Reserved on : 11.06.2024
Pronounced on : 25.06.2024

R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.27301 OF 2023 (GM - RES)

BETWEEN:

CENTRE FOR WILDLIFE STUDIES (R)
37/5, YELLAPPA CHETTY LAYOUT,
ULSOOR ROAD, (OFF HALASURU ROAD),
BENGALURU – 560 042
REPRESENTED BY ITS CHIEF FUNCTIONARY,
DR.ULLAS KARANTH.

... PETITIONER

(BY SRI UDAYA HOLLA, SR.ADVOCATE A/W
SRI V.VINAYAK KULKARNI, ADVOCATE)

AND:

1 . UNION OF INDIA
MINISTRY OF HOME AFFAIRS
NORTH BLOCK,
NEW DELHI – 110 001
REPRESENTED BY ITS SECRETARY.

2 . MINISTRY OF HOME AFFAIRS
FOREIGNERS DIVISION (FCRA WING/FCRA-MU)
MAJOR DHYANCHAND NATIONAL STADIUM,
NEW DELHI – 110 001
REPRESENTED BY ITS JOINT SECRETARY.

3 . HOME DEPARTMENT
GOVERNMENT OF KARNATAKA
ROOM NO.222, SECOND FLOOR,
VIDHANA SOUDHA,
BENGALURU – 560 001
REPRESENTED BY ITS
ADDITIONAL CHIEF SECRETARY.

4 . DEPUTY COMMISSIONER
BENGALURU URBAN DISTRICT
KEMPEGOWDA ROAD,
BEHIND KANDAYA BHAVANA
BENGALURU – 560 009.

... RESPONDENTS

(BY SRI MADHUKAR DESHPANDE, CGC FOR R-1 AND R-2;
SRI B.N.JAGADEESH, ADDL.SPP FOR R-3 AND R-4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) CALL FOR THE RECORDS AND B) QUASH THE ORDER OF SUSPENSION DATED 05/03/2021 PASSED BY R2 (ANNEXURE- U); C) QUASH THE EXTENDING THE SUSPENSION FOR ANOTHER 180 DAYS VIDE ORDER PASSED BY R2 DATED 10/09/2021 (ANNEXURE- W) AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question an order dated 05-03-2021 by which the 2nd respondent suspends its registration under the Foreign Contribution (Regulation) Act, 2010 ('the Act' for short) and sought a consequential relief against the orders passed aftermath of the aforesaid order and has further sought a direction by issuance of a writ in the nature of *mandamus* to consider the application submitted by the petitioner seeking renewal of licence.

2. Heard Sri Udaya Holla, learned senior counsel appearing for the petitioner, Sri Madhukar Deshpande, learned Central Government Counsel appearing for respondents 1 and 2 and Sri B.N. Jagadeesh, learned Additional State Public Prosecutor appearing for respondents 3 and 4.

3. Facts, in brief, germane are as follows:-

One Ullas Karanth said to be the * son of Dr. K. Shivarama Karanth, is the Chief Functionary for Centre for Wild Life Studies. The petitioner registers a trust deed under the name and style of Centre for Wildlife Studies with the object of promoting and carrying on activities relating to scientific study

**Deleted vide chamber order dated 27.06.2024.*

and conservation of natural habitats of wildlife, promoting projects which involve rehabilitation of endangered animals, eco-system and plants. The members of the scientists in the Trust are internationally recognized and have been conferred several awards and innumerable encomiums. With the aforesaid objects, on 23-01-1990 the Trust registers itself under the Act. The registration has been renewed from time to time. On **05-03-2021,** the petitioner makes an application for change of bank account in which funds of the trust were being operated, which also came to be permitted. After the said act, the petitioner receives funds from foreign contributors as well as from Indian contributors. The funds received are said to be utilized only for social and educational purposes in strict consonance with the norms under the Act. 20% of the funds of foreign contributions are utilized to meet the expenses of the Trust. It is the averment in the petition that separate accounts have been maintained for the receipt utilization etc. It would suffice if the story is forwarded to 05-03-2021 when the respondent/Union of India issues an order of suspension of registration of the petitioner for a period of six months. A communication is made to the petitioner in the form of a

questionnaire. The claim of the petitioner is that, the communication never reached the petitioner. The petitioner on 11-04-2021, against the order of suspension, sends a reply setting out all the details including maintenance of accounts or otherwise. It is then on 03-12-2021, a show cause notice comes to be issued to the petitioner to show cause as to why registration of the petitioner should not be cancelled in terms of sub-section (2) of Section 14 of the Act. The petitioner contends that a detailed reply was sent by the petitioner to the show cause notice refuting each one of the allegations. On 04-09-2023 an order comes to be passed cancelling the registration. The contention of the petitioner is that objections/reply of the petitioner running to over 25 pages and considering nothing, a cryptic order is passed that the petitioner has violated the provisions of the Act. It is these actions that has driven the petitioner to this Court in the subject petition.

4. The learned senior counsel Sri Udaya Holla representing the petitioner would vehemently contend that the order which cancels registration of the petitioner does not bear any reason and prior to cancellation of the certificate of registration of the petitioner, the petitioner ought to have been afforded personal

hearing in terms of Section 14(2) of the Act. He would submit that these factors would cut at the root of the matter and would restrict his submissions to the aforesaid grounds.

5. The learned counsel Sri Madhukar Deshpande representing the respondents/Union of India would vehemently contend that there is no warrant of affording personal hearing prior to passing of the order of cancellation. Section 14(2) of the Act contemplates reasonable opportunity of being heard. Being heard would not mean personal hearing. It is his submission that the requirement is only issuance of a show cause notice and not personal hearing. The show cause notice had admittedly been issued in the case at hand. Therefore, the impugned order cannot be interfered with on the said ground.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The registration of the petitioner on 23-01-1990 is a matter of record. On an allegation that there has been mis-management of funds of foreign contributors, an order of suspension of

registration of the petitioner comes about on 05-03-3021 for a period of six months. After the suspension, it is said that a communication is sent to the petitioner for which the respondents do not have any proof and the contention is that it was never received by the petitioner. Therefore, I leave the submission thereto as it is. The petitioner then, to the order of suspension, is seen to have sent a reply on 11-04-2023. This results in a show cause notice being issued to the petitioner seeking to show cause as to why the registration should not be cancelled in terms of Section 14(2) of the Act. Therefore, the entire fulcrum of the *lis* revolves around Section 14 of the Act.

8. Section 11 under Chapter III of the Act deals with registration of certain persons with Central Government. Section 12 of the Act deals with grant of certificate of registration on an application made under Section 11 of the Act. Section 13 of the Act deals with suspension of certificate. Section 14 of the Act deals with cancellation of certificate. It is germane to notice Sections 13 and 14 of the Act and they read as follows:

> *"**13. Suspension of certificate**.—(1) Where the Central Government, for reasons to be recorded in writing, is satisfied that pending consideration of the question of cancelling the certificate on any of the grounds mentioned in sub-section (1) of Section 14, it is necessary so to do, it*

may, by order in writing, suspend the certificate 11*[for a period of one hundred and eighty days, or such further period, not exceeding one hundred and eighty days, as may be specified] in the order.*

(2) Every person whose certificate has been suspended shall—

(a) not receive any foreign contribution during the period of suspension of certificate:

Provided that the Central Government, on an application made by such person, if it considers appropriate, allow receipt of any foreign contribution by such person on such terms and conditions as it may specify;

(b) utilise, in the prescribed manner, the foreign contribution in his custody with the prior approval of the Central Government.

14. Cancellation of certificate**.—(1) **The Central Government may, if it is satisfied after making such inquiry as it may deem fit, by an order, cancel the certificate if—

(a) the holder of the certificate has made a statement in, or in relation to, the application for the grant of registration or renewal thereof, which is incorrect or false; or

(b) the holder of the certificate has violated any of the terms and conditions of the certificate or renewal thereof; or

(c) in the opinion of the Central Government, it is necessary in the public interest to cancel the certificate; or

(d) the holder of certificate has violated any of the provisions of this Act or rules or order made thereunder; or

(e) if the holder of the certificate has not been engaged in any reasonable activity in its chosen field for the benefit of the society for two consecutive years or has become defunct.

> ***(2) No order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.***
>
> ***(3) Any person whose certificate has been cancelled under this section shall not be eligible for registration or grant of prior permission for a period of three years from the date of cancellation of such certificate."***
>
> *(Emphasis supplied)*

Section 14 of the Act permits cancellation of registration made under Section 12 of the Act, if the Government is satisfied, after making such inquiry as it may deem fit, to cancel the certificate. Sub-section (2) of Section 14 of the Act mandates that no order of cancellation under the Section shall be made unless the person concerned is given a reasonable opportunity of being heard. Sub-section (3) mandates that any person whose certificate has been cancelled shall not be eligible for registration or grant for a period of three years from the date of such cancellation.

9. A perusal at Section 14 of the Act would indicate two significant mandates *i.e.,* cancellation of the certificate cannot be made without affording a reasonable opportunity of being heard. Sub-section (3) of Section 14 of the Act is penal as the

cancellation of certificate will lead to disability of any person whose certificate is cancelled for a period of three years. Therefore, it has serious civil and economic consequences. In the teeth of the tenor of sub-section (3) and the purport of sub-section (2), the *lis* requires consideration.

10. The contention is that, a show cause notice is issued on 03-12-2021 seeking to show cause as to why registration should not be cancelled invoking Section 14 of the Act. The petitioner is said to have given a 25 page reply. The violations alleged in the show cause notice, as averred in the petition, read as follows:

> *(i) "Non-intimation and utilization accounts;*
> *(ii) Transfer of foreign contribution in FCRA;*
> *(iii) Receiving foreign contribution in its utilization accounts;*
> *(iv) Receiving domestic funds into its utilization accounts.*
> *(v) Utilization of foreign contribution for personal gain by transfer of vehicle; and*
> *(vi) Misuse of foreign contribution to finance "WILD KAAPI LLP".*

The reply submitted by the petitioner thereto, again as averred in the petition, can be broadly classified as follows:

> (i) *The petitioner has intimated the utilization accounts to the Ministry from time to time and there has been no violation and no specific instance of non-intimation has been alleged.*

(ii) *Petitioner was running 2 years Masters Degree Program in Wild Life Protection and Conservation in collaboration with National Centre for Biological Sciences, which is affiliated to the Department of Atomic Energy, Government of India. Expenses such as rent and professional fee in respect thereof were incurred from the local (Non FCRA) accounts and the same was reimbursed from the FCRA accounts after the foreign contribution came.*

(iii) *There have been wrong crediting by the Bank to the utilization accounts or there have been amount first spent and thereafter, replenishment to the utilization accounts etc. and there was no violation of the Act or the Rules, details of which are at pages 549 to 551.*

(iv) *Petitioner executes projects for domestic organizations including government departments and many a times, donations are received after the expenditure is incurred. The details as to how the allegations are not correct is set out at pages 553 to 558.*

(v) *Pajero Car was received by the petitioner in the year 1998, which vehicle was used extensively for forest activities for nearly 10 years, after which, it became unfit for further activities of the Trust and therefore, a decision was taken to sell it. Permission was also sought for from the Customs Department and the Customs Department granted permission to sell the Car and consequently, the Car was sold for the value set out in the books of the petitioner. (Pages 559 to 570)*

(vi) *Though the donation was received for the project "WILD KAAPI", there were no takers and ultimately, the Managing Trustees incorporated the partnership firm under the name and style "WILD KAAPI LLP". Not a single rupee of foreign contribution was transferred to "WILD KAAPI LLP".*

What comes about is one of the impugned orders dated 04-09-2023. A perusal at the impugned order would not indicate

that it is so cryptic that it needs to be annulled. But, the issue is not with regard to it being cryptic. The issue is, whether the petitioner should have been afforded a personal hearing in terms of sub-section (2) of Section 14 of the Act prior to passing of the order dated 04-09-2023. The words "reasonable opportunity of being heard" cannot be read in isolation. They have to be read along with sub-section (3) of Section 14 of the Act, the consequences of passing of an order of cancellation.

11. The learned senior counsel for the petitioner has placed reliance upon two judgments of the Division Benches of this Court – (i) ***DALMIA CEMENT (BHARAT) LIMITED v. GOVERNMENT OF KARNATAKA***[1] and (ii) ***STATE BANK OF MYSORE v. R.SHAMANNA***[2].

12. The Division Bench in the case of Dalmia Cement was considering an identical provision. The Rule that fell for interpretation therein was sub-rule (1) of Rule 12 of the Mineral Concession Rules, 1960. The Division Bench holds as follows:

> ***"5.*** *We have considered the submissions. Rule 12 of the said Rules reads thus:*

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[1] *2019 SCC OnLine Kar 802*
[2] *1984 SCC OnLine Kar 112*

"12. ***Refusal of application for a prospecting licence***

(1) ***The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant refuse to grant or renew a prospecting licence over the whole or part of the area applied for.***

(1A) An application for the grant or renewal of a prospecting licence made under rule 9 shall not be refused by the State Government only on the ground that Form B or Form E, as the case may be, is not complete in all material particulars, or is not accompanieg, by the documents referred to in clauses (d), (e), (f) and (g) of sub-rule (2) of the said rule.

(1B) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant.

(2) An application for the grant of a prospecting licence shall not be refused on the ground only that, in the opinion of the State Government, a mining lease should be granted for the area for which the application for a prospecting licence has been made.

PROVIDED that where applications for the grant of prospecting licence and applications tor the grant of mining lease in respect of the same area are received on the same date or on different dates within a period of thirty days, the applications for the grant of mining lease shall, if the area was previously held and worked under a mining lease, be disposed of before the application for the grant of prospecting licence are considered:

PROVIDED FURTHER that the applications received for grant of prospecting licence shall be liable to be considered only if they have not been already disposed of."

(underline supplied)

6. The Rule Making Authority has chosen to specifically provide that the power of rejection or

> ***refusal can be exercised by the State Government after giving an opportunity of being heard. We cannot accept the narrow interpretation put by the second respondent that 'opportunity of being heard' may not be necessarily 'opportunity of being personally heard'.***
>
> ***7. The words 'after giving an opportunity of being heard' were inserted by the amendment dated 2nd May 1979. Earlier sub-rule (1) of Rule 12 simply provided that the State Government may, for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew prospecting licence. Therefore, the Rule Making Authority has added the aforesaid words which clearly imply that the intention was to provide an opportunity of being heard as the rights of the applicant are affected if the application for grant or refusal of prospecting licence is rejected."***
>
> *(Emphasis supplied)*

The rule quoted in the aforesaid judgment of the Division Bench directed that after giving an opportunity of being heard and for reasons to be recorded in writing action should be taken. The Division Bench holds that it could not accept the contention of the State of opportunity being heard would not mean that opportunity of being personal hearing. The personal hearing was directed to be granted by setting aside the action impugned therein.

13. The other judgment which emanates from service jurisprudence, the Division Bench considering the State Bank of Mysore Regulations would hold as follows:

> ***"18.*** *Apart from that, there is a greater illegality in the procedure followed by the disciplinary authority against the respondent. Sub-rule (a) to Rule 19.12. of the Rules reads:*
>
> > *"He shall also be given a hearing as regards the nature of the proposed punishment in case any charge is established against him."*
> >
> > *(Emphasis supplied)*
>
> ***This Sub-rule envisages something more than mere opportunity to be afforded to the respondent. It requires a hearing to be given. The difference between mere opportunity and hearing is explict. There may be fusion between the two, but there should not be a confusion between the two concepts. Opportunity may be extended to hearing, but hearing cannot be condensed or limited to mere opportunity to file objections or representations. 'Hearing' means, ordinarily an opportunity of being heard, that means personal hearing. It is also clear from Rule 19.12. (e) of the Rules, which provides:***
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> > *"However, if the employee concerned requests a hearing regarding the nature of punishment such a hearing shall be given."*
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> ***19.*** *Similar word 'hearing' appears in sub-rule (3) of Rule 6 of the Karnataka Acquisition of Land for Grant of House Sites Rules 1972 came for consideration before this Court in Patel Munireddy v. Dy. Commissioner, Bangalore [1976 (2) K.L.J. 168.] to which one of us (Jagannatha Shetty, J.) was a party. While interpreting the said word, it was observed:*
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> > *"Sub-rule—(3) positively states that the Assistant Commissioner shall hear the objector and the Block Development Officer. 'Hearing' in the context is "personal hearing" and not mere opportunity to file objections. ……. If the right to be heard is to be a real right and is worth anything it must carry with it a*

> *right in the person to know the case which is made against him. He must know what materials have been collected, what evidence has been given and what statements or reports have been made affecting his rights. He must be given a fair opportunity for correcting or contradicting any relevant statement pre-judicial to his view. These principles appear in all these cases right from the celebrated judgment of Lord Loreburn, L.C. in Board of Education v. Rice (1911 A.C. 179)"*
>
> ***20.*** *This crucial aspect appears to have escaped the notice of the disciplinary authority. The show cause notice issued by the disciplinary authority against the proposed penalty asked the respondent to file only the representation. The respondent has not been afforded an opportunity of being heard. When the Rules governing the conducting of enquiry specifically provide that a hearing shall be given to the delinquent employee, he ought to be given a fair hearing and failure to give such a hearing would vitiate the order of penalty. The order against the respondent, therefore, cannot be sustained."*
>
> *(Emphasis supplied)*

The Division Bench in the aforesaid decision holds that hearing cannot be restricted to issuance of a show cause notice. Opportunity of being heard would mean even personal hearing.

14. In an identical circumstance, a learned single Judge of the High Court of Madhya Pradesh in ***SAMVAD SOCIETY FOR ADVOCACY AND DEV. v. UNION OF INDIA***[3], answering the very section, which I am now required to deal, holds as follows:

> *"**5.** The factual aspects stated herein as contended by the learned counsel for the petitioner has not been disputed by the respondent. However, four months after the renewal of the certificate, the impugned order was passed, whereby*

[3] *2019 SCC OnLine MP 811*

the renewed certificate has been declared non-est ab initio. The reason given for the said reversal of renewal is seen in paragraph-6 of the impugned order in just one line, which is ***and whereas, there is need to revise the said order for renewal of registration in public interest****" what that pubic interest is or what the activity of the petitioner could be seen or understood to be prejudicial to the interest of governance by the respondent, Union of India, is not mentioned in the said order. Ex-facie the orders smacks of arbitrariness. Once the right has been created in the petitioner to continue with his activities, to receive foreign aids and the same ought not be set-aside by the Union of India. The order setting aside the certificate of renewal ought to have explained the reasons why it was necessary to set aside elaborately and the petitioner should have been given an adequate opportunity, not just by way of natural justice, but also in view of section 14 of the FCRA which relates to cancellation of certificate and sub section (2) unambiguously laysdown "****no order of cancellation of certificate under this section shall be made unless the person concerned has been given a reasonable opportunity of being heard.****" It is undisputed that this opportunity is a mandatory requirement under sub-section (2) of section 14 of the FCRA and the same has not been given to the petitioner. Learned counsel for the respondent, Union of India has drawn the attention of this Court to their affidavit, where the reasons for passing the impugned order have been given. In the said affidavit the respondent says that on the basis of adverse inputs received from the securities agency in the report dated 29, September 2016 which is reproduced by the Union of India in his affidavit and which reads as hereunder "as per inputs with financial assistance of ACTIOONAID, UK, NGOs like Society for Advocacy and Development (SAMVAD) and Jai Bharti Shiksha Kendra, Katni M.P. Chalked out a plan on November 11, 2011 to increase public awareness against the proposed Chutka Nuclear Power Plant and Ataria Dam Project. In this connection, an agreement was made between British based financial agency ACTION AID and SAMVAD, including Jai Bharti Shiksha Kendra, in the month of January, 2012, under Network co-ordination Project for a period of 10 years to mobilize the public against the Chutka Projects including the Ataria Dam Project, ACTIONAID, UK sanctioned an amount of Rs. 10 Lakh to SAMVAD for the year 2012 for carrying out the campaign." The affidavit while not denying the fact that no opportunity was given to the petitioner of being heard*

before the impugned order was passed cancelling his registration states in paragraph-6 that principles of natural justice has not been violated as the action has been taken strictly as per the FCRA, 2010.

6. Heard the learned counsel for the parties and perused the documents filed along with this petition, the short affidavit and the additional affidavit filed by the Union of India and perused the law on the subject. The amended FCRA of 2010 did not do away with sub section (2) of Section 14 which, as hereinabove already discussed had a mandatory provision that no order of cancellation of certificate could be passed without hearing the person concerned giving reasonable opportunity to such person. Undoubtdly, the respondent does have the authority to revise an order granting certificate of operation to any NGOs but before it can do that, it must comply with the mandatory provisions of section 14 of sub-section (2) of the FCRA, 2010.

7. Under the circumstances, this petition succeeds and the impugned order dated 24.12.2016 is quashed on grounds of arbitrariness and also on the grounds of non-compliance with sub-section (2) of section 14 of FCRA. Consequently, the petitioner is reverted to the position that existed before the impugned order was passed. However, the Union of India shall be at liberty to exercise jurisdiction for cancellation of the certificate granted to the petitioner but after following the due process as stipulated under sub-section (2) of section 14 of the FCRA."

(Emphasis supplied)

15. The learned Central Government Counsel has placed reliance upon several judgments. I deem it appropriate to consider the same. The Apex Court in the case of ***UNION OF***

INDIA v. JESUS SALES CORPORATION[4] at paragraphs 4 and 5 on which the learned counsel has placed reliance read as follows:

> ***"4.*** *The learned counsel appearing on behalf of the Union of India took a stand that when aforesaid proviso requires the appellate authority to exercise discretion taking into consideration the facts and circumstances of each case, it does not flow from the said provision that before exercising such discretion, the appellate authority should hear the appellant; this discretion can be exercised by the appellate authority as the said authority may deem think proper. Now it is too late to urge that when a statute vests discretion in an authority to exercise a statutory power such authority can exercise the same in an unfettered manner. Whenever an unfettered discretion has been exercised, courts have refused to countenance the same.* ***That is why from time to time courts have "woven a network of restrictive principles" which the statutory authorities have to follow while exercising the discretion vested in them. This principle has been extended even when the authorities have to exercise administrative discretions under certain situations. Another well-settled principle which has emerged during the years that where a statute vests discretion in the authority to exercise a particular power, there is an implicit requirement that it shall be exercised in a reasonable and rational manner free from whims, vagaries and arbitrariness.***
>
> ***5.*** *The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connection, several judgments of this Court have been referred to. It need not be pointed out that under different situations and conditions the requirement of compliance of the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is*

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[4] *(1996) 4 SCC 69*

extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. When an authority has determined a tax liability or has imposed a penalty, then the requirement that before the appeal is heard such tax or penalty should be deposited cannot be held to be unreasonable as already pointed out above. In the case of Shyam Kishore v. Municipal Corpn. of Delhi [(1993) 1 SCC 22] it has been held by this Court that such requirement cannot be held to be harsh or violative of Article 14 of the Constitution so as to declare the requirement of pre-deposit itself as unconstitutional. In this background, it can be said that normal rule is that before filing the appeal or before the appeal is heard, the person concerned should deposit the amount which he has been directed to deposit as a tax or penalty. The non-deposit of such amount itself is an exception which has been incorporated in different statutes including the one with which we are concerned. Second proviso to sub-section (1) of Section 4-M says in clear and unambiguous words that an appeal against an order imposing a penalty shall not be entertained unless the

> *amount of the penalty has been deposited by the appellant. Thereafter the third proviso vests a discretion in such appellate authority to dispense with such deposit unconditionally or subject to such conditions as it may impose in its discretion taking into consideration the undue hardship which it is likely to cause to the appellant. As such it can be said that the statutory requirement is that before an appeal is entertained, the amount of penalty has to be deposited by the appellant; an order dispensing with such deposit shall amount to an exception to the said requirement of deposit. In this background, it is difficult to hold that if the appellate authority has rejected the prayer of the appellant to dispense with the deposit unconditionally or has dispensed with such deposit subject to some conditions without hearing the appellant, on perusal of the petition filed on behalf of the appellant for the said purpose, the order itself is vitiated and is liable to be quashed being violative of the principles of natural justice."*
>
> *(Emphasis supplied)*

The Apex Court holds that if the principle of affording personal hearing to the persons concerned is extended whatsoever, the statutory authorities who are vested with the power to pass orders on statutory appeals would lead to chaotic conditions. When principles of natural justice require an opportunity of being heard, it cannot mean in all circumstances that it should be personal hearing. Therefore, the Apex Court holds that in all circumstances it cannot lead to personal hearing. It is not a blanket ban by the Apex Court. The other judgment relied on by the learned counsel for the respondent is ***PATEL ENGINEERING LIMITED v. UNION OF INDIA***[5] wherein it is held as follows:

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[5] *(2012) 11 SCC 257*

> ***"38.*** *Coming to the submission that R-2 ought to have given an oral hearing before the impugned order was taken, we agree with the conclusion of the High Court that there is no inviolable rule that a personal hearing of the affected party must precede every decision of the State. This Court in Union of India v. Jesus Sales Corpn. [(1996) 4 SCC 69] held so even in the context of a quasi-judicial decision.* ***We cannot, therefore, take a different opinion in the context of a commercial decision of the State. The petitioner was given a reasonable opportunity to explain its case before the impugned decision was taken."***
>
> *(Emphasis supplied)*

The Apex Court observes while negativing the contention that the appellant therein had to be given oral hearing before the order impugned therein was passed while agreeing that the view of the High Court that there is inviolable rule that a personal hearing of the affected party must precede every decision of the State. The Apex Court follows the aforesaid judgment in the case of *Jesus Sales Corporation.* The third judgment relied by the learned counsel for the respondent is ***NIRMA INDUSTRIES LIMITED v. SECURITIES AND EXCHANGE BOARD OF INDIA***[6]. He seeks to place reliance upon paragraph 38 which reads as follows:

> ***"38. In our opinion, the aforesaid provisions are of no assistance to the appellants. Firstly, neither the appellants nor their merchant bankers requested for***

[6] *(2013) 8 SCC 20*

> ***an opportunity for a personal hearing. Secondly, in the present case, SEBI has not issued any instructions or directions under Section 11, which requires that the rules of natural justice be complied with. Thirdly, it cannot be said that the appellants had been condemned unheard as the entire material on which the appellants were relying was placed before SEBI. It is upon consideration of the entire matter that the offer of the appellants was rejected. This is evident from the detailed order passed by SEBI on 30-4-2007****. The letter indicates precisely the exceptional circumstances mentioned by the appellants seeking to withdraw the public announcement. Each and every circumstance mentioned was considered by SEBI. Therefore, it cannot be said that the appellants have been in any manner prejudiced by the non-grant of the opportunity of personal hearing. Therefore, the submission made by Mr Shyam Divan with regard to the breach of rules of natural justice is rejected."*
>
> *(Emphasis supplied)*

The finding of the Apex Court is that SEBI has not issued any instruction or direction under Section 11 of the Act therein, which requires that Rules of natural justice be complied with. Therefore, non-grant of opportunity of personal hearing has not caused any prejudice to the appellants therein. All the three judgments relied by the learned counsel for the respondents/ Union of India are distinguishable without much ado as the judgment in the case of ***PATEL ENGINEERING LIMITED*** *supra* follows ***JESUS SALES CORPORATION***. The issue in the said cases was entirely different. Leading to chaotic condition was what the Apex Court has delineated in all the cases if personal hearing is demanded in every circumstance. There can be no

qualm about the principle. The Apex Court has not imposed a blanket ban upon grant of personal hearing in any circumstance while interpreting a statute.

16. As observed hereinabove, sub-section (2) of Section 14 of the Act permits cancellation of registration. The consequence thereof is found in sub-section (3) which permits no registration under the Act for an entity which suffered cancellation for a period of three years. This is the dire civil and economic consequence that would ensue. Therefore, it cannot be said that sub-(2) of Section 14 of the Act is restricted only to hearing, hearing would mean only issuance of a show cause notice. Therefore, the contention of the learned Central Government Counsel is to be repelled and is accordingly repelled. I am in respectful agreement with what the learned single Judge of the High Court of Madhya Pradesh has held, interpreting sub-section (2) of Section 14 of the Act. Principles of natural justice, is trite cannot be stretched to unlimited extent. But, it is equally trite that when consequences thereof are grave, it should be complied with in its entirety even stretching in a little further. Therefore, the words depicted in the Act *'reasonable opportunity of being*

heard' cannot be restricted to issuance of a show cause notice but a personal hearing in the peculiar facts of the case owing to the peculiarity of sub-section (3) of Section 14 of the Act must have been afforded to the petitioner. Non-affording of personal hearing to the petitioner has rendered the order unsustainable and the unsustainability of it, would lead to its obliteration. ***Let there be no confusion that there can always be a fusion between hearing and personal hearing.***

17. For the aforesaid reasons, the following:

O R D E R

(i) Writ Petition is allowed.

(ii) Orders impugned dated 05-03-2021, 10-09-2021, 25-03-2022, 04-09-2023 all issued by the 2nd respondent stand quashed.

(iii) In the light of quashment of orders, the petitioner becomes entitled to all consequential benefits including restoration of *status quo ante*.

(iv) Liberty is, however, reserved in the Union of India, if it finds necessary, to act in accordance with law bearing in mind the observations made in the course of the order.

Sd/-
JUDGE

nvj
CT:MJ