
(2001) 09 AP CK 0152

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9544 of 1994

Ravada Ramulu

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 21-09-2001

Acts Referred:

Andhra Pradesh Gram Panchayats Act, 1964 — Section 150, 150(1), 150(3)
Andhra Pradesh Gram Panchayats Rules, 1964 — Rule 50(1), 50(2)
Constitution of India, 1950 — Article 226

Citation : (2001) 3 APLJ 109

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Gudapati Venkateswara Rao, for the Appellant; The Govt. Pleader for Panchayat Raj., for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This writ petition is filed assailing the order of the 1st respondent District Collector, Panchayat Wing, Vizianagaram, in Rc. No. 4438/92,A dated 12.4.1994 under which the petitioner was directed to credit an amount of Rs. 15,904/- to the Gram Panchayat fund within 15 days failing which the same would be recovered from him by invoking the provisions under the Revenue Recovery Act.

2. The CASE of the petitioner is that he was elected as Sarpanch of Jannivalasa in the year 1989. It is stated by the petitioner that the District Panchayath Officer, Vizianagaram issued a show-cause notice in Rc. No. 4438/92,A dated 26.12.1992 stating that certain complaints had been received against him alleging misutilisation of Rojgar funds to the tune of Rs. 15,900/- and calling upon him to show-cause as to why the cheque drawing power conferred on him should not be withdrawn. Under the same notice it was also ordered that pending passing of final orders, he should not withdraw any amounts from the bank accounts of the Gram Panchayat. In pursuance thereof, the petitioner states that

he submitted his explanation denying the allegations, but no further orders are passed by the respondents. The petitioner states that after more than an year the 1st respondent issued the impugned proceedings dated 12.4.1994 purported to be in exercise of the powers u/s 150(1) of the A.P. Grama Panchayath Act 1964 (for short "the Act") stating that it has been established that the petitioner had misappropriated the Rojgar funds to the tune of Rs. 15,900/-, and therefore, he shall credit the said amount to the Gram Panchayat funds within 15 days from the date of receipt of the said proceedings. It was also stated in the impugned proceedings that in the event of failure to credit the said amount the same would be recovered from the petitioner under the provisions of the Revenue Recovery Act. Challenging the said proceedings dated 12.4.1994 the present writ petition has been filed contending "inter alia" that the impugned proceedings are in violation of Principles of Natural Justice, since no prior notice was issued to him before exercising the powers u/s 150(1) of the Act.

3. On behalf of the respondents, the District Panchayat Officer filed a detailed counter. In the said counter it has been stated that the impugned proceedings dated 12.4.1994 is only a notice served on the petitioner calling upon him to reimburse the loss caused to the Gram Panchayat and to explain as to why the provisions under the Revenue Recovery Act should not be invoked and the petitioner should have submitted his explanation explaining the reasons under which he could not remit the amount but he ought not to have filed the writ petition straightaway. It is contended that there is an alternative remedy of appeal as provided under Sub-section (3) of Section 150 of the Act, but the petitioner failed to exhaust the said remedy of statutory appeal before invoking the jurisdiction of this Court under Article 226 of the Constitution of India. So far as the contention of the petitioner that no opportunity was given to him before issuing the impugned proceedings, it has been stated in the counter-affidavit that the show-cause notice dated 26.12.1992 was issued calling upon the petitioner to explain the misuse of Jawahar Rojgar funds and on the basis of the explanation offered by the petitioner, the Extension Officer (PTS) submitted a report confirming the loss caused to the Gram Panchayat to the tune of Rs. 15,900/-, and in pursuance thereof, proceedings u/s 150(1) of the Act have been initiated for recovery of the amount misused. It has also been stated in the counter-affidavit that the District Panchayat Officer had personally visited the Gram Panchayat on 18.12.1993 and recorded the statement of the petitioner wherein, he admitted, categorically, that he had misused the Jawahar Rojgar funds of the Gram Panchayat and requested one week time to remit the said amount.

4. Heard the learned Counsel for the petitioner as well as the learned Government Pleader for Panchayat Raj appearing on behalf of the respondents.

It has been submitted by Sri Gudapati Venkateshwar Rao, learned Counsel for the petitioner, that before passing the impugned order the 1st respondent ought to have afforded an opportunity to the petitioner as prescribed u/s 150(1) of the

Act. He contends that since the impugned order is not preceded by any notice calling upon him to show cause why the misappropriated amount should not be recovered from him, the impugned order is in violation of Principles of Natural Justice, and therefore, the same is liable to be declared as null and void. On the other hand, the learned Government Pleader submitted that in view of the explanation offered by the petitioner pursuant to the show-cause notice dated 12.6.1992, the Extension Officer had already confirmed the loss caused to the Gram Panchayat to the tune of Rs. 15,900/- and therefore it is not necessary to provide him a further opportunity before passing orders under Sub-section (1) of Section 150 of the Act.

5. For considering the above contentions of the respective parties, it is necessary to have a look at Section 150 of the Act, which reads as follows:

150. "Liability of Sarpanch, Upa-Sarpanch, executive authority for loss, waste or misapplication of property:- (1) If, after giving the Sarpanch, Upa-Sarpanch or the executive authority an opportunity of showing cause to the contrary, the Commissioner is satisfied that the loss, waste or misappropriation of any money or other property owned by or vested in the Gram Panchayat is a direct consequence of misconduct, or gross neglect, on the part of such Sarpanch, Upa-Sarpanch, or executive authority, the Commissioner may, by order in writing, direct the Sarpanch, Upa-Sarpanch or executive authority to pay to the Gram Panchayath, before the date fixed by him, the amount required to reimburse it for such loss, waste, or, misapplication, unless the Sarpanch, Upa-Sarpanch or executive authority proves that he had acted in good faith.

2) If the amount is not so paid, the Commissioner shall cause it to be recovered as arrears of land revenue and credited to the Grama Panchayath fund.

3) An appeal shall lie within thirty days from any decision of the Commissioner under this section to the Government whose decision thereon shall be final.

6. On plain reading of Sub-section (1) of Section 150 of the Act, it is clear that opportunity of showing cause shall be provided to the Sarpanch before the Commissioner arrives at a conclusion that the loss, waste, or misappropriation of money or other property owned by or vested in the Gram Panchayat is a direct consequence of misconduct or gross neglect on the part of the Sarpanch. Further, if the Commissioner is so satisfied, it is open for him to pass an order directing the Sarpanch to pay to the Gram Panchayat the amount required to reimburse it for such loss, waste, or, misappropriation unless the Sarpanch proves that he had acted in good faith.

7. There cannot be any doubt that the first limb of Sub-section (1) of Section 150 of the Act mandates an opportunity to show-cause before the Commissioner arrives at a conclusion that the loss, waste, or misappropriation is a direct consequence or misconduct or gross neglect on the part of the Sarpanch.

8. However, the second limb of Sub-section (1) of Section 150 of the Act, which

empowers the Commissioner to direct the Sarpanch to reimburse the amount to the Gram Panchayat does not expressly provide for affording opportunity as to the proposed action.

9. Therefore, the learned Government Pleader contends that since the allegations were already made known to the petitioner in the show cause notice dated 24.12.1992, the petitioner is not entitled to further opportunity before issuing the impugned proceedings u/s 150(1) of the Act.

10. It is true that where the statute, under which an authority functions, lays down any procedure, it would be mandatory and cannot be dispensed with on any ground. However, if any gaps are found in the procedure prescribed under the Statute, the same will have to be supplemented in conformity with the Principles of Natural Justice. It is well settled that the Courts cannot supplement the law, but can only supplement the procedure laid down in the statute, where it is found necessary to make it fair, the only exception being the exclusion of application of rules of Natural Justice by the statutory provision itself, either expressly or impliedly. The omission to include the requirement of opportunity in the statutory provision does not totally exclude the necessity to afford an opportunity to the affected party, but it can be implied from the nature of the power conferred on the authority the purpose for which it is conferred and the effect of such order on the rights or interest of the affected party.

11. It is relevant to refer to the following excerpts from the case of *Maneka Gandhi v. Union of India*. The Supreme Court while considering the question whether the procedure prescribed by the Passports Act, 1967 for impounding a passport meets the test of element of Natural Justice:

...It is true that there is no express provision in the Passports Act, 1967 which requires that audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question, if the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, : " A long course of decisions, beginning with *Dr. Bentley's case (1723)* 1 Str 557 and ending with some very recent cases, establish that although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature". The principle of audi alteram partem which makes that no one shall be condemned unheard, is part of the rules of natural justice.

In *Institute of Chartered Accountants v. L.K. Ratna* AIR 1987 SC 72, the Apex Court has been pleased to hold that the Principles of Natural Justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary. Again in *Dr Umrao Singh Choudhary Vs. State of M.P. and Another*, the Apex Court held that the Principles of Natural Justice does not supplement the law but supplement the law and its application may be excluded

either expressly or by necessary implication. Similar view has been expressed in *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, , and in *City Corner v. Personal Assistant to Collector & Additional District Magistrate*.

Now it is well settled that the Principles of Natural Justice are applicable even to the administrative orders and the Supreme Court in a catena of decisions accepted that the application of Principles of Natural Justice is mandatory in exercise of power involving civil consequences. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, , the Supreme Court held that even an administrative order which involves civil consequences must be made consistently with the rule of Natural Justice and that the person concerned must be informed of the case of the state and the evidence in support thereof and must be given a fair opportunity to meet the case before an adverse decision is taken. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the Supreme Court explained that the civil consequences undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence. In *Raghunath Thakur Vs. State of Bihar and Others*, , the Supreme Court emphasised that it is an implied principle of the rule of law that any order having civil consequences should be passed only after following the Principles of Natural Justice. In *Union of India v. E.G. Nambudiri* 1991 SC 1216, it has been held that where a vested right is adversely affected by an administrative order or where civil consequences ensue, Principles of Natural Justice apply even if the statutory provisions do not make any express provision for the same and the person concerned must be afforded opportunity of hearing before the order is passed. In *M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another*, , it is held that even the administrative order and not only quasi-judicial are required to be made in a manner in consequence with the rules of natural justice when they affect the rights of the citizens to the property or the attributes of the property.

12. As can be seen from the above decisions the whole concept of Natural Justice is built upon the well-known principle that no one should be condemned unheard. A person against whom some action is proposed to be taken or whose right or interest is going to be affected adversely shall be given a reasonable opportunity to defend himself. Particularly when a penal punishment is sought to be imposed in exercise of the power under the statute, it should be interpreted in consonance with the Principles of Natural Justice.

13. It is pertinent to note that the power conferred on the Commissioner u/s 150(1) of the Act is penal in nature involving civil consequences. Further in view of the concluding words "...unless the Sarpanch or Upa Sarpanch or the Executive Authority proves that he had acted in good faith" the said power cannot be said to be absolute or unqualified. The language of the second limb of Sub-section (1) of Section 150 of the Act makes it clear that the Commissioner cannot direct the

Sarpanch to reimburse the amount to the Gram Panchayat in every case mechanically. In other words, even after reaching the conclusion as provided under the first limb of Sub-section (1) of Section 150 of the Act, the Commissioner cannot exercise the power to direct reimbursement if in a given case the Sarpanch proves that he had acted in good faith. Thus, though not expressly provided, the language of Section 150(1) indicates affording an opportunity to the Sarpanch/Upa-sarpanch/Executive Authority to prove that he had acted in good faith.

14. In the light of the aforesaid principles and keeping in view the language of Sub-section (1) of Section 150 of the Act and the consequences that would flow from the order contemplated in exercise of the power under that provision, it has to be concluded that the requirement of reasonable opportunity being given to the affected party must be read into the second limb of Sub-section (1) of Section 150 also. If so interpreted, in my opinion, before passing an order u/s 150(1) of the Act, affording an opportunity to the affected party is mandatory not only by calling upon him to explain as to the allegations of loss, waste or misappropriation of the Gram Panchayat funds but also by putting him on notice specifically about the proceedings of recovery proposed u/s 150(1) of the Act. Unless such an opportunity is afforded to the affected party against the action proposed u/s 150(1) of the Act, in my opinion, it cannot be said that the requirement under the statutory provision is satisfied.

15. In the instant case, the contention of the respondents is that the petitioner was already issued a show-cause notice dated 26.12.1992 under which he was informed of the financial irregularities alleged against him and on the basis of the explanation submitted by the petitioner to the said notice, the Extension Officer submitted a report confirming the loss caused to the Gram Panchayat and therefore there is no need to issue a further notice to the petitioner before initiating the proceedings under Sub-section (1) of Section 150 of the Act.

16. I have carefully gone through the said notice in Re. No. 438/92,A dated 26.12.1992 relied upon by the respondents. It can be seen from the said notice that it was issued by the District Panchayat Officer in exercise of powers conferred under Sub-rule (1) of Rule 50 of the Rules under Schedule-II to the Act. It is stated in the said notice that in view of the report received against the petitioner as to certain irregularities it has been decided that it is necessary to prohibit the petitioner from drawing the moneys of the Gram Panchayat. Therefore, in exercise of powers conferred under Sub-rule (1) Rule 50 of the Rules to Schedule-II to the Act, the petitioner was called upon to show-cause as to why the cheque drawing power conferred on him should not be withdrawn. He was further directed to submit his explanation to the Divisional Panchayat Officer with a copy to the District Panchayat Officer within 15 days from the date of receipt of the said show-cause notice, failing which further steps would be taken assuming that he has no explanation to offer.

17. It is further stated in the said notice that pending passing of final order under

Sub-rule (1) of Rule 50, the petitioner is directed, as per second proviso to Sub-rule (1) of Rule 50, not to draw the amounts of Gram Panchayat from any bank and that pending final orders, the Extension Officer, Kothavalasa is empowered to draw the Gram Panchayat amounts. It is also pertinent to note that an Annexure was enclosed to the said notice furnishing the particulars of the two irregularities alleged against the petitioner, namely (i) misappropriation of Rs. 4,490/- drawn from the funds of the Gram Panchayat, and, (ii) failure to take necessary steps to avoid wastage of 140 bags of cement worth of Rs. 11,410/-

18. In pursuance of the said notice, the petitioner submitted his explanation in January, 1993 itself denying the allegations made against him. However, it is admitted by the respondents that in pursuance of the said notice no final orders were passed as provided under Sub-rule (1) of Rule 50 of the Rules.

19. I have also called for the record relating to the matter and on a perusal of the record, I am satisfied that except the aforesaid notice dated 26.12.1992 no further notice was issued to the petitioner at any time. As stated above, the notice dated 26.12.1992 was issued in exercise of powers conferred under Sub-rule (1) of Rule 50 of the Rules under Schedule-II to the Act under which the District Panchayat Officer may prohibit any Executive Authority from drawing the moneys of Gram Panchayat for such period as may be specified in such order. The first proviso to the said Sub-rule (1) of Rule 50 prescribes that no such order shall be passed unless an opportunity of making representation is given to the Executive Authority concerned. The second proviso to the said Rule also enables the District Panchayat Officer to issue an interim direction to the Executive Authority not to draw moneys of Gram Panchayat pending exercise of his powers under Sub-rule (1) of Rule 50. Sub-rule (2) of Rule 50 provides for an appeal to the District Collector against an order passed under Sub-rule (1) of Rule 50.

20. Thus, the power conferred under Sub-rule (1) of Rule 50 under Schedule-II to the Act is independent and provides for imposing certain restrictions on the powers conferred on the Sarpanch regarding withdrawal of Gram Panchayat funds. It appears that soon after the receipt of complaints alleging financial irregularities against the petitioner, the District Panchayat Officer exercised the power conferred under Sub-rule (1) of Rule 50 and issued show-cause notice dated 26.12.1992 calling upon the petitioner to show-cause as to why the cheque drawing power conferred on him should not be withdrawn. In that context the petitioner submitted his explanation denying the allegations made there under.

21. In my considered opinion the said show cause notice dated 26.12.1992 cannot form basis for exercising the power conferred u/s 150(1) of the Act. On a perusal of the impugned proceeding dated 12.4.1994, it is clear that the said proceeding is solely based upon the show cause notice dated 26.12.1992. As explained supra, the said show cause notice dated 26.12.1992 was issued under a different context and for a different purpose and under any circumstance it cannot be said to be satisfying the requirements u/s 150(1) of the Act.

22. Admittedly the petitioner was never put on notice that he is liable to reimburse the amounts alleged to have been misappropriated/misutilised by him and the action proposed u/s 150(1) of the Act. To satisfy the Principles of Natural Justice the notice must be adequate with regard to the details of the case against the affected party as well as the action proposed against him. In *Fedco (P) Ltd. and Another Vs. S.N. Bilgrami and Others*, and in *Joseph Vilangandan Vs. The Executive Engineer, (PwD), Ernakulam and Others*, , the Supreme Court held that the Court's conscience must be satisfied that the concerned person had a fair chance to know the details of the case against him and of the action proposed to be taken against him

23. In the facts and circumstances of the case on hand it must be held that the petitioner was not afforded an opportunity as mandated u/s 150(1) of the Act before resorting to the impugned action for recovery of the amounts from the petitioner.

24. The learned Government Pleader has also contended that the impugned order is based on the statement of the petitioner recorded by the Dist. Panchayat Officer on 18.12.1993 in which the petitioner admitted that he had misused the funds of the Gram Panchayat and therefore he is not entitled to notice. However, copy of the said statement was not placed before me. In view of the explanation submitted by the petitioner in January 1993 in reply to the show cause notice dated 24.12.1992 denying the allegations of financial irregularities and in the absence of any material in support of the sanctity of such statement, I am unable to uphold the impugned order on the ground that the petitioner admitted the irregularities in his own statement recorded by the Dist. Panchayat Officer. At any rate the notice as mandated u/s 150(1) of the Act cannot be dispensed with on the ground that the petitioner himself had admitted the allegations in his own statement recorded by the District Panchayat Officer. The person whose rights are going to be affected and against whom some prejudicial orders are proposed to be passed cannot be denied an opportunity to make an effective representation against the penal action proposed. In this context it is appropriate to refer to the observations of the Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, .

Thus on a consideration of the entire material placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken u/s 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis (of which) that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject matter or any of the allegations, if information was given and gathered it was for entirely different purpose. In our view, the requirements of Natural Justice are met only if opportunity to represent is given in view of proposed action. The demands of Natural Justice are not met even if the very person proceeded against has furnished the information on which the

action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the committee had the opportunity to meet the allegations contained in the order of supersession.

25. The learned Government Pleader then contended that since the petitioner failed to exhaust the alternative remedy of appeal provided under Sub-section (3) of Section 150 of the Act, the writ petition under Article 226 of the Constitution of India cannot be entertained.

26. It is true that where a remedy of appeal is available under a statute, resort must be had to that statutory remedy of appeal before seeking the discretionary remedy under Article 226 of the Constitution of India. It is open for this Court to decline to interfere in the exercise of its discretion until all the statutory remedies are exhausted. However, the existence of an alternative remedy is not an absolute bar to grant relief under Article 226. It is so held by the Apex Court and this Court in a catena of decisions and it is suffice to refer to the recent decision in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, , where the Supreme Court has been pleased to hold:

...under Article 226 of the Constitution the High Court having regard to the facts of the case has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies viz., where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or vires of an act is challenged.

27. As found supra, the impugned proceedings issued by the 1st respondent are in violation of the Principles of Natural Justice, since the petitioner was not put on notice at any stage as to the impugned action proposed u/s 150(1) of the Act. That being so, I am of the view that this is not a case where the relief under Article 226 of the Constitution of India can be refused on the ground of existence of the alternative statutory remedy.

28. For the aforesaid reasons, I hold that the impugned order dated 12.4.1994 is arbitrary, illegal and in violation of Principles of Natural Justice and it is accordingly set aside. However, it is open for the respondents to initiate appropriate proceedings afresh in accordance with law for recovery of the amount alleged to have been misappropriated by the petitioner. The writ petition

is accordingly allowed. No costs.