
(2002) 11 OHC CK 0033
In the Orissa High Court
Case No : O.J.C. No. 11908 of 2001

Rabinarayan Moharana

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Constitution of India, 1950 — Article 14
Consumer Protection Act, 1986 — Section 10, 10(3)
Orissa Consumer Protection Rules, 1987 — Rule 3, 3(6), 36

Citation : AIR 2003 Ori 93

Hon'ble Judges : M. Papanna, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : B. Routray, S.B. Jena, S.J. Nanda, S. Behera and S.S. Mohapatra, for the Appellant; D.K. Nanda, Additional Government Advocate for Opp. Parties 1 and 2 and D.K. Mohapatra, for Opp. Party 4, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Patnaik, J.—The petitioner was a lawyer practising in the Rourkela Bar. In response to an advertisement, he applied for the post of President, District Consumer Redressal Dispute Forum, Sundergarh-II, Rourkela. By a notification dated 30-9-2000 of the Government of Orissa, Food, Supplies and Consumer Welfare Department and by a letter dated 30-9-2000 of the said department of the Government of Orissa, the petitioner was appointed as President, District Consumer Redressal Dispute Forum, Sundergarh-II, Rourkela. He assumed charge as President of District Consumer Redressal Dispute Forum, Sundergarh-II, Rourkela and started working as such. By another order dated 24-11-2000 of the Government of Orissa, Food, Supplies and Consumer Welfare Department, the petitioner was appointed as President, District Consumer Redressal Dispute Forum, Sundergarh-I in addition to his own duties as President, District Consumer Redressal Dispute Forum, Sundergarh-II, Rourkela. One Shri Ashwini Kumar Kaiser who was working as Junior Clerk in the office of the President, District Consumer Redressal Dispute Forum, Sundergarh-I on temporary basis

since 25-10-1996 filed an F.I.R. on 2-4-2001 before the Superintendent of Police (Vigilance), Sambalpur Division, Sambalpur stating therein that he has filed a case before the Orissa Administrative Tribunal for continuance in his post in the office of the President, District Consumer Redressal Dispute Forum, Sundergarh-I on permanent basis and alleging that the petitioner was pressurising him to pay a bribe of Rs. 10,000/-, for submitting a favourable report to the Tribunal for continuance of his service on permanent basis. In the said FIR dated 2-4-2001 Shri Ashwini Kumar Kaiser also stated that apprehending that he may lose his job. he agreed to fulfil the demand of the petitioner in two phases and the petitioner had told him to pay Rs. 5,000/- by 2-4-2002 failing which he will submit an adverse report for termination of his job. The Superintendent of Police, Vigilance. Sambalpur Division, Sambalpur after receiving the said FIR on 2-4-2001 at 11.00 A.M. directed a case to be registered u/s 13(2) read with Section 13(1)(d)/7 of the Prevention of Corruption Act and further directed Shri Ashwini Kumar Sahoo. Inspector of Vigilance, Rourkela to lay the trap and Shri N. K. Patnaik, D.S.P., Vigilance Rourkela Unit to investigate into the case. Thereafter, vigilance trap was laid and a sum of Rs. 5,000/- was recovered from the possession of the petitioner on 2-4-2001 as per the vigilance report. An enquiry was conducted by the Revenue Divisional Commissioner, Northern Division, Sambalpur and an enquiry report was submitted by him to the Government in the Food, Supplies and Consumer Welfare Department and by notification dated 29-8-2001, the petitioner was removed from the post of President, District Consumer Redressal Dispute Forum. Sundergarh-II. Rourkela with immediate effect. In the meanwhile, the petitioner had resigned from the additional charge of President, District Consumer Redressal Dispute Forum, Sundergarh-I on 31-3-2001. Aggrieved, the petitioner has filed this writ petition with a prayer to quash the said notification dated 29-8-2001 removing him from the post of President, District Consumer Redressal Dispute Forum. Sundergarh-II, Rourkela.

2. Mr. B. Routray, learned Counsel for the petitioner submitted that before the impugned notification was issued removing the petitioner from the post of President, District Consumer (Redressal Dispute Forum, Sundergarh-H, Rourkela, principles of natural justice were not complied with. He contended that on 1-8-2001 at 5 P.M. the petitioner received a communication through FAX to meet the Revenue Divisional Commissioner, Northern Division, Sambalpur in connection with an enquiry on 2-8-2001 but by the said communication dated 1-8-2001 the petitioner was not informed about the allegations against him in respect of which the enquiry was being held. He further submitted that a copy of the enquiry report of the Revenue Divisional Commissioner, Northern Division, Sambalpur was not furnished nor any show cause notice issued to the petitioner before the Impugned notification was issued on the basis of the said enquiry report removing the petitioner from the post of President, District Consumer Redressal Dispute Forum, Sundergarh-II, Rourkela. According to Mr. Routray, therefore, the Impugned notification is liable to be quashed on the ground of violation of principles of natural justice. In support of this contention, Mr. Routray

cited the decision of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., wherein it has been held that the right to make a representation to the disciplinary authority against the finding recorded in the enquiry report is an integral part of opportunity of defence against the charges and it is a breach of principles of natural justice to deny the said right and, therefore, a copy of the enquiry report should be furnished to the delinquent employee so that he can make a representation against the charges levelled against him in the enquiry before the disciplinary authority. He also relied on the decisions of this Court in Dora Gram Panchayat v. State of Orissa. 1999 (2) OLR 463 and National Thermal Power Corporation Ltd. v. State of Orissa 2002 (1) OLR 410 in which the concept and requirements of natural justice have been explained at length. He cited the decision of the Supreme Court in Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant (2001) 1 SCC 182 : AIR 2001 SC 24 in which also the Supreme Court has explained the concept and requirements of natural justice.

3. Mr. D. K. Nanda, learned Additional Government Advocate, on the other hand, submitted relying on the counter affidavit filed on behalf of opp. parties land 2 that the President, District Consumer Redressal Dispute Forum, Sundergarh-II, Rourkela was not a civil post and there was no necessity to give an opportunity to the petitioner to file a show cause before issuing the impugned notification removing him (petitioner) from the post of President, District Consumer Redressal Dispute Forum, Sundergarh-II, Rourkela. He further submitted that the decision of the Supreme Court in Managing Director, ECIL, Hyderabad v. B. Karunakar (supra) was rendered in the context of the rights of a person holding a civil post under the Union or a State under Article 311 of the Constitution and will not apply to the post of President, District Consumer Redressal Dispute Forum under the Consumer Protection Act, 1986 and the rules made thereunder. He explained that under Rule 3 (6) (g) & (h) of the Orissa Consumer Protection Rules, the State Government has the power to remove the petitioner from the Post of President, District Consumer Redressal Dispute Forum on the basis of a finding in an enquiry and that the Revenue Divisional Commissioner, Northern Division, Sambalpur while conducting the enquiry complied with the principles of natural justice. Mr. D. K. Mohapatra, learned Counsel for the opp. party No. 4 further submitted that Sub-rule (6) of Rule 3 of the Orissa Consumer Protection Rules and the proviso thereto does not mention that a show cause notice is to be given to the President or Member of the District Forum before he is removed from his post and, therefore, the contention of Mr. Routray, learned Counsel for the petitioner that a show cause notice was to be served on the petitioner before he was removed from the post of President, District Consumer Redressal Dispute Forum is mis-conceived. He stated that for acceptance of bribe of Rs. 5,000/- by the petitioner on 2-4-2001, Vigilance P.S. Case No. 29 of 2001 has been registered and on the basis of a detection report of the vigilance against the petitioner for the offence under the Prevention of Corruption Act, 1988 a criminal case is pending.

4. Under Article 311 (2) of the Constitution, a person can be removed from service only after an enquiry in which he is informed of the charges against him and after he* is given an opportunity of being heard in respect of the charges, but the said rights are available to a person who is a member of a civil service of the Union or All India Service or a civil service of a State or holds a civil post under the Union or the State as the said Article 311 itself makes it clear. The District Forum has been established under the Consumer Protection Act, 1980 and its members and President are not members of the civil service of the State and do not hold civil posts under the State though they are appointed by the State Government. Sub-section (3) of Section 10 of the said Act provides that the salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government. The State Government has prescribed the salary or honorarium and other allowances and terms and conditions of the President and members of the District Forum in Rule 3 of the Orissa Consumer Protection Rules. Sub-rule (6) of Rule 3 is quoted herein below :

"3. Salary or honorarium and other allowances and terms and conditions of the President and members of the District Forum (Section 10 (3))-

(1) to (5) xx xx xx

(6) The President or a member of a District Forum shall cease to be the President or member, as the case may be, if he

(a) dies or resigns from office or attains the age specified in Sub-section (2) of Section 10 of the Act, or

(b) is adjudged an insolvent, or

(c) is convicted of an offence involving moral turpitude, or

(d) remains absent in three consecutive sittings of the District Forum, or

(e) joins political party or a communal organisation, or

(f) becomes physically or mentally incapable to discharge his functions efficiently, or

(g) acquires such financial or other interest as is likely to affect his functions prejudicially, or

(h) so abuses his position as to render his continuance in office prejudicial to the public interest :

Provided that the membership on any of the grounds specified in Clauses (f), (g) and (h) above shall cease either on his own admission or on the basis of a finding by an enquiry caused by the State Government.

The aforesaid Sub-rule (6) now provides that a show cause notice is to be issued to the President or a member of the District Forum before his removal

from the post of President or member of the District Forum, as the case may be, on any of the grounds indicated in Clauses (a) to (h) of the sub-rule. The proviso to Sub-rule (6) of Rule 3 quoted above, however, provides that the membership on any of the grounds specified, in Clauses (f), (g) and (h) shall cease either on the admission of such member or on the basis of a finding by an enquiry caused by the State Government. There is no express provision in the said proviso to Sub-rule (6) of Rule 3 similar to Article 311 (2) that in such enquiry the member of the District Forum will be informed of the charges against him and he will be given an opportunity of being heard In respect of the charges.

5. Although the provisions of Article 311 (2) of the Constitution will not apply to an enquiry under the proviso to Sub-rule (6) of Rule 3 of the Orissa Consumer Protection Rules, removal of a President or a member of the District Forum on the basis of a finding in an enquiry caused by the State Government must be only after compliance with the principles of natural justice. In *Dora Gram Panchayat v. State of Orissa* (supra), a Division Bench of this Court has held :

"8. The concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They ,may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice.

The expression "civil consequences" encompasses in fraction of not merely property of personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life".

The President or member of the District Forum is appointed under the Consumer Protection Act, 1986 and the rules framed thereunder normally for a certain term and an order of removal before expiry of such term pursuant to an enquiry under the proviso will not only involve civil consequences for him but also cast a stigma on his character. Hence, even though rules of natural justice have not been expressly incorporated under the proviso to Sub-rule (6) of Rule 3 of the Orissa Consumer Protection Rules, they have to be implied from the very nature of enquiry contemplated by the said proviso and from the adverse consequences that will follow from the findings in such enquiry under the proviso.

6. But as has been held in *M/s. National Thermal Power Corporation Ltd. v. State of Orissa* (supra), the question whether requirements of natural justice have been met by the procedure adopted in a given case, depends to a great extent on the facts of the said case. In the recent case of *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant* (supra), the Supreme Court has held at page 26 of

AIR :

"Since the decision of this Court in Kraipak case A.K. Kraipak and Others Vs. Union of India (UOI) and Others, one golden rule that stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in Ridge v. Baldwin (1964) AC 40 very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances--who then is a reasonable man--the man on the Clapham omnibus? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in Ridge v. Baldwin in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even in the millennium year. As a matter of fact this Court in the case of The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others, upon reliance on the attributes of the doctrine as above-stated as below (SCC p. 387. para 8) :

"8. The second question, however, as to what are the principles of natural justice that should regulate an administrative act or or -der is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed or rigorous yardstick in this manner. The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably....."

7. Thus, what the Court has to examine in the present case is whether the Revenue Divisional Commissioner while conducting the enquiry against the petitioner has been fair in his approach and has given the petitioner a reasonable opportunity of defending himself against the allegations of having accepted the bribe of Rs. 5,000/-. Paragraphs 5 and 6 of the report of the Revenue Divisional Commissioner are quoted herein below :

"5. The accused Rabinarayan Moharana stated that while working as President of District Consumer Dispute Redressal Forum, Sundergarh-II. Rourkela, Govt. had appointed him as President, District Consumer Dispute Redressal Forum, Sundergarh-I in addition to his own duties and accordingly joined on 13th December, 2000. He has stated that it is a conspiracy to tranish his image in which the complainant is being used by some other persons who were inimical to him. He also stated that the FIR is not so full-fledged and is false and tampered with. He stated that his predecessor had selected the complainant and sent the proposal to the Govt. for regularisation of the latter's service in October/ November 2000. Since the process was prima facie illegal his predecessor was removed from additional charge (who was the President, District Consumer Dispute Redressal Forum. Jharsuguda), and he was given the charge of the

Forum at Sundergarh. Further, the proposal of regularisation submitted to the Govt. was cancelled by the Ex-President. After joining at Sundergarh, he sought clarification from the Govt. as to whether to retain Shri Kalsar and another Clerk at Rourkela. Government had given clearance for retention of Kalsar. So there was no question of giving any threat to the complainant that he would be removed from his service if he does not pay money. He further stated that as directed by the Govt. Paragraph-wise comments was submitted to the Govt. Advocate on 15-2-2001, vide dispatch No. 56/ 2001. Again as per the direction of the Govt. he had submitted paragraph-wise comments on 23-3-2001 to the Govt. while he was on tour to Cuttack. Thus, he stated that having already submitted paragraph-wise comments there was no question of he demanding bribe and accepting it on 2-4-2001. He also added that when the case is pending before the Orissa Administrative Tribunal, for regularisation of the complainants service, there was no question of removing him from the service. He stated that the complainant had alleged earlier that he had threatened him to remove from the service and later on charged the allegation that he had demanded money for giving a favourable paragraph-wise comments. He had given the paragraph-wise comments based on the facts and not otherwise as any wrong report would attract the adverse views of Hon"ble OAT. He added that it is a clear case of manipulation of FIR and deliberate conspiracy.

6. From the records and statements of the investigating officer, the accused person and the complainant, it is not clear as to what are the reasons for which the accused had demanded for bribe. The complainant had given different reasons at different point of time. The fact remains that the money was paid to the accused on 2-4-2001 as per the records of Vigilance organisation. It appears that the complainant has changed his allegations from threatening to termination of his job, to giving favourable paragraph wise comments in response to the petition before the OAT, to a threat of stopping his salary. From the records and statements, it is clear that there was no way the accused could have terminated the services as there was Govt. letter for continuance of the service of the complainant and also the case is pending the Hon"ble OAT. Further, the paragraph-wise comments are reportedly furnished to the Govt. before the date of alleged bribe. Further, as mentioned by the complainant himself the file was processed for stopping the salary as per the instructions contained in the Govt. letter."

A reading of the aforesaid report would show that the petitioner was made aware of the allegations against him that he had accepted a bribe of Rs. 5,000/- and in the enquiry, he had also been given reasonable opportunity to defend himself against the said allegations and the Revenue Divisional Commissioner had also taken into consideration the defence of the petitioner and yet had found that money was paid to the petitioner on 2-4-2001 as per the records of the vigilance organisation though the exact reason for which money was paid to the petitioner was not clear. The contention of Mr. Routray, learned counsel for the petitioner, therefore, that principles of natural justice had not been followed in the enquiry

conducted by the Revenue Divisional Commissioner is not at all correct.

8. Coming now to the submission of Mr. Routray that a copy of the enquiry report was not furnished nor a show cause notice issued to the petitioner after the enquiry report was submitted to the Government, as we have indicated above, there is no provision in Sub-rule (6) of Rule 3 of the Orissa Consumer Protection Rules for issue of a show cause notice to the President or member of the District Forum sought to be removed. There is also no provision in the proviso to Sub-rule (6) of Rule 3 for furnishing a copy of the enquiry report to the member of the District Forum on the basis of which he is sought to be removed. In a given case, it is possible to contend that furnishing of such enquiry report and issue of show cause notice were part of the requirements of natural Justice. But we fail to see what prejudice the petitioner has suffered in this case on account of the fact that a copy of the enquiry report was not furnished to the petitioner or on account of the fact that the petitioner has not been served with a show cause notice before accepting the finding in the enquiry report. All that has been found in the enquiry report is that money was paid to the petitioner on 2-4-2001 as per the records of the vigilance organisation and on the basis of this sole finding, the Government has taken a decision to remove the petitioner from the post of President of the District Forum. No different consequence could have followed if the petitioner had been furnished with a copy of the enquiry report and had been given an opportunity to show cause before the impugned notification for removal of the petitioner from the post of President of the District Forum was issued by the State Government. In *Managing Director, ECIL, Hyderabad v. B. Karunakar* (supra) in which the Supreme Court held that furnishing a copy of the enquiry report and an opportunity to the delinquent employee to submit a representation against the findings in the enquiry report are part of reasonable opportunity and principles of natural justice. His Lordship P. B. Sawant who delivered the majority judgment observed at page 1092 :

"..... The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just right. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of Justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice".

9. It was next submitted by Mr. Routray, learned counsel for the petitioner that the Revenue Divisional Commissioner has not recorded any finding in the enquiry report and has merely recorded what is alleged in the FIR by the vigilance

organisation and that Clauses (g) & (h) of Sub-rule (6) of Rule 3 of the Orissa Consumer Protection Rules are not attracted. We are unable to accept the aforesaid contention of Mr. Routray. The Revenue Divisional Commissioner has found that money was paid to the petitioner on 2-4-2001 as per the records of the vigilance organisation. Thus, the aforesaid finding of the Revenue Divisional Commissioner is not based merely on the allegation in the FIR dated 2-4-2001 lodged by Ashwini Kumar Kaiser but on the records of the vigilance organisation. The enquiry under the proviso to Sub-rule (6) of Rule 3 of the Orissa Consumer Protection Rules is in the nature of domestic enquiry and not in the nature of a criminal trial. Once a finding is recorded that the petitioner has received money on 2-4-2001 from Shri Ashwini Kumar Kaiser as per the records of the vigilance organisation, an inference can be drawn by the State Government that the petitioner has abused his position as the President and member of the District Forum so as to render his continuance in the office prejudicial to the public interest. This finding of the Revenue Divisional Commissioner in the enquiry report and this decision of the State Government, however, cannot affect the defence of the petitioner in the criminal trial which has to be decided by the Court on its own merits in accordance with law.

10. It was finally submitted by Mr. Routray, learned counsel for the petitioner that the State Government should have consulted the State Commission constituted under the Consumer Protection Act, 1986 inasmuch as the State Commission has been vested with the administrative control over the District Forum u/s 24B of the Consumer Protection Act, 1986. Mr. Routray cited a Division Bench decision of the Bombay High Court in *Sadashivrao Gopal Dhamankar v. State of Maharashtra* 2000 (3) CPR 6 : 2000 Lab IC 2567 in which the order of transfer of President of the District Forum issued by the Under Secretary, Food, Civil Supplies and Consumer Protection Department of the State Government was held as suffering from lack of executive power.

11. We are afraid, we cannot accept the aforesaid submission of Mr. Routray. In Sub-section (2) of Section 24-B of the Consumer Protection Act, 1986 the State Commission has been vested with the administrative control over all District Fora within its jurisdiction in all matters referred to in Sub-section (1) of Section 24-B. But Sub-section (3) of Section 10 of the Consumer Protection Act, 1986 provides that the terms and conditions of members of the District Forum shall be such, as may be prescribed by the State Government. The amending Act which introduced Section 24-B in the Consumer Protection Act, 1986 has not amended the said provisions of Sub-section (3) of Section 10 of the Consumer Protection Act, 1986. The result is that the terms and conditions of the service of members of the District Forum including the President of the District Forum continued to be governed by Rule 3 of the Orissa Consumer Protection Rules and Sub-rule (6) of Rule 3 of the said rules does not provide that before the removing the President or member of the District Forum, the State Commission has to be consulted. In the absence of any statutory provision for consultation with the State Commission for removal of the President or member of the District Forum, the

Court cannot strike down a notification issued by the State Government for removing the President or member of the District Forum on the ground that the State Commission has not been consulted.

12. In the result, we find no merit in this writ petition and we accordingly dismiss the same. Considering the facts and circumstances of the case, the parties shall bear their own costs.

M. Papanna, J.

13. I agree.