

(1998) 11 OHC CK 0010
In the Orissa High Court
Case No : O.J.C. No. 15209 of 1998

Khira Swain

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1998) 11 OHC CK 0010

Hon'ble Judges : R.K. Patra, J; Pradipta Ray, J

Bench : Division Bench

Advocate : S.D. Das, B.N. Udgata, A. Lamantray, A.K. Nayak, H.S. Satpathy, S. Patnaik, A. Mohanty, D. Dhar, B.K. Sinha and D.R. Bhokta, for the Appellant; R.K. Mohanty, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—Should a person sit to hear an appeal as the appellate authority against the decision of his own? This is the moot question that arises for consideration in this petition filed under Articles 226 and 227 of the Constitution of India.

2. The Petitioner made an application (registered as Misc. Case No. 1850 of 1995) before the Mutation Officer-cum Tahasildar, Buguda for mutation of land measuring Ac.0.028 in, plot No. 3513 under Khata No. 1609 of Mouza Buguda in her favour which she claims to have purchased by a registered sale deed dated 12-7-1968. The Mutation Officer-cum- Tahasildar by order dated 12-3-1996 rejected the said application. Being aggrieved by the order of rejection, she filed Mutation Appeal No. 5 of 1996 under Rule 92 of the Orissa Mutation Manual before the Sub-Collector, Ghumsur, Bhanjanagar who by order dated 19-9-1998 (Annexure-2) dismissed it. This order passed in the appeal is called in question by the Petitioner on the ground that it is hit by the principle of "Nemo debet esse judex in propria sua causa" (no man can be a judge in his own cause).

3. It is on record that U. Misra was the Mutation Officer-cum- Tahasildar was by order dated, 12-3-1996 rejected the application of the Petitioner for mutation of the land. It is an undisputed fact that he himself was the Sub-Collector who as the appellate authority rejected the appeal which was filed against his own order. The Petitioner filed a petition on 9-9-1998 (Annexure-1) through her advocate before the Sub-Collector stating therein that as Mutation Officer, he rejected her application for mutation and, as such, the appeal should be referred to the Additional District Magistrate for "its proper adjudication in the interest of natural justice". The, Sub-Collector in the impugned order has referred to the aforesaid petition filed on behalf of the Petitioner and observed as follows:

The Advocate for the Appellant was filed a petition to refer this case to the Addl. District Magistrate, and for proper adjudication on the ground stated therein. Heard him. In this contention it is observed that the learned Advocate should have filed such a petition before the Addl. District Magistrate, Ganjam if he apprehends that he may not get justice in this Court. The petition being devoid of merit is rejected.

After making the afore,said observation, he dealt with the merits of the case and dismissed the appeal holding that "there are no irregularities and illegalities committed by the Tahasildar, Buguda while disposing the case.

4. The rule of natural justice basically and essentially constitutes two elements, namely, (i) no one shall be condemned un-heard (*audi alteram partem*) and (ii) no one shall be a judge in his own cause (*nemo debet esse judex in propria sua causa*). The present case is concerned with the second aspect. We may state that the requirement of "fair play in action" or "fair hearing" not only applies to judicial proceedings but also to quasi-judicial and administrative proceedings. *Nemo debet (esse judex in propria sua causa)* i. e. no one shall be a judge in his own cause is a principle now firmly established in law. Justice should not only be done but should manifestly be seen to be done. Justice can never be seen to be done if a man acts as a judge in his own cause or where he himself sits as an appellate authority to hear an appeal against his own order. The principle behind this rule is that the hearing should be done by the concerned authority with on unbiased mind. It has been recently observed by the Supreme Court in *State of West Bengal and Others Vs. Shivananda Pathak and Others*, with regard to the rule against bias as follows:

Bias has many forMs. It may be pecuniary bias, personal bias, bias as to subject matter in dispute, or policy bias etc.. In the instant case, we are not concerned with any of these forms of bias. We have to deal, as we shall presently see a new form of bias, namely, bias on account of judicial obstinacy

(emphasis supplied)

5. In this connection, we may refer to another decision of the Supreme Court in *Baidyanath Mohapatra v. State of Orissa*, A.I.R 1989 S.C. 2215. In that case, a Chief Engineer challenged the order of the State Government pre-maturely

retiring him from the service in the Orissa Administrative Tribunal. The Tribunal dismissed the case by upholding the validity of the order of premature retirement. The matter was taken up to the Supreme Court by way of appeal. Their Lordships found that the Chief Secretary of the State Government was one of the members of the Review Committee which made recommendation for the Engineer's premature retirement and in pursuance thereof, the State Government passed the final order. Later, he (Chief Secretary) as the Chairman of the Administrative Tribunal decided the case filed by the Engineer challenging the order of premature retirement. It would be profitable to quote paragraph-8 of the judgment of the Supreme Court:

There is a disturbing feature of this case which vitiates Tribunal's order. Sri Gian Chand, Chairman of the Tribunal, ex-Chief Secretary of the State of Orissa, was member of the Review Committee which made recommendation against the Appellant for his premature retirement, and in pursuance thereof the State Government had issued the impugned order. It appears that Mr. Gian Chand had later been appointed as Chairman of the Administrative Tribunal. Sri Gian Chand participated in the proceedings of the Tribunal, and he is party to the decision of the Tribunal. These facts show that Mr. Gian Chand, who had administratively taken a decision against the Appellant, considered the matter judicially as a Chairman of the Tribunal, thereby he acted as a Judge of his own cause. While it is true that there is no allegation of personal bias against Mr. Gian Chand, he may have acted bona fide, nonetheless, the principles of natural justice, fair play, and judicial discipline required that he should have abstained from hearing the Appellant's case. While considering the Appellant's case the Tribunal exercised judicial powers and it was required to act judicially as the jurisdiction of the Civil Court and High Court have been excluded and vested in the Administrative Tribunal. The Members of the Tribunal must follow rules of natural justice in administering justice like Judges, they should not sit in judgment on their own decisions. Mr. Gian Chand was disqualified to hear the Appellant's case. The order of the Tribunal is vitiated on this ground.

(emphasis supplied)

6. As already mentioned, the Petitioner apprehending that she would not get justice before the Sub-Collector, brought to his notice that the order challenged in appeal was passed by him as the Mutation Officer. It was clearly an indication to him that the Petitioner reasonably entertained doubt that she would not get justice at his hands. In the circumstances, in all fairness, the Sub-Collector should not have heard and disposed of the appeal, it is, therefore, a clear case of "judicial obstinacy".

7. For the reasons aforesaid, the impugned order passed by the Sub-Collector cannot be supported by law being hit by the rule of "nemo debet esse iudex in propria sua causa".

8. In the result, the order dated 12-9-1998 at Annexure-8 is hereby quashed.

The Sub-Collector (opp. party No. 2) is directed to transmit the records to the Additional District Magistrate who will take necessary steps for disposal of the appeal by any other competent authority according to law.

9. The writ petition is accordingly allowed. There would be no order as to costs.

Pradipta Ray, J.

10. I agree.

Writ petition allowed.