

(2012) 09 CHH CK 0003
In the Chhattisgarh High Court
Case No : Writ Petition C No 617 of 2012

Setho Prasad Gupta and Others

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Mahatma Gandhi National Rural Employment Guarantee Act, 2005 — Section 27

Citation : (2012) 4 CGBCLJ 378

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Manoj Paranjpe, for the Appellant; Pankaj Shrivastava Panel Lawyer for the respondent No. 1 2 and 4 and Shri Pankaj Shrivastava Advocate for the respondent N, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Shri Satish K. Agnihotri, J.—By this petition, the petitioners seek quashing of the award dated 07.02.2012 (Annexure P/1) passed by the respondent No. 3, in complaint case No. 19 (Om Prakash Soni v. Setho Prasad Gupta) whereunder the Ombudsmen, Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (for short `MNREGA), has directed to register a criminal case against the petitioners and to recover the amount of wages from petitioner No. 2. The facts, in brief, are that the petitioner No. 1 is holding the substantive post of Assistant Grade III in the department of Panchayat & Rural Development. At present, he is discharging his duties in the office of Collector, Balrampur. The petitioner No. 2 was appointed on the post of Mate under the MNREGA, on the basis of resolution passed by Gram Panchayat, Bhanora, and the petitioner No. 3 is holding the substantive post of Panchayat Secretary, and posted at Gram Panchayat, Bhanora. The Sub Divisional Officer (Revenue) (for short `the SDO"), Ramanujganj, District Balrampur, on the basis of news published in a newspaper, issued show cause notice dated 24.10.2011 (Annexure P/5) to the petitioner No. 1 to cause his appearance on 03.01.2011 and an

enquiry was initiated on the basis of the said news clipping. The statement of the petitioner No. 1 and 2 were recorded. The SDO found that the allegations contained in the complaint that job card was prepared in the name of wife and son of Setho Prasad Gupta was found to be false. The SDO also recorded the finding that the respondent No. 2 obtained the amount of wages for 60 days and he has not obtained the amount of wages more than 60 days. It was further found by the SDO that no resolution was passed by the Janpad Panchayat, Balrampur for demand of employment. The report of the SDO was sent to the Commissioner, Surguja Division stating that the allegations contained in the newspaper were false. All of a sudden, the respondent No. 6 filed a written complaint which was received on 19.10.2011 before the respondent No. 3. The same was registered as complaint No. 19. The respondent No. 3 directed the petitioner No. 1 and 2 to remain present before him for recording their statements.

2. It is the allegation of petitioners that no copy of the complaint was served, nor any show cause notice was issued, nor they were informed about the allegations leveled against them. The respondent No. 3 collected material behind the back of the petitioners and thereafter, on the basis of statements and material collected during the course of the enquiry, the impugned award dated 07.02.2012 was passed.

4. Shri Paranjpe, learned counsel appearing for the petitioners submits that the before passing the impugned award, the basic principle of audi alteram partem has not been followed as the petitioners were not provided any opportunity to put forward their cases. Neither any show cause notice was issued nor were they supplied with a copy of the enquiry report and/or complaint. Further, the respondent No. 3 has no jurisdiction for direction to register FIR against the petitioners. In view of section 27 of the Act, the instructions for MNREGA Ombudsman have been formulated with the objective of establishing a system for redressal of grievances and disposal of complaints relating to implementation of the Act and the schemes made under the Act. According to instruction No. 13.5 there shall be no appeal against the award passed by the Ombudsman and the same shall be final and binding on the parties. Thus, in this circumstance, when no opportunity of hearing was afforded to the petitioners, it would be prejudicial to the interest of the petitioners wherein the Ombudsman has directed to register a criminal offence against them. Hence, the impugned award deserves to be quashed. In support of his contention, Shri Paranjpe relies on a decision of this Court in *Durgesh Prasad Sinha v. State of Chhattisgarh & Others*¹, *Ku. Poonam & Others v. State of Chhattisgarh & Others*² and the decision of the Supreme Court in *Ashwin S. Mehta v. Union of India*³.

4. On the other hand, Shri Shrivastava, learned Panel Lawyer appearing for the State/respondent No. 1, 2, 4 as well as respondent No. 5, would submit that after implementation of MNREGA, it was found that large number of grievances were arising in regard to its implementation. Hence the office of MNREGA,

Ombudsman was established. Shri Shrivastava submits that proper opportunity of hearing was afforded to the petitioners before passing of the impugned award. The award is just and proper and needs no interference. He would further submit that as per clause 8.1.8 to 8.2.5 of the Instructions on Ombudsman, the Ombudsman has power to direct redressal, disciplinary and punitive action against the erring parties. Further, the Ombudsman is competent to direct lodging FIR against the erring parties.

5. Shri Shrivastava would submit that the Lokpal has the power to pass the order, as aforesaid in the award and the petitioners were afforded opportunity of hearing, without filing any document in support of it.

6. Despite service of notice, the respondent No. 6 has chosen not to appear in the matter.

7. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

8. Clause 12 of the MNREGA scheme provides for disposal of complaint. Clause 12.2 clearly provides that Ombudsman shall cause a notice of the receipt of any complaint alongwith a copy of the complaint to be sent to NREGA authority complained against. Clause 12.3 provides that when facts of the case are admitted by the parties, Ombudsman shall dispose the case in accordance with law.

9. Submission of the petitioners is that on receipt of a complaint against the petitioners, no show cause notice alongwith a copy of the complaint as required, was served on the petitioners and the enquiry was done and materials were collected at the back of the petitioners. On the basis of that, the impugned award was passed on 07.02.2012, holding that the petitioners have misused the office for financial benefits by appointing the petitioner No. 2 as Mate, further, in the Job Card, overwriting was done and the name of Rakesh was changed to Rakesh and 164 was changed to 364, one Upendra Gupta, who was the student of Class 12th and minor, his age was wrongly entered and was shown as unemployed and was given job card, and the petitioner No. 2, without doing any work, was paid wages in an illegal manner. Accordingly, the Lokpal directed to lodge FIR against the petitioners and to recover the amount of wages paid to the petitioner No. 2.

10. On perusal of the award, as well as the original records, produced by the State counsel, it is nowhere found in the award that the complaint made against the petitioners carries an admission. It is not clear as to whether the petitioners were issued any show cause notice alongwith a copy of the complaint by the Lokpal, as required under clause 12.2. The grievances of the petitioners are that a news was published in the daily news paper upon which a notice was issued by the SDO for appearance of the petitioner No. 1 and 2, for recording their statement. Statements were recorded and enquiry conducted by the SDO wherein the enquiry was initiated. The SDO submitted his report to the Commissioner, Surguja Division (Annexure P/6) holding that the allegations

published in the newspaper "Nai Duniya" Bilaspur is partly proved. Since the petitioner No. 1 was posted for a period of 23 years at one place, it was directed to transfer the petitioner to any other block in view of his growing relations with the people on account of his service for a long period. It appears that the latest complaint was made by the respondent No. 6, wherein, no show cause notice was issued nor opportunity of hearing was afforded to the petitioners by the Lokpal, as there is no reference in the original documents supplied by the State counsel. The State/respondent No. 1, 2, 4 and 5 have throughout justified the powers of Lokpal but has not dealt with the allegation that no show cause notice or any opportunity of hearing was afforded to the petitioners, except their presence before the Lokpal.

11. In the statement of the petitioner No. 1 as well as petitioner No. 2, there is admission with regard to certain facts but not of the allegations made in the complaint. Thus, it cannot be held that the petitioners have admitted the allegations as well as the entire facts, before the Lokpal. All the original documents which I have perused, it is found that the statements were recorded before the Lokpal and not before the SDO and that was not the basis for taking decision holding that the petitioners have admitted the facts. The notings in the letter of the letter issued by the Chief Executive Officer, Janpad Panchayat, Balrampur to the Vice Chairman, District Panchayat, Surguja, wherein the Collector had directed the Lokpal to complete the enquiry within a period of 15 days. The Lokpal has marked that the communication was to the office of Vice Chairman, District Panchayat, Surguja. In the notings dated 13.12.2011 of the Lokpal, it appears that the petitioner No. 1, Arvind Minj and Sugiya appeared before the Lokpal and got their statements recorded. In the statement of Sugiya, it was stated that she was not aware as to how many registers were there and when they were prepared. In the statement of petitioner No. 2, who was appointed as Mate, the ownership of three trucks was admitted by him. The Sarpanch, Arvind Singh, in his statement has also stated that he is not aware as to how the petitioner No. 2 was appointed as Mate. However, it is not the case wherein the allegations made in the complaint was admitted by the petitioners. It is crystal clear that no show cause notice was issued to the petitioners with a copy of the complaint or the report.

13. The Supreme Court, in *Ashiwin S. Mehta (supra)*, in respect of principles of natural justice, observed as under:

25. It is true that rules of "natural justice" are not embodied rules. The phrase natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by any authority, irrespective of whether the power which is conferred on a statutory body or Tribunal is administrative or quasi judicial. The concept of "natural justice" implies a duty to act fairly i.e. fair play in action. As observed in *A.K. Kraipak Vs. Union of India*, the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

27. It is thus, trite that requirement of giving reasonable opportunity of being heard before an order is made by an administrative, quasi judicial or judicial authority, particularly when such an order entails adverse civil consequences, which would include infraction of property, personal rights and material deprivation for the party affected, cannot be sacrificed at the alter of administrative exigency or celerity. Undoubtedly, there can be exceptions to the said doctrine and as aforesaid the extent and its application cannot be put in a strait-jacket formula. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred; the purpose for which the power is conferred and the final effect of the exercise of that power on the rights of the person affected.

13. This Court, in *Ku. Punam (supra)*,, relying on decision of the Supreme Court, in *Basudeo Tiwary v. Sido Kanhu University & Others*⁴, *Canara Bank & Others v. Debasis Das & Others*⁵, *Ashok Kumar Sonkar v. Union of India & Others*⁶, *Shrawan Kumar Jha & Others v. State of Bihar & Others*⁷, *D.K.Yadav v. J.M.A. Industries Ltd. & Others*⁸, has held that purpose of rules of natural justice is not to administer justice alone but to prevent miscarriage of justice.

14. In view of the above and for the reasons stated hereinabove, and the well settled principles of law on natural justice, the impugned award dated 07.02.2012 (Annexure P/1) is quashed. However, it is made clear that the petitioners shall remain out of job till the Lokpal, after issuing fresh show cause notice alongwith a copy of the complaint, considers the matter a fresh and pass appropriate order. It is further made clear that in the meantime, registration of F.I.R. against the petitioners shall also not be proceeded against, till a fresh order is passed by the Lokpal, as aforestated.

15. The Lokpal is directed to start the proceedings from the stage of issuing of show cause notice with a copy of complaint and other relevant documents and thereafter, following basic principles of natural justice and consider the case afresh and pass order in accordance with law, as early as possible, preferably within a period of three weeks.

17. Resultantly, the petition is partly allowed to the above extent. There shall be no order asto costs.