

(2024) 06 OHC CK 0126

In the Orissa High Court

Case No : Writ Petition (C) No. 7516 Of 2019

Basanta Kumar Swain

APPELLANT

Vs

State Of Odisha & Ors

RESPONDENT

Date of Decision : 25-06-2024

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Home Guards Act, 1961 — Section 5(2), 7(3), 9(3)

Citation : (2024) 06 OHC CK 0126

Hon'ble Judges : Dr. S.K. Panigrahi, J

Bench : Single Bench

Advocate : P.C.Mishra, Isswar Mohanty

Final Decision : Allowed

Judgement

Dr. S.K. Panigrahi, J.

1. Since common question of facts and law are involved in both the Writ Petitions, the same were heard together and are being disposed of by this common judgment. However, this Court felt it apposite to deal the W.P.(C) No.7516 of 2019 as the leading case for proper adjudication of both the cases.

2. The Petitioners through these Writ Petitions challenge the order passed by the Commandant General Home Guards, Cuttack City, Cuttack (O.P.No.5) vide its Order (Memo) No.1235 dated 30.03.2019 thereby dismissing the Petitioners from the Home Guard Organization there by dismissing the appeal.

I. CASE OF THE PETITIONER:

3. The brief fact of the case is that:

(i) It is submitted that A.C.P. Traffic, Cuttack UPD Letter No.778 dated 06.08.2018 it was intimated that from 10am to 11am a news was broadcasted in News 7 channel in (electronic media) under the caption operator traffic police. It is alleged that both the Petitioners chased on Bolero vehicle bearing No. WB-23-

D-7449 coming with fry and detained Lakheswar filling station. It is alleged that both the Petitioner demanded and accepted money from the vehicle.

(ii) It is submitted that after receipt of above letter both the Petitioners were asked to explain within one month as why disciplinary action be taken against the present Petitioner.

(iii) It is submitted that that they were serving as Home Guard under Opp.Party No.6 and on the fateful day that is on 06.08.2018 the Opp.Party No.3 allocated duty to the Petitioner No.1 at Kajipatna and to B.K. Swain in the same place as Kajipatna (series No.8 & 9). It is alleged that the Petitioner detained the vehicle at Lakheswar filling station and demanded and accepted money.

(iv) It is submitted that there is no materials and against Petitioner warrant such a heavy punishment at no point of time the Petitioner cased in such vehicle and demanded money. It is submitted that the Petitioner is allowed to perform his duty at Kajipatna, the cause of action arose at Phulnakhara, Lakheswar filling station, so the Petitioner has no role in this alleged offence. The Petitioner has not chased any vehicle nor detained for acceptance of money.

(v) It is submitted that the cause of action arose on 06.08.2018 and without giving any opportunity of hearing terminated to the Petitioners from services.

(vi) It is submitted that sub-Section 2 of Section 5 of the Home Guards Act clearly states that no protection shall be instituted against the Home Guard in respect of anything done or purporting to be done by him in the discharge of his functions of duties as such members except with the previous sanction of the Commandant General.

(vii) It is submitted that in the instant case no such sanction has been obtained. That the Opp. Party No.4 Deputy Commandant General as well as Opp. Party No.5 hurriedly and without applying their judicial mind terminated the Petitioner from his service which is under Annexures - 4 and 7.

(viii) It is submitted that there is no materials against the Petitioners. Nothing has been seized from the Petitioner, no Bolero vehicle has been seized no cash has been recovered from the Petitioners. Hence, it is a false case foisted against the present Petitioner. The termination order passed was without any departmental proceedings was not sustainable in the eye of law.

(ix) Hence, this Writ Petition.

II. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES 3 TO 5 :

4. Learned counsel for the Opposite Party No.2 earnestly made the following submissions in support of his contentions.

(i) It is submitted that as per Letter No.778/ACP Traffic, dated 06.08.2018 of the Assistant Commissioner of Police, Traffic, Cuttack UPD on 06.08.2018 from 10AM to 11AM a news was broadcasting in the News-7 Channel (Electronic Media)

under the caption "Operation Traffic Police". In that video, Ex-HG/464 (present petitioner) of N.H. Traffic PS with others who were in civil dress chased one Bolero vehicle bearing Registration No. WB-23-D- 7449 carrying with fry and detained near Lakheswar Filling Station.

(ii) It is further submitted that it is alleged that they have demanded and accepted money from that vehicle. After receipt of the letter under Annexure-A/3, the petitioner had been asked vide Letter No.836/HGs, dated 06.08.2018 (Annexure-2) to explain within one month as to why disciplinary action shall not be taken against him. The petitioner has also submitted his show cause and the same is found to be not satisfactory. Thereafter, the petitioner has been discharged from Home Guards Organization vide D.O. No. 64, dated 30.08.2018 (Annexure-4).

(iii) It is submitted that the petitioner was never show caused for dismissal, rather one month notice has been served on him vide Annexure-2 to the writ petition. It is submitted that before dismissal of the petitioner, he was served with one month notice vide letter to the writ petition.

III. COURT'S REASONING AND ANALYSIS:

5. Section 5 (2) of the Home Guards Act clearly states that "no prosecution shall be instituted against the member of the Home Guard in respect of anything done or purporting to be done by him in the discharge of his function or duties as such member except with the previous sanction of the Commandant General". In the present case in hand no such procedure has been followed. Rather it is reported by the A.C.P. Traffic that the Petitioner was in duty at Anand Bazar (Baranga P.S.) which is not true rather the Petitioner has been allotted duty at Kazi Patna on 6.8.2018 he was discharging his duty under the supervision of Traffic A.S.F..

6. Section 7(3) of Orissa Home Guards Act states that when the Commandant General or Commandant passed an order suspending, reduction of Rank, fining or dismissing the member of Home Guard under Section 1 he shall record such order with the reasons therefore and a note of inquiry in writing and no such order shall be passed by the said commandant or Commandant General unless the person concerned has been given an opportunity of being heard in his defence. However, in the present case, no such inquiry has been done and the Petitioner has not been given an opportunity of being heard.

7. Section 9 (3) of the Home Guards Act clearly states that no proceedings shall be instituted under Sub-Section 1 or 2 without the previous sanction of the Commandant General, but in the present case no sanction has been sought for from the commandant General and hurriedly with ulterior motive the O.P.No.3 dismissed the service of the Petitioner on the same day i.e. 6.8.2018.

8. In *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati and Others* (2015) 8 SCC 519, this Court has highlighted that procedural fairness is essential for arriving at correct decisions, by observing:

"27. It/ thus/ cannot be denied that the principles of natural justice are grounded in procedural fairness which ensures taking of correct decisions and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms."

9. Traditional English Law recognized and valued the rule against bias that no man shall be a judge in his own cause, i.e. *nemo debet esse judex in propria causa*. The obligation to hear the other or both sides as no person should be condemned unheard, i.e. *audi alteram partem*. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasized that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In *A.K. Kraipak and others v. Union of India and Others* (1969) 2 SCC 262, the Constitutional Bench, dwelling on the role of the principles of natural justice under the Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend on a great extent on the facts and circumstances of that case, the frame work of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.

10. With respect to the aforesaid discussion and the cases cited hereinabove, this Court is inclined to quash the order passed by the Commandant General Home Guards, Cuttack City, Cuttack (O.P.No.5) vide Order (Memo) No.1235 dated 30.03.2019. This Court directs the Opposite Parties to hold the proceedings while abiding by the principle of natural justice. Accordingly, both the Writ Petitions are hereby allowed.

11. Interim order, if any, passed earlier in any of the Writ Petitions stands vacated..

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