Arignar Anna Weavers Co-Operative ... vs State Of Tamil Nadu And Ors. on 27 January, 1999

Equivalent citations: AIR1999MAD254, AIR 1999 MADRAS 254

ORDER

S.S. Subramani, J.

1. W.P. Nos. 13836, 13837, 13843 and 13 844 of 1998 are filed by the respective Cooperative Society represented by the President seeking to quash the notice issued by the Enquiry Officer under Section 81 (2)(1) of the Tamil Nadu Co-operative Societies Act. The Notice is dated 31-8-1998.

2. Even before the notice was issued, an order of supersession was passed against those Societies as per Order dated 13-6-1998 and confirmed in Appeal dated 20-10-1998. Orders of supersession are challenged in W.P. Nos. 16880 to 16883 of 1998.

3. I will first take into consideration the question whether the order of supersession is valid, for which I need narrate the facts in W.P. No. 16880 of 1998 since the facts are similar in all cases. That Writ Petition was filed by the members of the Board and the Society.

4. Petitioners therein assumed Office on 30-10-1996. A show cause notice was issued on 10-4-1998 under Section 88(1)(a) of the Tamil Nadu Co-operative Societies Act, asking them to explain why the Board shall not be superseded. In that proceeding, reference was made to an Inspection Report dated 23-3-1998 and it was further stated that it was in consequence of the same, they wanted supersession of the Board. Petitioners submitted their explanation on 30-4-1998. In that reply, petitioners wanted a copy of the Inspection Report, which is the only basis for issuing the show cause notice. It is the grievance of the petitioners that copy of the Inspection Report was not given in spite of demand. But at the same time, based only on that Report, second respondent passed an order superseding the Board. The matter was taken in appeal under Section 152 of the Co-operative Societies Act, without success. The same is challenged in these writ petitions, on various grounds.

5. Even though various grounds are taken in the writ petition challenging the orders of supersession and the subsequent confirmation, the only point that was urged by learned Senior Counsel for petitioners was that the impugned Orders cannot be sustained since they have been passed in violation of the principles of natural justice. The argument was that the only basis for passing the order of supersession of the Board is the Report of the Inspection Committee. But the details of the same have not been communicated to the petitioners and, therefore, they could not successfully defend themselves or submit their explanation effectively, to the second respondent. It is further said that the Inspection Report is neither a confidential document, nor a privileged document, and the petitioners are, as of right, entitled to a copy of the Report. It was further argued by the learned

Senior Counsel for petitioners that even though the Act does not say that the Report has to be communicated, under the principles of natural justice, petitioners are entitled to have a copy of the same. It was further argued by learned Senior Counsel that without complying with the provisions of Section 82 of the Tamil Nadu Co-operative Societies Act, even show cause notice under Section 88 of the Act cannot be issued.

6. All the allegations in the writ petitions are disputed in the counter-affidavits filed by respondents. Learned Additional Government Pleader submitted that the show cause notice itself gives necessary information about the enquiry and the result of the same. It is further said that the Act also does not say that the petitioners are entitled to a copy of the Report. According to him, the principles of natural justice have been fully complied with, and the explanations submitted by petitioners were fully considered by respondent No. 2. Therefore, the respondents prayed for dismissal of the writ petitions.

7. The only point that requires consideration is, whether the principles of natural justice have been violated and whether the orders impugned in these writ petitions are bad in law.

8. Section 82 of the Tamil Nadu Co-operative Societies Act empowers the Registrar to make an order in writing, for investigation, whenever he considers that the affairs of the society in general require such inspection or investigation. He may also pass such an order to investigate into any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to the society. The Registrar may authorise a person to hold the inspection and investigation. But the same will have to be completed within a period of three months from the date of the order, subject to a further extension of time not exceeding three months. Inspection will have to be completed within a period of six months, at any rate. Sub-section (5) to Section 82 of the Act reads thus:--

> "The Registrar may, by order in writing, direct the registered society or any officer or the society to take such action as may be specified in the order to remedy within such time as may be specified therein the defects, if any, disclosed as a result of the inspection or investigation."

Section 88(1)(a)(i) reads thus :--

> "The Registrar may, if he is of opinion that the Board of any registered society is not functioning properly or wilfully disobeys or wilfully fails to comply with any order or direction issued by the Registrar under this Act or the rules ((ii) (A) and (B) are Omitted) after giving the Board of the registered society or the financing bank, as the case may be, opportunity of making its representations, by order in writing, supersede the Board and appoint a Government servant or an employee of any body corporate owned or controlled by the Government (hereinafter referred to as the special officer) to manage the affairs of the society for a specified period not exceeding one year.

(rest omitted) Rule 104 of the Co-operative Societies Rules deals with the procedure regarding inquiry, inspection or investigation. Sub-rules (6), (7), (8) and (9) of Rule 104 read thus :--

"(6) (a) The Enquiry Officer, or Inspecting Officer or Investigation Officer shall submit his report on the matters on which inquiry is ordered to be held or inspection or investigation is ordered to be made in the Registrar within such time as may be specified by the Registrar but not exceeding ten days from the date of completion of the inquiry or inspection or investigation.

(b) The report shall contain the findings of the Enquiry Officer or Inspecting Officer or Investigating Officer and the reasons therefor supported by documentary or other evidence as recorded or gathered by him during the course of his inquiry or inspection or investigation as the case may be, where the inquiry held or inspection or investigation was made into any specific allegation, he shall state the procedure followed by him, the documentary, oral and other evidence gathered by him and his specific findings.

(c) The Enquiry Officer or Inspecting Officer or Investigating Officer as the case may be, shall, as far as practicable, not include any matter of confidential nature in the main report of the inquiry, inspection or investigation but shall submit such matter or matters in a separate confidential report. Where any matter of confidential nature has to be discussed in the main report, the report may be drafted in such a manner that the matter of confidential nature can either be seggregated or be not communicated except to the party concerned.

(d) The Enquiry Officer or Inspecting Officer or Investigation Officer, as the case may be, shall also specify in his report the costs of the inquiry or inspection or investigation together with his recommendation as to the manner in which the entire cost or part thereof may be apportioned among the parties specified in Sub-section (1) of Section 85 with justification therefor.

(7) The Registrar shall communicate the result of the inquiry or inspection or investigation, in brief, without going into details and without disclosing matters of confidential nature within a period of three months from the date of receipt of the report.

(a) in the case of inquiry, to-

(i) the Government or to any officer appointed by the Government, where the Government have subscribed to the share capital of the society;

(ii) the financing bank to which the society is affiliated;

(iii) to the society concerned;

(iv) to the District Collector in case the inquiry is ordered at his request;

(v) to the federal society concerned;

(b) in the case of inspection or investigation, to-

(i) the society concerned:

(ii) the financing bank to which the society is affiliated;

(iii) the federal society concerned; and

(iv) to the creditor concerned where the inspection or investigation is made on the application of the creditor.

(8) The Enquiry Officer or Inspecting Officer or Investigating Officer shall send a separate report pointing out the lapses on the part of any officer or servant of a society or of the Government responsible for administration or supervision or audit or an officer or servant of any other organisation noticed, if any, during such enquiry, inspection or investigation and suggesting suitable action against him.

(9) (a) The Registrar may ask the society or the Government department or the organisation concerned communicating necessary details, available in the report of inquiry or inspection required for taking action against the officer or servant specified in Sub-rule (8) to take such action within such time not exceeding two months from the date of receipt of communication as may be specified by him.

(b) The society or the Government department or the organisation shall report to the Registrar the action as required under clause (a) within the time specified by the Registrar in the communication and shall send further report to the Registrar till the action required to be taken is completed."

Chapter XVII or the Co-operative Societies Rules deals with miscellaneous provisions. Rule 173 enables any person on payment of fees at the rates specified in Schedule V to obtain certified copies of any document (not being a document privileged under Sections 123, 124, 129 and 131 of the Indian Evidence Act, 1872 (Central Act 1 of 1872) filed in the Registrar's office.

9. I have already extracted the relevant portions of the various Sections and Rules. In this connection, it is better to state that the very legislation was enacted for an orderly development of the co-operative movement in accordance with the co-operative principles such as open membership, democratic management, etc. If this is the purpose of the enactment, and the Board has been duly elected to manage the Society, the democratic management can be removed from the

Office only after fully satisfying the provisions of the Statute. It is to prevent the mismanagement, such actions are taken, and if the management could be prevented by some other action preserving the democratic principles, retaining the management with the elected body, the same will have to be adopted before proceeding to supersede the Board.

10. Why I am stressing on the above point is because, in the instant case, the Board has been superseded only on the basis of an Inspection Report. If some other action could he taken without superseding the Board, that should have been done before taking action under Section 88 of the Act.

11. I have already extracted Section 82(5) of the Act. The said provision empowers the Registrar to direct the registered society or any officer of the society to take remedial measures after disclosing the result of the inspection or investigation. The rule also provides for the same. If remedial measures are taken, and if the defects, if any pointed out by the Inspection Committee are cured, respondents will not be justified in taking action under Section 88 of the Act. In this case, no notice or direction has been given by the respondents under Section 82(5) of the Act. According to me, the supersession of the Board must be done as a last resort, and that is why Section 88(1)(a)(i) empowers the Registrar to supersede the Board if the society wilfully disobeys or fails to comply with the directions. The action of the respondents in initiating proceedings under Section 88 of the Act/is therefore, improper.

12. The further question that arises for consideration is, whether the Order itself is violative of the principles of natural justice. The only reason stated is that the Society is not fuctioning properly. The basis for such an assumption is the Inspection Report. Even in the counter, respondents have no case that the Report or any portion thereof is confidential in nature, nor are the respondents claiming any privilege under Sections 123, 124, 129 and 131 of the Indian Evidence Act. Rule 173 of the Co-operative Societies Rules enables any person to get certified copy of a document filed in the Registrar's Office, on payment of requisite fees. The word used in that Rule is 'person' and not 'a member of society'. Therefore, even a third party is entitled to get copies of a document, subject to payment of the requisite fees. If a third party is entitled to get a certified copy, naturally, a member of the Board, who is an aggrieved person, will be entitled to get a copy of the Report, which is the basis for issuing show-cause notice. Even Rule 104, portions of which I have extracted supra, says that the Registrar is duty bound to communicate the result of the inquiry in brief to the concerned Society. Sub-rule (9) of Rule 104 further says that the Registrar has to communicate necessary details available in the report of inquiry or inspection or investigation required for taking action against the officer or servant. From these provisions, it is clear that there is a duty cast on the respondents to inform the affected person and also the society about the result of the inquiry with the necessary details. If the respondents do not comply with the provisions of Section 82 and the Rules, they cannot initiate action under Section 88 (1) (a) (i) of the Act.

13. The argument of learned Additional Government Pleader is that in the show cause notice itself the result of the inquiry has been given. I do not think that the same will specify the statutory requirement. The result of the enquiry in the show cause notice is only an intimation for taking action under Section 88 of the Act. The petitioners are entitled to challenge validity of the enquiry report verifying the data is given therein, and, for that purpose, they are entitled to have a copy of

the same. Only if the Report is based on acceptable materials, it can be held to be valid, and then only on the basis of such a Report, proceedings under Section 88 of the Act can be had. In the instant case, petitioners have not been given such an opportunity.

14. In this connection, the decision , S. L. Kapoor v. Jagmohan, is relevant for our purpose. In paragraph 16 of the judgment, Their Lordships have said that (at page 145 of AIR):--

> "...In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based if it is furnished in a casual way or for some other purpose. We do not suggest the the opportunity need be a 'double opportunity' that is one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. ..."

In paragraph 24, Their Lordships have further said thus :--

> "The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. Jackson's NATURAL JUSTICE (1980 Edn.) contains a very interesting discussion of the subject. He says :
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> "The distinction between justice being done and being seen to be done has been emphasised in many cases. ....
>
> The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C. J.'s judgment in R. v. Home Secretary, ex. P. Hosenball, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice".

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of injustice or possible injustice. In Altco Ltd. v. Sutherland, Donaldson, J., said that the court, in deciding whether to interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or "to use the time hallowed phrase" that justice should not

only be done but be seen to be done. In R. v. Thames Magistrates' Court, ex. P. Polemis, the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the applicant had no defence to the charge.

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say : "Well, even if the case had been properly conducted, the result would have been the same . That is mixing up doing justice with seeing that justice is done (per Lord Widgery CJ. at page 1375).' In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

15. In Wade & Forsyth -- 'Administrative law' -- 7th Edition (1994), at page 531, the learned Authors have said thus :--

> "A proper hearing must always include a 'fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view'. Lord Denning has added :
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> 'If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.' ...."

16. In De Smith, Woolf and Jowell --Judicial Review of Administrative Action -- 1995 Edition -- in Chapter 9, under the caption 'Duty of adequate disclosure', in paragraphs 18 and 19, it is said thus :--

> "If prejudicial allegations are to be made against a person, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers. In order to protect his interests he must also be enabled to controvert, correct or comment on other evidence or information that may be relevant to the decision; indeed, at least in some circumstances [here will be a duty on the decision maker to disclose information favourable to the applicant, as well as information

> prejudicial to his case. If material is available before the hearing, the right course will usually be to give him advance notification; .....
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> If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. ,, ..."

17. In the decision (M. A. Jackson v. Collector of Customs), which relates to a case under the Customs Act, the Department proceeded under Section 28(1) of the Customs Act alleging short levy of duty. The Department computed the duty on the basis of certain documents, for which no notice was given to the appellant. The question was whether the Department was justified in relying on the documents, copies of which were not furnished to the appellant. In paragraph 8 of the judgment, Their Lordships said thus :--

> "In our view, once it is admitted that the price mentioned in the magazine was not mentioned in the show-cause notice issued to the petitioner, any reliance on the said price mentioned in the magazine by the Customs authorities must be held to be illegal. Further, it is clear that though this point was taken in the grounds of the appeal before the appellate authorities a copy of the magazine was never made available to the petitioner, ..."

For the above reason, the Orders of the Authorities were set aside by the Honourable Supreme Court.

18. In (K. Vijayalakshmi v. Union of India), in para 6, it was held thus (at page 2961 of AIR) :--

> "We are of the view that without going into the factual aspect of the case, the order of the Tribunal as well as the order of the General Manager confirmed by the appellate authority are liable to be set aside on the sole ground that the document based on which the conclusion came to be reached having not been supplied to the appellant, the decision cannot be sustained. The respondent ought to have given to the appellant a copy of the opinion of the Forensic Department based on which the impugned order came to be passed."

The same principle was reiterated in the decision (State of W.B. v. Nuruddin Mallick) wherein the Honourable Supreme Court directed the Authorities to serve a copy of the adverse material to the institution and thereafter pass orders on obtaining explanation regarding the same.

19. In 'Penumbra of Natural Justice' by Tapash Gan Choudhury, (1997 Edition), under the Chapter 'Fair Hearing', in paragraph 10 (at page 100), the learned Author says that the opportunity of being heard must be real and effective. Relevant portion of that paragraph reads thus :--

> "A cardinal factor in the administration of justice is that a party likely to be affected by any decision be allowed to state his case to the utmost. This calls for a fair and

proper opportunity of being heard which means that there must always be a substantial opportunity and a proper latitude to meet everything which is likely to be considered against a party.

LORD GREENE, M.R. viewed that a tribunal or an authority exercising quasi-judicial functions cannot perform its duty unless it gives a person a real and effective opportunity of meeting every relevant allegation which may be made against him. To the same effect was the view also of LEWIS, J., who in delivering the judgment of the King's Bench Division in a case observed that the opportunity to meet a particular piece of evidence must be a real and effective opportunity and merely bringing to the notice of the party that such evidence exists is not enough. Thus, merely to show a letter under seal of secrecy to counsel or the friend of an aggrieved person, who is precluded from seeing it, cannot be said to enable the person effectively to deal with its contents.

In order, therefore, that the right to be heard becomes a real right, it must any with it a right in the accused to know the case which is made against him, the evidence given and the statements made affecting him with the right of having a fair opportunity to correct or contradict them. If that is not done, it infringes the rule that justice must always 'be seen to be done' and becomes contrary to natural justice. It may be cautiously noted that mere lip service done to the principles of natural justice will not fulfill the requirement and the audience allowed in such circumstance will tantamount to nothing."

20. On the basis of these legally settled principles, it has to be held that the petitioners are entitled to have a copy of the Inspection Report, which is the only basis for initiating action under Section 88 of the Act.

21. At this juncture, it is pertinent to point out that learned Additional Government Pleader submitted that the result of the enquiry is initimated in the show-cause notice and that will be sufficient compliance. It was further argued by him that neither the Act nor the Rules framed thereunder provide for communicating copy of the Report itself. This point has already been considered by me in an earlier portion of this Order. So long as the respondents have no ease that the Report is a privileged document, or that it is a confidential one, they are bound to supply a copy of the same. Though the Rule says that the result of the enquiry and the material portion of it is to be communicated, that does not imply that the Report need not be communicated. As held in S. L. Kapoor's case (supra), it is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences. If it entails civil consequences, opportunity of fair hearing will mean, to disclose all materials against the members as well as the Society. Learned Author Tapash Gan Choudhury in his book 'Pemumbra of Natural Justice' (referred to above) has said as follows in Chapter 4 in paragraph 11 :--

> "It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action." This is in line with the thinking of BYLES, J. in Cooper's case, where the learned Judge observed that "although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

It is pertinent to note in this context that the "silence of a statute has no exclusionary effect except where it flows from necessary implication". Wherever Parliament intends a hearing, it is often argued, it says so in the Act and the rules, and inferentially where it has not specificated it is otiose. "There is no such sequatur". The procedural fairness embodying hearing is, therefore, to be implied whenever action is taken affecting the rights of parties unless the language of the statutory instrument leaves no option to the court. In Smt. Indira Nehru Gandhi v. Shri Raj Narain, K.K. Mathew, J. observed that "if a power is given to a body without specifying that the rules of natural justice should be observed in exercising it, the nature of the power would call for its observance."

22. Similar question came for consideration before the Kerala High Court, and, in the decision reported in (1997) 1 Kerala Law Journal 475. (Sudarsanan v. State), a learned Judge of that High Court has held thus :--

> "hi this case as enquiry under Section 66 of the Act was ordered and a report was submitted to the Registrar. But no order under Section 66 (5) of the Act was made as contemplated. On the contrary, consequent on enquiry under Section 66 of the Act a recommentation to supersede the committee was made by the Assistant Registrar. The request of the committee for the copies of the inquiry report was not granted, whereas it is seen that the report is the basis of the impugned order. This clearly vitiates the principles of natural justice. ....."

23. In (1998) I Kerala Law Journal 735 : (1998 Lab IC 2424) (Mukkom Service Co.-op. Bank v. Joint Registrar) also, the case is similar, i.e., the result alone was intimated. While considering the case, learned Judge held thus (at page 2426 of Lab IC) :--

> "If the matter is viewed in another angle also, it can be easily found out that Ext. P-3 is arbitrary. Admittedly, Ext.P-1 is based on the findings contained in the report under Section 66. On the basis of such findings, five conclusions are made by the Joint Registrar in Ext. P-1. Whether there is supporting findings in the report is a matter in issue. The petitioner is only told in Ext. P1 that there are adverse findings against the petitioner in the report. But the report is not disclosed to him. When action is taken on the basis of such findings pointing out the understanding of the findings by the Joint Registrar, it is equally possible for the petitioner to challenge that understanding and to canvass that the findings are in his favour, before any

> action is finalised in terms of Ext.P-1. In such circumstances also, when an action is taken and the Board of Directors is directed to cancel the appointments made by them, they should have been given an opportunity to substantiate that there is no such finding in such report warranting such cancellation, unlike in the proceedings under Section 32 as dealt with in the two decisions cited by the Government Pleader. On that basis also, in order to have a fair opportunity to the petitioner, the petitioner is entitled to get a copy of the report. On this reason also, the challenge against Ext. P-3 shall succeed."

24. The sole material which is the basis for initiating action under Section 88 of the Act is not disclosed to the petitioners. It is admitted in the counter that it is only on the basis of the Report under Section 82 of the Act, action has been taken under Section 88 of the Act. When the petitioners have been denied a copy of the same, it follows that they cannot defend their case properly. Petitioners never waived their right to get the copies. From the very inception, they have been insisting that they should be furnished with a copy of the Report When the same was urged before the Appellate Authority, it held that the show cause notice discloses the result of the Report and that amounts to sufficient compliance of the statutory requirement. In my opinion, this approach of the Appellate Authority is also not proper.

25. This itself is sufficient to set aside the orders impugned in these writ petitions. Apart from this, in the Explanations submitted by them, petitioners have given various reasons why the Board shall not be superseded. Neither the second respondent nor the Appellate Authority has met the explanation and given reasons why the explanation cannot be accepted.

26. In the Order of the second respondent dated 13-6-1998 superseding the Board, it is said thus :--

> (Vernacular matter omitted) The fact that the respondents would not have verified the various accounts or any of the books, is clear from the fact that the second respondent himself has appointed as Enquiry Officer under Section 81 of the Act and the Enquiry Officer issued notice to the petitioners to produce the account books to verify the irregularities. That notice is dated 31-8-1998, which is subsequent to the Order impugned in the writ petitions. It is only to justify the Order already passed under Section 88 of the Act, proceedings under Section 81 of the Act have been initiated. Respondents would not have verified the accounts is further clear from the fact that when the matter was taken before the Magistrate's Court, for seizure of the account books, the same also failed. It was thereafter, the notice dated 31-8-1998 was issued. The Order under Section 88 of the Act is based on no material. Even before this Court, the respondents have not produced the Report under Section 82. For the above reasons, it has to be held that action under Section 88 of the Act is without jurisdiction. As I have held earlier, before proceeding under Section 88 of the Act, respondents have to comply with the statutory requirements under Section 82 (5) of the Act even if it is assumed that there were defects as pointed out in the Report and only thereafter they can proceed under Section 88 of the Act. The proceedings in this case is also violative of the principles of natural justice since copy of the Enquiry

Report has not been furnished to the petitioners. Consequently, Writ Petition Nos. 16880 to 16883 of 1998 are allowed and the impugned Orders are quashed.

27. I have already said that in W.P. Nos. 13836, 13837, 13843 and 13844 of 1998, petitioners have challenged the notice under Section 81 of the Act issued by the Enquiry Officer for production of accounts. Since the action of the respondents is mala fide. I feel that the issuance of such a notice is also not correct. 1 have held earlier that it was without verifying the records, second respondent has passed the order though he has said that the accounts and other records were verified. When the same was disputed, proceedings under Section 81 were initiated. If the respondents had already reported under Section 82 of the Act, I do not think that there is any necessity for any further enquiry under Section 81 of the Act. The impugned notices are, therefore, quashed, and these Writ Petitions are also allowed.

28. In the result, all the writ petitions are allowed, however, without any order as to costs. Connected W.M. Ps. are closed.