
(1966) 06 CAL CK 0004
In the Calcutta High Court

Babar Ali Sardar and Others and Manimohan Patra and Others APPELLANT
Vs
State of West Bengal and Others RESPONDENT

Date of Decision : 16-06-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Representation of the People Act, 1951 — Section 100(1)(c), 116A, 36(4)

Citation : 71 CWN 842

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Arun Prokash Chatterjee and Sanjoy Bhattacharyya, for the Appellant; N.C. Chakravarty, Satyendra Nath Mukherjee and Prodyut Kumar Banerjee, for the Respondent

Judgement

D. Basu, J.—The point for decision in these two cases under Article 226 of the Constitution is whether the Appellate Authority under Rule 13 of the West Bengal Panchayat Rules, 1958, has to act in a quasi-judicial capacity, in disposing of the appeal and, if so, the petitioner in the two cases are entitled to the relief claimed.

2. The petitioners are voters for election to the Aanchal Panchayat of two areas respectively, namely, Bakra and Salap Aanchal Panchyat. The nomination papers submitted by the petitioners under Rule 10(1) of the said Rules, were however, defective and were, accordingly, rejected by the Returning Officer (O.P. No.2), contending that the defect in question was not of a "substantial" character within the meaning of Rule 10(3), proviso. The petitioners took an appeal to the District Panchayat Officer (O.P. No.3) under the provisions of Rule 13, on the ground that their names were wrongly omitted from the list. The provisions of Rule 13 may profitably be reproduced at once :

If any person who has filed a nomination paper under sub-rule (1) of Rule 10 finds that his name is not included in the list of candidates published under sub-rule (6) of Rule 10 by the Returning Officer or if any person who filed a nomination paper disputes the right of any other candidate to be on such list,

such person may appeal to the District Panchayat Officer in writing not less than 26 days before the election day. The District Panchayat Officer shall forward a copy of his order passed on appeal to Returning Officer so as to reach him not less than 16 days before the election day, and the Returning Officer when so directed by the District Panchayat Officer shall, on receipt of the order, amend the list, note upon it the date of such amendment and forthwith publish at the office of the Gram Panchayat or Anchal Panchayat, if any, or at some other conspicuous places the amendments made in the list.

3. The petitioners' grievance is that the Appellate Authority rejected their appeal without hearing the petitioners and even without issuing a notice of any hearing to them. The opposite parties do not say that O.P. No.3 did issue such notice but contend that he was not required to do any such thing under the provisions of Rule 13.

4. It has been vehemently argued by the learned Government Pleader, on behalf of opposite parties, that it was an administrative appeal and that since the relevant statutory provisions do not require any hearing the Appellate Authority or to take any other steps in that behalf.

5. It is patent that the Rule itself does not impose any quasi-judicial obligation nor require any compliance with the rules of natural justice but that is not conclusive of the matter. In my recent judgment in C.R. No.461 of 1966 before the Division Bench, I have stated how, starting from the narrow view in (1) Province of Bombay Vs. Kusaldas S. Advani and Others, , that the exclusive source of quasi-judicial obligation was the express provisions of the relevant statute our Supreme Court has been proceeding towards the other extreme, namely, that even where the relevant statutory provision is silent, a quasi-judicial obligation may still be inferred from the nature of the function itself, the rights of the parties affected and the like. The authorities, - both English and Indian, - to be cited just now, demonstrate that so far as the appellate function is concerned, even when such function is vested in an administrative authority, the nature of the function itself would require a hearing, according to the rules of natural justice.

6. The learned Government Pleader referred to the recent English decision in (2) *Wednesbury Corporation v. Ministry of Housing and Local Government*, (1965) 3 WLR 956, in support of the proposition that there was no quasi-judicial obligation in the absence of a statutory direction to that effect. That case, however, relates to the provision relating to a local inquiry u/s 23 of the Local Government Act, 1958, and simply lays down that the Minister who receives the relevant report from the Local Government Commission for effecting reforms in the Local Government organisation, and then orders an inquiry into the objections submitted to him against the proposals, does not act quasi-judicially but administratively. It is to be noted that the function of the Minister, in that case, was not an appellate function. The ratio decidendi of the decision was that the entire function of the Minister u/s 23 was administrative, being a step towards

the initiation of legislation, and the inquiry in question was only an aid to house coming to a subjective determination as to the need for necessary legislation. The observations of Sellers, L.J., (p. 969) will clear this out :

The statute of 1958 which governed the Minister imposed upon him administrative functions. He has to make up his mind on any proposal made by the Commission and the enquiry into objections enables him the better to appreciate their nature and strength and serves to inform him accordingly. The Minister was not, therefore, in my judgment, acting in a judicial capacity in ordering an enquiry, nor were the Inspectors in concluding it.

7. So far as the appellate function is concerned, the proposition that an appoint function is inherently quasi-judicial in nature rests on the high authority of Lord Haldane's observation in the case of (3) Local Government Board v. Arlidge, 1915 AC 120 (132, 150) :

When the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made.....

That this principle applies even where the appellate function is vested not in a Court but in an administrative authority is also well-established on the authority of case such as the (4) King v. Tribunal of Appeal, (1920) 3 KB 334, (5) 1 KB 277, and the like. In (3) Arlidge's case, (ibid) itself, the appellate function in question had been vested in the Local Government Board. Coming now to India, in the first case of (6) Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , it was held that the appellate function, whether it has to be exercised by a judicial or administrative authority, must be exercised quasi-judicial.

8. The principle was explained, in no unmistakable terms by our Supreme Court, speaking through Sinha, J., in (6) Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, -

Where there is a right vested in the authority created by statute, be it administrative or quasi-judicial to hear appeals and revisions it becomes its duty to hear judicially, that is to say, in an objective manner, impartially, after giving reasonable opportunity to the parties concerned in the dispute, to place their respective cases before it.

The above principle regarding the appellate function has been deeply embedded in Indian jurisprudence and has been extended to the function of exercising statutory powers of revision and review (Nagendra's case, ibid); (7) Laxman Purushottam v. State of Bombay, AIR 1964 SC 435 (442); (8) Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, ; (9) Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others, ; (10) Shivji Nathubhai Vs. Union of India (UOI) and Others, .

9. It was argued by the learned Government Pleader that the foregoing principle might apply where the civil rights of an individual were affected by an administrative order but not where the right affected was itself the creature of a statute, such as a right to vote or to stand for election, as in the instant case. This argument cannot, however, stand for a moment. It cannot be overlooked that in (6) Nagendranath's case itself the original order affected a statutory right, viz., the right to settlement of an excise shop under the Eastern Bengal and Assam Excise Act, 1910. Where the right affected is a civil right, e.g., where a person's house is sought to be demolished by the order of a local authority, even the primary function of issuing such order must be performed quasi-judicially, though the statute is silent about the procedure to be followed, for because the primary authority is "invested with power to affect the property of one of Her Majesty's subjects," it "is bound to give such subject an opportunity of being heard before it proceeds" and, in such a case.

although there are no positive words in a statute requiring that the party shall be heard yet the justice of the common law will supply the omission of the legislature.

10. The principle of justice of "universal application", which was laid down by Willes and Byles, JJ., in the ancient case of (11) *Cooper v. Wandsworth Board*, (1863) 14 CB (NS) 180, has been reiterated by Common law Judges for over a century up to the recent decision of the House of Lords in (12) *Ridge v. Baldwin*, (1963) 2 All ER 66 (71, 74, 108) HL.

11. But when we speak of the appellate function, we go up one tier higher, and that is why different considerations prevail. In this case, it is not the nature of the right affected, but the nature of the function itself, namely, that a person aggrieved by the order of an inferior authority has approached a superior authority for a reconsideration of the decision of the inferior authority. In such a case, the provision for appeal would be an empty formality, if the person who is aggrieved and has taken the trouble of appealing to the superior authority, is not even allowed to present his case before the superior authority. This has to do nothing with the nature of the right going to be affected or the considerations upon which the appellate authority will ultimately dispose of the appeal, but is concerned only with minimum of a fair procedure which must be followed by the appellate authority before taking up the appeal on its merits; and that is the principle laid down by the House of Lords in (3) *Local Government v. Arlidge*, (ibid).

12. The fact that the function of the inferior authority has to be performed subjectively, according to the provision to Rule 10(3), cannot take away the quasi-judicial obligation from the appellate authority, for, even though an objective standard has not been provided by the statute for disposing of the appeal, there is no reason why we should not hear the appellant and allow him the opportunity of persuading him that the subjective power has been exercised by the inferior authority capriciously. Of course, the instant case does not relate

to emergency powers of the Executive or a power relating to the security of the country, such as defence or the like, vide (12) *Ridge v. Baldwin*, (1963) 2 All ER 66 (75-76, 79) where the nature of the function would take itself out of the basic principles of natural justice, because the statutory power might be defeated if a hearing had to be offered to the person aggrieved before disposing of the appeal or review, as was pointed out by our Supreme Court in (13) *Sadhu Singh Vs. Delhi Administration*, . Nor is the matter of election to a local authority dependent upon any "policy" determination by the Executive.

13. It may be noted, in this connection, that Rule 13 has two parts, dealing with two different grounds for appeal, - the first deals with the case where the complaint of the appellant is that his name has been illegally omitted from the list of candidates; the second deals with the case where the appellant "disputes the right of any other candidate to be on such list". It is clear that there is patently a lis in the second case, - a dispute between two rival candidates, and such dispute cannot possibly be heard without giving the opportunity to the contesting parties to place their respective cases before the appellate authority. If this far be conceded, it must follow that the same obligation will fasten to the other part of Rule 13, for, it cannot be that the appellate function will be quasi-judicial with respect to one part of the rule which confers the appellate power and not with respect to the other.

14. In this context, it would not be out of place to explain the importance of the function to be exercised under Rule 13 of the West Bengal Panchayat Rules and the need for complying with the basic requirement of a quasi-judicial procedure in determining the appeal provided therein, with reference to the comparable provisions in relation to a parliamentary election under the Representation of the People Act, 1951. As stated earlier, the rejection of a nomination paper can be the subject matter of an appeal under Rule 13 on the ground that the defect in question was not of a substantial character within the meaning of the proviso to Rule 10(3). Similar is the provision in Section 36(4) of the Representation of the People Act, 1951 to the effect that the Returning Officer's power to reject any nomination paper is confined only to cases where the defect is not of a substantial character. Where a nomination paper has been improperly rejected, it is open to the aggrieved party to present an election petition under Rules 80-1, and it is thereupon competent for the Election Tribunal to declare an election void on this ground u/s 100(1)(c). Then, again, the decision of the Election Tribunal is not final but is subject to appeal to the High Court u/s 116A of that Act. Under the Panchayat Act, on the other hand, though there is provision for an election petition to be presented u/s 17 of the Act (read with Rule 30), to question an election, it is quite evident that the ground of a nomination paper having been rejected on an improper ground cannot be the subject of an election petition under Rule 30 because the same District Magistrate, who hears the appeal under Rule 13, is the authority to determine an election petition. If, therefore, a specific provision has been made for disposing of the objection against an improper rejection of a nomination in Rule 13, before the election is held, it is legitimate to

infer that the matter shall be disposed of in appeal under Rule 13 and shall not again be open to question by way of an election petition under Rule 30. It is also to be noted in this context that there is no provision for appeal from the decision of a District Magistrate upon an election petition and that the orders of the District Magistrate under Rule 13 shall also be final. The improper rejection of a nomination paper cannot be said to be an insignificant matter when we refer to the provisions of the Representation of the People Act, and, inasmuch as this matter has to be determined once for all by the District Magistrate in the appeal under Rule 13, at a State prior to the election being held, it is only fit and proper that the appeal should be decided by the District Magistrate after giving an opportunity to the appellant to present his case before him.

15. It remains still to consider what is the extent to which the appellate authority under Rule 13 must adopt a judicial approach and a judicial procedure?

16. It is no doubt established that, in the absence of a specific provision in the governing statutory provisions, an administrative Tribunal need not follow the exact procedure of a Court but it is agreed on all hands that there is a minimum of judicial procedure which must be complied with whenever a quasi-judicial obligation is inferred from the nature of the function. That minimum requirement is, as stated by the House of Lords in (3) Arlidge's case (ibid), and by the King's Bench Division in (4) Rex v. Housing Appellate Tribunal, (1920) 3 KB 334, an opportunity to be offered to the appellate authority. No doubt, in the actual facts of the case in (3) Local Government v. Arlidge, (ibid), it was held that the appellant could not make any complaint that he had been denied an opportunity of being heard orally before the Local Government Board, which was exercising the appellate function. The Board, headed by the Minister, had the power to direct a public inquiry to be held by the Health Inspectors before disposing of the appeal. At such an inquiry any party interested might appear and state his case orally. The appellant in that case did actually appear before the Inspectors and presented his case and the Board acted upon the report of the Inspectors; it was held by the House of Lords that since the appellant had the opportunity to present his case before the Inspectors appointed by the appellate authority he could not insist that he should have a subsequent and additional hearing before the Board analogous to a Court of law. It should be noted that the public inquiry was held under orders of the appellate authority and as a part of the appellate procedure itself. The House of Lords did not say that the appellant need not have any opportunity of presenting his case at any stage of the appellate proceedings but merely held that because such an opportunity had been offered and availed of at the stage of public inquiry there was no obligation, in the absence of an express provision in the statute, that the appellant should again be heard orally before the Board. The inquiry by the Inspectors was treated as a part of the appellate proceeding on the ground that the Minister was not in a position to do everything personally in view of his other commitments in Parliament. This aspect of the decision in (3) Arlidge's case (ibid), has sometimes been overlooked.

17. The decision in Arlidge's case, laid down the absolute need for an opportunity to be offered to the appellant to present his case at some stage of the appellate proceedings and this is highlighted by the majority decision in (4) Rex v. Housing Appellate Tribunal, (ibid). In this case, there was no provision for any public inquiry as a part of the appellate proceeding and it was held by the Division Bench that the Appellate Tribunal could not dispose of the appeal without communicating to the appellant the date fixed for hearing the appeal, so as to give him an opportunity of appearing on that date and to make arguments on the grounds taken in the memorandum of appeal (P. 343 ibid). In support of this decision, the Court referred to the maxim "audit alteram partem", and said that this principle was applicable to a proceeding in appeal in the same manner as it was applicable to a quasi-judicial Tribunal of the first instance. The following observations are of importance :

Now, that being so, does that principle apply equally to the hearing of an appeal? I think it does. I see no reason why the right to sufficient hearing should be limited to an inquiry by a Tribunal of first instance. I do not mean that the extent of the right is precisely the same before both Tribunals, for when the matter comes before the Appeal Tribunal there has already been a hearing before the Tribunal appealed from. But, even so, I cannot think that the Appeal Tribunal is at liberty to cut down the right of appeal, that is to say, the right to have an adjudication on the subject matter of the appeal upon the materials which the appellant desires to place before the Tribunal and which are properly admissible before it... There was no reason why the Appeal Tribunal should not, within the twenty-five days that elapsed between 3rd April and 28th April have given notice to the parties that they would determine that appeal on a specified day, and that if either of the parties had any further facts to bring forward or arguments to urge they should give notice of them to the Tribunal. Such a notice would not have delayed the determination of the appeal (per Earl of Reading, C.J.).

The conspicuous feature of the case in R.V. Housing Appellant Tribunal, is that the statutory Rules made to regulate the procedure relating to the appeal the Appellate Tribunal had provided that if after a consideration of the memorandum of appeal and the reply, "the Appeal Tribunal are of opinion that the case is of such a nature that it can properly be determined without a hearing, and may dispense with a hearing, and may determine the appeal summarily". Nevertheless, the majority of the Court held that though, under the Rule, the Tribunal could dispense with an oral hearing in any case, it could not dispense with any hearing at all, for, that would be denying the right to appeal, which had been conferred by the statute itself and that any rule which sought to curtail that right would be ultra vires. According to the majority (p. 343), the right to appeal implied, in the minimum, (a) the right to have a notice of the date of hearing of the appeal; (b) the right to appear on that date and to submit arguments in support of the memorandum of appeal.

18. Of course, if there are disputed facts involved, it might require an additional

right to adduce evidence (or to contradict the materials relied upon by the respondent), as was pointed out in the early case of *R. v. Archbishop of Canterbury*, (1859) 1 E & E 545. Lord Campbell, C.J., observed :

The appellant here has not been heard. In his petition he denies almost everything charged against him, specifically, and asks the archbishop to appoint a time and place at which he may be heard and adduce evidence in his behalf. Without any communication with him, his Judge decides against him. That was not a hearing.

19. But even where no facts are involved, a statutory right to appeal to a superior Tribunal against the decision of an inferior authority necessarily implies the right to have an opportunity to appear before the superior authority and to present the case of the appellant. Where the Legislature seeks to exclude that right and intends that the superior Tribunal shall give his decision on going through the memorandum of appeal presented by the appellate, it would say so expressly. In such a case, the appellant may be helpless unless, of course, he can challenge the validity of such a statutory provision on same constitutional ground, as in a country like India. Rule 13 has made no such express negative provision. Hence, the basic or essential requirement of an appellate function must be complied with by the District Magistrate, while exercising his power under Rule 13.

20. I have, therefore, no doubt that the District Panchayat Officer should have sent out a notice to the petitioners fixing a date for hearing of the appeal so that they might appear before him to present their case, if so advised, and that the decision of the appellate authority, rejecting the petitioners' appeal must be quashed.

21. Two preliminary points taken by the learned Government Pleader have, however, to be dispensed with:

Firstly, it has been urged that the present petition is not maintainable since the petitioners have not annexed to their petition a copy of the impugned order of the Appellate Authority. This point ought, however, been taken at the very initial stage, so that the Court might ask the petitioners to produce a copy of the order. This is, however, a proceeding for Certiorari and the entire records of the inferior Tribunal are before the Court and in paragraph 9 of the counter affidavit it is categorically stated the O.P. No. 3, rejected the petitioners' appeal after obtaining a report from the Returning Officer and that the result of their appeal would be evident from the fact that their names have been omitted from the final list of candidate. It is also urged that there is no obligation even to communicate the result of the appeal to the Appellant. In this situation, the present petition cannot be rejected on this technical ground at this stage.

The second objection of the learned Government Pleader is that this petition is not maintainable because the person who has eventually been elected has not been impleaded as a party in this petition. No doubt, the person who would be

affected by the decision of the Court is a necessary party in a proceeding for Certiorari. But in determining this question, the nature of the relief asked for from the Court has to be taken into consideration. The relief prayed for in the instant case is not against the election of the successful candidate. What the petitioners ask is that they should be offered an opportunity of being heard before their appeal is disposed of by the appellate authority. This does not necessarily mean that the appellate authority would set aside the election after hearing the petitioners; the successful candidate would not, therefore, be affected by the mere quashing of the impugned appellate order. After the appeal is sent back to the appellate authority for a hearing according to law, there will be nothing to prevent the appellate authority from calling upon the successful candidate also before him, before disposing of the appeal. But as to that it is not necessary to make any pronouncement in the present proceeding. The preliminary objection must be rejected.

22. In the result, the Rules must be made absolute and the impugned orders of O.P. No. 3, rejecting the petitioners' appeals must be quashed. Opposite party No. 3 is directed to dispose of the appeals according to law, after issuing a notice upon the petitioners and after giving them an opportunity of being heard. There would be no order as to costs.

23. Further steps in the election proceedings will be withheld until the disposal of the appeal, as directed.

24. In view of the order just made no separate order is necessary on the connected applications.