
(2015) 10 OHC CK 0029
In the Orissa High Court
Case No : O.J.C. No. 2074 of 1995

Jayasen Paricha

APPELLANT

Vs

Gandahati Gram Panchayat and Others

RESPONDENT

Date of Decision : 30-10-2015

Acts Referred:

Citation : (2015) 10 OHC CK 0029

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

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Prasad, J.—Heard learned counsel for the petitioner and Mr. Amit Pattnaik, learned counsel for the State.

2. This writ petition has been filed challenging the order dated 22.03.1995 (Annexure-7) passed by the District Panchayat Officer, Parlakhemundi by which the approval of appointment of the petitioner as Secretary, Gandahati Gram Panchayat has been withdrawn with immediate effect.

3. Brief facts of the case is that the petitioner who is a Matriculate having passed HSC Examination held in the month of April, 1992 residing at village Gandahati and duly registered in the Employment Exchange which was valid up to November, 1995. After coming to know from the Notice Board of the Gandahati Gram Panchayat that there was a vacancy in the post of Secretary in the aforementioned Gram Panchayat, duly applied for the said post along with other eligible candidates.

4. The names of the candidates including the petitioner were taken into consideration for appointment to the post of Secretary were placed before the Gram Panchayat and the petitioner was selected for the post of Secretary as he was found to be eligible and suitable for the post and accordingly the Gram Panchayat has passed its Resolution dated 22.06.1994.

5. As per the Orissa Gram Panchayat Act and Rules, decision was taken by the Resolution dated 22.06.1994, forwarded to the District Panchayat Officer, Gajapati for according approval to the appointment of the petitioner as Secretary with due communication to the B.D.O., Rayagada as per Memo No. 4274 dated 23.06.1994, the District Panchayat Officer, Gajapati had approved the appointment of the petitioner as per his letter bearing letter No. 730 dated 25.10.1994 and in pursuance to the selection and approval of the appointment of the petitioner has given his joining report on 26.10.1994 with the copy of the same to the Block Development Officer, Rayagada, Sub-Collector, Parlakhemundi and the District Panchayat Officer, Gajapati which was duly been accepted on the very day by the Sarpanch, Gandahati G.P.

6. The petitioner started discharging his duty but all of a sudden he had received copy of the order passed by the District Panchayat Officer, Gajapati, Parlakhemundi communicated to him vide Memo No. 265(3) dated 20.03.1995 wherein it was stated that the appointment of the petitioner which was found to be irregular since not been done in pursuance to the procedure prescribed under Rule 213 of the Orissa Gram Panchayat Rules, 1968 and as such the approval granted to the appointment of the petitioner has been recalled.

7. The petitioner being aggrieved with the said decision and order as contained in Annexure-7 is before this Court by way of this writ petition on the ground i.e.,

"(i) that the petitioner has been appointed on the basis of notice published in the Notice Board along with 10 other candidates who have also made application for consideration of their candidature.

(ii) The petitioner had participated in the selection process in which he was declared to be suitable and thereafter selected by the Resolution having been taken by the Gram Panchayat."

8. Thereafter, requirement of law is the resolution which would be taken by the Gram Panchayat has to be approved by the District Panchayat Officer, Gajapati and accordingly the decision taken by the Gram Panchayat in the resolution dated 22.06.1994 has been approved on 25.10.1994 and thereafter he has started discharging his duty.

9. The District Panchayat Officer, Gajapati after allowing the petitioner to perform duty for a period of four months all of a sudden has passed the order on 20.03.1995 (Annexure-7) by which the approval of service accorded by the District Panchayat Officer, Gajapati has been withdrawn but the ground that procedure laid down in Rule 213 of the Orissa Gram Panchayat Rules, 1968 has not been followed.

10. The petitioner since been appointed after following the due procedure hence the appointment cannot be said to be irregular. The authorities who have issued Annexure-7 dated 20.03.1995 has not afforded any opportunity of being heard to the petitioner and thereby violating the principle of natural justice which is the

mandatory requirement before taking adverse decision against the petitioner because as per the procedure the petitioner has been selected, selection has been approved, a valuable right has been accrued in favour of the petitioner hence before taking away the said right, the authorities ought to have provided adequate and sufficient opportunity of being heard to the petitioner.

11. Annexure-7 dated 20.03.1995 is without any reason, while the approval has been recalled no reason has been assigned and it is settled if any order is without any reason it will be said to be cryptic and without any application of mind which will be said to be in the teeth of the principle of natural justice.

12. It is the case of the petitioner that the appointment of the petitioner is irregular and not illegal so irregularity can be regularized at any time.

13. On the other hand learned counsel for the opposite party-State has appeared, filed detail counter affidavit, vehemently opposed prayer of the petitioner by stating inter alia therein that the provision as provided under Rule 213 of the Orissa Gram Panchayat Rules, 1968 provides procedure for selection and appointment for the post of Secretary of Gram Panchayat which prescribes that before filling up of the post wide circulation of the advertisement has to be made but in this case no such circulation has been made hence the authority after coming to know on subsequent stage that the procedure as laid down under Rule 213 of the Orissa Gram Panchayat Rules, 1968 since not been followed hence they have taken decision to be recalled the approval of the appointment of the petitioner.

14. Further submission has been made that the authorities have acted on the basis of principle of illegality cannot be permitted to be perpetuated and when it came to the notice of the authorities it is the duty of the authority to rectify the illegality.

15. It has been contended that after making appointment the authorities have conducted detail enquiry in which it came to the notice of the authorities that the procedure as laid down under Rule 213 of the Orissa Gram Panchayat Rules, 1968 has not been followed.

16. Hence, there is no illegality in the action of the opposite parties as such arguments has been advanced that Annexure-7 needs no interference by this Court.

17. Heard learned counsel for the parties and perused the documents on record.

18. The petitioner was one of the applicants for the post of Secretary of Gandahati Gram Panchayat. It is admitted case of the parties that the advertisement has not been issued but notice has been published in the Notice Board in the office of the Gram Panchayat for filling up the post of Secretary of Gandahati Gram Panchayat. In pursuance to the said notice displayed in the Notice Board the petitioner along with other had participated in the selection process, the candidature of the petitioner along with others have been assessed

by the Gram Panchayat and vide Resolution dated 22.06.1994 the petitioner has been found to be suitable accordingly selected as per requirement of Rule 213 of the Orissa Gram Panchayat Rules, 1968.

19. The Gram Panchayat is selecting the Secretary by taking unanimous decision consisting of the Panchayats the decision has to be approved by the District Panchayat Officer, Gajapati and accordingly the decision as contained in Resolution dated 22.06.1994 has been forwarded before the District Panchayat Officer, Gajapati for its approval who has approved the appointment of the petitioner on 25.10.1994 accordingly the petitioner has joined to that post on 26.10.1994 started discharging his duty.

20. While the petitioner has rendered four months of service, he has been served with an order dated 20.03.1995 by which it has been communicated to him that the approval which was granted by the District panchayat Officer, Gajapati on 25.10.1994 has been recalled with immediate effect.

21. The arguments which has been advanced on behalf of the petitioner that the order as contained in Annexure-7 is in violation of principle of natural justice, without any reason the authorities have tried to justify their stand by way of making statement in the counter affidavit that cannot be said to be proper compliance because the things which is not in the impugned order cannot be supplemented by way of an affidavit.

22. In order to assess the arguments when the order impugned has been perused, it is apparent that no reason has been assigned, no opportunity of being heard has been provided to the petitioner.

23. The rule is well settled that if any right has been accrued to any of the parties and if the authorities are going to take any adverse decision against the said party the bare requirement is to provide an opportunity of being heard to him to explain the reason and to at least know the reason on what ground the authorities have made up their mind to take adverse decision.

24. In this regard reference of the judgment rendered by the Hon"ble Supreme Court in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, wherein it has been held at paragraphs 58 and 61 as follows:--

"58. We may commence the discussion of this question with a few general observations to emphasis the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanizing 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.

"that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring

into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair, natural justice, it has been said, it only "fair play in action."

61. This Court speaking through Hedge, J., in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , quoted with approval the above passage from the judgment of Lord Parker, C.J., and proceeded to add: (at p.156 of AIR)

"The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it....."

This view was reiterated and re-affirmed in a subsequent decision of this Court in The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh, . The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

25. In view of the proposition laid down by the Hon"ble Supreme Court there is no dispute that the authorities have got power to take any decision if anything is found to be illegal, but the minimum requirement of following principle of natural justice has to be observed. But in this case that principle has not been followed hence as contained Annexure-7 cannot be approved.

26. So far as other contention of the learned counsel for the petitioner is that the authorities have passed a cryptic order, without any reason. However, so many things has been stated in the counter affidavit but the order which was passed is without any reason will also said to be in violation of principle of natural justice.

27. Thus it is evident that if the order passed by the authority lacks with the reason it will amount to violation of principle of natural justice, reference in this regard may be made to the judgment of Hon"ble Apex Court rendered in the case of MMRDA Officers Association Kedarnath Rao Ghorpade Vs. Mumbai Metropolitan Regional Development Authority and Another, wherein their lordships at para-5 it has been pleased to observe which is being quoted herein below:--

"5. Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union observed "The giving of reasons is one of the fundamentals of good administration."

In Alexander Machinery (Dudley) Ltd. v. Crabtree reported in 1974 ICR 120 (NIRC) it was observed:

"Failure to give reasons amounts to denial of justice. Reasons are live links

between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at."

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, ."

28. So far as the contention of the learned counsel for the State that the procedure has not been followed regarding the appointment of the petitioner as contained under Rule 213 of the Orissa Gram Panchayat Rules, 1968 hence the appointment of the petitioner cannot be approved.

29. All these facts although has not stated in the impugned order but stated in the counter affidavit, this arguments of the learned counsel for the State is contrary to the proposition laid down by Hon"ble Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein it has been held at para-8 which is being quoted herein below:--

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji.

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in Ms mind, or what be intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

30. Yet in another judgment their lordships of Hon"ble Supreme Court has been pleased to heed in the case of East Coast Railway and Another Vs. Mahadev Appa Rao and Others, at para-9 which is being quoted herein below:--

"9. There is no quarrel with the well-settled proposition of law that an order

passed by a public authority exercising administrative/executive or statutory powers must be judged by the reason stated in the order or any record of file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reason in an affidavit filed before the court where the validity of any such order is under challenge. The legal position in this regard is settled by the decision of this Court in Commissioner of Police vrs. Gordhandas Bhanji wherein this Court observed: (AIR p.18, para 9)

"9..... public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

31. In view of the foregoing settled proposition if anything has not been written in the impugned order cannot be supplemented by an affidavit because if the authority is going to pass any adverse order the reason has to be there so that a party against whom the order is passed at least may be able to know what was going in the mind of the authority if that is lacking in the order, the order will be said to be cryptic and without any application of mind. In this context also Annexure-7 dated 20.03.1995 cannot be approved.

32. So far as the contention of learned counsel for the State that the appointment of the petitioner was irregular because the procedure as laid down under Rule 213 of the Orissa Gram Panchayat Rules, 1968 has not been followed i.e., wide circulation of the advertisement hence the appointment of the petitioner cannot be approved and accordingly approval already granted has been recalled.

33. In this respect it needs to understand the difference between illegal appointment and irregular appointment and it is settled illegality cannot be permitted which is said to be made contrary to the recruitment rules and contrary to the eligibility conditions but it is not the case of the opposite party that the appointment of the petitioner was contrary to the eligibility conditions, beyond the sanctioned post rather specific case of the opposite party is that the appointment of the petitioner was made without following due procedure.

34. The appointment of the petitioner is irregular and it is settled if irregularity has been committed it can be regularized but illegality cannot be legalized, reference may be made in this context of para-53 of the judgment rendered by Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, wherein at para-53, the reference of irregular and illegal appointment has been made, the reference of this judgment is only been taken only for the purpose of showing distinction in irregular and illegal

appointment.

35. So far as the contention of wide publication has not been made, in this regard learned counsel for the petitioner has submitted that applications have been invited by displaying the same in the Notice Board of the Gram Panchayat and accordingly apart from the petitioner other candidates have also participated to that effect specific statement has been made at paragraph-5 of the writ petition which has not rebutted by the learned counsel for the State in their counter affidavit.

36. It is not the case of the State that only the petitioner was the sole candidate rather apart from the petitioner there are other candidates also.

37. The Gram Panchayat under the statutory power has selected the petitioner it was approved by the District Panchayat Officer, Gajapati after proper application of mind but only after four months approval granted has been recalled that too without any reason assigned in the impugned order without following principle of natural justice.

38. Learned counsel for the petitioner has submitted in the meanwhile the petitioner has also been promoted to the post of Village Level Worker after being considered by Collector, Gajapati which would be evident from Annexure-9 and the promotion is subject to the decision of this writ petition.

39. But the fact remains that the petitioner has been granted promotion which suggests that there is no complaint against the petitioner regarding discharging his duty.

40. Since the petitioner has already continued fairly for a period of 21 years and the appointment of the petitioner has not been alleged to have been illegal but the case of the opposite parties is the appointment of the petitioner is irregular hence on the ground of illegality Annexure-7 cannot be endorsed.

41. So far as the contention of the learned counsel for the State that illegality cannot be permitted to be perpetuated, there is no dispute about this.

42. But in the facts and circumstances of the case it is not the case that the appointment of the petitioner is illegal rather specific case against the petitioner is that his appointment is irregular hence said principle cannot be applied in the facts and circumstances of the case of the petitioner.

43. In the totality of entire facts and for the foregoing reasons the impugned order is hereby quashed.

44. Accordingly, the writ petition is allowed.