
(1995) 11 OHC CK 0004
In the Orissa High Court
Case No : O.J.C. No. 4736 of 1995

Smt. Anita Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 23-11-1995

Acts Referred:

Citation : (1996) 82 CLT 539 : (1996) 1 OLR 274

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : A.S. Naidu, P. Mohanty, R.K. Rath, D.K. Ray and D. Mohapatra, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

A. Pasayat, J.—Petitioner calls in question legality of the order passed by the Under Secretary to Government, Health and Family Welfare Department, directing cancellation of allotment in favour of the petitioner of a twenty-four hour medicine store in the campus of Upgraded Public Health Centre, Balikuda in the district of Jagat-singhpur.

2. The petition has been filed in the following background.

The Government took a policy decision to open Day and Night Medicine Store in all the Hospitals as well as Public Health Centres existing in the State so as to cater the needs of common people. For the said purpose number of circulars were issued by the Government laying down procedure to be adopted before making such allotment. On 13-5-1993 the Government issued a circular streamlining the existing procedure relating to opening of twenty-four hour medicine stores in the Medical College, District Headquarters, Sub-divisional Headquarters, and Hospitals etc. Applications were invited and on consideration the petitioner was selected to open a twenty-four hour medicine store as aforesaid. She entered into an agreement with the concerned authority on 23-6-1995. Subsequently came the impugned order of the Government, which was issued by the Under Secretary to the Chief District Medical Officer,

Jagatsinghpur, with a copy to the petitioner intimating that the opening of medicine store in the campus of Upgraded Public Health Centre, Balikuda allotted in favour of the petitioner was cancelled. There was direction to take steps for fresh advertisement for opening of twenty-four hour medicine store.

3. According to the petitioner, before such cancellation was directed there was no opportunity afforded to her to have her say, and denial of such opportunity amounted to violation of the principles of natural justice.

In the counter-affidavit filed, the plea of non-affording of opportunity has been accepted. But a stand has been taken that since allegations were received against the petitioner, and taking into consideration the complaints received, direction for cancellation was given.

4. The primary question that needs consideration is whether the cancellation as directed is defensible. 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 facts and circumstances of that case, the frame-work 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 infraction of not merely property or 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.

5. Natural justice has been variously defined by different Judges. A few instances will suffice. In *Drew v. Drew and Leburu* : (1855) 2 Macg 18. Lord Cranworth defined it as "universal justice". In *James Dunbar Smith v. Her Majesty The Queen* : (1877) 3 App Case 614 Sir Robert P. Collier, speaking for the Judicial Committee of the Privy Council, used the phrase "the requirements of substantial justice," while in *Arthur John Spockman v. The Plum-steal District Board of Works* : (1884) 10 AppCas 229. Lord of Selborne. L. C., preferred the phrase "the substantial requirements of justice". In *Voinet v. Barrett* (1985) 55 LJRD 39. Lord Esher, M. R. defined natural justice as "the natural sense of what is right and wrong". While, however, deciding *Hopkins v. Smethwick Local Board of Health* : (1890) 24 QBD 712, Lord Esher, M. R., instead of using the definition given earlier by him in *Voinet v. Barrett* chose to define natural justice as "fundamental justice". In *Sidge v. Baldwin* : (1963) 1 WB 539, Lord Esher, M. R., in the Court of Appeal counted natural justice with "fair play in action", a phrase favoured by Bhagwati, J. in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and Another, . In *re H. N. (An Infact)* (1967) 2 QB 617, Lord Parker, C. J. preferred to describe natural Justice as "a duty to act fairly". In *Fairmount Investments Ltd. v. Secretary to State for the Environment*: (1976) 1 WLR 1255, Lord Russell of

Willowan somewhat picturesquely described natural justice as "a fair crack of the whip", while Geoffrey Lene, L. J., in *Regina v. Secretary of State for Home Affairs, Ex parte Hosenball* : (1977) 1 WLR 766, preferred the homely phrase "common fairness."

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 causas" as stated in (1605) 12 Co. Rep. 114, that is, no man shall be a judge in his own cause". Coke used the form "aliquis non debet case judes in propria causa quia non potest sessee judex at hors"(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 simal 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 "suit 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 carte inauita after a, atquum lice. di (sic) haud sequum facerit", 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) or, in other words, as it is now expressed, "Justice should not only be done but should manifestly be seen to be done".

7. The stand of the opposite parties being that the cancellation had its matrix on the complaints received against the petitioner, it was more desirable and imperative that she should have been given an opportunity to defend herself. That admittedly has not been done. Therefore, there has been clear violation of rules of natural justice which invalidates the order of cancellation vide Annexure-8. While quashing the same we leave it to the authority to grant an opportunity to the petitioner to have her say in relation to allegations of complaints, which according to the authority concerned provide foundation for taking action against the petitioner. Only after grant of such opportunity, action as authorised in law should be taken.

The writ application is allowed to the extent indicated above.

P.C. Naik, J.

8. It is really unfortunate that in spite of a large number of decisions that an order passed behind the back of a party or without hearing a party cannot be

sustained, the authorities continue to pass adverse orders without hearing the person who is to be affected. The authorities seem to forget that it is now well-settled that orders affecting civil rights or leading to civil consequences ought not to be passed without observing the basic principles of natural Justice which are nothing but two fundamental rules of fair procedure : that a man may not be the judge of his own cause and, a man's defence may always be fairly heard.

9. The principle of natural justice are not new. The rest on two broad principles resting on Latin maxim which are drawn by common law from "Jus Naurale". In course of time, the principles of natural justice have been developed by Courts which have devised a kind of code of fair administrative procedure, in its broadest sense, natural justice may simply mean the natural sense of what is right and wrong and this concept has been developed to a stage that violation of principles of natural justice makes the decision void. In absence of anything to the contrary, the Court presume that these requirements ere implied and have to be followed not only be judicial or quasi-judicial authorities but even by administrative authorities.

10. Initially the principles of natural justice were applied to the Courts in respect of judicial functions and gradually by judicial pronouncements, the principles of natural justice were made applicable to the statutory authorities or Tribunals exercising quasi-judicial functions and later, the principles were extended to the administrative authority who has the function of determining civil rights, whose orders affect civil rights or gave rise the civil consequences.

11. In his Book "Administrative Law", H. W. R. Wade observes that by developing the principles of natural justice, the Courts have devised a kind of Code of fair administrative procedure. In its broadest sense, natural justice may mean simply "natural sense of what is right and wrong" and even in its technical sense, it is now equated with "fairness". Thus, violation of principles of natural justice makes the decision void. In other words, rule of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power.

12. I agree with learned Brother Pasayat, J. that the order of cancellation vide Annexure-8 cannot be sustained and has to be quashed.