
(1999) 04 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 481 of 1998

Dilip Kr. Sarkar

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 05-04-1999

Acts Referred:

Citizenship Act, 1955 — Section 3

Citation : (1999) 2 GLT 390

Hon'ble Judges : N.S. Singh, J

Bench : Single Bench

Advocate : P.R. Barman, for the Appellant; U.B. Saha, for the Respondent

Final Decision : Allowed

Judgement

N.S. Singh, J.—At the very outset Mr. U.B. Saha. learned Govt. Advocate sought for one week's further time so as to enable the State Respondents to file counter affidavit. The prayer is objected by Mr P.R. Barman, learned Counsel appearing for the Petitioner by contending inter alia, that the Respondents had been given enough opportunity and time so as to enable them to file counter affidavit and apart from it, this Court by an order dated 23rd March, 1999 granted 10 days time with a condition that no further adjournment shall be granted to the Respondents for filing counter affidavit.

2. Upon hearing the learned Counsel for the parties, I am of the view that this matter can be disposed of at this stage considering the existing facts and circumstances of the case. The prayer for adjournment as sought for by Mr U.B. Saha, learned Govt Advocate is rejected and this Court is hereby propose to dispose of this writ-petition with the following judgment and order after proper application of judicial mind in the matter.

3. The memorandum dated 26th October, 1998 bearing No. 2461-78/F.9(212)/SDO/KMP/TW/98 as in Annexure-F to the writ petition issued by the Sub-Divisional Officer, Kamalpur, Dhalai, Tripura cancelling the Scheduled Caste

certificate issued to and in favour of the writ Petitioner is the subject matter under challenge in this writ petition.

4. Mr P.R. Barman, learned Counsel for the Petitioner contended that the Collector, North Tripura District, Kailashahar under his office order/letter dated 18th April, 1973 as in Annexure-A to the writ petition recognised the Petitioner as Indian Citizen within the meaning of Section 3 of the Citizenship Act and the competent authority namely Sub-Divisional Officer, Kamalpur, North Tripura also issued Scheduled Caste Certificate to and in favour of the present writ Petitioner vide, office order/Caste certificate dated 2nd May, 1978 as in Annexure-C to the writ petition. But in the year 1997 the concerned Sub-Divisional Officer directed the writ Petitioner to meet him with original papers pertaining to the caste certificate issued to him, on 2nd May, 1978 vide No. 205 on 11th December, 1997 at 11.00 a.m. positively and, in response to the said office letter and direction made by the Sub-Divisional Officer, the writ Petitioner submitted the original Caste Certificate with the Sub- Divisional Officer and met him, however, the impugned memorandum/order dated 26th October, 1998 was issued by the Sub-Divisional Officer concerned cancelling the caste certificate issued to and in favour of the present writ Petitioner without giving any opportunity of being heard. According to Mr P.R. Barman, learned Counsel no due process of law was adopted and followed by the competent authority before passing the impugned memorandum of 26th October, 1998 as in Annexure-F to the writ petition inasmuch as, no reasonable opportunity of being heard was ever afforded to the writ Petitioner before cancelling his caste certificate and, as such, it is a clear case of violation of principles of natural justice.

5. At the hearing Mr U.B. Saha, learned Govt. Advocate submitted that enquiry has been made and it has been revealed that due to mis-representation of facts, the said caste certificate was issued to and in favour of the present writ Petitioner and, apart from it, the Petitioner has been given opportunity to submit his original caste certificate for verification and to find out the factual matter as reflected in the document marked as Annexure-D to the writ petition which is an office letter of 3rd December, 1997 issued by the Sub-Divisional Officer, Kamalpur, Dhalai District. It is also contended by Mr U.B. Saha that the impugned memorandum was issued by the competent authority after due compliance of the required procedure. When this Court require the assistance of Mr. U.B. Saha, learned Govt. Advocate, this Court apprised Mr U.B. Saha as to whether his submission is made on the basis of the available original records, but Mr U.B. Saha, learned Govt. Advocate submitted that his submission is based on the parawise comments and at the moment he could not produce the related records except the parawise comment. It is also submitted by Mr U.B. Saha that reasonable opportunity of being heard was afforded to the writ Petitioner before passing of the impugned memorandum thus, cancelling the caste certificate of the writ Petitioner. Supporting the case of the State Respondents, Mr U.B. Saha has drawn my attention to the statements/parawise comments of the State Respondents made in para 3, 4 and 5. In my considered view, the statements

and comments of the State Respondents made in para 3, 4 and 5 of it are very material, important and essential for just determination of the real points in controversy between the parties and, accordingly, these parawise comments so far produced by Mr U.B. Saha is hereby formed as part of the record and the same is marked as "X" for identification and, apart from it, the said para 3,4 and 5 of the parawise comments of the State Respondents are hereby reproduced hereunder:

Para-3: It is a fact that details of the family members of the Petitioner family are recorded in the ORR register of Kanchanpur G.P. under Salema Block but the entry given in the caste status of the said register is totally based on the statement of Petitioner and such entry has no locus standi in ascertaining the S.C. Status of Petitioners.

Para-4: It is a fact that, consequent upon the sad demise of Prime Minister Rajib Gandhi the Petitioner house was gutted by fire and in the said fire all documents of Shri Dilip Kr. Sarkar got destroyed as revealed from the general diary of Ambassa PS vide G.D. entry No. 642 dated 24.9.91.

Para-5: A duplicate citizenship was issued in favour of the Petitioner due to loss of original certificates as prayed for.

6. On bare perusal of these parawise comments and also on perusal of the available materials on record, I am of the view that the submission of Mr U.B. Saha, learned Govt. Advocate holds a little water inasmuch as, there is no even a whispering in the parawise comments pertaining to the issuance of show cause notice or any opportunity to the writ Petitioner of being heard or so before issuing the impugn memorandum as in Annexure-F to the writ petition.

7. It is well settled that the administrative or executive order involving civil consequences should be passed in accordance with the principles of natural justice. In this connection, I hereby recall the decision of the Apex Court rendered in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei and Others,

8. Professor H.W.R. Wade and Professor C.F. Forsyth in their book "Administrative Law " highlighted and recalled the words of Lord Wrenbury who laid down the law as follows:

A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so-he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably.

Apart from it, it is well settled that justice must not only be done but it must appear to have been done. The Professor H.W.R. Wade in his book said:

Thus violation of natural justice makes the decision void, as in any other case of

ultra vires. This effect is discussed more fully below. For the moment it is enough to note that the rules of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of the power. The Court presumes that these requirements are implied in the absence of indications to the contrary in the Act conferring the power or in the circumstances in which the Act is to be applied...

In the long history of the case on natural justice as applied to administrative action this question had never before been agitated, for the simple reason that the logic of the situation excluded it. It had always previously been held that a breach of the rules of natural justice resulted in the determination being null and void, in the same way as any other act which was ultra vires. For the duty to act fairly, just like the duty to act reasonably, was enforced as an implied statutory requirement, so that failure to observe it meant that the administrative act or decision was outside the statutory power, unjustified by law, and therefore, ultra vires and void. This assumption was so well understood that it was rarely spelled out in judgments.

9. In the instant case, the authority concerned did not follow the rules of natural justice while passing the impugned memorandum as in Annexure-F to the writ petition and they did not act reasonably and the competent authority exercise the power conferred upon it arbitrarily while issuing the impugned memorandum. This observation is being made by this Court on the basis of the available materials on record.

10. For the reasons, discussions and observations made above, I am of the view that the writ Petitioner could make out a case to justify the interference of the impugned memorandum of 26th October, 1998 as in Annexure-F to the Writ petition and accordingly this impugned memorandum is hereby quashed thus, allowing the writ petition but without costs.