

**(2012) 05 CHH CK 0006**  
**In the Chhattisgarh High Court**  
**Case No : Writ Petition (C) NO. 5225 of 2011**

|                          |    |            |
|--------------------------|----|------------|
| Smt. Durpati Bai         | Vs | APPELLANT  |
| State of C.G. and Others |    | RESPONDENT |

**Date of Decision :** 04-05-2012

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Mahatma Gandhi National Rural Employment Guarantee Act, 2005 — Section 26(1),  
27, 27(1), 28, 33

**Citation :** (2012) 3 CGBCLJ 284

**Hon'ble Judges :** Prashant Kumar Mishra, J

**Bench :** Division Bench

**Advocate :** Awadh Tripathi, for the Appellant; Ajay Dwivedi, Deputy Govt.  
Advocate for the State and Shri Paras Mani Shrivastava, counsel, for the Respondent

**Final Decision :** Dismissed

## Judgement

Prashant Kumar Mishra, J.—In this writ petition filed under Article 226 of the Constitution of India, the petitioner has called in question the legality, validity and correctness of the order/award dated 12.07.2011 (Annexure P-1) passed by the Ombudsman appointed under The Mahatma Gandhi National Rural Employment Guarantee Act 2005 (henceforth the Act, 2005). Under the impugned order/award the Ombudsman has made recommendation against the petitioner imposing cost of Rs. 1000/- as also for lodging an FIR against her and against Panchayat Secretary Pardeshilal Patel, Rojgar Sahayika Shanti Devi Kashyap, as they have been found to be involved in preparation of forged wage-slips; illegal withdrawal of the amount from Post Office and retaining pass book of labourers with them.

2. The facts of the case in short is that complainant Pireet Ram, Chandrika Prasad, Amerika Bai, Sanat Kumar, Ram Sharan, Punai Bai, Sulochani Bai of village Turigaon, Tahshil Navagarh, District Janjgir Champa lodged complaint before the Ombudsman alleging preparation of forged muster roll, withdrawing

amount from the post office by making forged signature of labourers and thereby preparing forged wage slips. From the order passed by the Ombudsman, it also appears that Programme Officer Hazarilal went to the village on 14.12.2010 to verify the facts. However, the villagers were not satisfied with the manner in which the Programme Officer conducted enquiry and thus the)7 lodged the present complaint before the Ombudsman with copies of the complaint made before the Collector and Chief Executive Officer., Zila Panchayat. It has also been alleged by the complainants that several villagers namely Bopali, Chhedini Bai, Chandra Shekhar and Sulochani Bai are not residing in the village, yet forged muster rolls have been prepared in their name and the amount has been withdrawn. It also appears that the petitioner who is the Sarpanch of the village Panchayat and Rojgar Sahayika did not submit any reply and the reply was submitted only by the Panchayat Secretary who admitted that consequent to repeated complaints against the Rojgar Sahayika, the work of issuance of wage slip was handed over to him. However, according to the Panchayat Secretary, the complaint is false and payments have been made to the labourers in accordance with the procedure prescribed.

3. The Ombudsman recorded the statements of witnesses and has thereafter passed the impugned order.

4. Learned counsel for the petitioner has argued that the enquiry has not been made in accordance with the principles of natural justice and effective opportunity of hearing has not been provided. He would submit that the petitioner was not given opportunity to cross examine the witnesses, therefore, the impugned order is vitiated. He has also argued that the Ombudsman has not considered the documents submitted by the petitioner on 03.07.2011 and for this reason also, the impugned order cannot be sustained.

5. On the other hand, learned State Counsel as well as learned counsel for respondent No. 4 have opposed the writ petition. According to them, the proceedings before the Ombudsman are of summary in nature and once it is found that opportunity of hearing has been provided, it cannot be said that the principles of natural justice have not been complied with. Learned State Counsel has placed on record a copy of the instructions issued by the Central Government in exercise of powers u/s. 27 of the Act, 2005.

6. None of the parties have placed on record the original complaint filed before the Ombudsman. Annexure P-2 is copy of the statement of witnesses recorded by the Ombudsman. It contains the statements of petitioner Durpati Bai, Pardeshi Lal Patel, Shanti Devi, Harnarayan, Lalu, Ram Pireet Kashyap, Chandrika Prasad Kashyap, Amerika Bai, Sanat Kumar Kashyap, Ram Sharan, Punai Bai Kashyap and Sulochani Kashyap. Thus it is apparent that the Ombudsman recorded the statements of the petitioner, Panchayat Secretary Pardesilal and Rojgar Shayika Shanti Devi along with the statements of the complaint.

7. From the statements of the petitioner, it appears that her husband is

Upsarpanch of the Gram Panchayat and the entire work is carried on by her husband with the assistance of the Panchayat Secretary and Rojgar Sahayika. The petitioner is not at all aware of any affair of the Gram Panchayat in as much as he has not been able to describe the nature of the document when the wage slip was shown to her. The Panchayat Secretary has admitted that payments were not made in his presence. He was confronted with blank wage-slip and other counter-slips in which the signature of receipt of the concerned labourer is not available and was also shown the interpolation and overwriting in different wage slips. 3 wage slips have been issued in the name of one single person with 3 different kinds of signatures and the thumb impression does not state as to whose thumb impression has been taken and in none of the wage slips, the date of issue is mentioned. In his detailed statement, he has admitted all sorts of illegalities, irregularities, interpolation, overwriting and defects in different wage slips. This witness has tried to shift the burden on Rojgar Sahayika whereas Shanti Devi, Rojgar Sahayika has denied that she has filled in the muster rolls. According to her the muster rolls have been filled in by Mate (labourers) namely Chandramani, Ashok, Rajkumar, Bhim and Krishna Kumar; and the wage slips have been filled in by her. From her statement also, it appears that there was dispute inter-se between the Sarpanch; Panchayat Secretary and Rojgar Sahayika but she also admits about the illegalities, interpolation and defects in filling the wage slips. In the statements of complainants/villagers, they have alleged preparation of forged wage slips, retention of pass book by the Sarpanch, Panchayat Secretary and Rojgar Sahayika.

8. With the above state of material available on record, this Court is required to consider the argument raised by petitioner regarding violation of principles of natural justice in as much as denial of right to cross examine the witnesses has vitiated the entire procedure.

9. The Mahatma Gandhi National Rural Employment Guarantee Act 2005 (henceforth the Act, 2005) has been enacted to provide a legal guarantee for at-least 100 days of employment to enhance livelihood security of the poor households in rural areas. In the statements of objects and reasons of the Act 2005, the following salient features of the legislation have been high-lighted:

(i) The objective of the legislation is to enhance the livelihood security of the poor households in rural areas of the country by providing at least one hundred "days of guaranteed wage employment to every poor household whose adult members volunteer to unskilled manual work.

(ii) The State Government shall, in such rural areas in the State and for such period as may be notified by the Central Government, provide to every poor house hold guaranteed wage employment in unskilled manual work at least for a period of one hundred days in a financial year in accordance with the provisions made in the legislation.

(iii) Every State Government shall, within six months from the date of

commencement of this legislation, prepare a scheme to give effect to the guarantee proposed under the legislation.

(iv) The one hundred days of employment under the legislation will be provided at the wage rate to be specified by the Central Government for the purpose of this legislation. Until such time a wage rate is specified by the Central Government for an area, the minimum wage rate fixed by the State Government under the Minimum Wages Act, 1948 for agricultural labourers shall be considered as the wage rate applicable to that area.

(v) If an eligible applicant is not provided work as per the provisions of this legislation within the prescribed time limit, it will be obligatory on the part of the State Government to pay unemployment allowance at the prescribed rate.

(vi) A Central Employment Guarantee Council at the Central level and State Employment Guarantee Councils at the State level in all States where the legislation is made applicable will be constituted for review, monitoring and effective implementation of the legislation in their respective areas.

(vii) The Standing Committee of the District Panchayat, District Programme Coordinator, Programme Officers and Gram Panchayats have been assigned specific responsibilities in implementation of various provisions of the legislation at the Gram Panchayat, Block and District levels.

(viii) The Central Government shall establish a fund to be called "National Employment Guarantee Fund" for the purposes of this legislation. Similarly, the State Governments may constitute State Employment Guarantee Funds.

(ix) Provisions for transparency and accountability, audit, establishment of grievance and redressal mechanisms and penalty of non-compliance are also envisaged.

(x) Provisions for Minimum features of Rural Employment Guarantee Scheme and conditions for guaranteed Rural Employment under a scheme and minimum entitlements of labourers have been laid.

10. Section 27 of the Act confers power on the Central Government to give directions whereas Section 28 of the Act declares over-riding effect of the legislation. These provisions are reproduced hereunder for ready reference:

27. Power of Central Government to give directions.--(1) The Central Government may give such directions as it may consider necessary to the State Government for the effective implementation of the provisions of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may, on receipt of any complaint regarding the issue or improper utilization of funds granted under this Act in respect of any Scheme if prima facie satisfied that there is a case, (cause an investigation into the complaint made by any agency designed by it and if necessary, order stoppage of release of funds to the Scheme and institute appropriate remedial measures for its proper

implementation within a reasonable period of time.

28. Act to have overriding effect.-- The provisions of this Act or the Schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being (sic) in force or in any instrument having effect by virtue of such law:

Provided that where a State enactment exists or is enacted to provide employment guarantee for unskilled manual work to rural households consistent with the provisions of this Act under which the entitlement of the households is not less than and the conditions of employment are not inferior to what is guaranteed under this Act, the State Government shall have the option of implementing its own enactment.

Provided further that in such cases the financial assistance shall be paid to the concerned State Government in such manner as shall be determined by the Central Government, which shall not exceed what the State would have been entitled to receive under this Act had a Scheme made under this Act had to be implemented.

11. In exercise of powers u/s. 27(1) of the Act, the Central Government has issued directions to the State Government to set up office of ombudsman in accordance with the instructions accompanying the said direction/order dated 07th September, 2009. The INSTRUCTIONS ON OMBUDSMAN filed as Annexure R-1 by the State is thus a statutory direction issued by the Central Government which has overriding effect by virtue of Section 28 of the Act. In the said Instructions, paragraph 8 speaks about powers and duties of the ombudsman which includes amongst others, power to receive complaints from NREG workers and to consider such complaints and facilitate their disposal in accordance with law; issue direction for conducting spot inspection, lodge FIR against erring parties; direct redressal, disciplinary and punitive actions etc. The procedure for redressal of grievance has been provided in chapter 4 of the Regulation. Para 9 mentions the grounds on which complaints shall be filed and Para 10 is about procedure for filing the complaint. Paragraph 11 provides that the proceedings before the ombudsman will be summary in nature whereas paragraph 13 is about the Award by the Ombudsman and Appeal.

12. According to Regulation No. 11, "the ombudsman shall not be bound by any legal rules of evidence and may follow such procedure that appears to him to be fair and proper. The proceedings before the Ombudsman shall be summary in nature" Regulation 13 again says that the Ombudsman may pass award after affording the parties reasonable opportunity to present their case. He shall be guided by the evidence placed before him by the parties, the reports of social audits, if any, the provisions of NREG Act and Scheme and practice, directions, and instructions issued by the State Government or the Central Government from time to time and such other factors which in his opinion are necessary in the interest of justice. It further provides that the award passed under sub-

clause 13(1) shall be a speaking order with further provision that there shall be no appeal against the award passed by the Ombudsman and the same shall be final and binding on the parties. It is further provided in Clause 13(9) that in any proceeding before the Ombudsman, if the facts reveal a case of illegal gratification, bribery or misappropriation and the Ombudsman is satisfied that the case is fit for further investigation by a criminal court, the same shall be referred by him to the authority competent to sanction criminal prosecution of the persons involved in the case. The competent authority on receipt of such a case shall forward the case to appropriate authority for further action in accordance with law.

13. The issue concerning violation of principles of natural justice vis a vis failure of the authority to provide opportunity of cross examination to the petitioner is to be considered keeping in view the provisions of the Act/Instructions and the law settled by the Supreme Court in this regard. In Para 68 of the judgment in the matter of Competition Commission of India Vs. Steel Authority of India Ltd. and Another,

68. Generally, we can classify compliance or otherwise, with these principles mainly under three categories. First, where application of principles of natural justice is excluded by specific legislation; second, where the law contemplates strict compliance with the provisions of the principles of natural justice and default in compliance therewith can result in vitiating not only the orders but even the proceedings taken against the delinquent; and third, where the law requires compliance with these principles of natural justice, but an irresistible conclusion is drawn by the competent court or forum that no prejudice has been caused to the delinquent and the non-compliance is with regard to an action of directory nature, The cases may fall in any of these categories and therefore, the court has to examine the facts of each case in light of the Act or the rules and regulations in force in relation to such a case, "it is not only difficult but also not advisable to spell out any straitjacket formula which can be applied universally to all cases without variation.

Further in paragraphs 79, 83, 85, 86 & 89 the Supreme Court has held as under:

79. It is difficult to state as an absolute proposition of law that in all cases at all stages and in all events the right to notice and hearing is a mandatory requirement of principles of natural justice. Furthermore, that non-compliance therewith, would always result in violation of fundamental requirements vitiating the entire proceedings. Different laws have provided for exclusion of principles of natural justice at different stages, particularly, at Court-Wherever such exclusion is founded on larger public interest and is for compelling and valid reasons, the courts have declined to entertain such a challenge. It will always depend upon the nature of the proceedings, the grounds for invocation of such law and the requirement of compliance with the principles of natural justice in light of the above-noticed principles.

83. The provisions of section 26(1) clearly indicate exclusion of principles of natural justice, at least at the initial stages, by necessary implication. In cases where the conduct of an enterprise, association of enterprises, person or association of persons or any other legal entity, is such that it would cause serious prejudice to the public interest and also violates the provision of the Act, the commission will be well within its jurisdiction to pass ex-parte ad-interim injunction orders immediately in terms of Section 33 of the Act, while granting post-decisional hearing positively, within a very short span in terms of Regulation 31(2). This would certainly be more than adequate compliance with the principles of natural justice.

85. Wherever, this court has dealt with the matters relating to complaint of violation of principles of natural justice, it always kept in mind the extent to which such principles should apply. The application, therefore, would depend upon the nature of the duty to be performed by the authority under the statute. Decision in this regard is, in fact, panacea to the rival contentions which may be raised by the parties in a given case. Reference can be made to the judgment of this court in *Canara Bank v. Debasis Das*.

86. We may also notice that the scope of duty cast upon the authority or a body and the nature of the function to be performed cannot be rendered nugatory by imposition of unnecessary directions or impediments which are not postulated in the plain language of the section itself. "Natural justice" is a term, which may have different connotation and dimension depending upon the facts of the case, while keeping in a view, the provisions of the law applicable. It is not a codified concept, but are well-defined principles enunciated by the Courts. Every quasi-judicial order would require the authority concerned to act in conformity with these principles as well as insure that the indicated legislative object is achieved. Exercise of power should be fair and free of arbitrariness.

89. The exceptions to the doctrine of audi alteram, partem are not unknown either to the civil or criminal jurisprudence in our country where under the CPC ex-parte injunction orders can be passed by the court of competent jurisdiction while the courts exercising criminal jurisdiction can take cognizance of an offence in absence of the accused and issue summons for his appearance. Not only this, the courts even record pre-charge evidence in complaint cases in absence of the accused under the provisions of the Code of Criminal Procedure. Similar approach is adopted under different systems in different countries.

(Emphasis supplied)

14. In the matter of *Krishna Swami Vs. Union of India and another*, a Constitution Bench of the Supreme Court had an occasion to deal with inquisitorial and regulatory power and the nature of duty performed by the administrative agencies while exercising the power. Explaining the expression "inquisitorial" it has been held that the investigating power granted to the administrative agencies normally is inquisitorial in nature. The course of such

investigation has to be examined with reference to the statutory powers. In Para 61 of the said judgment of Krishna Swami (supra) it has been held thus:

61. The problem could be broached through a different perspective as well. In normal parlance, in a criminal case, investigation connotes discovery and collection of evidence before charge-sheet is filed and based thereon definite charges are framed. Inquiry by a Magistrate is stopped when the trial begins. The trial is culminating process to convict or acquit an accused. In service jurisprudence, departmental inquiry against a delinquent employee, bears similar insignia to impose penalty. At the investigation stage the accused or the charged officer has no say in the matter nor is he entitled to any opportunity. "The disciplinary authority or inquiry officer, if appointed, on finding that the evidence discloses prima-facie ground to proceed against the delinquent officer, the inquiry would be conducted. The criminal court frames charges after supplying the record of investigation relied on. Equally, the disciplinary authority/inquiry officer would frame definite charge or charges and would communicate the same together with a statement of the facts in support thereof sought to be relied on and would call upon the delinquent officer to submit his explanation or written statement of defence, etc. At the trial/inquiry the person is entitled to reasonable opportunity to defend himself.

(emphasis supplied)

15. In the matter of Union of India and another Vs. W.N. Chadha, , it has been held thus in paragraph 88 & 89:

88. The principle of law that could be deduced from the above decisions is that it is no doubt true that the fact that a decision, whether a prima facie case has or has not been made out, is not by itself determinative of the exclusion of hearing, but the consideration that the decision was purely an administrative one and a full-fledged inquiry follows is a relevant--and indeed a significant--factor in deciding whether at that stage there ought to be hearing which the statute did not expressly grant.

89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full inquiry in case of filing a report u/s 173(2) follows in a trial before the court or tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognize. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.

16. In State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, it has been held thus in paragraphs 15 & 16:

15. In our opinion, there is a complete misreading of the aforesaid provision by the High Court. It is, no doubt true that a satisfactory explanation was required

to be given by the delinquent officer. But this opportunity is only to be given during the course of the trial. It is no doubt true that evidence had to be gathered and prima facie opinion found that the provisions of Section 5(1)(e) of the Act are attracted before a first information report was lodged. During the course of gathering of the material, it does happen that the officer concerned or other person may be questioned or other queries made. For the formation of a prima facie opinion that an officer may be guilty of criminal misconduct leading to the filing of the first information report, there is no provision in law or otherwise which makes it obligatory of an opportunity of being heard to be given to a person against whom the report is to be lodged. That such satisfactory account had to be rendered before a court is also borne out from the judgment of this Court in Veeraswami case where referring to Section 5(1)(e) of the Act at page 713 of the said judgment, it was observed as follows:

Clause (e) creates a statutory offence which must be proved by the prosecution. It is for the prosecution to prove that the accused or any person on his behalf, has been in possession of pecuniary resources or property disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily". That means the accused has to satisfy the court that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The accused however, could discharge that burden of proof "on the balance of probabilities" either from the evidence of the prosecution and/or evidence from the defence.

(Emphasis added)

16. The aforesaid passage leaves no manner of doubt that the opportunity which is to be afforded to the delinquent officer u/s 5(1)(e) of the Act of satisfactorily explaining about his assets and resources is before the court when the trial commences and not at an earlier stage. The conclusion arrived at by the learned Single Judge that the principles of natural justice had been violated, as no opportunity was given before the registration of the case, is clearly unwarranted and contrary to the aforesaid observations of this Court in K. Veeraswami case.

17. From what has been pronounced by the Supreme Court in the above quoted judgments, the law in this regard can be summarized that it is not necessary that in all cases, at all stages and in all events right to notice and hearing is a mandatory requirement of principles of natural justice. It is equally settled that while forming a prima facie view about commission/omission in explaining the

conduct and maintaining the accounts as well as non-performance of duties of any other nature which may lead to registration of an FIR, the authority need not afford an opportunity of hearing or allow the witnesses to be cross examined as if the Ombudsman is trying a civil suit. The object with which the Act 2005 has been enacted appears to be a solemn object of providing livelihood to the poor masses residing in remote country side and any effort by the concerned implementing agency to throttle the heart and soul of the said Ac, has to be dealt with severely and immediately. Therefore, keeping in view the object of the enactment and the scheme of the regulation/instructions issued by the Central Government u/s. 27(1) of the Act, it cannot be said that failure to provide opportunity of hearing to cross examine the witnesses amounts to violation of principles of natural justice.

18. As a matter of fact, Regulation No. 11 clearly provides that the Ombudsman shall not be bound by any legal rules of evidence and may follow such procedure that appears to him to be fair and proper. Regulation 13 again speaks about affording reasonable opportunity to present their case with further obligation on the Ombudsman to pass speaking award. Thus the provisions of the Regulation provides for observance of principles of natural justice in the form of affording reasonable opportunity to present their case and to follow such procedure which is fair and proper.

19. The "Ombudsman" has issued notice to the petitioner and has recorded statements, therefore, the procedure adopted by the Ombudsman cannot be said to be unfair or improper in any manner. More so, when the petitioner as well as the Rojgar Sahayika and Panchayat Secretary have themselves admitted in their statements about various discrepancies, irregularities and deficiencies in issuing wage slips maintaining muster rolls etc. These admissions by itself demolish the case of the petitioner that proper opportunity of hearing was not afforded. Even otherwise from the order passed by the Ombudsman it would appear that the petitioner has not submitted any reply to the show cause notice and has herself waived her right of hearing by not submitting any reply. It has not been stated as to how the petitioner has been prejudiced because of failure of Ombudsman to provide opportunity to cross examine villagers whose statements were recorded. No application or any oral prayer was made by the petitioner in course of enquiry before the ombudsman for providing opportunity to cross examine the villagers/complainants.

20. In the matter of K.L. Tripathi Vs. State Bank of India and Others, it has been held thus in paragraph 32 & 33 as under:

32. The basic concept is fair play in action administrative, juridical or quasi judicial. The concept of fair play in action must depend upon the particular lis, if there be, any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the

facts but certain explanation of the circumstances there is no requirement of cross examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

33. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was not dispute about the veracity of statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross examination does not create any prejudice in such cases.

21. Applying the said ratio in the matter of K.L. Tripathi (supra) and when it is kept in mind that the petitioner has not submitted any reply to the show cause notice and no prayer has been made by her for cross examining the villagers/ complaints and otherwise, this Court has found that the procedure adopted by the Ombudsman while conducting enquiry was fair and proper and a speaking award has been passed after affording reasonable opportunity to the parties, there is no violation of principles of natural justice merely because the petitioner was not granted any opportunity to cross examine the witnesses. For the foregoing reasons, this Court does not find any substance in the writ petition which deserves to be and is hereby dismissed.