Editorial

PARIS TREATY ON GLOBAL WARMING

India's commitment to the treaty in Paris during December last on how to reduce the global warming is a step further to save the humanity. During the summit the treaty was placed before the developed and developing countries as to how to restrict the increase in global temperature at 2^0 Celsius and further restrict it it 1.50. India's support to the treaty should be an eye opener to many countries who have not fulfilled their commitment in reducing the emissions. During the earlier meeting at Copenhagen in Denmark, India exposed rich nations who are responsible for destruction of ecological balance by releasing toxic gas and chemicals and asked them to cut the emission by atleast 40 percent by 2020. The global summit was expected to take serious note on the worsening weather conditions. According to the report the contribution by North America is 25.5 Percent, Europe is 17.2 percent and Asia is 35.5 percent.

Average temperature near earth was steady till the industrial revolution which is now increasing alarmingly due to presence of Carbon dioxide. Ever increasing human population have increasingly altered global environment adding more and more Carbon dioxide to the atmosphere especially by burning of fossil fuels like coal, oil,gas etc.,leading to global warming.

Earth is supporting atmosphere with many gases,primarily oxygen, nitrogen, besides other gases called Green House Gas (GHG) which include ozone and carbon dioxide. Though GHG is contributing only 2 percent of the total gas,carbon dioxide is the prominent contributor to the global warming, that has created a hole in ozone layer a shield that prevents penetration of sun rays directly on earth. According to Prinston University in US, the percentage of oxygen on earth which is vital for all living organisoms. has come down on earth by 0.7 percentage during the last 30 years. Though it is natural, the gravity of the reduction is so high according to them.

During the recent meet at Rwanda, in Africa held on 15th OCTOBER, 2016, India joined nearly 200 countries to seal a legally binding deal that aims to reduce climate damaging GHG, in products such as air conditioners, refrigerator etc. The meet was aimed at to substantially reduce the hydrofluorocarbon (HFCs) that depletes ozone layer. Its global warming potential is thousand times that

of carbon dioxide. This will also help earth to reduce 0.5 degree celsius of warming and endorse Paris climate deal.

It was also agreed earlier that the developed countries will provide $10,000 crores to the developing countries to rehabilitate them from the damage caused due to global warming. India also insisted for transfer of technology in tackling the damage to the developing countries.The agreement will come into force on 1/1/2019 in which India played an exemplary role showing flexibility.

Now the challenge before the country will be how to manage the requirement of fuel for the industrial and economic growth while complying with Paris treaty when they are depending on fossil fuel such as coal, oil, gas etc. As such for, implementing the conditions India requires the support of all the states and the local bodies while utilizing the energy and maintaining the atmosphere. India also requires to make certain modification in their economic and industrial policies to meet the situation. Usage of conventional energies like solar, tidal, wind, hydro power, nuclear and creating greenery are some of the solutions to global warming that also generate oxygen required for all complex forms of life and reduce the level of carbon dioxide. In order to meet the situation the Govt. had also started taking steps by banning usage of plastic, encourage usage of natural gas, organic fertilizer, CFL bulbs, restricting the usage of polluted vehicle on the road, afforestation in large scale etc.

Every individual on earth should contribute for preservation of the equilibrium of nature and maintain the climatic conditions fit for every living organism or creature on earth to survive and save our mother earth. It should also be noted that human beings cannot survive without the support of nature whereas nature can survive without human beings.■

Artide

JURISDICTIONAL POINT IN EXECUTION PROCEEDINGS UNDER SECTIONS 33-C(1), 33-C(2) AND 6-H(1), 6-H(2) OF THE INDUSTRIAL DISPUTES ACT, 1947

It is a well settled law that the jurisdictional point must be decided first as preliminary issue. That the Hon'ble High Court, Allahabad relying on the judgments of the Hon'ble Supreme Court published in AIR.1963 page 569 and 1964 (8) FLR 277 published in 'Indian Factories and Labour Reports 1975 (3) at page 345 held at page 346 as under:-

> ".....The observation made by the Supreme Court clearly indicate that the Labour Court had no jurisdiction to adjudicate the merits of the dispute unless the question relating to jurisdiction was decided first.

That it is clear from the above observation of the Hon'ble High Court, Allahabad based on the judgments of the Hon'ble Supreme Court that the jurisdictional point, must be decided first as preliminary issue. Similarly jurisdictional point must be raised and decided in the execution proceedings under sections 6-H(1) and 33-C (1) as in the adjudication proceedings of the Industrial Disputes Act, 1947 (Central and U.F.) There is no law that the jurisdictional point should not be raised and decided in the execution proceedings under the above Acts.

That the Hon'ble High Court in the case of ***Kshetriya Sahkari Samiti Ltd. v. Regional Additional Labour Commissioner, Agra and others.*** 'Published in the held in para 6 as under:–

> "... ... ... No doubt proceedings under Section 6-H(1) of the Act are execution proceedings and point of jurisdiction can be raised even in the execution proceedings.,.. . "

It is clear from the above observation of the Hon'ble court that the jurisdictional point must be raised and decided in the execution proceedings under sections 6-H (1) and 6-H (2) and under sections 33-C (1) and 33-C(2) of the Industrial Disputes Act, 1947 (Central and U.P.) Moreover the jurisdictional point can be decided by framing the preliminary issue only.

That there is an award of the Industrial Tribunal, Gorakhpur in the Adjudication Case No. 120/ 2003 published on 21.5.2014. The award in the above case is wrong because there is cutting on the date of the award and also on the date below the signature of the Presiding Officer of the Industrial Tribunal.

Moreover the above award was published five months earlier than the date mentioned in the award. There are two dates in the above award. The date of the award is November 13 or 14-2013 and the date below the signature of the Presiding Officer is 12 or 13.11.2014. Which of the two dates written in the award is correct? It is clear from the above discussion that in the above Adjudication Case No. 120/ 2003 the award is wrong because of the cutting on the dates and also because of the two dates. Moreover the above award is wrong also because the certified copy of the award was issued fifteen days earlier than the date written below the signature of the Presiding Officer. The certified copy of the award was issued on 28.10.2014 and the date below the signature of the Presiding Officer is 12 or 13.11.2014 as it is clear from the above Annexure-A.

That applicant (The employee concerned) filed the application (case) under Section 6-H (1) of the U.P. Industrial Disputes Act, 1947 before the Deputy Labour Commissioner, Gorakhpur which was listed as Case No. R.D. 14/ 2014 and the Deputy Labour Commissioner calling the opposite party (Flood Division, Deoria) sent the notice for filing the objection (Reply).

That the opposite party (Flood Division, Deoria) after receiving the above notice filed the objection (Reply), ***which is annexed to this article as Annexure-E.***

That applicant (The employee concerned) after receiving the reply of the opposite party (Flood Devision, Deoria) filed the reply.

That the above Case No. R.D.14/ 2014 was listed before the Deputy Labour Commissioner, Gorakhpur but the Assistant Labour Commissioner, Gorakhpur started the hearing of the above case and so the application for framing and deciding the preliminary issues was filed before the Assistant Labour Commissioner, Gorakhpur.

That the above Case No. R.D. 14/ 2014 was listed before the Deputy Labour Commissioner, Gorakhpur but without any transfer order of the case from Deputy Labour Commissioner to Assistant Labour Commissioner, the Assistant Labour Commissioner started the hearing of the above case. There is no provision under the U.P. Industrial Disputes Act, 1947 for transfer of the case from Deputy Labour Commissioner to Assistant Labour Commissioner or from Assistant Labour Commissioner to Deputy Labour Commissioner card even there is no such provision for transfer of the case under section 6-H(1) of the above Act and so the whole proceedings of the above R.D. case before the Assistant Labour Commissioner, Gorakhpur were wrong and without jurisdiction also.

That under section 6-H(1) of the U.P. Industrial Disputes Act, 1947 the Government of Uttar Pradesh has delegated its power to the Deputy Labour Commissioner. In my view if the Government of Utter Pradesh has redelegated its power to the Assistant Labour Commissioner, under section 6-H(1) of the above Act, the redelegation of such power is wrong because it is a well settled law that if once the power has been delegated, it can not be redelegated.

That under section 6-H(1) of the U.P. Industrial Disputes Act, 1947 the interest on the awarded amount cannot be imposed.

That the proceedings under section 6-H(1) of the U.P. Industrial Disputes Act, 1947 are execution proceedings. It is a well settled law that the

executing Court or authority under the execution proceedings can interpret the award and if the award is wrong the executing Court or authority can refuse to give effect. The Hon'ble Supreme Court bench of three Judges published in Supreme Court Labour judgement (4) at page 2748 has held at page 2752 in para 2 as under:–

> "... ... ... the Labour Court under section 33-C (2) would be competent to interpret the award on which the claim is based, and it would also be open to it to consider the plea that the award sought to be enforced is a nullity. There is no doubt that if a decree put in execution is shown to be a nullity, the executing Court can refuse to execute it. The same principle would apply to proceedings taken under section 33-C (2) and the jurisdiction of the Labour Court before which the said proceedings are commenced... ..... "

That the law for deciding the preliminary issues first is well settled. If the Court or authority decides the case on merit without deciding the preliminary issues, it is wrong and without jurisdiction also. It is a well settled law that the jurisdictional points must be decided first as preliminary issues before deciding the merit of the case. Whenever the question of the jurisdictional point is raised, it must be decided first as preliminary issue. It is the duty of the Vakil and also of the Court or authority to see that the preliminary issues are framed and decided first before taking the matter on merit. The jurisdictional point can be raised and decided as preliminary issues in the execution proceedings also. The Vakil must be fair to the client and also the Court must be fair to the case.

That the Assistant Labour Commissioner decided the Case No. R.D. 14/ 2014 without considering the argument and rulings cited (submitted) during the argument from the side of the opposite party (Flood Division, Deoria). Moreover without deciding the preliminary objections (issue) he decided the case on merit and sent the show-cause notice (order) dated 4.8.2015 for the recovery of the awarded amount imposing the interest also to the opposite party. The above order is being annexed to this article as annexure-H

That whenever the question of jurisdictional point is raised, the Court is bound to decide the same as preliminary issue. Unless the Court holds that it has jurisdiction to entertain and decide the case, it cannot enter into the merit of the case. If the Court or authority decides the case on merit without deciding the preliminary issues of jurisdictional points, it is not only illegal but without jurisdiction also.

It is clear from the discussion in the foregoing paras that the matter in the execution proceedings under section 6-H(1) of the U.P. Industrial Disputes Act, 1947 must be judiciously dealt with and also very clear that the preliminary objection of jurisdictional points must be decided first by framing the preliminary issues. Moreover it is crystal clear that the executive and judiciary must be separate in labour also.■

By.....
D.C. Singh
Ex. Labour Welfare Officer,
Adhyaksh,Gorakhpur

WELL DRAFTED APPOINTMENT LETTER IS GATEWAY TO GOOD INDUSTRIAL RELATIONS

COMMON PITFALLS LEADING TO DISASTROUS CONSEQUENCES

- Unless in appointment letter is provide for probation period, he/she can be treated as regular employee.
- When an appointment letter does not provide about retirement age, such employee can continue to work as long as he is physically and mentally fit to work.
- If there is no condition in the appointment

letter about transfer of an employee from one place to another, such an employee cannot be transferred.

- In the absence of any condition in the appointment letter about quantum suspension allowance, such a suspended employee will be entitled to full wages during his suspension.

- If there is no such condition that an employee can be transferred to any other office or branch or unit, such employee cannot be legally transferred to such branch or unit which has been set up after the employee has been conducted in the employment.

- If an appointment letter provides gratuity in the monthly CTC (Cost to the Company), an employee make claim gratuity even when he has not completed 5 years of service.

An appointment letter or employment letter is a formal letter provided in writing to a candidate joining for employment. Appointment letters are usually provided after offer letter on the first day of the candidate starting work. The appointment letter describes in length the position offered, salary, benefits, confidentiality policy, work policy, starting date, and important information about the employment. The candidate usually would receive the appointment letter on the first day after beginning employment and would return a signed copy back to the employer indicating acceptance of the appointment letter.

An appointment letter sets out the terms and conditions of employment including designation of a job, emoluments, leave, transferability, notice for termination, retirement age, suspension allowance during suspension etc. In case some of such and other important aspects are not enumerated in the appointment letter, is frustrated and can spell doom. Thus, no chance by left ambiguity. For instance, if retirement age of an employee is not prescribed in the appointment letter, the employer cannot retire an employee as long as he is mentally and physically fit. It is, however, a different matter that one the Kerala High Court has held that such an employee cannot claim his appointment as one for life. Same position prevails if the terms and conditions of employment to not provide for transfer of an employee, he cannot be transferred and it cannot be contended that an employer has an implied right to transfer his employee. Thus if transfer of an employee from one place to another is not an accordance with the terms and conditions as stipulated in the appointment such a transfer is liable to be set aside. Not only that a clause pertaining to transfer is to be incorporated but at the same time an employer has no right to transfer his employee to a new branch factory or a plant started by him subsequent to date of employment of and employee unless it has been so stated in the relevant clause pertaining to transfer that the employee would also be liable to be transferred to any of the existing concerns or to be started in future. The Supreme Court has clarified this aspect over six decades and even on today it is being scrupulously followed and many transfer made by the employers even because of **bona fide** and genuine reasons, have been stalled by the Courts. As a result the employer has to eat humble pie. Similarly, if there is no condition pertaining to suspension or substance allowance during the suspension period (which is generally 50% of the wages) an employer will be liable to pay full wages during the suspension of employee as per settled law of Supreme Court. '
Normally, all appointments of the employees by the employers are made initially on probation with a provision for extension of the probation period as well as termination, of the services of a probationer. It is also well settled law that a probationer has no lien on the job and is engaged in order to test or assess his performance and the conduct, either during the initial period or the extended period of probation. It is usually helpful to state expressly in the appointment letter that the probationer 's services will stand automatically terminated at the end of the probationary period, unless he is expressly confirmed. Still more important aspect is to state in the appointment later that during the initial or extended period of probation the service of the probationer can be terminated without notice and without stating any reason.

This cannot be done easily after an employee is

confirmed but can be done during the probationary period when it is so stated in the appointment letter. Obviously, such a provision should be used only rarely and always with the utmost fairness. The Supreme Court has also held that employer can terminate the services of a probationer summarily.

However, such a clause pertaining to appointment and termination a probationer has to be very carefully drafted lest the whole purpose of appointment on probation of an employee, can be frustrated, in this context, reference is made to a case decided by Karnataka High Court, where the management appointed the petitioners on probation on 23.12.1997 and the relevant clause pertaining to appointment of probationer is reproduced below:–

You will be on probation for a period of two years from the date of joining. During this period, if your work and conduct is found satisfactory, you will be confirmed in the post of Assistant Professor, Otherwise, your services are liable to be terminated. Pursuant to the aforesaid appointment both the petitioners were working as Assistant Professors in the respondent 's institution, subsequently they were issued with the respective impugned discharge orders per annexes E & F, both, dated 28'" January, 1999 stating:–

As per your performance is not satisfactory, .your services are hereby terminated with effect from the forenoon of February, 1, 1999 as per clause 1 of appointment order.

It will true be seen that admittedly, the discharge of the services of both petitioners under respective Annexure E & F both, dated 28 'h January 1999, was made before expiry of their said probation period of two years. The petitioners filed a writ petition in the High Court relying upon various ruling of the Supreme Court contending that the termination orders at Annexures E & F as issued by the respondent are invalid and void.

While relying upon the three Judges Bench of Supreme Court in the case of **Express Newspapers**' the Hon 'ble High Court was seized of the question whether the discharge of petitioner therein from service by his employer during the period of probation was legally sustainable. The order appointing the petitioners in that case has been quoted by their Lordships in the judgment, which is reproduced below:

Your appointment will in the first instance, be on probation for six months, if during this period we find you satisfactory, and you find the job suitable, we will confirm you.

On consideration of the terms of that appointment order their Lordships of Supreme Court have held that the employer was not empowered to discharge the petitioner therein before expiry of the probation period and, therefore, that termination order was not legally sustainable. In that regard, the Apex Court held:-

"There can in our opinion, be no doubt about the position of law that an employee appointed on probation for six months continues as a probationer even after the period of six months if at the end of the period of his services had either not been terminated or is confirmed. It appears clear to us that without anything more, an appointment on probation for six months given the employer no right to terminate the service of an employee before six months had expired, except on the ground of misconduct or other sufficient reasons in which case even the service of permanent employee could be terminated".

The above pronouncement of the Apex Court clearly lays down the law that an employer would have no power to terminate an employee .during the period of probation, unless of course such a right has been reserved either under the appointment order itself or by any relevant rules/regulations relating to appointment probation and confirmation of appointees.

Thus in the instant case, a plain, reading of the relevant clause or condition (1) of the orders at Annexures C&D concerning appointment of petitioners showed that the probation period of each of them was two years from the respective date of their appointment and that during this period of probation, if their work and conduct were found satisfactory by the employer then, their services were to be confirmed in the posts of Assistant Professor. If not, their services were liable to be terminated. Therefore, the right which was reserved by the employer under the said appointment order was to

confirm the services of each of the petitioners within their respective probation period if their work and conduct were found satisfactory. In case, if the same was not found satisfactory, then the respective services of petitioners were liable to be terminated not during their probationary period, but after expiry thereof. The respondent however, sought to make out case from the contents of the said appointment orders that the employer had reserved his right to terminate the services of the petitioners even during their respective Period of probation of their work and conduct were not found satisfactory. The High Court classified that this plea militates against the plain meaning of the three sentences contained in Cl. (1) of the respective appointment orders at Annexure C & D and, therefore, it is not acceptable, it was further held that in none of the authorities cited by the Petitioner, the Supreme Court has taken a view divergent from its ruling in the case of **Express Newspaper** which was rendered by the Bench of these judges. The aforesaid decisions citied are beside this point and they are in support of the undisputed proposition that the termination order terminating the services of a probationer without casting any stigma on him is a termination simplicitor which any employer has a right to made such order. Therefore, the impugned order of respondent at Annexure E & F are legally unsustainable and are liable to be quashed. Thus, in view of the reasons aforesaid, the petitions are allowed in part. The impugned petitioners order of respondent at Annexures E & F both, dated 28th January, 1999 are quashed and the respondent is directed to reinstate petitioners in their respective posts of Assistant Professor and allow them to continue under its services as such with all consequential monetary benefits until their services are terminated in accordance with law if respondent deems fit to take and initiate any fresh action against them for their removal from service. However, the prayer of the petitioner that should be confirmed in service in their respective posts was declined, since such a direction was not permissible. In this context, reference is made to another judgment of the Supreme Court have direct application upon the point in holding that when a clause in the appointment letter of probationer provided that his services could be terminated at any time during the probation period, the, question of issue of notice before terminating the services did not arise.

The purpose of citing the numerous authorities on the appointment letter is to drive the point that this should not be taken lightly. First impression may not be the last impression but first solid step will undoubtedly anger well for the employers. It is always advisable to preface the appointment with utmost case so as to avoid deep and depressing pitfalls.■

Labour Welfare

RAJYA SABHA CLEARS MATERNITY ACT UPDATE; WOMEN TO GET 26 WEEK LEAVE

The Rajya Sabha recently passed the amendments to the Maternity Benefit Act that seeks to provide 26 weeks of maternity leave to working women and 12 weeks to commissioning mothers and introducing an enabling provision of 'work from home" for nursing mothers.

The Union Cabinet chaired by Prime Minister Narendra Modi gave its ex post facto approval to the bill. The provisions are applicable to all establishments employing 10 or more people. The amendments will help about 1.8 million women in the organized sector, according to Cabinet source.

The bill will now go to the Lok Sabha, where the government enjoys a majority and after its passage in the lower house and presidential assent, the changes will be notified by the labour ministry, making them formal.

As per the proposed amendments, maternity leave for women working in both private and public sector will be enhanced to 26 weeks from the current 12 weeks. However, women who already

have two or more children will get only 12 weeks.

The bill proposes 12 weeks of maternity leave to commissioning mothers who use surrogates to have a child, as well as to working women adopting a baby below the age of three months.

Additionally, it has a provision that seeks to allow nursing moms to work from home even after 26 weeks of maternity leave, depending upon their job profile. The work from home option will be available where the nature of work assigned to the employee permits her to do so. The woman employee and her employer have to mutually agree on the duration of the arrangement.

The woman –friendly measures also include making it mandatory for firms with 50 employees to have crèches individually or in arrangement with a few firms within a prescribed distance. The employer will have to allow the employee to visit the crèche four times daily that will include the interval of rest allowed to woman employees.

"This initiative would be a good step towards finding solutions to retain female employees and simultaneously it would also be a strengthening move towards increased return to work post-maternity and greater employee retention in the long run," said Vanita Bimbhet, president, Ficci Ladies Organisation.

The government feels the maternal care to the child during early child hood is crucial for the growth and development of the child.■

Source: Economic Times - Dt. 12.8.16

EATING HABBIT OF GROWING INDIA

I can resist everything except temptation, said Oscar Wilde, the renowned Irish author and dramatist. It is the temptation that makes people to go after food irrespective of age, quality and quantity. With the demand the supply is being made. Accordingly the Indian food bazaar is flooded with junk food of various brands that is ready to cook. This new avatar of food items has become a blessing for the working women in India, especially when the joint family system gave way for micro family. In earlier days most of the Indians were eating rice, wheat, fruits or vegetables grown in their own backyard that has become part of history, in view of the high cost of fruits and vegetables and other farm products and change of life style. Now the Indian women prefer the cheap junk food that caters to the need of the growing children.

Ever since the medieval period to modern age, man's relationship with food had undergone sea change.

Ever since the medieval period to modern age, man's relationship with food had undergone sea change. Now a situation has come that people are living to eat rather than eating to live, no matter the quality of the food. Generally food is not only nourishes the body but also affect its internal biological clock that regulate the daily rhythm of human life. Appetite differs from person to person, as the human beings are designed to be variable though the structure is the same. While consuming the foul not al/ persons experience the same taste as some food can taste nice to one person may be not be acceptable to others. Interest in food is also governed by external stimuli like vision, taste, palatability, aroma, thought. preference, timing, emotion, association, environment etc. As far as the taste is concerned people are categorized in to three, such as super tastes, medium taste and non-taste, depending up on the type of papillae in their tongue that facilitate them to taste their food.

A balanced diet enhances cognitive function,

improve mental alertness and sustained concentration. Brain require steady supply of blood, sugar which can he obtained in rich nutritious food. Generally apatite is linked with aroma the food generated that stimulate one's apatite. This is closely linked to hedonics a science that linked the study of pleasant and unpleasant sensation and state of mind. According to research, fasting improve the sensation and increase the palatability. The increase in the proportion of food consumption appears to be driven by appetite leading to pleasure. Normally people eat when they are determined by hunger and appetite signal.

The junk food like pizza, burgar, noodles etc, provide variety of tastes that makes people to eat out of pleasure than their biological needs. They are made out of refined cereals, hormone supplements and contain presetvetive. Over use of artificial sweetness, preservatives or colour which are found in the processed food can aggravate the bacterial imbalances. Unfortunately eating food outside in India has become a fashion not knowing its ill effect on human body, inviting diseases. They not only lack its nutritional value but contribute array of health problems including premature growth, sterility, impotency, nerve disorders and other neurotic problems, making the children lethargic and sluggish. Children are carried away by the show and promise made by the brand ambassadors of the products through print and electronic media, without knowing its ill effect. The media unrealistically portray slim, healthy character, consuming high level of fatty, sugary and salty food that mislead the younger generation. The recent controversy over a particular brand of noodles had opened the eyes of the authorities resulting in banning the products.

Bacterial imbalances plays a major role in a variety of deseases. Poor diet that lack fibre in the form of natural food containing fruits and vegetables can cause bacterial imbalance.

Besides junk food, use of antibiotics can also reduce good bacteria in the stomach resulting in inflammatory bowel, diarrhoea, liver disease, diabetes,acute pancreatitis. In such condition using probiotic has proved beneficial. According to World Health Organisation taking micro organism sufficiently will be beneficial to the heath.

Besides the junk food, the use of preservatives, chemicals and pesticides in fruits, vegetables, farm products and other meat products, eating away the health of the people are a cause of concern not only to the public but also to the authorities. Other than the random inspection and raid, authorities seldom act in all seriousness. Lack of deterrent and low conviction, makes the culprits to move freely at the expense of the innocent people. Despite establishment of Food safety and standard Authority of India in the year 2006, and promulgation of Food safety standard regulation 2011 implement of the rule is haphazard and erratic. Lack of control over various unbranded food item also makes the thange worse.

On the occasion of world health day, the World Health Organisation (WHO) has introduced a slogan 'Farm to plate, make the food safe' without adultering or tempering in the middle. When we talk about food security, we are not concerned about natural safe food reaching our plate. In this regard it is necessary that the life style of the people need to be changed by reverting to our old natural food style taken from farms to plate, instead of depending up on the western food and life style. House hold cooking of food from natural vegetable and making their own food will improve the health and immunity. India is already enriched with wide variety of traditional/ ethnic fermented food, which had been an integral part of daily diet, such as curd based products, fermented rice, bajra or ragi, idli, dosa etc. These foods modulate the stomach through immune response and inhibition of pathogen. Five keys to food safety need to be promoted are maintain cleanliness, separate raw and cooked food, cook thoroughly, keep food at correct temperature and use safe water and raw material.■

Judicial Verdict

[2016 (149) FLR 821]
(GUJARAT HIGH COURT)
R.M. CHHAYA, J.
Special Civil Application No. 17176 of 2015
with
S.C.A. Nos. 19816 and 19917 of 2015
March 4, 2016
Between
LIFELINE FOUNDATION THROUGH ITS AUTHORIZED REPRESENTATIVE
(EMPLOYEES)
and
STATE OF GUJARAT and others

Factories Act, 1948– Section 45(3)– Natural justice– When rights are affected– Principles of natural justice have to be observed– Therefore, the action of respondents quashing reorganization of petitioner abruptly by the respondents– Without affording any opportunity of being heard and without giving any show- cause notice and or without assigning any reasons– Is in violation of principles of natural justice– Recognition was granted under section 45(3) of Factories Act– Hence the impugned order deserves to be quashed. [Para 11]

JUDGMENT

R.M. CHHAYA. J.– Identical facts arise in these petitions and common order elated 29.9.2015 is under challenge in these petitions rand therefore, all the petitions are heard together and are disposed of by this common judgment and order.

2. Heard Mr. Jal Unwala, learned Counsel with Mr. Mohil P. Pathak, learnned Counsel for the petitioner in SCA No. 17176/15 and Mr. Nirad Buch, learned Counsel for the petitioner in SCA No. 19816/15 and SCA No. 19917/15, Mr. Manan Mehta, learned AGP in SCA Nos. 17176/15 & 19917/15 and Ms Vrunda Shah, learned AGP in SCA No. 19816/15 for the respondents.

3. By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged the order dated 29.9.2015.

4. On perusal of the record of these petitions, it appears that the petitioner of SCA No.17176/15 was granted recognition as provided under section 45(3) of the Factories Act, 1948 on 19.8.2014. Similarly, petitioner of SCA No. 19816/15 was granted recognition on 17.4.2010 and the petitioner of SCA No. 19917/15 was granted recognition on 11.12.2014. Abruptly, by the impugned order, the recognition is quashed.

5. Mr. Unwala as well as Mr. Buch, learned Counsel appearing for the concerned petitioners, have submitted that the impugned order is without affording any opportunity of being heard and without giving any show-cause notice and/or without assigning any reasons. The learned counsels appearing for the petitioners further submitted that the petitioners are non-profit earning institutions, have carried on activities as per recognition without any complaint. It was contended that on the aforesaid grounds and the grounds raised in the petition the same deserves to be allowed as prayed for

6. In response to the notice issued by this Court, the respondents have filed their reply. Mr. Manan Mehta, learned AGP, has pointed out that as per the opinion

of the Legal Department of the State of Gujarat, section 45(3) of the Factories Act does not provide for any opportunity of being heard and therefore, the impugned order is legal and proper and no interference is called for.

7. The learned Counsels appearing for the petitioners have predominantly raised the ground of non-hearing though other grounds are also pressed into service. On examining the aforesaid ground, it appears, with respect, that the action of the respondents is in clear breach of principles of natural justice. The record of the petitions clearly indicates that the petitioners were given recognition and they have acted upon the same. In such circumstances, the hearing has to be provided and in opinion of this Court it has to be read into it. The order impugned does not indicate even remotely any circumstances which warrant such actions without observance of principles of natural justice.

8. The learned Counsel for the petitioners have rightly relied upon the judgment of the Apex Court in the case of **Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati and others,** as well as the judgment of the Division Bench of this Court in the case of **Killol V Shelat v. Municipal Corporation of City of Ahmedabad and another.**

9. It is rightly asserted by the learned Counsels for the petitioners that the administrative decision which has in fact affected the petitioners would require at least observance of principles of natural justice. Considering the ratio laid down by the Apex Court in the case of **Dharampal Satyapal Ltd. (supra)** and the facts and circumstances of this case, the authorities ought to have given an opportunity of being heard to the petitioners.

10. Similarly, the Division Bench of this Court in the case of **Killol V. Shelat (supra)** wherein the road lines were prescribed under the provisions of the BPMIC Act by the Municipal Commissioner without giving an opportunity of being heard to the affected persons, have observed thus –

> " 28. It can thus be seen that outside of Clause(a) of sub-section(1) of section 210, persons likely to be affected by prescription of street line by the Commissioner have no right of hearing. In case of **Lala Shri Bhagwan and another v. Ram Chand and another,** the Apex Court observed that power to determine the questions affecting the rights of citizens would impose the limitation that power should be exercised in conformity with the principles of natural justice. In case of **Delhi Transport Corporation v. D.T.C. Mazdoor Congress and others,** the Apex Court observed that it is now well settled that **'audi alteram partem '** rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule.
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> 29. It goes without saying that a citizen who is being deprived of his valuable right to property which though may not be fundamental right continuous to be a constitutional right and which, is by now recognized as a human right has at-least the minimum right of hearing before such a result is brought about. In a given case, he may be able to point out to the authority that proposed prescription of the street line is either arbitrary or unjust or wholly **mala fide**. Depriving the citizen of his right to property without even the minimum right of hearing cannot be countenanced. In case of **P.T. Munichikkanna Reddy and others v. Revamma and others,:** the Apex Court observed that the right of property is now considered to be not only a Constitutional or statutory right but also a human right. Similar observations were also made in case of **Lachhman Dass v. Jagar Ram and others.'**
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> 30. It is by now well settled that without affording opportunity of being heard, no order adverse to a person can be passed. Principles of natural

justice require that before taking action against the citizen, he must have a right to be heard. Such requirement of principles of natural justice can be abridged or even totally shut out. However, same can be done only by specific statutory provisions or by necessary implications. In other words, when the statute is silent, principles of natural justice can be read into it and unless a statutory provision specifically or by necessary implications dispenses with the principles of natural justice, hearing must be given before passing any adverse orders. In case of **State Govt. Houseless Harijan Employees' Association v. State of Karnataka and others**, the Apex Court observed that the requirements of natural justice will be read into statutory provisions unless excluded expressly or by necessary implication.

31. Nothing in Clause(a) of sub-section(1) of section 210 would suggest that such a requirement of hearing was meant to be shut out or even curtailed by the legislation. By very nature of power that the Commissioner exercises under the said clause, requirement of natural justice are inherent and therefore, must be read into clause(a) of sub-section (1) of section 210 of the BPMC Act.

11. Considering the aforesaid ratio, therefore, when the rights are affected, the principles of natural justice have to be observed and therefore, the action of the respondents and the impugned order is in violation of the principles of natural justice and hence, the impugned order deserves to be quashed only on the said singular ground and it is not necessary to deal with other grounds raised in these petitions. Accordingly, the impugned order is hereby quashed and set aside qua these three petitioners. It would be open to the respondent authorities to issue appropriate show-cause notice and after giving an opportunity of being heard to-the petitioners, the authorities may pass appropriate order/s.

12. Petitions are allowed to the aforesaid extent. Rule made absolute accordingly in each of the petitions.

No order as to costs.

Petitions Allowed.

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