
(2001) 10 AP CK 0154
In the Andhra Pradesh High Court
Case No : WA No's. 150 and 155 of 2000

Nalla Malla Reddy

APPELLANT

Vs

M. Mutyalu Goud and Others

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 249, 249(7)
Evidence Act, 1872 — Section 58

Citation : (2002) 1 ALD 387

Hon'ble Judges : S.B. Sinha, C.J.; S.R. Nayak, J

Bench : Division Bench

Advocate : C.V. Mohan Reddy, for the Appellant; Government Pleader for Panchayat Raj and A. Suryanarayana Murthy, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—These appeals are directed against a common order dated 25-1-2001 passed by a learned single Judge of this Court in Review WPMP No.29113 of 1999 in WP No.21297 of 1999 and WP No.21707 of 1999 whereby and where under the review petition and WP No.21707 of 1999 filed by the appellant herein were disposed of.

2. The appellant (for short "the donor") donated a sum of Rs.35,000/- for construction of water tank, bus shelter and for laying internal roads within the Panchayat limits of Kachawanisingaram Gram Panchayat purported to be under Janmabhoomi Programme. Such amount was paid to the Sarpanch, who was the writ petitioner in WP No.21297 of 1999. According to the donor, as the said amount had not been spent by the Sarpanch, an appropriate action should have been taken against him. An enquiry was caused to be made in the matter by the Collector and upon satisfying himself that Sarpanch had not spent the said amount, passed an order on 8-5-1998 directing recovery thereof from him. It appears that, prior to issuance of the said order, a show-cause notice dated 11-12-1997 had been issued. But, despite the same, the Sarpanch did not file

any explanation in the stipulated period.

3. However, subsequently, upon consideration of the purported explanation offered by the Sarpanch dated 1-1-1998, the proceedings had been dropped by the Collector on 7-9-1998. A communication was sent to the appellant-donor to the aforementioned effect. The donor thereafter approached the Mandal Praja Parishad Development Officer. The Mandal Development officer, by a communication, dated 24-9-1998 informed the donor that the funds were utilised for purchase of pipes for laying underground drainage system and the amounts were paid by way of cheque to the Convener of the Drainage Water Works. A fresh representation was made by the donor before the Collector on 26-10-1998 requesting him to initiate a criminal action against the Sarpanch under the provisions of Indian Penal Code. A clarification was sought for by the Divisional Panchayat Officer whereafter the Collector issued a show-cause dated 19-1-1999 to the Sarpanch as to why the amount should not be recovered from him. A writ petition, being WP No.32418 of 1998, was filed by the donor under the impression that no action had been taken on his representation and the said writ petition was disposed of by an order dated 19-2-1999 together with connected matter in Writ Petition No.24769 of 1998 directing the authorities to take immediate action and initiate criminal action against the Sarpanch. A personal hearing was given to the parties on 6-3-1999 whereafter show-cause notice had again been issued on 30-3-1999 calling for explanation from him as to why the amount should not be recovered and further as to why he should not be removed from office. He filed his explanation on 21-4-1999. In the order dated 30-4-1999 the Collector while passing an order of removal of the Sarpanch from office stated that he had not filed his explanation by that time. Appeal against the said order was preferred and as no order had been passed by the Commissioner for a long time, the Government was moved whereafter, the order suspending the order of the Collector was passed by the Government. Questioning the said proceedings, the donor has filed writ petition, being WP No. 11977 of 1999, which was disposed of at the admission stage with a direction upon the State to dispose of the revision petition by 17-7-1999 positively.

4. The State disposed of the revision in terms of the said direction issued by the Court directing the Commissioner to dispose of the appeal who passed an order dated 13-7-1999 which was the subject-matter of Writ Petition No. 21297 of 1999. By reason of the said order, the Commissioner while confirming the order of the Collector remitted the matter back to him for consideration after getting report of the Committee.

5. A committee was constituted for the purpose of finding out as to whether the amount given by the donor was spent in the matter in accordance with law or not. Questioning the said order, Sarpanch filed Writ Petition No.21297 of 1997, which by reason of an order dated 12-10-1999 was allowed by the learned single Judge directing the Commissioner to decide the matter afresh. Questioning the said order, the donor has filed review application and the learned single Judge

disposed of the said review application and the Writ Petition No.21707 of 1999 as under:

"In the light of the conflicting claims forth by the parties, I am inclined to dispose of the review application as well as WP No.21707 of 1999 directing the Collector to look into the matter personally and pass a speaking order after hearing both the parties uninfluenced by the notings of her subordinates within six (6) weeks from the date of receipt of a copy of this order. The order passed by the Collector shall advert to each and every contention raised by the parties and the findings arrived at by her should be supported by documentary evidence.

As the order of the primary authority removing the Sarpanch from office is set aside, he is entitled to get back into the office. But it is made clear that as I have set aside the order only on technicalities, I am inclined to allow him to act as Sarpanch subject to the condition that he shall not incur any expenditure on behalf of Panchayat without prior permission of the Departmental Officers concerned except payment of salaries and other routine expenditure which was approved by the Gram Panchayat."

6. Mr. Venkataramana, learned Counsel appearing on behalf of the appellant, would contend that the Collector had already arrived at a finding upon giving an opportunity of hearing to the Sarpanch. In that view of the matter Mr. Venkataramana, would contend that there is no violation of principles of natural justice. Submission of Mr. Venkataramana is that notice had already been issued, but no explanation had been filed and as such the Collector had the requisite jurisdiction to pass the order. He would contend that the explanation filed by the Sarpanch only before the Divisional Panchayat Officer, which by no means, can be said to be filing of an explanation in terms of the show-cause notice issued. Mr. Venkataramana would urge that the Commissioner while exercising his revisional jurisdiction had also acted illegally in directing constitution of a Committee, which is not contemplated under the Gram Panchayat Act. In the aforementioned situation, Mr. Venkataramana would urge that the only course of action would be to direct recovery of the amount.

7. Mr. A. V. Suryanaryana Murthy, learned Counsel appearing on behalf of the first respondent, on the other hand, submits that the proceedings having been directed to be initiated by the learned single Judge may be allowed to continue, as in other respects this writ petition has become infructuous. Election has already been held wherein the Sarpanch did not take any part. The work in question is already over and thus these writ appeals for all intent and purport have become infructuous.

8. The Collector in his order dated 30-4-1999 directed that the Upa-Sarpanch shall take over complete charge from the Sarpanch. The notification appended to the said order refers to a notification which contains a detailed order on the issue. It appears that therein he recorded a finding to the effect that the amount donated by the donor herein was used by the Sarpanch for his personal use. A

finding of fact has also been arrived at that the Sarpanch had misappropriated the donation of Rs. 35,000/-. The order of removal was passed against the Sarpanch by the Collector in exercise of his power conferred u/s 249 of the A.P. Panchayat Raj Act. Charges of misappropriation against him having been proved, the order of removal was passed. In revision, the Commissioner concurred with the aforementioned finding of the Collector stating:

"On 13-7-1999, the case was heard at 11-00 a.m. The District Panchayat Officer, Ranga Reddy Sri S. Anil Kumar, Sri N. Malla Reddy R/o. Kanchawanisingaram, Sri Muthyulu Goud, appellant and Counsel for the appellant Sri Muralidhar Rao were present. Heard all the parties. The Counsel for the appellant could not produce sufficient recorded evidence for utilisation of Rs. 35,000-00 which is the subject-matter for the removal has given the amount of Rs. 35,000-00 to Sri Ch. Venkata Reddy Habitation Committee Convenor for works for the underground drainage work towards public contribution, the letter from Mandal Parishad Development Officer, Mandal Parishad, Ghatkesar Lr. No.G1/DB/ 99 dated 22-12-1998 states that for this work the amount of Rs.24,573/- is the amount pertaining to peoples contribution i.e., 30% of the total value of work done which was recovered from the work bill from the HWC Convenor i. e., Mr. Ch. Venkata Reddy as per the norms of Janma Bhoomi Programme. Hence I do not find any substantial grounds to intervene in the orders of the District Collector, Ranga Reddy in Progs. No.B2/ 3626 of 1997, dated 30-4-1999."

It was directed:

"Hence, keeping in view of the direction of Government in Memo No. : 41015/ Pts.II/A2-98-6, dated 12-7-1999 and in exercise of the powers conferred, u/s 249 (7) of APPR Act, 1994 read with G.O. Ms. No.693, dated 28-10-1995, the stay issued by the Government is vacated and the orders of Collector, Ranga Reddy in Proceedings No.D2/3626/97, dated 30-4-1999 are hereby upheld. The case is remanded back to Collector, Ranga Reddy District with a direction to institute a Commission of enquire into the execution of Janma Bhoomi work in Gram Panchayat, Kachawanisingaram, order the Commission to physically visit the village and verify the correctness of the works and to find out whether the amount of Rs. 35,000/- has been spent and the decide to matter within (4) weeks."

9. Such a direction, as has rightly been contended by Mr. Venkataramana, is wholly without jurisdiction. In this view of the matter, we are of the opinion that a further opportunity of hearing to the Sarpanch may not be necessary, as before the Collector he had admitted the charges levelled against him. Further grant of an opportunity to the Sarpanch could end in useless formality. In any event, the finding of the Collector having been upheld by the Commissioner, interference therewith is permissible only if it could have been proved by reason of purported violation of the principles of natural justice Sarpanch had been substantially prejudiced. Such is not the case.

10. It is now well settled, having regard to the principles adumbrated in Section 58 of the Indian Evidence Act, the facts admitted need not be proved. Principles of natural justice must be extended only where it is necessary. Prejudice doctrine in the realm of Audi Alteram Partem has come to stay. Principle of natural justice must be applied in situational flexibility (See K.L. Tripathi Vs. State Bank of India and Others, In V. Rajamalliah Vs. High Court of A.P. and another, , a Division Bench of this Court while dealing with the question that the Enquiry Officer has followed the procedure prescribed in Civil Services (CCA) Rules of 1963 instead of subsequent Rules of 1991, which are holding the field at the relevant time held that there are no material differences between the two procedures and no prejudice is shown to have been caused to the delinquent. The Bench meeting the contention of the delinquent's Counsel that in the enquiry conducted by the Enquiry Officer, the Enquiry Officer first examined the petitioner and later examined the witnesses produced by the disciplinary authority, without even supplying the list of witnesses examined by the disciplinary authority before they were examined in the course of the enquiry, and this procedure is not in consonance with the well established procedure in a departmental enquiry and also regulations governing the departmental enquiry observed:

12. Coming to the third contention of the learned Counsel for the petitioner, it is true that ordinarily the disciplinary authority should examine its witnesses first in support of the charge. In the instant case, it is admitted that the enquiry Officer examined the delinquent-petitioner in the first instance. It is also alleged that no list of witnesses of the disciplinary authority was furnished to the petitioner before they were produced before the Enquiry Officer for examination. As quite often said and reiterated by the Courts, procedure is hand-made of justice and it is essentially meant to advance justice. It is not the case of the petitioner that on account of this departure in the procedure, the petitioner could not effectively cross-examine the witnesses produced on behalf of the disciplinary authority. If that was the case, he ought to have made complaint to the Enquiry Officer in that regard or before the disciplinary authority or before the High Court on administrative side. Though the fact of the Enquiry Officer examining the petitioner in the first instance was stated in the Memorandum of Appeal before the High Court, no prejudice on that count was pleaded in the Memorandum of Appeal.

11. A Division Bench of this Court in Bankatlal Satyanarayana Parikh and Co., Nizamabad Vs. Commissioner of Commercial Taxes, A.P., Hyd. and another, , referring to S.L. Kapoor Vs. Jagmohan and Others, , Rajendra Singh Vs. State of Madhya Pradesh and others, , MC v. Union of India (1996) 6 SCC 237, Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , observed:

The dialectics of the audi alteram partem rule has, in contemporaneous administrative law, evolved dynamically. The means-based technical view has been eschewed in favour of the holistic and effect-analysis model, Violation of natural justice is by itself, no longer sufficient to invalidate State action. A clear

prejudice that has been suffered by the violation needs to be pleaded and demonstrated. This is the current and operative doctrine.

12. In *Ch. Anita and Others Vs. State of Andhra Pradesh and Others*, , this Bench held:

The principle of natural justice does not have a rigid formula. Natural justice has different facets - the requirement to comply with the principle of *audi alteram partem* and the extent thereof. The doctrine of natural justice does not contain anybody of codified canons. As natural justice has a root in fairness the application thereof would certainly vary from case to case.

When there are gross irregularities involving a large number of persons it may not be possible to give a personal hearing to each one of them particularly when the truth and substance of the matter can be found out from the record. Although natural justice to some of us is being considered to be part of Article 14, the concept has undergone a change. Although at one point of time non-compliance of the principles of natural justice was considered to be *per se* having a prejudicial effect, by and by the prejudice theory has been evolved by the Apex Court.

13. This aspect of the matter has also been considered by a Division Bench of this Court (wherein one of us S.B. Sinha, C.J., was party) in an unreported judgment in WP No. 18717 of 1999 dated 6-6-2001 wherein it was held:

7. In a case of this nature, where the facts are admitted, in our considered opinion, the principles of natural justice are not required to be complied with, not only because the said principles are not applicable but also on the ground that even if the principles of natural justice are directed to be complied with, the same would not yield any different result.

14. In *Malloch v. Aberdeen Corporation* (1971) 2 All ER 1278, Lord Wilberforce stated:

A breach of procedure whether called a failure of natural justice, or an essential administrative fault cannot give.... a remedy in the Courts, unless behind it there is something of substance which has been lost by the failure. The Court does not act in vain.

15. Yet again in *R. v. Secretary of State for Transport Parte Gwent Country Council* (1987) 1 All ER 161, it has been held that the test prejudice should be applied in a case of enhancement of toll charges over a bridge. Although in that case, the statute provided for a public hearing before effecting increase in toll charges over a bridge, the Court of appeal held that unless prejudice is established to have resulted from the procedural impropriety, no interference was called for.

16. In *Jankinath Sarangi Vs. State of Orissa*, , while holding that the principles of natural justice are violated, the Apex Court observed that in the facts and

circumstances of the case, no prejudice was caused to the appellant by not examining the two retired Superintending Engineers who were cited as witnesses. Hidayatullah, CJ, observed:

There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but, there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial (o him of a particular right.

17. See State Bank of Patiala and others Vs. S.K. Sharma, , The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, .

18. If the finding of fact as arrived at by the Collector and consequently the Commissioner cannot be disturbed, the only logical corollary thereto would be that the amount of Rs. 35,000/- said to have been appropriated by the Sarpanch be recovered from him. The contention put forth by the Sarpanch that he had submitted his explanation is of no use inasmuch as he purported to have submitted an explanation before the Divisional Panchayat Officer, who was not the appropriate authority. He was asked to show-cause by the Collector and not by the Divisional Panchayat Officer. It is beyond any cavil of doubt that in terms of the provisions of the A.P. Panchayat Raj Act, the Collector is the competent authority to initiate the proceedings and not the Divisional Panchayat Officer.

19. For the reasons aforementioned, these appeals are allowed and the judgment of the learned single Judge is set aside to the extent mentioned hereinbefore. No order as to costs.