

Deepak Ananda Patil vs The State Of Maharashtra on 4 January, 2023

Bench: Pamidighantam Sri Narasimha, Dhananjaya Y Chandrachud

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos 88-89 of 2023

Deepak Ananda Patil

... Appellant

versus

The State of Maharashtra & Ors

... Respondents

WITH MA Nos 1978-1979 of 2022 in SLP (C) Nos 20001-20002 of 2022 AND SLP (C) Nos 22734-22737 of 2022 JUDGMENT Dr Dhananjaya Y Chandrachud, CJI Civil Appeal Nos 88-89 of 2023

1. Leave granted.
2. These appeals arise from a judgment dated 22 September 2022 of a Single Judge of the High Court of Judicature at Bombay.
3. The ninth respondent, Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Limited, is a cooperative society registered under the Maharashtra Co-operative Societies Act 1960. The society has its own bye-laws and is engaged primarily in the production of sugar. The jurisdiction of the cooperative society extends to 122 villages in seven talukas of District Kolhapur and it has 17,173 cultivator members.
4. Bye-law 17-A prescribes the requirements for being a 'producer member' of the society. The bye-law stipulates that a member should (i) have attained the age of 18 years; (ii) be an occupier of land within the jurisdiction of the society/factory as owner or tenant; and (iii) cultivate sugarcane in a minimum area of 10 gunthas of land.
5. In 2019, complaints were filed by respondents 3 to 8 while invoking the provisions of Section 11 of

the Maharashtra Cooperative Societies Act 1960. The complaints which were addressed to the Registrar, sought the removal of approximately 2000 members on the ground that they did not fulfill the conditions of eligibility.

6. On 3 January 2020, the Regional Joint Director (Sugar) addressed a communication to the cooperative society adverting to the fact that the complainants had alleged that the members whose names were set out in a list of members attached as 'Annexure A' were, as the case may be, not residing in the jurisdiction of the factory; not holding ten gunthas of land; and did not fulfill the requirements of eligibility in terms of the bye-laws. The notice to show cause also adverted to the fact that writ petitions were filed before the High Court of Judicature at Bombay in which an order had been passed on 20 December 2019 directing the Regional Joint Director to conclude the enquiry by 15 February 2020.

7. The cooperative society, upon receipt of the notice from the Regional Joint Director, forwarded a copy to all the members whose eligibility was sought to be disputed. The allegations in the notice to show cause were disputed by at least some of the members. The members disputed the allegation that they were not eligible in terms of the bye-laws and sought an opportunity to produce evidence in support of their eligibility.

8. On 14 February 2020, the Regional Joint Director (Sugar) held that the members whose names were set out in Annexure B to Annexure B-6 were disqualified from being members of the society. The breakup of these members is as follows:

- (i) 59 members did not hold the minimum area of agricultural land within the jurisdiction of the factory;
- (ii) 709 members did not hold agricultural land within the jurisdiction of the factory;
- (iii) 205 members held land on the basis of usufructuary mortgages for which there was no entry in the revenue records;
- (iv) 33 members were dead, requiring the deletion of their names;
- (v) 69 members were found to have been recorded more than once;
- (vi) The shareholding of 2 members stood cancelled; and
- (vii) The factory had consented to the deletion of 338 members.

A total of 1415 members comprised in Annexures B to B-6 to the order were directed to be deleted. 484 members (Annexures A and A-1) were found to meet the conditions of eligibility.

9. An appeal against the order of the Regional Joint Director (Sugar) under Section 152 of the Maharashtra Cooperative Societies Act 1960 was dismissed on 18 February 2021 by the Minister of

Cooperation.

10. This led to the institution of writ petitions before the High Court. The Single Judge rejected the Writ Petitions by the impugned judgment and order dated 22 September 2022. The Single Judge has observed that there was no controversy on factual aspects and dealt with the submission that the Registrar had no jurisdiction under Section 11 to enquire into whether a member stood disqualified after the formation or registration of the cooperative society. The Single Judge held that the expression “for the purpose of the formation or registration or continuance of society” was deleted by way of an amendment to Section

11. Hence, it was held that the power of the Registrar under Section 11 is not restricted to enquiring into the eligibility only at the stage of the formation or registration of the society.

11. We have heard Mr Maninder Singh and Mr Neeraj Kishan Kaul, senior counsel appearing on behalf of the appellants; Dr Abhishek Manu Singhvi, senior counsel appearing on behalf of the original complainants and Mr Tushar Mehta, Solicitor General of India appearing on behalf of the State of Maharashtra. The sugar factory is represented by Mr Siddarth Bhatnagar, senior counsel.

12. The principal submission which has been urged on behalf of the appellants is that there has been no enquiry at all on an individual basis on whether or not the members who were sought to be disqualified fulfilled the condition specified in the bye-laws. In this context, it was submitted that:

(i) One omnibus notice was issued to the cooperative society containing an annexure listing out the members who were sought to be disqualified;

(ii) There was no specific allegation of ineligibility against individual members;

(iii) Confronted with an order of the High Court dated 20 December 2019 requiring the enquiry to be concluded in less than 2 months i.e. by 15 February 2020, the Regional Joint Director pursued the enquiry in haste without considering the individual eligibility of each of the members who were sought to be disqualified;

(iv) Though a Committee was apparently constituted to verify the allegations in the show cause notice, the report of the Committee was not divulged either to the cooperative society or to the members who were sought to be disqualified.

Hence, it was urged that there was a breach of the principles of natural justice. Moreover, it was submitted that the grounds in the appeal before the appellate authority under Section 152 as well as before the High Court in the Writ Petitions would indicate that there were serious objections to the findings of ineligibility on facts. Since the facts have not been enquired into, it was submitted that an order of remand to the Regional Joint Director (Sugar) would be warranted.

13. Dr Abhishek Manu Singhvi, senior counsel appearing on behalf of the original complainants in the enquiry submitted:

(i) No submissions were raised before the High Court in regard to the lack of enquiry into individual eligibility; and

(ii) The only submission which was urged was on the basis of Section

11.

Hence, it was urged that it would not be open to the appellants to assert any other submission and, if they are aggrieved by the order of the High Court, the correct remedy would be in the form of a review.

14. The second limb of the submission of Dr Singhvi is that there are concurrent findings in the order of the Regional Joint Director and the appellate authority on factual aspects which have been affirmed by the dismissal of the writ petition under Article 226 of the Constitution of India. Hence, it was urged that there is no warrant for the interference of this Court.

15. While considering the rival submissions, certain basic facts emerge from the record. An omnibus show cause notice was issued on 3 January 2020 to the cooperative society by the Regional Joint Director (Sugar) acting on the basis of complaints raising a dispute with regard to the eligibility of nearly 2,000 members. The cooperative society forwarded a copy of the show cause notice to each of the members.

16. The Single Judge of the High Court has recorded the submission of the counsel appearing on behalf of the complainants that a Committee was constituted to verify the allegations and that the Committee submitted its report to the Regional Joint Director (Sugar). The report, insofar as it contained findings with regard to the eligibility of individual members, was crucial for the members to set up their defense in regard to the plea of their alleged ineligibility. A copy of the report was not supplied to the individual members or to the cooperative society.

17. It is a well-established principle of administrative law that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized has been apprised of it and given an opportunity to respond to it. Surveying the precedents extensively, MP Jain & SN Jain's treatise on Principles of Administrative Law¹ notes that:

“If the adjudicatory body is going to rely on any material, evidence or document for its decision against a party, then the same must be brought to his notice and he be given an opportunity to rebut it or comment thereon. It is regarded as a fundamental principle of natural justice that no material ought to be relied on against a party without giving him an opportunity to respond to the same. The right of being heard may be of little value if the individual is kept in the dark as to the evidence against him and is not given an opportunity to deal with it. The right to know the material on which the authority is going to base its decision is an element of the right to defend oneself. If without disclosing any evidence to the party, the authority takes it into its consideration, and decides the matter against the party, then the decision is vitiated

for it amounts to denial of a real and effective opportunity to the party to meet the case against him. The principle can be seen operating in several judicial pronouncements where non-disclosure of materials to the affected party has been held fatal to the validity of the hearing proceedings.

(emphasis supplied)

18. In *T. Takano v Securities and Exchange Board of India* 2, a two judge bench of this court, of which one of us was a part (D.Y. Chandrachud, J.), 1 MP Jain & SN Jain, *Principles of Administrative Law* (LexisNexis, 8th ed.) at 490-91. 2 (2022) 8 SCC 162 discussed the line of cases of this Court on the duty to disclose investigative material. The Court analyzed the ratio in *Natwar Singh v Director of Enforcement* 3, *Krishna Chandra Tandon v Union of India* 4, *Khudiram Das v State of West Bengal* 5, *Union of India v Mohd. Ramzan Khan* 6, *Managing Director, ECIL, Hyderabad v B. Karunaka* 7, *State Bank of Patiala v SK Sharma* 8, *State of Uttar Pradesh v Ramesh Chandra Mangalik* 9, *Kothari Filaments v Commr. Of Customs* 10, and noted that:

“39. The following principles emerge from the above discussion:

(i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and

(ii) An ipse dixit of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.” (emphasis supplied) In the present case, it is undisputed that the Committee’s Report submitted to the Regional Joint Director (Sugar) contained findings with regard to the eligibility of individual members. It was both relied upon and relevant for the purpose of adjudication. It is also undisputed that the Report was not supplied to the individual members or to the cooperative society.

3 (2010) 13 SCC 255 4 AIR 1974 SC 1589 5 (1975) 2 SCC 81 6 (1991) 1 SCC 588 7 (1993) 4 SCC 727 8 (1996) 3 SCC 364 9 (2002) 3 SCC 443 10 (2009) 2 SCC 192

19. On the issue of the impact of such non-disclosure, in *T. Takano*, summarizing the ratio of the Constitution Bench in *B. Karunakar* 11, we noted that:

“A Constitution Bench of this Court in *Karunakar* (supra) held that the non-disclosure of the relevant information is not in itself sufficient to warrant the setting aside of the order of punishment. It was held that in order to set aside the order of punishment, the aggrieved person must be able prove that prejudice has been caused to him due to non-disclosure. To prove prejudice, he must prove that

had the material been disclosed to him the outcome or the punishment would have been different. The test for the extent of disclosure and the corresponding remedy for non-disclosure is dependent on the objective that the disclosure seeks to achieve. Therefore, the impact of non-disclosure on the reliability of the verdict must also be determined vis-à-vis, the overall fairness of the proceeding. While determining the reliability of the verdict and punishment, the court must also look into the possible uses of the undisclosed information for purposes ancillary to the outcome, but that which might have impacted the verdict.” The Committee’s Report dealing directly with the findings on the eligibility of the individuals would have been relevant for any of the individuals to dispute the factual aspects on the basis of which their eligibility was called into question. Furthermore, in the absence of any other specific allegation or grounds of ineligibility being made available to the individuals, it is certain that the non-disclosure of the Report prejudiced them.

11 Supra

20. Further, it emerges from the record that there was a direction by the High Court in the exercise of its writ jurisdiction for the conclusion of the enquiry by 15 February 2020. The notice to show cause specifically referred to the direction in terms of which the Regional Joint Director was to conclude the enquiry within a stipulated time frame. Neither the order of the Regional Joint Director (Sugar) nor the order of the appellate authority has dealt with the facts pertaining to the eligibility of each of the members. The findings of the Regional Joint Director are summarized in the Annexure to the order of which Annexures B to B-6 have been summarized in the earlier part of this judgment. There has been no consideration of the nature of the ineligibility qua each member, the ground of ineligibility or of the documentary material which was produced in support of the claim that the member was ineligible.

21. The submission on behalf of the appellants is that several members were enrolled as members of the society in 1984 and as a result of the action of the Regional Joint Director, they would be made to suffer serious prejudice as a consequence of their losing the membership of the cooperative society. The order under Section 11 has serious consequences for the members. An omnibus order of this nature has been passed by the Regional Joint Director, preceded by a general notice to show cause which was issued to the cooperative society. There has been no application of mind to the grounds of ineligibility which were asserted against each member. The order under Section 11 operates to oust a particular individual from the membership of the society. The principles of natural justice must be observed in relation to each member whose membership is sought to be ousted. There was a clear breach of the principles of natural justice.

22. For the above reasons, it would be appropriate to set aside the impugned order of the High Court and to restore the proceedings to the Regional Joint Director. Though the High Court has proceeded exclusively on the basis of the submission with reference to Section 11, we find from the record that there were serious objections which were raised both in the appeal and before the High Court in the pleadings in regard to the alleged ineligibility of the members. The consequence of ousting such a large group of members from the membership of a cooperative society would result in a serious

miscarriage of justice unless individual facts are considered in each case.

23. We accordingly allow the appeals in the following terms:

a. We set aside (i) the impugned judgment and order of the High Court dated 22 September 2022; (ii) the order of the Regional Joint Director (Sugar) dated 14 February 2020; and (iii) the order in appeal of the Minister of Cooperation dated 18 February 2021; b. The proceedings shall stand restored to the file of the Regional Joint Director (Sugar);

c. Since the members have appeared in these proceedings, no further notice to show cause would be necessary to the members; d. The members who are sought to be proceeded against shall be entitled to a disclosure of the scrutiny report of the Committee as well as of the copy of the complaints and the documents which are annexed thereto. This exercise shall be completed within a period of one month from the date of this order;

e. Thereafter, the members would be at liberty to submit their replies within a period of one month;

f. The Regional Joint Director shall pass fresh orders after furnishing to the members an opportunity of being heard within a period of three months thereafter.

24. The appeals shall stand allowed in the above terms.

25. Pending applications, if any, stand disposed of. MA Nos 1978-1979 of 2022

26. The Interlocutory Applications seeking restoration of Special Leave Petition (C) Nos 20001-20002 of 2022 are allowed.

27. The Special Leave Petitions are restored to file in their original numbers. SLP (C) Nos 20001-20002 and 22734-22737 of 2022

28. In terms of the order passed in Civil Appeal Nos 88-89 of 2023, the Special Leave Petitions are disposed of.

29. Pending applications, if any, stand disposed of accordingly.

.....CJI [Dr Dhananjaya Y Chandrachud]
.....J. [Pamidighantam Sri Narasimha] New Delhi;

January 04, 2023.

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