

(1997) 03 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 2707 of 1997

Ramkrushna Sahu

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 17-03-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (1997) 1 OLR 481

Hon'ble Judges : S.N. Phukan, C.J;A. Pasayat, J

Bench : Division Bench

Advocate : Suryakanta Padhi and D. Mohapatra, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—Alleging violation of principles of natural justice this writ application has been filed by Hamkrushna Sahu (hereinafter referred to as the "petitioner"). He assails the decision of Collector, Gajapati (opp. party No. 1), who directed that the petitioner was to be in the black-list. There was further direction that no purchase was to be made from him.

2. It is petitioner's case that, he has been supplying materials to different Government offices in the district of Gajapati. The District Social Welfare Officer, Gajapati by his letter dated 3-2-1997 intimated the Child Development Project Officer and the Block Development Officers of the district that as per the orders of the Collector, petitioner was to be in the black-list and no purchase was to be effected from him. Petitioner makes agrievance that an order of black-listing has the effect of depriving him of equality of opportunity in the matter of public contract, and therefore, he had the right to be heard before such a decision is taken.

Though no counter-affidavit has been filed, learned counsel for State while accepting that no opportunity was granted to the petitioner before directing

including of his name in the black-list, submitted that it was done in the public interest and therefore, there was no violation of the principles of natural justice.

3. Black-listing has the effect of preventing a person from the; privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of black-listing indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair-play require that person concerned should be given an opportunity to represent his case before he is put on the black-list.

The State which has the right to trade has also the duty to observe equality. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling. Where the black-listing order involves civil consequences it casts a slur. It creates a barrier between the persons black-listed and the Government in the matter of transactions. The black-lists are "instruments for coercion". Hence a person must be given an opportunity of hearing before his name is put on the black-list.

4. In passing an order of black-listing. Government department acts under what is described as a standardised Code. This is a Code for internal instruction. Government departments make regular purchase. They make list of approved suppliers after taking into account the financial standard of the firm, their capacity and their past performance. These aspects were highlighted by the apex Court in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, .

5. It is the stand of the State that there is no requirement in law of giving prior notice before black-listing any person. It is true that there is no specific requirement of giving any notice. But it is an implied principle of rule of Law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that black-listing any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. This aspect was highlighted by the apex Court in *Raghunath Thakur v. State of Bihar and Ors.* : AIR 1983 SC 620.

6. How then have the principles of natural justice been interpreted in the Courts

and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative processes. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" as stated in 1805 12 C R 114, that is "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa quia non potest es-sa, judex et pars" (Co-Litt 1418). that is, "no man ought to be a judge in his own cause because he cannot act as Judge and at the same time be a party". The form "nemo potest esse simul actor et judex," that is, "no one can be at once suitor and judge" is also at times used. The second rule and that is the rule with which we are concerned in this writ petition is "audi alteram partem", that is, "hear the other side". At times and particularly-in continental countries the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely. "qui aliquid statuerit parte inaudita altera aequum licet dixerit, haud aequum fecerit", that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" (See Boswell's case: (1605) 6 Co. Rep. 48-b, 52-a), or, in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done".

7. In the circumstances, the direction to include petitioner in the black-list as indicated by the District Social Welfare Officer, Gajapati (opp. parity No. 2) is indefensible, and the order vide Annexure-1 is quashed. It is open to the authorities if so advised to grant an opportunity to the petitioner for having his say, in the event it is proposed to put the petitioner in the black-list.

The writ application is allowed to the extent indicated above. There shall be no order as to costs.

S.N. Phukan, C.J.

8. I agree.