

SURESH CHANDRA NANHORYA

v.

RAJENDRA RAJAK AND ORS.

SEPTEMBER 14, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

*Code of Civil Procedure, 1908—Section 115—Civil Revision Application—High Court passed adverse order against appellant by only hearing the applicant's advocate without issuing any notice to the appellant—Non-issuance of notice before disposal of Civil Revision—Propriety of—Held, improper—It is a clear violation of the principles of natural justice—Administrative Law—Natural justice.*

While disposing of a Civil Revision Application under S.115, CPC, High Court passed adverse order against appellant by only hearing the applicant's advocate without issuing any notice to the appellant. Though Review application was filed specifically pointing out that no notice had been issued before disposal of the Civil Revision, High Court did not consider that aspect and dismissed the review application. Challenge in the present appeal is to the order passed by the High Court in the Civil Revision as well as in the Review Application.

Allowing the appeal, the Court

**HELD: 1.1.** A perusal of the High Court order itself shows that only the applicant's advocate was heard. There is also even no mention that any notice was issued to the appellant and/or it was served. An adjudication adverse to him was done by disposal of Civil Revision without even issuance of notice before such adverse adjudication. It is a clear violation of the principles of natural justice. [179-E]

**1.2.** Natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention

**A of miscarriage of justice. [179-F; 180-B]**

*Cooper v. Wandsworth Board of Works*, (1963) 143 ER 414 and *Mullooh v. Aberdeen*, [1971] 2 All E.R. 1278, referred to.

**B 2. The orders passed by the High Court in the Civil Revision and the Review Application are accordingly set aside and the matter is remitted to the High Court for fresh consideration on merits after due notice to the appellant. [180-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4139 of 2006.

**C From the Judgment and Order dated 23.4.2004 of the High Court of Madhya Pradesh, Bench at Jabalpur in M.C.C. No. 574/2004.**

Rajavenkatappa Naik, Raja Raghvendra Naik. S.K. Tandon and Rameshwar Prasad Goyal for the Appellant.

**D Anoop G. Chaudhari, June Chaudhari, K.K. Mohan, B.S. Banthia and Vikrant Singh for the Respondents.**

The Judgment of the Court was delivered by

**ARIJIT PASAYAT, J.** Leave granted.

**E Challenge in this appeal is to the judgment and order dated 7.2.2003 in Civil Revision No.144/2003 and the order dated 23.4.2004 in (Review Application) Misc. Civil No. 574/2004, passed by a learned Single Judge of Madhya Pradesh High Court at Jabalpur.****F Though various points were urged in support of the appeal, the primary stand was that Civil Revision filed under Section 115 of the Code of Civil Procedure, 1908 (in short the 'CPC') was allowed by the learned Single Judge even without issuing notice to the appellant. On knowing the order passed by learned Single Judge in the Civil Revision, the review application was filed specifically pointing out that no notice had been issued before disposal of the Civil Revision. The High Court rejected the same as noted above.****G Learned counsel for the appellant submitted that in the review petition it was categorically mentioned that without notice the order dated 7.2.2003 was passed. There is no finding recorded that any notice was in fact issued.****H**

Unfortunately, the High Court did not consider this aspect and dismissed the review application. It is also submitted that the revision was not maintainable. A

Learned counsel for the respondent on the other hand submitted that though it may be a fact that notice was not issued before disposal of the Civil Revision yet the orders do not warrant any interference as a right position in law has been noted. B

The order of the High Court reads as follows:

“xxx                      xxx                      xxx

The trial Court has obviously mis-interpreted the provisions in Order VII Rule 11(d) C.P.C. Under this rule the plaint can be rejected where the suit “appears from the statement in the plaint to be barred by any law”. That is riot the situation here. The plaintiff has filed the suit for declaration of title and injunction and that can always be decided by the civil court irrespective of the decision of the revenue court under Section 250 of the M.P. Land Revenue Code, 1959. C D

The revision is allowed.....”.

A perusal of the order itself shows that only the applicant’s advocate was heard. There is also even no mention that any notice was issued to the present appellant and/or it was served. An adjudication adverse to him was done by disposal of Civil Revision without even issuance of notice before such adverse adjudication. It is a clear violation of the principles of natural justice. E

Natural justice is an inseparable ingredient of fairness and reasonableness. It is even said that the principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. F

In the celebrated case of *Cooper v. Wandsworth Board of Works*, (1963) 143 ER 414, the principle was thus stated: G

“Even God did not pass a sentence upon Adam, before he was called upon to make his defence. ‘Adam’, says God, ‘where art thou’ has thou not eaten of the tree whereof I commanded thee that ‘thou should not eat’.” H

A Since then the principle has been chiselled, honed and refined, enriching its content. In *Mullooh v. Aberdeen*, [1971] 2 All E.R. 1278, it was stated:

“the right of a man to be heard in his defence is the most elementary protection.”

B Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

C On that score alone, the appeal deserves to be allowed. The order passed by the learned Single Judge in the Civil Revision and the Review Application are accordingly set aside and the matter is remitted to the High Court for fresh consideration on merits after due notice to the appellant.

The appeal is allowed. No costs.

D B.B.B.

Appeal allowed.