

(1996) 04 OHC CK 0007
In the Orissa High Court
Case No : O.J.C. No. 29 of 1996

Manu Bhai Patel

APPELLANT

Vs

The Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 24-04-1996

Acts Referred:

Employees State Insurance Act, 1948 — Section 45

Citation : (1996) 2 OLR 169

Hon'ble Judges : A. Pasayat, J;A. Deb, J

Bench : Division Bench

Advocate : P. Patnaik, B. Jena and S.N. Sukla, for the Appellant; B.C. Mohanty, B. Mohanty and D.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat. J.

1. Petitioner calls in question legality of determination of liability u/s 45 of the Employees' State Insurance Act, 1948 (in short, the "Act") by the Regional Director of Employees' State Insurance Corporation (in short, the "Corporation"). Though many points were urged in support of the writ application, essentially it was submitted that before determination no opportunity was granted to the petitioner to have his say in the matter. The stand of the Corporation in the counter-affidavit and in course of hearing is that on the basis of inspections made by the inspecting staff of the Corporation, and on the basis of records produced by petitioner before the inspecting staff, determination was made and therefore, there was no requirement for granting any opportunity to the petitioner. It is also submitted that Section 45 of the Act does not postulate grant of any opportunity.

2. It is the basic requirement of principles of natural justice that when any action adverse to any person is taken or any liability is fastened, the affected person is to be granted an opportunity to have his say in the matter. This basic

requirement of principles of natural justice is based on the maxim "audi alteram partem", that is, hear the other side. Apart from the two basic requirements i. e. (a) "nemo potest esse simul actus et iudex" (no one can be at once suitor or judge) or "Nemo iudex in causa sua" (no man shall be a Judge in his own cause), and (b) audi alteram partem (hear the other side), a corollary has been deduced which is "qui aliquid statuerit parte inaudite altera, acquum licet dixerit, baud acquum facerit" (he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right)", or, in other words, as it is now expressed justice should not only be done, but should manifestly be seen to be done. Even if there is no statutory requirement of granting an opportunity the same has to be afforded as a part of requirements of natural justice. This requirement exists unless grant of an opportunity is specifically excluded in the concerned statute. Where a statutory provision does not exclude natural justice, the requirement of affording an opportunity of being heard can be assumed, particularly when the proceedings are quasi-judicial. Even if a statute is silent and there are no specific words in the particular statute spelling out the need to hear the party whose rights and interests are likely to be affected the requirement to follow the fair procedure before taking a decision must be read in the statute unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute unless there is a clear mandate to the contrary. As observed in *Mullooh v. Aberdeen* : 1971 (2) All ER 1728, "the right of a man to be heard in his defence is the most elementary protection". There is no specific exclusion of principles of natural justice in the Act. Therefore, the authorities were not justified in fixing liability on the petitioner without granting him an opportunity of being heard.

3. In the result, we set aside the orders and demand notices impugned, and quash Annexures 1 and 4, and consequent inactions taken. We make it clear that we have not expressed any opinion on merits of the case. It is for the Corporation to grant an opportunity to the petitioner to have his say in the matter, and to take action in accordance with law.

The writ application is allowed. No costs.

A. Deb, J.

4 . I agree.