

(1969) 08 OHC CK 0031

In the Orissa High Court

Case No : Original Jurisdiction Case No. 154 of 1965

Balasore Municipality

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-08-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1970 Ori 41

Hon'ble Judges : G.K. Misra, C.J.; R.N. Misra, J

Bench : Division Bench

Advocate : D. Mohanty and P.V. Ramdas, for the Appellant; Standing Counsel, B.K. Pal, B.J. Pal, A. Mohanty, R.K. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, C.J.—Opposite party No. 4 is the Head-clerk-cum-Accountant in Balasore Municipality. On 12-6-64 there was a quarrel between himself and a Municipal Sweeper. He requisitioned the services of the Police for protection. On 6-7-64 the Chairman of Balasore Municipality (petitioner) framed 8 charges against him in a disciplinary proceeding. Charge No. 3 was to the effect that opposite party No. 4 abused the Chairman by using insulting words. Charges 4 and 5 were that he showed insubordination to the Chairman. All the charges arise out of the incident of 12-6-64.

On 15-7-64 the delinquent showed cause and pleaded not guilty. He clearly asserted that the Chairman was personally interested in the case and denied the charges of insulting the Chairman and insubordination and wanted that the enquiry should be made by some person other than the Chairman. He also filed an appeal before the State Government that the Chairman cannot be the Enquiry Officer. Initially, the Chairman granted an order of stay but later on he vacated it and did not forward the memorandum of appeal. The Chairman made the enquiry himself and found the delinquent guilty of all the charges. Ultimately the punishment of dismissal was inflicted. The dismissal order was passed on

5-10-64 and was to take effect retrospectively from 29-9-64.

2. With regard to charge No. 3, the Chairman relied upon his own evidence that he was insulted by the delinquent and believed his own statement. Against the order of punishment opposite party No. 4 filed an appeal to the State Government. On 22-4-65, Government passed the following order.

"I am directed to say that after careful consideration of the appeal petition dated 24-10-64 of Sri S.C. Sen, ex-Head Clerk-cum-accountant of Balasore Municipality, Government have been pleased to decide that the disciplinary action taken by the Chairman against the Head-clerk-cum-Accountant is irregular as the Chairman, who is the appointing authority as well as the disciplinary authority of the appellant, has acted illegally by becoming the enquiry officer, and that his order dated 5-10-64 cannot have retrospective effect from 29-9-64. Government have, therefore, been pleased to order that the appellant be reinstated forthwith and the period of his suspension and dismissal from duty be treated as the period spent on duty.

The matter of fresh independent enquiry into the incident or conduct of the appellant will be taken up later."

Thus, by the Government order the petitioner was reinstated in service, but there was a direction that an enquiry would be held by a person other than the Chairman later. In fact, on 3-5-65, the Chairman addressed a letter asking the District Magistrate to intimate to him the person who would enquire into the charges framed against opposite party No. 4. Aggrieved by the order passed by the State Government setting aside the order of dismissal passed by the Chairman, the present application under Article 226 of the Constitution has been filed.

3. Mr. Mohanty for the petitioner does not dispute that an appeal lies to Government against the order of dismissal passed by the Chairman. The only contention raised by him is that the appeal was heard by Government without any notice being given to the petitioner, who got no opportunity to justify the order of dismissal and as such there was a violation of the principle of natural justice and the order of Government must be vacated.

4. Mr. Pal, on the other hand, contends that the Chairman violated the principles of natural justice, and being an administrative functionary the Chairman was not entitled to any hearing in appeal; and even if he was entitled to a hearing, the High Court should not interfere when there has been no failure of justice.

5. These contentions require careful examination.

6. The first question for consideration is whether the Chairman was entitled to any hearing in appeal. Mr. Mohanty was unable to place any statutory rule whereunder a public functionary like the Chairman is entitled to a hearing when the appeal was heard. Law is well settled that the rules of natural justice vary with the varying constitution of statutory bodies and the rules of natural justice

alleged to have been contravened should be decided not under any preconceived notions but in the light of the statutory rules and provisions. Where no such rule, which could be said to have been contravened, is brought to the notice of the Court, it is no ground for interference either under Article 226 or 227 simply because a Tribunal viewed the matter in a light which is not acceptable to the Court.

At the first stage of an enquiry a delinquent must be given every opportunity to defend himself and must be heard but once the proceedings have terminated, the subsequent stages like appeals or revisions are, in most cases, governed by rules and regulations which are framed or according to practice. Though a personal hearing is essential at the primary stage of enquiry, at later stages personal hearing cannot be given if the rules do not so permit. Rules of natural justice do not necessarily require that there should be repeated hearings at all later stages. *F.N. Roy Vs. Collector of Customs, Calcutta*, ; *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, ; and *Prafulla Kumar Mazumdar Vs. Inspector General of Police and Others*, .

7. In this case even if the delinquent had been the appellant, he was not entitled to a personal hearing at the appellate stage on the aforesaid principles. The question of having any hearing of a Judge or a public functionary does not arise at all. The order with the record of any judge or public functionary acting judicially or quasi-judicially is the subject-matter of the appeal. That should speak for itself and be its own defence. Such authorities are not entitled to any hearing either at the appellate or revisional stage. Mr. Mohanty's contention has no substance and is accordingly rejected.

8. Even otherwise, the Chairman himself violated the principles of natural justice in making the enquiry when charge No. 3 directly concerned himself. The charge was that he was insulted by the delinquent. The only evidence in support of that charge was the statement of the Chairman himself. The enquiry officer thus held the delinquent guilty on his own evidence. This is abhorrent to any notion of judicial determination. It is one of the fundamental principles of judicial procedure that the person entrusted with hearing of a case judicially or quasi-judicially, should not have personal bias. The principles governing the doctrine of bias vis-a-vis a judicial tribunal are : (i) no man shall be judge in his own cause and (ii) justice should not only be done but manifestly and undoubtedly seem to be done.

9. The same principles equally apply to authorities who have to act even quasi-judicially to decide rights : See *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, ; and *Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others*, .

10. The Chairman had thus a bias in the enquiry. He was the complainant as well as a witness in the case and was also the Judge in that very case. His order

dismissing the delinquent was rightly vacated,

11. Once we are of opinion that the Chairman acted with bias and his order was rightly vacated, we would not, in exercise of our power under Article 226 or 227 of the Constitution, interfere with the appellate order passed by the Government as there has been no failure of justice. The power of the High Court under those Articles is discretionary. See *A.M. Allison Vs. B.L. Sen*, and *Balvantrai Chimanlal Trivedi, Manager, Raipur Mfg. Co. Ltd., Ahmedabad Vs. M.N. Nagrashna and Others*, .

12. To sum up : The petitioner was not entitled to any hearing at the appellate stage by Government. Even if he were entitled to a hearing we would not interfere with the order of Government when the Chairman himself did not act in accordance with the principles of natural justice and no failure of justice had been caused by the appellate order directing a fresh enquiry by a person other than the Chairman.

13. In the result, the application fails and is dismissed with costs. Hearing fee Rs. 100/- (Rupees one hundred only).

R.N. Misra, J.

14. I agree.