

(1979) 08 OHC CK 0022
In the Orissa High Court
Case No : O.J.C. No. 624 of 1978

Chandol Gram Panchayat

APPELLANT

Vs

Pallai Gram Panchayat and Others

RESPONDENT

Date of Decision : 20-08-1979

Acts Referred:

Companies Act, 1956 — Section 399(4)
Gram Panchayat Rules — Rule 84, 85
Orissa Grama Panchayat Act, 1964 — Section 2, 72

Citation : (1980) 49 CLT 396

Hon'ble Judges : S.K. Ray, C.J; N.K. Das, J

Bench : Division Bench

Advocate : G. Rath, R.K. Rath, N.C. Panigrahi and G.S. Sarangi, for the Appellant; D.P. Mohanty, S.A.M. Raheman, M.K. Mallick and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

N.K. Das, J.—A cattle market is situated within the Chandol Gram Panchayat and the said market is also managed by the said Gram Panchayat. Pallai and Danpur Gram Panchayats, opposite parties 1 and 2 in this writ petition, are adjacent to Chandol Gram Panchayat. There is a medical centre at Chandol which has been constructed with the aid and contribution of this Gram Panchayat. The residents of the other two Gram Panchayats, namely, Pallai and Danpur, equally avail of the opportunities and facilities provided by the medical centre. For this reason, there was apportionment of the income of the Chandol Cattle Market. The Collector by his order dated 21-6-1972 apportioned the income of the cattle market at 60% to Chandol Gram Panchayat and 20% each to opposite parties 1 and 2. As objections were raised by the Chandol Gram Panchayat as to apportionment of the income, an enquiry was conducted by the Collector through the S.D.O. Kendrapara. Subsequently, the question of apportionment was reviewed. The Petitioner, thereafter, made several attempts to increase the percentage of apportionment of the income in its favour. The Collector, in partial modification of

his previous order, passed order to the effect that the income of the Chandol Cattle Market for the year 1976-77 and onwards would be apportioned at 80% in favour of the Petitioner Gram Panchayat and 10% each to opposite parties 1 and 2, after setting apart Rs. 10,000/- per annum for contribution to the medical aid centre, till completion of its building. Thereafter, the Collector by his letter dated 15-2-1978 directed the Sarpanch of the Petitioner Gram Panchayat to pay to opposite parties 1 and 2 some money on the basis of 10% of the total annual income of the Cattle Market for the years 1974-75 and 1975-76. On a sudden by order dated 12-4-1978, the Collector passed the following order vide Annexure-5:

The Government in C.D. & S.W. (GP) Department have been pleased to communicate orders in their letter No. 4572/GP dated 25-2-1978 that the original apportionment of shares issued in District Office Order No. 2311/GP dated 24-4-1974 apportioning income from Chandol Cattle Market among Chandol, Palei and Danpur Gram Panchayats " Rs. 60/- per cent for Chandol G.P. and 20 per cent each to Palei and Danpur G. Ps should take effect from the year 1974-75 and onwards. District Office order communicated in letter No. 2051/GP dated 27-5-1977 is, therefore, hereby cancelled.

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The Petitioner has challenged this order as illegal, without jurisdiction, inasmuch as it has been passed behind the back of the Petitioner and in contravention of the settled principles of natural justice. It is further asserted that the Collector of the district being the appropriate authority to make the apportionment of the estates, as provided u/s 72 of the Gram Panchayat Act read with Rule 84 of the Gram Panchayat Rules the State Government has no authority or power to interfere in the matter. There is provision of appeal against the order of the Collector to the Revenue Divisional Commissioner and no appeal lies to Government against the order of the Collector and, as such, the Government has no jurisdiction to sit in appeal against the order of the Collector and modify the order or cancel the same. The Petitioner, therefore, prays to quash the order-Annexure-5.

2. Opposite party No. 1 in its return has stated that the Government has changed the percentage of apportionment on the objection raised by this opposite party, against the order of the Collector it is further alleged that the Petitioner should have gone in appeal against the order of the Collector. The order of Government has been communicated through the Collector to the parties and the Collector being the delegated authority has acted according to the instructions of Government.

Opposite party No. 2 has stated in its counter that the order passed by government is within its authority and jurisdiction.

Opposite party Nos. 3 and 4 in their return have stated that Annexure-3 was passed after considering all facts and according to the utility of the market by the

residents of different Gram Panchayats. The Government on consideration of facts and the representations before it, issued direction to the Collector on 25-2-1978 to give effect to the order of the Collector in 1974. Accordingly, the Collector has cancelled his previous order.

3. There is no dispute about the fact that the Cattle Market is situated within the Petitioner Gram Panchayat. So also the medical centre. These are also managed by the Petitioner Gram Panchayat. There is no dispute about the fact that the Collector made the apportionment according to Section 72 of the Gram Panchayat Act read with Rule 84 of the Gram Panchayat Rules. In 1972, the apportionment was made by the Collector at the rate of 60% to the Petitioner and 20% each to opposite parties 1 and 2. Subsequently, there was an enquiry by the S.D.O., as directed by the Collector on objection of the Petitioner Gram Panchayat and the Collector apportioned the income of the Cattle Market at the rate of 80% to the Petitioner and 10% each to opposite parties 1 and 2 and this was to be effective from 1976-77 onwards. No appeal was tiled by opposite parties 1 and 2 against this order of the Collector. The apportionment under Annexure-2 at the rate of 60% to the Petitioner and 20% each to opposite parties 1 and 2 was to take effect from 1974-75 and this was modified by Annexure-3 which was to take effect from 1976-77 onwards.

4. Section 72 of the Orissa Gram Panchayat Act provides that when the residents within the jurisdiction of more than one local authority use any market or fair, the right of management, regulation and control whereof is vested in the Gram Panchayat, the State Government or the prescribed authority may, from time to time, apportion the income of such market or fair among the aforesaid local authorities in such manner and proportion as the" State Government or the prescribed authority may decide. "Prescribed" as defined in Section 2(q) of the Act means prescribed by rules made by the State Government under the Gram Panchayat Act Rule 84 of the Orissa Gram Panchayat Rules is the relevant rule in this connection, which provides as follows:

84(1)(a) If the residents within the jurisdiction of more than one local authority in the same district use any market or fair, the Collector may from time to time apportion the income of such market or fair among the aforesaid local authorities in such manner and proportion setting aside the expenditure on proper management development of market and maintenance of sheds, etc. in the same, as he may decide. The management of the market or fair shall remain with the local authority having jurisdiction over the area and the money set aside for management development and maintenance shall be paid to the said local authority.

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Rule 85 provides that any local authority aggrieved by an order of the Collector passed under Rule 84 may, within thirty days from the date of the order prefer an appeal to the Revenue Divisional Commissioner.

5. Undisputedly, the Collector made the apportionment in 1972. The Petitioner objected to it. Then the Collector changed it and this modified order was to take effect from 1976-77 onwards. This modified order (Annexure-3) was worked out for 1976-77 and 1977-78. On the 25th of February, 1978, when the financial year 1977-78 was going to be over and hardly a month was left, the State Government gave a direction to the Collector that the apportionment made in 1972 by Annexure-1 has to take effect from 1974-75. The Collector was within his jurisdiction and after considering the requirement of the locality modified his previous order and passed order under Annexure-3 changing the apportionment. If either the opposite party No. 1 or opposite party No. 2 was aggrieved by it, it would have gone in appeal, as provided in the Rules. But admittedly, no appeal was preferred by anyone of these Gram Panchayats. Under the law, it should be deemed that Annexure-3 became final after the expiry of thirty days from the order. There is no provision of any appeal to the Government against the order of the Collector. It transpires from the counter affidavit filed by the State Government that a representation was made by opposite party No. 1 to the State Government and on the strength of that representation a direction was given by the State Government and the Collector worked out that direction it is admitted in the counter affidavit of opposite party No. 1 that the decision of Government Was communicated through the Collector. From the contents and language of Annexure-5: as quoted above, it is clear that the Collector cancelled his previous order of 1974 (Annexure-3) only on the ground that he was directed by the Government that Annexure-1 should be operative from 1974-75. He has acted only as a machinery, but the aforesaid order does not appear to have been passed by the Collector utilising his own considerations or judgment.

6. When the statute makes a provisional the Government or public authorities should act according to the statute. Under the Rules, the Collector has been empowered to make the apportionment and he also acted accordingly. There is clear provision of appeal against the order of the Collector, but no one filed any appeal against the order Annexure-3 and the order became final. There was no reason for the Government to interfere with the order and opposite party No. 1 did not take recourse to the statutory provision.

7. Section 72 of the Orissa Gram Panchayat Act provides that the State Government or the prescribed authority (Collector) can make apportionment of the income. Rule 84 prescribes that in such cases, the Collector has to make the apportionment. The rule is a part of the statute and it empowers the Collector to make the apportionment. There is provision of appeal as against the order of the Collector, by a party who is aggrieved by such order. If opposite party No. 1 made any representation to the Government, then it was the duty of the Government to ask opposite party No. 1 to take recourse to the statutory provision as the Collector has acted according to the rules. The Government did not take into account the relevant considerations, namely, the provisions in the Rules, and has disregarded the same. If any consideration has been made by the Government, then it would be irrelevant and unreasonable and will amount to

abuse of power. It is contended on behalf of opposite party No. 1 that Government having concurrent power has acted within its jurisdiction and, as such, the direction given by the Government to the Collector cannot be questioned. The rules have clearly provided that the Collector is empowered to make apportionment and appeal is provided against the order of the Collector to the next higher authority, and the procedure has been laid down in the Rules. Simply because Government has the power, there is no reason why the Government will again exercise the power when it has already been exercised by the Collector and no party aggrieved by such order has taken recourse to the provisions made in the Rules. In view of the provision made in the Rules, the power exercised by the Government cannot be said to be absolute but subject to legal limitations. These limitations have been expressed in the Rules. Therefore, the power of the Government is to be exercised reasonably and the relevant considerations only must be taken into account, so that there must be no malversation of any kind or that the decision should not be arbitrary or capricious. In other words, the power to be exercised should be in the manner intended by the empowering Act and consistent with the policy of the Act. Exercising such power should be understood that the action should be according to Rules on reason and justice, but not a contradiction to the policy of the statute.

Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely that is to say, it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended (See page 340. Administrative Law, Fourth Edition, by H.W.R. Wade).

The Legislature must have conferred the power with intent that it should promote the policy and object of the Act as a whole.

8. The Rules which are part of the Statute Book have made it clear that the Collector has to make the apportionment. In the instant case, the Government has unnecessarily interfered by giving a direction to the Collector and this direction was given towards the close of the financial year 1977-78. By that time, the apportionment made by the Collector by Annexure-a already worked out for two years, but Government gave direction that Annexure-I was to take effect from 1974-75 onwards. This itself creates prejudice to the Petitioner Gram Panchayat. Admittedly, no opportunity was given to the Petitioner before the Government interfered with the order of the Collector. It is well settled that the rules of natural justice are attracted in administrative matters when parties are to be affected seriously by such order. We, therefore, hold that rules of natural justice have been violated in this case inasmuch as the action of Government does not amount to fair play See *R.S. Bhatia v. State of Orissa* 46 (1978) C.L.T. 38.

It has been said that natural justice is only "fair play in action" Where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf *Schmidt v. Secy of*

State for Home Affairs (1969) 2 Ch. D. 149. The duty to act judicially need not be super-added, but it may be spelt out from the nature of the power conferred, the manner of exercising it and its impact on the rights of the person affected and where it is found to exist, the rules of natural justice would be attracted. An advance in the field of law has been made not only in England, but also in India relating to the application of rules of natural justice. The proliferation of administrative law provoked considerable fresh thinking on the subject and soon it came to be recognised that "fair play in action" required that in administrative proceedings also, the doctrine of natural justice must be held to be applicable.

It has also been held in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, that while considering the administrative actions, the Court has to consider is it right, or fair, or just? It has also been held that even when the statute is silent, the law may in a given case make an implication that rules of natural justice are applicable. Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the commission of the legislature. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of natural justice. The aim of both administrative inquiry as well as quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice it is difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both. See *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, .

Thus it would appear that there is no distinction between the quasi-judicial power or administrative power relating to application of the rules of natural justice. The Supreme Court has made it clear in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, that for the purpose of fair play in action, the application of rules of natural justice is attracted in the field of administrative action where a person is going to be deprived of his personal freedom or his property.

9. Reliance has been placed on behalf of opposite party No. 1 on *M. Nagalakshmiah v. State of Andhra Pradesh* 1973 (2) S.L.R. 105, and *Akasa Reddy v. The Revenue Divisional Commissioner, Adoni* 1974 (2) S.L.R. 383. These two decisions relate to suspension of some officers by the higher authorities. These two cases have no application to the facts and circumstances of the present case. They relate to the relationship of master and servant and the hierarchy in the service and the question was whether the higher authority can suspend a lower official.

Reliance is also placed on the decision *Shrikrishna Tiles and Potteries v. Company Law Board* 1979 Company Cases 409. This case is also not applicable to the facts and circumstances of this case. The question involved there was whether the

function of the Central Government or the Company Law Board u/s 399(4) of the Companies Act, 1956, in granting an authorisation to a member or members holding less than 1/10th of the issue share to file a petition for leave against the oppression or mismanagement amounts to a quasi-judicial or administrative order. It was held in that case that the same being an administrative order no prior notice of hearing is to be given to the Company before the Board grants the authorisation. But the facts and circumstances of the present case are absolutely different. Here, the Petitioner is adversely affected when Annexure-3 already worked out for two years. Moreover, there are statutory provisions making the guideline, or, in other words, providing procedure to be followed in making the apportionment and providing appeals against that order. It cannot be said to be purely administrative matter and liabilities are also created by such order. In such cases, there is no question of relationship of master and servant. On the other hand, there is clear provision in the Rules embodying procedures to be followed. Opposite party No. 1 or opposite party No. 2 never took recourse to the statutory procedures. Therefore, it was not open to Government to interfere with the order of the Collector which became final after the expiry of thirty days of the order. The relevant considerations and the policy of the statute were not taken into consideration by Government and, as such, the action of Government amounts to abuse of power and is not a fair play. For these reasons, the Collector has been careful enough to state in his order (Annexure-5) that under the instructions of Government, he cancelled Annexure-3. It is also note worthy that opposite party No. 1 did not file any appeal as provided under the Rules, but It took recourse to oblique methods by approaching Government and such oblique method was encouraged in spite of statutory provisions. This amounts to utter injustice.

On the aforesaid analysis, we hold that Annexure-5 should be quashed.

10. In the result, the writ application is allowed. Annexure-5 is hereby quashed and a writ of mandamus be issued accordingly. We make no order as to costs.

S.K. Ray, C.J.

11. I agree.