
(2020) 02 OHC CK 0005
In the Orissa High Court
Case No : Writ petition (C) No. 20578 Of 2015

Minakhi Dalei

APPELLANT

Vs

State Of Odisha And Others vvv

RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

Citation : (2020) 02 OHC CK 0005

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : S. Mishra, B. Mohanty, S.K. Samantray, D. Priyanka, E. Agarwal, B. Senapati, P.K. Rath, R.N. Parija, A.K. Rout, S.K. Patnaik, A. Behera B.K. Dash

Final Decision : Allowed

Judgement

B.R. Sarangi, J

1. The petitioner, by means of this writ petition, has sought to quash order dated 29.10.2015 passed in AW Misc. Appeal Case No. 14 of 2015 in

Annexure-5 and issue direction to the authorities to implement order dated 13.02.2015 passed in AW Misc. Appeal Case No. 1 of 2015 and AW

Misc. Appeal Case No. 2 of 2015 in letter and spirit.

2. The factual matrix of the case, in hand, is that a notice was issued on 23.06.2014 by opposite party no. 2 for formation of a Women Sabha in the village with regard to selection of candidates for the post of Anganwadi Helper in respect of Dagarasahi Anganwadi Centre in the district of Bhadrak.

Pursuant thereto, a meeting was held on 21.07.2014 wherein two candidates, including the petitioner, applied for and participated in the process of

selection. Though petitioner was selected by opposite party no. 2, as Anganwadi Helper and asked to join which she did, but she was not issued with

engagement order, for which she filed W.P. (C) No. 397 of 2015. Whereas, opposite party no. 5 challenging selection of the petitioner filed W.P. (C)

No. 891 of 2015. Both the writ petitions were heard together and disposed of vide order dated 29.01.2015 remanding the matter to the Sub-Collector,

Bhadrak-opposite party no. 4 and permitting the petitioner as well as opposite party no. 5 to file separate appeals independently for adjudication.

Consequently, AW Misc. Appeal Case No. 1 of 2015 was filed by the petitioner and AW Misc. Appeal Case No. 2 of 2015 was filed by opposite

party. 5. Both the appeals were disposed of by the Sub-Collector, Bhadrak, vide common order dated 03.03.2015, directing to place the matter before

the BLCC for taking a decision as to whether Dalasahi would be included in Dagarasahi or not, and thereafter the CDPO, Bhadrak shall take

immediate steps for selection of Anganwadi Helper within a period of one month. When such matter was pending for adjudication before the BLCC,

opposite party no. 5, without impleading the petitioner as a party, filed AW Misc. Appeal Case No. 14 of 2015 before the Sub-Collector, Bhadrak,

who, vide order dated 29.10.2015 set aside the common order passed earlier on 03.03.2015 in AW Misc. Appeal Case Nos. 1 and 2 of 2015. Hence,

this application.

3. Mr. Soumya Mishra, learned counsel for the petitioner contended that without affording any opportunity of hearing to the petitioner and behind her

back the order impugned has been passed. It is further contended that the Sub-Collector, Bhadrak has no jurisdiction to entertain the 2nd appeal at the

instance of a party, who had earlier filed an appeal before the very same forum, and more so, the order impugned passed in the said 2nd appeal,

without giving any opportunity of hearing to the petitioner, was in gross violation of the principle of natural justice and also not maintainable.

4. Mr. B. Senapati, learned Addl. Government Advocate appearing for the State opposite parties contended that even though AW Misc. Appeal Case

No. 14 of 2015 is termed as 2nd appeal, which is not maintainable, but that by itself was in the shape of review of the earlier order dated 03.03.2015

passed in AW Misc. Appeal Case Nos. 1 and 2 of 2015, thereby the Sub-Collector, Bhadrak has passed the order impugned. He, however, admitted

the fact that in AW Misc. Appeal Case No. 14 of 2015 the petitioner was not made as a party.

5. Ms. S. Das, learned counsel appearing on behalf of Mr. P.K. Rath, learned counsel for opposite party no. 5 could not place before this Court any

provision under which 2nd appeal was filed by opposite party no. 5 before the Sub-Collector, but, however, she argued with vehemence on merits of

the case and contended that if a mistake has been committed by the authority concerned, the same can be rectified by passing another order, thereby,

no illegality or irregularity has been committed by the authority in passing the order impugned.

6. This Court heard Mr. Soumya Mishra, learned counsel for the petitioner; Mr. B. Senapati, learned Addl. Government Advocate appearing for the

State opposite parties; and Ms. S. Das, learned counsel appearing on behalf of Mr. P.K. Rath, learned counsel for opposite party no. 5 and perused

the record. Pleadings having been exchanged and with the consent of the learned counsel for the parties, this writ petition is being disposed of finally

at the stage of admission.

7. Upon hearing learned counsel for the parties and after going through the records, this Court finds that both petitioner and opposite party no. 5 earlier

approached this Court by filing W.P. (C) No. W.P. (C) No. 397 of 2015 and W.P. (C) No. 891 of 2015 respectively and they were heard together

and disposed of vide order dated 29.01.2015 permitting them to file independent appeals. In pursuance thereof, petitioner filed AW Misc. Appeal Case

No. 1 of 2015 and opposite party no. 5 filed AW Misc. Appeal Case No. 2 of 2015 and both the appeals were heard together and disposed of by the

Sub-Collector, Bhadrak, vide common order dated 03.03.2015, directing to place the matter before the BLCC for taking a decision as to whether

Dalasahi would be included in Dagarasahi or not, and thereafter the CDPO, Bhadrak shall take immediate steps for selection of Anganwadi Helper

within a period of one month. But opposite party no. 5, having not satisfied with the said order, preferred once again AW Misc. Appeal Case No. 14

of 2015 before the Sub-Collector, Bhadrak, who, vide order dated 29.10.2015 modified the order dated 03.03.2015 passed in AW Misc. Appeal Case

Nos. 1 and 2 of 2015 and issued direction to the CDPO, Bhadrak to issue engagement order in favour of opposite party no. 5 as Anganwadi Helper.

8. At this juncture, it is of relevance to indicate that the Sub-Collector, Bhadrak, while considering AW Misc. Appeal Case No. 14 of 2015, formulated

the following question:â?

â??The question arises as to whether there was any necessity to convene the BLCC to take a decision whether Daleisahi should be included

in Dagarasahi Anganwadi Centre when there are two different Centres in the name of Dalei Sahi and Dagarasahi.â??

9. The above question, which was formulated by the Sub-Collector, clearly indicates that he has tried to review the earlier order passed by him on

03.03.2015 and while trying to do so the petitioner was not made a party to the proceeding, which fact has been admitted by the learned Addl.

Government Advocate as well as learned counsel appearing for opposite party no. 5. Thereby, the appeal so filed by opposite party no. 5, i.e., AW

Misc. Appeal Case No. 14 of 2015 suffers from non-joinder of proper party, and consequentially the order impugned dated 29.10.2015, having been

passed therein behind the back of the petitioner, suffers from violation of principles of natural justice.

10. In the above context, the law is well settled that the soul of natural justice is â??fair play in actionâ??

11. In *HK (An Infant) in re*, 1967 1 All ER 226 (DC), Lord Parker, CJ, preferred to describe natural justice as â??a duty to act fairlyâ??.

12. In *Fairmount Investments Ltd. v. Secy of State for Environment*, 1976 2 All ER 865 (HL), Lord Russell of Killowen somewhat picturesquely

described natural justice as â??a fair crack of the whipâ??

13. In *R. v. Secy. of State for Home Affairs, ex p. Hosenball*, Geoffrey Lane, LJ, 1977 3 All ER 452 (DC & CA), preferred the homely phrase

â??common fairnessâ?? in defining natural justice.

14. In *A.K. Kraipak v. Union of India*, (1969) 2 SCC 262 : AIR 1970 SC 150 = (1969) 2 SCC 26,2 is a landmark in the growth of this doctrine.

Speaking for the Constitution Bench, Hegde, J. observed thus:

â??If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made

inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-

judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character.

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 far reaching effect than a decision in a quasi-judicial enquiry.

15. In *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 : AIR 1978 SC 597 = (1978) 1 SCC 24, law has done further blooming of this

concept. This decision has established beyond doubt that even in an administrative proceeding involving civil consequences doctrine of natural justice must be held to be applicable.

16. In *Swadeshi Cotton Mills v. Union of India*, (1981) 1 SCC 664 : AIR 1981 SC 818, the meaning of "natural justice" came for

consideration before the apex Court and the apex Court observed as follows:

"The phrase is not capable of a static and precise definition. It cannot be imprisoned in the straight-jacket of a cast-iron formula.

Historically, "natural justice" has been used in a way which implies the existence of moral principles of self evident and

unarguable truth. "Natural justice" by Paul Jackson, 2nd Ed., page-1. In course of time, judges nurtured in the traditions of British

jurisprudence, often invoked it in conjunction with a reference to "equity and good conscience". Legal experts of earlier generations

did not draw any distinction between "natural justice" and "natural law". "Natural justice" was considered as that part of

natural law which relates to the administration of justice.

17. In *Basudeo Tiwary v. Sido Kanhu University* (1998) 8 SCC 194, the apex Court held that natural justice is an antithesis of arbitrariness. It,

therefore, follows that audi alteram partem, which is facet of natural justice is a requirement of Art.14.

18. In *Nagarjuna Construction Company Limited v. Government of Andhra Pradesh*, (2008) 16 SCC 276, the apex Court held as follows:

"The rule of law demands that the power to determine questions affecting rights of citizens would impose the limitation that the power

should be exercised in conformity with the principles of natural justice. Thus, whenever a man's rights are affected by decisions taken under

statutory powers, the court would presume the existence of a duty to observe the rules of natural justice. It is important to note in this

context the normal rule that whenever it is necessary to ensure against the

failure of justice, the principles of natural justice must be read into a provision. Such a course is not permissible where the rule excludes expressly or by necessary intendment, the application of the principles of natural justice, but in that event, the validity of that rule may fall for consideration.â??

19. The apex Court in *Uma Nath Panday v. State of U.P.*, (2009) 12 SCC 40 : AIR 2009 SC 2375, held that natural justice is the essence of fair

adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the

prevention of miscarriage of justice.

20. Natural justice, another name of which is common sense justice, is the name of those principles which constitute the minimum requirement of

justice and without adherence to which justice would be a travesty. Natural justice accordingly stands for that â??fundamental quality of fairness

which being adopted, justice not only be done but also appears to be doneâ??.

21. In view of the fact and law, as discussed above, this Court is of the considered view that since order impugned dated 29.10.2015 passed by the

Sub-Collector, Bhadrak in AW Misc. Appeal Case No. 14 of 2015 vide Annexure-6 is violative of the principle of natural justice, the same cannot

sustain in the eye of law and is hereby quashed.

22. The writ petition is thus allowed. No order to costs.