M.C. Mehta vs Union Of India And Ors on 27 July, 1999

Equivalent citations: AIR 1999 SUPREME COURT 2583, 1999 (6) SCC 237, 1999 AIR SCW 2754, 1999 (3) COM LJ 371 SC, 1999 (4) SCALE 267, 1999 (4) LRI 140, 1999 (6) ADSC 609, (1999) 5 JT 114 (SC), 1999 (8) SRJ 255, 1999 (5) JT 114, (1999) 3 COMLJ 371, 1999 ADSC 6 609, 1999 (2) UJ (SC) 1254, (1999) 6 SUPREME 265, (1999) 3 RECCIVR 652, (1999) 4 SCALE 267

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Bench: S. Saghir Ahmad, M. Jagannnadha Rao

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           CASE NO.:
Writ Petition (civil)  4677 of 1985

PETITIONER:
M.C. MEHTA

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 27/07/1999

BENCH:
S. SAGHIR AHMAD & M. JAGANNNADHA RAO

JUDGMENT:
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JUDGMENT 1999(3) SCR 1173 RE: INDER MOHAN BENSIWAL RE: BHARAT PETROLEUM CORPORATION LTD.

I.A. No. 481 in I.A. No. 18 in The Judgment was delivered by M. JAGANNADHA RAO, J. :

> M. JAGANNADHA RAO, J. for the The applicant in IA No. 481 is Sri Inder Mohan Bensiwal who is an allottee of a retail outlet dealership for petrol from the Hindustan Petroleum Ltd. (8th respondent) (hereinafter called 'HPCL') under a letter, dated 16.11.1993. IA 481 is filed by him for restoration of the San Martin Marg plot as a dealer of HPCL. The contesting party in the IA 481 is Bharat Petroleum Co. Ltd. and it has filed an independent IA also for quashing the order, dated 10.3.1999 on the ground of violation of principles of natural justice.

2. The facts of the case are as follows : Initially, the HPCL wrote to the Land & Development Officer, Ministry of Urban Development, for allotment of suitable site to the HPCL on 17.11.1993 and 24.1.1994 and an order was passed by the Deputy Land & Development Officer on 7.9.1994 allotting a site described as Site B. But finally by order, dated 10.7.1996, a site at San Martin Marg,

Chanakyapuri, New Delhi, was allotted by the Land & Development Officer to HPCL for the purpose of the petrol station of the applicant

3. But, the order of this court in a public interest case has changed the turn of events. On 28.4.1997, this court passed an order in the public interest litigation relating to maintenance of environment in the Ridge area, for shifting the Bagga Link Road Filling Station (not party before us) who is a dealer with Bharat Petroleum Corporation from the Ridge area. Consequent thereto, the Urban Development Department passed an order on 30.7.97, allotting the plot at San Martin Marg to Bharat Petroleum Corporation. That plot was already allotted to HPCL as stated above. It is an admitted fact that the department did not give any notice to HPCL nor to the applicant before taking away the San Martin plot and allotting it to Bharat Petroleum. To the order of this court, dated 28.4.1997 in the PIL, case, HPCL and the applicant were not parties.

4. However, in a review petition filed by Bagga Link Road Filling Station in IA 185 in IA 18, this court on 7.4.1998, recalled the order, dated 28.4.1997 and allowed the said dealer to continue where he was previously conducting his business at the Ridge area. It was also ordered that the 'alternative space allotted to the filling station (i.e., San Martin Marg) be withdrawn', and it was directed that 'the Land and Development Officer may retain possession of the land which was proposed to be allotted to it (i.e., Bagga Link Filling Station)'. It is the case of Bharat Petroleum Corporation that pursuant to the order of the Government of India, dated 30.7.1997, it was put in possession on 1.9.1997.

5. Soon after the passing of the order of the Supreme Court, dated 7.4.1998, recalling its earlier order, dated 28.4.97, the HPCL wrote to the Land & Development Officer on 20.4.1998 for restoration of status quo ante, namely, for restoration of the San Martin plot to the HPCL so that it could be given back to its dealer, the applicant, as originally contemplated. The applicant also made representation on 18.5.1998 and 26.11.1998. In the meantime, without noticing the latter order of the Supreme Court, the joint Director (New Leases) allotted a site in Dwarka to HPCL on 26.11.98 for allotment to the HPCL in substitution of the plot at San Martin Marg, for being given to the applicant. It was not noticed that Bharat Petroleum Corporation's plot at the Bagga Link Road Filling Station was to be restored to it and consequently; HPCL could get back its plot at San Martin Marg. But after the order of this court, dated 7.4.98 recalling its earlier, order, dated 28.4.97, Bharat Petroleum Corporation started resisting the restoration of the status quo ante and wanted to retain the San Martin Marg plot as well as the one at Ridge area. That has resulted lin the present dispute.

6. The Government realised that once the order of the Supreme Court, dated 28.4.1997 was recalled on 7.4.1998, Bharat Petroleum could not lay any claim to San Martin Marg plot because its dealer, [Bagga] Link [Road] Filling Station, could retain the Ridge area location. Therefore, the Land & Development Officer passed another order on 10.3.1999, restoring the status quo ante before 28.4.1997 and also restoring the original allotment, dated 10.7.1996 to HPCL for the purpose of the business of the applicant, who was HPCL's dealer. This order was reiterated on 18.3.1999. This order was passed unfortunately without notice to Bharat Petroleum Corporation. The Land & Development Officer delivered back possession to HPCL on 24.3.1999. It may also be noted that on 6.4.1999, the alternative site allotted to HPCL at Dwarka on 26.11.1998 was withdrawn because

HPCL was getting back San Martin Marg plot.

7. On the ground that no notice was given to it, when the order, dated 10.3.1999 was passed, Bharat Petroleum Corporation filed CWP No. 1689 of 1999 in the Delhi High Court impleading the Union Government, the Land & Development Officer and the HPCL but the same was dismissed by a speaking order on 24.3.1999 holding that the impugned order, dated 10.3.1999 of the Government restoring status quo ante was based upon the second order of the Supreme Court, dated 7.4.1998 recalling the earlier order, dated 28.4.1997 and that the High Court of Delhi could do nothing to allow Bharat Petroleum to retain San Martin Marg plot. SLP (C) No. 5502 of 1999 filed by the said Bharat Petroleum Corporation was also dismissed by this court on 19-4-1999.

8. Then Bharat Petroleum Corporation filed an IA (unnumbered) on 26.3.1999 in this court for quashing the order, dated 10.3.1999 as having been passed in breach of natural justice. It has also filed an affidavit in IA 481 on 5.5.1999 opposing the applicant's claim for restoration of San Martin Marg plot of the HPCL. This unnumbered IA has been tagged on with IA 481 filed by the applicant, the dealer of HPCL.

9. We have heared learned senior counsel, Sri S. S. Ray, for the Bharat Petroleum Corporation and Sri Gopal Subramanyam, learned senior counsel for the HPCL, and Sri A. Sharan for the applicant (the dealer of HPCL), i.e., Sri Inder Mohan Bensiwal.

10. Learned senior counsel for the Bharat Petroleum Corporation, Sri S. S. Ray, contended that by order, dated 30.7.1997, his clients were allotted the plot at San Martin Marg, and that the said plot could not have been cancelled on 10.3.1999 and allotted on 24.3.1999 to the HPCL in cancellation of the order, dated 30.7.1997 without issuing show cause notice to Bharat Petroleum Corporation. Learned senior counsel also submitted that after his clients were allotted this plot on 30.7.1997 at San Martin Marg, HPCL was given a plot at Dwarka on 26.11.1998 in lieu of San Martin Marg plot and that HPCL could not claim the plot at Dwarka as well the plot at San Martin Marg. An order passed in violation of principles of natural justice was void and there was no need to go into any question of prejudice and the court had no discretion to refuse relief. The fact that later on Bharat Petroleum Corporation was allowed to retain the plot at the Ridge for the Bagga Filling Station by this court was not relevant while dealing with the question of breach of principles of natural justice.

11. On the other hand, learned senior counsel for the HPCL, Sri Gopal Subramanyam, contended that this was not a fit case where this court should exercise discretion in favour of Bharat Petroleum inasmuch as no de facto prejudice had been shown. In the light of the admitted or indisputable facts, even if fresh opportunity was given, it would not have made any difference to the result because of the following facts : HPCL had an earlier allotment to the plot at San Martin Marg, dated 10.7.1996 and when consequent to order in a PIL case that was withdrawn and allotted on 30.7.97 to Bharat Petroleum Corporation, no notice was given to HPCL or to its dealer, the appellant. Further, the order of the Government, dated 30.7.1997 in favour of Bharat Petroleum was passed as a consequence of the first order of this court, dated 28.4.1997 in the PIL case and when this court, on 7.4.98, had withdrawn the order, dated 28.4.97, the order, dated 30.7.97 of allotment to Bharat Petroleum would also fall alongwith the order of this court, dated 28.4.97. Bharat Petroleum

Corporation suffered no prejudice because it retained its original allotment of plot at the Ridge. The said corporation could not lay claim for two plots, one at the Ridge and the other at San Martin Marg. Further, learned senior counsel made an alternative submission, namely, that the court had a duty to pass an order in the nature of restitution so that an consequences of its earlier order, dated 28.4.1997 (which was recalled) were set at naught. Learned senior counsel also pointed out that after the impugned order, dated 10.3.1999 was passed restoring San Martin Marg plot to HPCL, possession was also delivered to HPCL on 24.3.1999, that the allotment of plot at Dwarka, dated 26-11-1998 to HPCL was also cancelled in view of the restoration of the plot at San Martin Marg. HPCL could not be a loser of its plot at San Martin Marg and also the one at Dwarka. The IA of the Bharat Petroleum was, therefore, liable to be dismissed and IA 481 of the applicants was to be allowed issuing appropriate directions.

12. On the above submissions, the following points arise for consideration :

> (1) Whether this court, in exercise of powers under Article 32 (or the High Courts, generally, under Article 776), is bound to declare an order of Government passed in breach of principles of natural justice as void or whether the court can refuse to grant relief on the ground that the facts of the case do not justify exercise of discretion to interfere or because de facto prejudice has not been shown ?
>
> (2) Whether the court is not bound under Article 32 (or High Courts under Article 226) to quash an order of Government on ground of breach of natural justice of such an action will result in the restoration of an earlier order of Government which was also passed in breach of natural justice or which was otherwise illegal ?

Points 1 and 2

13. These two points are connected and can be taken up together.

14. From the facts set out above, it is clear that the HPCL had an allotment from the Government on 10.7.1996 of the San Martin Marg plot to be given to its dealer, Sri Inder Mohan Bensiwal, the applicant in IA 481. That-order stood virtually set aside when the Government allotted the same plot on 30.7.1997 to Bharat Petroleum Corporation and this was done without notice to HPCL nor to Inder Mohan Bensiwal. The background of the order, dated 30.7.1997 of the Government was that it was the result of certain directions of this court, dated 28.4.1997 in a public interest case whereby a certain dealer of the Bharat Petroleum near the Ridge area was to vacate that area. That resulted in that dealer being allotted the San Martin Marg plot on 30.7.97 which was earlier allotted to HPCL. Later, this court on 7.4.1998 recalled its order, dated 28-4-1997 in the public interest case. Consequently, the Government has now by order, dated 10.3.1999 given back San Martin Marg plot to HPCL but, no doubt, without notice being given to Bharat Petroleum to whom this plot was allotted on 30.7.1997. In essence, the earlier order, dated 30.7.1997 against HPCL and the impugned order, dated 10.3.1999 against Bharat Petroleum were both without notice to the respective affected parties.

15. It is true that, whenever there is a clear violation of principles of natural justice, the courts can be approached for a declaration that the order is void or for setting aside the same. Here the parties have approached this court because the orders of the department were consequential to orders of this court. Question, however, is whether the court in exercise of its discretion under Article 32 or Article 226 can refuse to exercise discretion on facts or on the ground that no de facto prejudice is established. On the facts of this case, can this court not take into consideration the fact that any such declaration regarding the 10.3.1999 order will restore an earlier order, dated 30.7.1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order, dated 10.3.1999 is set aside as being in breach of natural justice, Bharat Petroleum will be getting two plots rather than one for which it has no right after the passing of the later order of this court, dated 7.4.98 ?

16. Courts are not infrequently faced with a dilemma between breach of the rules of natural justice and the court's discretion to refuse even though rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party.

17. We shall initially refer to two cases where discretion was exercised not to grant relief and the first one was a case where relief was refused even though there was breach of natural justice. The first one is Gadde Venkateswara Rao v. Government of Andhra Pradesh and others 1966 (2) SCR

172. There the Panchayat Samithi, in exercise of its statutory powers passed a resolution on 25.8.1960 to locate a primary health centre at Dharmajigudem. Later, it passed another resolution on 29.5.1961 to locate it at Lingapalem. On a representation by villagers of Dharmajigudem, Government passed orders on 7.3.1962 setting aside the second resolution, dated 29.5.1961 and thereby restoring the earlier resolution, dated 25.8.1960. The result was that the health centre would continue at Dharmajigudem. Before passing the orders, dated 7.3.62, no notice was given to the Panchayat Samithi. This court traced the said order of the Government, dated 7.3.1962 to section 62 of the Act and if that were so, notice to the Samithi under section 62(1) was mandatory. Later, upon a review petition being filed, Government passed another order on 18.4.1963 cancelling its order, dated 7.3.1962 and accepting the shifting of the primary centre to Lingapalem. This was passed without notice to the villagers of Dharmajigudem in the High Court. On appeal by the said villagers to this court, it was held that the later order of the Government, dated 18.4.1963 suffered from two defects : it was issued by Government without prior show cause notice to the villagers or Dharmajigudem and Government had no power of review in respect of Government orders passed under section 62(1). But that there were other facts which disentitled the quashing of the order, dated 18.4.63 even though it was passed in breach of principles of natural justice. This court noticed that the setting aside of the later order, dated 18.4.1963 would restore the earlier order of Government, dated 7.3.62 which was also passed without notice to the affected party, namely, the Panchayat Samithi. It would also result in the setting aside of a valid resolution, dated 29.5.1961 passed by the Panchayat Samithi. This court refused relief and agreed that the High Court was right in not interfering under Article 226 even if there was violation of natural justice. Subba Rao, j., as he then was, observed (page 189) as follows :

> "Both the orders of the Government, namely, the order, dated 7 March, 1962, and that of, dated 18 April, 1963, were not legally passded : the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under section 72 of the Act to review an order made under section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village."

His Lordship concluded as follows :

> " In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government, dated 18 April, 1963 ? If the High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case."

The above case is clear authority for the proposition that it is not always necessary for the court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order, if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law.

18. We would next refer to another case, where, though there was no breach of principles of natural justice, this court held that interference was not necessary, if the result of interference would be the restoration of another order which was not legal. In Mohammad Swalleh and others v. Third Additional District Judge, Meerut, and another 1988 (1) SCC 40, which arose under the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972, the prescribed authority dismissed an application filed by the landlord and this was held clearly to be contrary to the very purpose of section 43(2)(rr) of the Act. The District Court entertained an appeal by the landlord and allowed the landlord's appeal without noticing that such an appeal was not maintainable. The tenant filed a writ petition in the High Court contending that the appeal of the landlord before the District Court was not maintainable. This was a correct plea. But the High Court refused to interfere. On further appeal by the tenant, this court accepted that though no appeal lay to the District Court, the refusal by the High Court to set aside the order of the District Judge was correct as that would have restored the order of the prescribed authority, which was illegal.

19. Learned senior counsel for Bharat Petroleum contended that once natural justice was violated, the court was bound to strike down the orders and there was no discretion to refuse relief and no other prejudice need be proved.

20. It is true that in Ridge v. Baldwin [1964] A.C. 40, it has been held that breach of principles of natural justice is in itself sufficient to grant relief and that no further de facto prejudice need be shown. It is also true that the said principles have been followed by this court in several cases, but

we might point out that this court has not laid down any absolute rule. This is clear from the judgment of Chinnappa Reddy, J., in S. L. Kapoor v. Jagmohan 1980 (4) SCC 379. After stating (page 395) that 'principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed' and that 'non-observance of natural justice is itself prejudice to a man and proof of prejudice independently of proof of denial of natural justice is unnecessary', Chinnappa Reddy, J., also laid down an important qualification (page 395) as follows :

> "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."

21. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the court need not issue a writ merely because there is violation of principles of natural justice.

22. Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases, there is a considerable case law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed. See Malloch v. Aberdeen Corporation [1971] 1 W.L.R. 1578 (per Lord Reid and Lord Wilberforce), Glynn v. Keele University [1971] 1 W.L.R. 87, Cinnamond v. British Airport Authority [1980] 1 W.L.R. 582 and other cases where such a view has been held. The latest addition to this view is R v. Eating Magistrates' Court ex p Fannaran 1996 8 Admn LR 351 (358) (see DeSmith, Suppl., page 89) 1998 where Straughton, Lj, held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in Lloyd v. McMohan [1987] A.C. 625 (862) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand court in McCarthy v. Grant 1959 NZLR 1014, however, goes half way when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood - not certainty - of prejudice'. On the other hand, Garner's Administrative Law, 8th Edition, 1996, pages 271-272, says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin [1960] A.C. 40], Megarry, J., in John v. Rees [1970] Ch. 345, stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J., has said that the 'useless formality theory' is a dangerous one and, however' inconvenient, natural justice must be followed. His Lordship observed that convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality' theory in R v. Chief Constable of the Thames Valley Police Force ex p Cotton 1990 IRLR 344, by giving six reasons. (See also his article 'Should Public Law Remedies be Discretionary ?' 1991 PL 64). A detailed and emphatic criticism of the 'useless formality theory' has been made much (of) earlier in 'Natural justice, Substance or Shadow' by Prof. D. H. Clark of Canada (see 1975 PL, pages 27-63) contending that Malloch [1971] 1 W.L.R. 1578] and Glynn [1971] 1 W.L.R. 87] were

wrongly decided. Foulkes (Administrative Law, 8th Edition, 1996, pages 323), Craig Administrative Law, 3rd Edition, page 596, and others say that the court cannot prejudge what is to be decided by the decision making authority. De Smith, 8th Edition, 1994, paras 10.031 to 10.036, says courts have not yet committed themselves to any one view though discretion is always with the court. Wade Administrative Law, 5th Edition, 1994, pages 526-530, say that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S. K. Sharma 1996 (3) SCC 364, Rajendra Singh v. State of M. P. 1996 (5) SCC 460, that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

23. We do not propose to express any opinion on the correctness or otherwise of the 'useless formality' theory and leave the matter for decision in an appropriate case, inasmuch as, in the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed out by Chinnappa Reddy, J.

24. In our view, on the admitted and indisputable facts set out above, namely, the recall of our earlier order of the court, it becomes mandatory for the court to restore the status quo ante prevailing on the date of its first order. Restitution is a must. Further, Bharat Petroleum having got back its plot at the Ridge, it cannot lay further claim to the one at San Martin Marg which was given to it only in lieu of the Ridge plot. Similarly, HPCL has to get back its plot in San Martin Marg [plot] inasmuch as, otherwise, it will have none and Bharat Petroleum will have two. Bharat Petroleum cannot retain the advantage which it got from an order of this court which has since been withdrawn. Thus, what is permissible and what is possible is a single view and the case on hand comes squarely within the exception laid down by Chinnappa Reddy, J., in S. L. Kapoor v. Jagmohan 1980 (4) SCC 379].

25. For the aforesaid reasons, IA 481 is allowed, and the unnumbered IA of Bharat Petroleum is dismissed. In the circumstances, there will be no order as to costs.