
(1996) 01 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 2884 of 1985

Banamali Jena (after him), Subasini Mohapatra (after her)
and Haris Chandra Mohapatra and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 17-01-1996

Acts Referred:

Citation : (1996) 82 CLT 402 : (1996) 1 OLR 272

Hon'ble Judges : D. Misra, J;A. Pasayat, J

Bench : Division Bench

Advocate : A.S. Naidu, P. Mohanty, P.K. Nanda and A.K. Rath, for the Appellant;
Additional Government Advocate for Opp. parties 1 to 3 and A.K. Mishra, G.S.
Panda, H.H Nayak A.K. Mohanty and K.K. Mohanty for Opp. parties 4(a) to 4(c),
for the Respondent

Judgement

A. Pasayat. J.

1. Though several points were urged in support of the writ application, we find that the order dated 7-10-1983 passed by the Addl. Tahasildar-cum-Collector under the Orissa Estates Abolition Act, 1951 (in short, the "Act"), Beripada was passed without notice to the affected person. The order was passed in O. E. A. Case No. 23 of 1983 where Banamali Jena, the original petitioner was a party. On his death, during the pendency of the writ application his legal representative was brought on record. Since she also died during the pendency of the application, her legal representatives have been brought on record.

2. It is a basic requirement of principles of natural Justice that before an order adverse to a person is passed, he should be granted an opportunity of heard. Two fundamental principles of natural justice are that a man should not be a Judge of his own cause, and no order should be passed without hearing the affected party. Essential characteristic of "natural justice" is put by Romans in two maxims; (i) namo judex in causa, sua, and (ii), audi alteram partem, which respectively mean (i) no-one can be a judge of in his own cause, and (i) hear

both sides. The said of the rules of natural justice is to secure justice prevent miscarriage of justice. The person affected must have; (i) a reasonable opportunity of being heard and (ii) the hearing must be a genuine one and not an empty public relation exercise. The original petitioner Banamali was not granted an opportunity to have his say in respect of the materials which have been utilised by the Tahasildar to draw adverse inference. The requirement of natural justice was to disclose such materials, which were used against the original petitioner. In the celebrated case of *Cooper v. Handworth Board of Works* : 1953 (143) ER 414, the principle was thus stated : "Even God did not pass a sentence upon Adam, before he was called upon to make his defence" "Adam" says God, "where art that" "has thou not eaten of the tree whereof I commanded thee that thou should not eat." Since then the principle has been chiselled, honed and refined, enriching its content. A more recent statement of the law in *Mulloh v. Abardsen* : 1971 (2) ER 1278 is that "the right of a man to be heard in his defence is the most elementary protection." This position was highlighted by this Court in *Eric Alvares Vs. Collector and Others*, .

In that view of the matter, we remit the matter back to the Addl. Tahasildar-cum-Collector under the O.E.A. Act, Baripada to take a fresh decision in the matter. To avoid unnecessary delay, parties are directed to appear before the Addl Tahasildar, Baripada on 27-2-1996 so that a date can be fixed for early disposal of the matter, keeping in view of the fact that the proceeding was initiated in the year 1983.

The writ application is disposed of. No costs.

D. Misra, J.

I agree.