

(1981) 09 GAU CK 0017
In the Gauhati High Court
Case No : Civil Rule No. 8 (SH) of 1979

Ka Oldphimai Mukhim

APPELLANT

Vs

The District Council Jaintia Hills, Autonomous District Jowai
and Others

RESPONDENT

Date of Decision : 25-09-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Citation : AIR 1983 Guw 1

Hon'ble Judges : K. Lahiri, J

Bench : Single Bench

Advocate : B. Lamare, for the Appellant; A. Sarma and A. Dutt, for the Respondent

Judgement

K. Lahiri, J.—The points that fall for determination in this case are whether respondent No. 3 had jurisdiction to "cancel" the Petitioner's "Patta" of the land being Patta No. 6198, Elaka Jowa, within Riatsasim. Elaka Jowai? If so, whether the act of "Cancellation" was in violation of the principles of natural Justice? These are the only questions to be answered in this application under Article 226 of the Constitution.

2. Admittedly, the petitioner was granted Patta No. 6198 for the paddy fields by the District Council, Jaintia Hills Autonomous District, Jowai. The last Patta was renewed from April 1, 1968 to March 31, 1977. Clause (1) of Patta reads as follows :--

"On expiry of this period the patta shall be renewed if the Patta holder wants to continue holding the land and the rate of revenue shall be as decided by the Executive Committee at the time of renewal".

Annexure "B" is the report in respect of the waste land for which the petitioner has applied. The report shows that the petitioner had asked for settlement of "Khali" land within Government forest known as Riatsasim. Notwithstanding the

report that formed a part, of the forest, the Executive Member in charge of Revenue, District Council. U. K. & J. Hills, Shillong recommended for settlement of the land in favour of the petitioner and thereafter settlement was made in her favour.

3. It shows that the District Council had full knowledge that the land was within "forest land" known as Riatsasim before it had granted patta to the petitioner. As required under Clause 1 of the patta, the petitioner made application (vide Annexure "E") for renewal of her patta. On her application for renewal a local inspection was made on 14-2-1979. Thereafter, the Revenue Officer, respondent No. 3, by his order dated 22nd March, 1979, informed the petitioner that the Chief Forest Officer, upon inspection had found the land under the patta falling within "Riatsasim protected forest (Orchid Sanctuary)", required to be retained for beautification of the town, rivers and for any other purposes that might arise in future and acting on the report the Revenue Officer, Jaintia Hills District Council, Jowai cancelled the patta of the petitioner and directed her to return "the patta".

4. Mr. B. Lamare. Counsel for the petitioner has made short, crisp and wholesome submissions. The learned counsel contends that the impugned order of cancellation was violative of the principles of Natural Justice to which the petitioner was entitled as of right. Secondly, counsel contends that the petitioner was prejudiced as the respondents had no jurisdiction to cancel the patta Mr. A. Sarma, learned counsel appearing for the District Council submits that in the absence of any power prohibiting the Respondents from cancelling the patta, the authority empowered to grant the same had implied power to vary, amend or cancel it and relies on the General Clauses Act. However, Mr. Sarma submits that prior hearing or notice ought to have been given to the petitioner before cancelling the patta, but non-service of such notice and failure to grant prior hearing before cancellation did not violate the principles of Natural Justice as the impugned order was made to bear up the "Public interest".

5. The indubitable facts that emanate from the records are that: (1) the petitioner was in possession of her patta land; (2) Clause 1 of her patta reserves a kind of right in her favour to get renewal of the Patta on mere asking; (3) there is nothing in the document to show that any right was reserved by the District Council not to renew the same (4) no provision of law could be shown by the respondents that it had power "not to extend the life of the patta" and, (5) it was a case of "cancellation of the Patta" and not non-renewal thereof. The act of cancellation conveys existence of the life of patta and determination of its life during its continuance. The word "Cancel" means, to obliterate; to destroy the effect of an instrument by defacing obliterating, expunging or erasing it; to revoke or recall--vide Black's Law Dictionary (Revised Fourth Edn.), The most (important) question is whether the act of cancellation could be done unilaterally when the respondent had acted on the reports of some officers and (without giving) petitioner prior notice or hearing. If the question is decided in favour of

the petitioner, the second contention raised need not be answered.

6. Post decisional hearing was not given to the petitioner and denial thereof is violative of principles of Natural Justice, complains the petitioner. Even a common man states a grievance about violation of natural justice in every sphere of his activities, as it has been deeply ingrained in our socio-economic life by the laws propounded by the Supreme Court. The collocation of the words "natural justice" is not a static idea; it cannot be imprisoned in a strait-jacket of a cast-iron formula it has Kaleidoscopic views which vary according to fact situations. The principles of natural justice is one of foremost product of "Civilised jurisprudence" that no action should be taken against a person to affect his right or interest without giving reasonable opportunity to him. The standard of reasonableness of the opportunity of course has no static standard as it varies from case to case, from authority to authority and also in relation to the same authority. The principles are grounded on justice, equity and good conscience. The principles of natural justice can be compartmentalised into two main disciplines, which are : (1) "audi alteram partem", and (2) "Nemo debet esse iudex in propria sua causa" -- no man can be judge in his own cause. A man cannot be deprived of his liberty or property for any wrong, until he has had a fair opportunity at answering the allegations against him, unless, indeed the legislation has expressly or impliedly given an authority to act without that necessary preliminary. Mr. A. Sarma counsel for the respondents concedes that the two essential facts of the principles of "audi alteram partem" rule i. e. (a) notice and (b) prior opportunity of hearing, were withheld but disputes the entitlements on the score that the impugned action was an administrative action rendered by an administrative authority where the rule has no application.

7. Admittedly, it was a proceeding where two contending parties were there, one claimed the right of renewal of the patta and the other disputed his claim the proceeding was adjudicatory in character and respondent No. 3 was called upon to resolve the dispute. The rule casts duty on all public authorities who decide dispute in the exercise of legal power to follow the rule diligently. The rule which is respected the world over, cannot be immolated or sacrificed at the altar of administrative celerity. In some area "justice and convenience" "are not on speaking term" as aptly put by Lord Atkin in *G. M. C. of Medical Education v. Spackman* 1943 AC 627. It is true that in England before the landmark case of *Ridge v. Baldwin* 1964 AC 40 , the rules of natural justice were applied only to judicial and quasi-judicial proceedings which necessitated the Courts to discern whether the impugned action was taken by the authority in exercise of its administrative or quasi-judicial power. After *Ridge v. Baldwin* concept of natural justice has made a great leap in the field of administrative law. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, the Supreme Court has held that even an administrative order or decision involving "Civil consequences" has to be made consistently with the rule of natural justice. The supposed distinction between quasi-judicial and administrative decision was mollified in *Binapani Dei* Skipping over a number of leading decision we find that the distinction was eroded in *A.K.*

Kraipak and Others Vs. Union of India (UOI) and Others, where the Constitution Bench observed (Paras 13 & 20) :

"If the purpose of these rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry."

"In a welfare State like ours, it is inevitable that the organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their function, in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously".

"With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism....."

"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. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry".

8. Lord Parker's observation in *In re, H. K. (An Infant) (Official Solicitors V. K.)* 1965 AC 201 were quoted with approval. A statutory body or tribunal, irrespective of the fact whether the powers conferred on them are administrative Or quasi-judicial, has obligation to act fairly, in consonance with the fundamental principles of substantive justice and, therefore bound to follow the rule of law. Natural justice is now a "brooding omnipresence" although varying in its play. Its quintessence is good conscience and nothing more, but nothing less. The rule of natural justice came up for consideration in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, and a new ground was broken-violation of the principles of natural justice, it has been held also affect the fundamental rights under Articles 14 and 21 of the Constitution. In *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, it has been ruled that violation of the principles of natural justice is to disregard the Constitutional mandate under Article 14 as also the judicially evolved rule of administrative law. There are exceptional cases where the principles of natural justice particularly the ride of "audi alteram partem" are inapplicable. However, it can only be so

where the statute conferring the power has clearly and specifically excluded its application in express language. Such cases do not evolve any problem. However, we face difficulties when the statute conferring the power does not expressly rule out its application but its exclusion is sought, or where the court finds it difficult to apply, due to the presence of certain relevant factors of urgent or special factors so strong that it would be unsafe to apply the rules in those cases, like (a) urgency where an obligation to give notice or opportunity of hearing would frustrate the very object sought to be prevented or remedied, say, taking prompt action in urgent preventive or remedial actions like public health, public safety, public security etc. In such circumstances two competing forces run parallel side by side (1) the necessity of taking emergent or speedy action and, (2) the duty to act fairly. "It is untenable hearsay..... to lock jaw the victim or act behind his back by tempting innovation of urgency unless the clearest case of public injury flowing from the least delay is evident" observed Lord Upjohn in *Durayappah v. Fernando*. (1967) 2 AC 337 . The learned Judge prescribed minimal procedural safeguard of post-decision at hearing in such cases as it "has relevance to administrative and judicial gentlemanliness." However, his Lordship was cautious and circumspect to observe that situational modifications of the rule are not impermissible and the rider reads : "The glory of the law is not that sweeping rules are laid down but it tailors principles to practical needs doctor remedies to suit the patient promotes not freezes, life's process, if we may mix metaphor." The pragmatic balance between two vital competitive requirements is acting urgently and fairly. In *Wiseman v. Borneman*. 1971 AC 297, there was a hint of the competitive claims of "hurry and hearing". Lord Reid observed "Even where the decision has to be reached by a body there must be a balance between the need of expedition and the need to give full opportunity to the defendant against him". In *Howard v. Borneman* (1974) 3 WLR 660, Lord Denning condensed the observations of the Law Lords thus; "No doctrinaire approach is desirable but the court must be anxious to salvage the cardinal rule to the extent permissible in a given case".

9. Therefore, notwithstanding extreme urgency, the rule of natural justice is applicable in administrative action to the extent permissible. It should not be an easy casualty in the name of urgency where the order has civil consequence. Civil consequences covers a wide range of infraction, it connotes infraction of property and personal rights, civil liberties, material deprivation and non-pecuniary damages as well and as a matter of fact everything that affects a person in his civil life. The rule should be applied with vigour until the force of the competing element, namely, the common good or public good, paralyse our hands to apply the rule in a case. Even in such cases post-decisional hearing might be prescribed, if so permissible on the facts and circumstances of the case. Therefore, the tag that an order is purely administrative in nature and character is an inconsequential consideration the effect of the order has an adverse civil consequence on the petitioner. The contention of Mr. Sarma is, therefore, without any substance.

10. Turning to the instant case we find that no notice was served on the petitioner before rendering the impugned order. Reports were used against her without affording any opportunity. Her property right was extinguished by a stroke of pen. I have no hesitation that there was no urgency in the matter nor was there any emergency nor is there any law which denied her the right to notice and prior hearing. The impugned order was rendered patently violating the principles of natural justice. Therefore, the incongruous order must be wiped out and the inevitable orders must flow. The impugned order is quashed and the rule is made absolute. Respondents might take up fresh proceedings against the petitioner, if so advised. Hearing fee Rs. 150/- payable by respondent No. 1 to the petitioner.