ex facie' disclose the reasons, which operated on them in granting or refusing a permit. It follows that where the order by administrative authorities be quasi judicial, it must be 'speaking order', and absence of reasons in it, would be fatal to its legality. The complaint by the petitioner is that he was suspended in 1952, & had not been allowed to do any work thereafter; that the criminal complaint against him has been found not to be established; that he has been thereafter dismissed for unsatisfactory conduct; but he does not know what that conduct is, and is not, from the record, in a position to exercise properly the right of appeal, which the Rules given him. We feel there is substance in the complaint, for, where one does not know the facts, on which the conclusion against one is drawn, it would be impossible to challenge it or lead rebuttal."

In a different context, but in a manner relevant to our present purpose, the Supreme Court pointed out in a ruling reported In Chandra Deo Singh v. Prokash Chandra Bose (AIR 1963 SC 1430) while dealing with a complaint that reasons were not given by the magistrate while dismissing a complaint under S.203 of the Criminal Procedure Code, as follows:

"It is possible to say that giving of reasons is a prerequisite for making an order of dismissal of a complaint and absence of the reasons would make the order a nullity. .....

The complainant is entitled to know why his complaint has been dismissed with a view to consider an approach to a revisional Court. Being kept in ignorance of the reasons clearly prejudices his right to move the revisional Court. ....."

A later ruling of the Supreme Court in Bhagat Raja v. Union of India (AIR 1967 SC 1606) contains observations very pertinent to our point:

"Let us now examine the question as to whether it was incumbent on the Central Government to give any reasons for its decision on review. It was argued that the very exercise of judicial or quasi judicial powers in the case of a tribunal entailed upon it an obligation to give reasons for arriving at a decision for or against a party. The decisions of tribunals in India are subject

to the supervisory powers of the High Courts under Art.227 of the Constitution and of appellate powers of this Court under Art.136. It goes without saying that both the High Court and this Court are placed under a great disadvantage if no reasons are given and the revision is dismissed curtly by the use of the single word "rejected", or, "dismissed". In such a case, this Court can probably only exercise its appellate jurisdiction satisfactorily by examining the entire records of the case and after giving a hearing come to its conclusion on the merits of the appeal. This will certainly be a very unsatisfactory method of dealing with the appeal. Ordinarily, in a case like this, if the State Government gives sufficient reasons for accepting the application of one party and rejecting that of the others, as it must, and the Central Government adopts the reasoning of the State Government, this Court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But, when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this Court, in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying those reasons which according to it are sufficient to uphold the order of the State Government, this Court, in appeal, may find it difficult to ascertain which are the grounds which weighed with the Central Government in upholding the order of the State Government. In such circumstances, what is known as a 'speaking order' is called for."

It is thus clear that failure to give reasons ordinarily voids the order.

9 Another point has been taken that the refusal of adjournment by the Government without assigning reasons was arbitrary and therefore unjust. Giving reasons for orders is certainly a requirement of natural justice, but this does not mean that every incidental or interlocutory or other similar order must contain elaborate reasons. As I said earlier, that would make the canon of natural justice unnatural and unjust. At the same time, there is force in the contention that the party had no opportunity to engage another advocate and argue his appeal as he had no knowledge that his advocate had not appeared and had only moved for adjournment which eventually was rejected. It may be that the granting of adjournment is a purely discretionary matter and the exercise of that discretion cannot be dissected by the writ Court. But the circumstances of the case must also be borne in mind. If counsel, engaged by a party without informing his client, requests for an adjournment which is turned down, the dismissal of the appeal visits a punishment on the party which may be neither fair nor just. It may, perhaps, be proper in the interests of justice to give the client some time, however short, to engage a counsel. While this wholesome procedure might well have been adopted by the Government in this case, I am not prepared to strike down the order Ext. P7 for that reason alone.

10 A few other points also have been mentioned before me, but counsel for the writ petitioner ultimately said that he did not press his objection on the grounds of natural justice to the validity of Ext. P3. None of the alleged infirmities in Ext. P3, he assures me, he proposes to urge in appeal before the Government if Ext. P7 were to be quashed and a rehearing of the appeal were to be allowed. He undertakes that he will confine himself to the merits of the charges of

irregularities and not to put forward any other contentions before the appellate authority. Nor has he any objection to respondent Krishnan being impleaded or heard in appeal but not behind his back. Of course, if Government proposes to use the report of the Deputy Registrar or any other material not already mentioned in Ext. P1, it is only reasonable that it should be put to the appellant. In this state of things, I am not called upon to quash Ext. P3 order and I do not do so. This relieves me from considering more fully the arguments of counsel for the State and for the 4th respondent to sustain Ext. P3. But, for reasons already stated, I quash Ext. P7 order and direct Government to rehear the appeal de novo. I dare say that the appellant may be allowed to urge his contentions on the merits and will be given an opportunity to meet any additional material Government may seek to rely upon. It will not be a pious hope, I fancy, that the Government will consider the materials on record in a fair manner and give reasons for its conclusions. It is far from me to suggest anything on the merits of the charges but it may not be out of place to record my view that even correct conclusions and orders are upset in Courts, because there has been violation of natural justice or noncompliance with important procedural requirements. This is because of our national creed, in law and in life, that we should reach right ends through right means. I venture to suggest that all administrative officers charged with the duty to pass orders and a fortiori those in the higher echelons of authority, affecting the civil rights of citizens, should be educated in administrative law, particularly in the basic requirements of natural justice. Administrative agencies, intent on doing justice and acting expeditiously and enthusiastically, get tripped unwittingly on account of their ignorance of the nuances or even the minimum needs of natural justice and of the obligations under Art.14 and 19 of the Indian Constitution. The present case, perhaps, is an instance in point. If the average administrative officer had been better informed about his procedural obligations, many an order of his would not have been a casualty on judicial scrutiny and many an unwanted babe in the writ jurisdiction would not have been born! After all, ephemeral victories ultimately do nobody any good!

11 I allow the O. P. to the extent indicated above by striking down Ext. P7 and further direct the State Government to rehear the appeal in accordance with law. Since the matter is of some gravity and urgency I direct Government to dispose of the appeal within three weeks of the receipt of this order. No costs.

Carbon copies of this order would be furnished to all the parties.
