

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Order reserved on: 30.10.2017****Order passed on: 08.12.2017****WPC No.1402 of 2017**

Ajay Kumar Mishra, aged about 45 years, S/o Shri Dr. U.S. Mishra, Advocate by profession, bearing enrollment No.C.G./153/2001, R/o B-2, Aadarsh Nagar, Durg, Tahsil and District Durg (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, through Principal Secretary, Govt. of Chhattisgarh, Law Department, Secretariat Mahanadi Bhawan, Naya Raipur (CG) 492002
2. Shri Vijay Kumar Hota, Additional Secretary, Govt. of Chhattisgarh, Law Department, Secretariat, Mahanadi Bhawan, Naya Raipur (CG) 492002

---- Respondents

 For Petitioner : Mr.Punit Ruparel, Advocate
 For Respondents : Mr.P.K.Bhaduri, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. The petitioner herein-A.K. Mishra was appointed as Counsellor of the Family Court, Durg by the State of Chhattisgarh on 23.2.2011 (Annexure P/1) in accordance with Section 6 of the Family Courts Act, 1984 (hereinafter called as 'the Act of 1984') and Rule 6 of the Chhattisgarh Family Courts Rules, 2007 (hereinafter called as 'the Rules of 2007') until further orders, thereafter the State Government by the impugned order dated 21.4.2017 (Annexure P/2) revoked the

order of appointment of the petitioner. Feeling aggrieved against the impugned order of termination of his services, this writ petition under Article 226 of the Constitution of India has been filed by the petitioner stating inter-alia that order revoking his appointment on the post of Counsellor of Family Court, Durg is violative of the principles of natural justice, as he has even not been allowed to show-cause before revoking his order of termination, his services were quite satisfactory and there is no reason available with the State Government for revoking his order of appointment. Therefore, the order of revocation is liable to be set aside.

2. The State Government has filed return opposing the averments made in the writ petition stating inter-alia that appointment of Counsellor is to be made after approval of the High Court and termination has been made in terms of Rule 15 of the Rules of 2007 subject to the recommendation of the Judge of the Family Court and no approval or consultation with the High Court is contemplated under the Rules of 2007. It has also been brought on record that the Family Court, Durg by its memo dated 28.1.2017 (Annexure R/2) informed to Registry of this Court that the petitioner's act as Counsellor is not in accordance with the Rules of 2007 and he is obstructing in dispensation of justice. The Judge, Family Court, Durg recommended for termination of the petitioner's appointment as Counsellor. The recommendation was forwarded by the High Court on administrative side to the



Department of Law and Legislative Affairs and the State Government thereafter has terminated the services/appointment of the petitioner.

3. No rejoinder has been filed.
4. Mr.Punit Ruparel, learned counsel appearing for the petitioner, would submit that the act of revoking the petitioner's appointment as Counsellor without affording any reasonable opportunity of defending himself is clearly violative of the principles of natural justice and as such, it is liable to be set aside.
5. Mr.P.K.Bhaduri, learned Government Advocate appearing for the respondents/State, would submit that the petitioner's appointment on the post of Counsellor has been terminated as per Rule 15 of the Rules of 2007 which only contemplates that appointment of Counsellor may be terminated by the State Government before the expiry of his term on the recommendation of the Judge of the Family Court. It nowhere provides for affording a reasonable opportunity of hearing before termination of his services. He would further submit that the petitioner has not questioned the constitutional validity of Rule 15 of the Rules of 2007. Therefore, the State Government is absolutely justified in revoking the petitioner's appointment as Counsellor of the Family Court, Durg.
6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and also gone through the records with utmost circumspection.



7. The question for consideration would be whether the State Government is justified in revoking the petitioner's appointment as Counsellor of the Family Court, Durg in accordance with Rule 15 of the Rules of 2007.

8. Rule 15 of the Rules of 2007 provides as under:-

“15. Termination of appointment of Counsellor.- The appointment of a Counsellor may be terminated by the State Government at any time before the expiry of his term on the recommendation of the Judge of the Family Court.”

9. From perusal of the aforesaid rule, it is quite vivid that the State Government is empowered to terminate the services of Counsellor before the expiry of his term if the recommendation is made by the Judge of the Family Court for his termination. It nowhere provides for providing an opportunity of hearing before termination of his services and the Rules of 2007 are blissfully silent about the procedure to be followed for termination of services of Counsellor appointed in accordance with the said Rules.

10. The principles of natural justice consist principles of two rules. Firstly, no one shall be judge in his own cause and secondly, no decision shall be given against a party without affording him a reasonable opportunity of hearing. The principle-*audi alteram partem* is no one should be condemned unheard or both the sides must be heard before passing any order. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is rendered, but



there are instances where though an authority is vested with the powers to pass orders which affect the liberty or property of an individual, but the statute may not contain a provision for prior hearing. The principle- *audi alteram partem* has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not, if it involves civil consequences.

11. In the matter of **A.K. Kraipak and others Vs. Union of India and others**¹, the Supreme Court has held that rules of natural justice also operate in the areas not covered by any law. These principles thus supplement the law of the land.

12. The view expressed by the Supreme Court in A.K.Kraipak (supra) has been reiterated and reaffirmed in the matter of **The D.F.O., South Kheri and others Vs. Ram Sanehi Singh**².

13. Following the principle of law laid down in **A.K.Kraipak** (supra), the Supreme Court in the matter of **Smt.Maneka Gandhi Vs. Union of India and another**³ has held that 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

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(1969) 2 SCC 262

² 1971 (3) SCC 864

³ AIR 1978 SC 597

authority which has the power to take punitive or damaging action. This principle was laid down by this Court in the **State of Orissa v. Dr.(Miss) Binapani Dei**⁴ in the following words:

“The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitution set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. 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.”

14. In **S.L. Kapoor Vs. Jagmohan and others**⁵ the Supreme Court has held that the old distinction between a judicial act and an administrative act has withered away and now even an administrative order, if involves civil consequences, must comply with the rules of natural justice and further held that everything that affects a citizen in his civil life inflicts a civil consequence.
15. In **State Bank of India and others Vs. K.P. Narayanan Kutty**⁶ the Supreme Court has held that principles of natural justice have to be read into the relevant service rule [R.50(3)(ii), SBI (Supervising Staff) Service Rules

⁴ AIR 1967 SC 1269

⁵ (1980) 4 SCC 379

⁶ (2003) 2 SCC 449

in this case] though there is no express provision for the said regulation.

16. In the light of principles of law laid down by the Supreme Court in the aforesaid judgments (supra), if the facts of the present case are examined, it would appear that the petitioner was validly appointed as Counsellor of the Family Court, Durg by the State Government and merely on the recommendation of the Judge, Family Court, Durg, his services have been terminated as per Rule 15 of the Rules 2007. Termination of the petitioners' services involves civil consequence and thereby he has been deprived of the office of Counsellor of Family Court, Durg which he was validly holding. Even otherwise, termination presupposes misconduct on the part of the petitioner while holding the office. Rule 15 of the Rules of 2007 impliedly obliges the State Government to follow the principle of natural justice and afford an opportunity of hearing before terminating the services of the petitioner as Counsellor, though principles of natural justice are not statutorily incorporated in Rule 15 of the Rules of 2007. The principles of natural justice need not be super-added by statute and it can be read into relevant rules and regulation like Rule 15 of the Rules of 2007.

17. As a fallout and consequence of the above-stated discussion, the impugned order dated 21.4.2017 (Annexure P/2) passed by the State Government revoking the petitioner's order of appointment on the post of Counsellor is



hereby quashed. The petitioner be reinstated on the post of Counsellor at Family Court, Durg forthwith. However, this will not bar the State Government to proceed further in accordance with law.

18. The writ petition is allowed to the extent sketched herein-above leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-



HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No.1402 of 2017****Petitioner**

Ajay Kumar Mishra

Versus**Respondents**

State of Chhattisgarh and another

HEAD-NOTE**(English)**

Service of Counsellor of Family Court cannot be terminated without following the principles of natural justice.

(हिन्दी)

नैसर्गिक न्याय के सिद्धान्तों का पालन किए बिना कुटुम्ब न्यायालय के परामर्शदाता की सेवा पर्यवसित (समाप्त) नहीं की जा सकती।

