
(1988) 04 OHC CK 0039

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 960 and 961 of 1980

Somanath Panda

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 26-04-1988

Acts Referred:

Orissa Forest Contract Rules, 1966 — Rule 25

Citation : (1988) 66 CLT 232

Hon'ble Judges : P.C. Misra, J; L. Rath, J

Bench : Division Bench

Advocate : R. Mohanty, Sanjit Mohanty and Debasis Das, for the Appellant;
Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—Challenge in these two writ petitions is to the compensation determined under the provisions of the Orissa Forest Contract Rules, 1966 (hereinafter referred to as 'the Rules') against the Petitioner who is a forest contractor. He had taken Coupe Nos. 5 and 6 of Ghumsur Division. Bhanjanagar in 1977-78 on purchase for timber and firewood therein and entered into agreements for the purpose with the Divisional Forest Officer, Bhanjanagar acting on behalf of the Governor of Orissa. The Petitioner worked both the coupes from 30-9-1977 to 31-5-1978 and handed over them to the departmental authorities on 2-6-1978. It is his complaint that in respect of Coupe No. 5, only 35 acres were handed over to him instead of 45 acres as mentioned in the agreement and in respect of Coupe No. 6, 45 acres were handed over instead of 50 acres. So far as Coupe No. 5 is concerned, an interim inspection report had been made on 28-4-1978 in which 177 trees had been stated to have been illegally felled by the Petitioner and in respect of it compensation of Rs. 7,595/- was determined on 22-8-1978. Again a final inspection report was made on 23-11-1978 showing 531 trees inside the coupe and 564 trees outside the coupe to have been felled illegally by the Petitioner. The inspection report was despatched to the Petitioner

on 28-11-1978 which reached him on 30-11-1978 and on the same day compensation of Rs. 10,38,946/- was determined as being payable by the Petitioner. Similarly in respect of Coupe No. 6, compensation of Rs. 16,250/- was assessed on 30-11-1978 on the basis of the inspection report of 23-11-1978 despatched to the Petitioner on 28-11-1978. The Petitioner carried two appeals before the Conservator of Forests, Berhampur Circle, Berhampur (opposite, party No. 2) who, in respect of Coupe No. 5, reduced the compensation to Rs. 1,93,700/- and in respect of Coupe No. 6 to Rs. 5,600/-.

2. Assailing the orders of determination of compensation as modified in the appeals, it is urged by Mr. Debasis Das, learned Counsel appearing for the Petitioner that the orders levying compensation were passed in violation of Rule 26 of the Rules which stipulates a period of twenty-one days from the date of despatch of the inspection reports as available to the forest contractor to raise objections thereon, but in both the cases, compensations were levied only two days after the inspection reports were despatched. As a matter of fact, on the very day the inspection reports were received by him, the compensations were levied. It is further contended that the appellate authority has taken into consideration the materials which were not made available to the Petitioner and that the original authority i.e. Divisional Forest Officer in determining the compensation also did not pass a speaking order disclosing the basis in determining the compensation and that certain reports of inspections earlier made on 26-6-1978 and 17-7-1978, in which nothing untoward had been discovered even though the inspections were made by senior officers of the department i. e, Divisional Forest Officer and Assistant Conservator of Forests, had not been taken into consideration.

3. In the counter affidavit filed by the opposite parties, the essential facts raised by the Petitioner are not disputed. So far as Coupe No. 5 is concerned, it has been contended that prior to the final inspection report, there were two interim inspections on 16-12-1977 and 28-4-1978 on the basis of which compensation of Rs. 7,595/- had been determined. The Petitioner did not attend the final inspection of the Coupe on 23-11-1978 in spite of notice and that he having not so attended is not entitled to any claim under Rule 26 of the Rules and it is to be deemed that he had forfeited his right to file any objection in respect of the inspection reports.

4. The contention of the learned Counsel for the Petitioner relating to Rule 26 of the Rules is unassailable. Rule 25 of the Rules authorises Divisional Forest Officer to assess compensation against the contractor. Rule 26 mandatorily enjoins that a carbon copy of the inspection report in the prescribed form is to be handed over to the contractor or his authorised agent personally, failing which the same shall be despatched by registered post with acknowledgement due and if the contractor has any objection to the charges made against him, he can do so by appearing before the Divisional Forest Officer or represent his case in writing within twenty-one days from the date of despatch of the report. The order of the

Divisional Forest Officer is to be passed after considering the representation made by the forest contractor and any violation on the part of the contractor to contest the charges would render him liable to make full payment of the compensation. Since admittedly the compensation was levied much prior to the expiry of twenty-one days from the date of despatch of the final inspection report it must be said that the Divisional Forest Officer had no authority to levy compensation. He lacked initial jurisdiction to act in the matter before the period available to the contractor was over. It is not a mere irregularity as has been held by the Conservator of Forests in appeal. Rule 26 is nothing but is a rule of natural justice embodied in the Rules, and its violation resulting in heavy penalty against the Petitioner cannot be countenanced. In that view of the matter, both the orders levying compensation and the order passed in appeal modifying the same are liable to be quashed.

5. In view of the conclusions reached, it is not? necessary to further examine in detail the other submissions made by Mr. Das though it must be stated that when an appellate authority though an administrative one calls for a comment from the original authority on the appeal petition, it is the demand of natural justice that the assertions made by the original authority are made known to the Appellant to? enable him to contest the averments made. The first demand of any administrative action is fair play which is not only to be practised but must also be shown to have been practised. It was observed in *Ferro Alloys Corporation Limited Vs. Union of India (UOI)* and *Another*, thus:

..... When a Tribunal is to decide a lis, it is under an obligation to grant reasonable opportunity to the parties to make their representation and further to provide them with all documents and materials proposed to be taken into consideration in making the decision so that they can press their own comments on such documents and materials but however the opportunity for such representation need not be an oral one unless the rules so prescribe or because of the very nature of the proceedings or the complexity of the question involved for decision, the aid of an oral hearing is essential. Evidently, while the test is uniform, yet its applicability will vary from case to case depending upon the facts.

6. Besides so far as the compensation levied under Rule 26 of the Rules is concerned, it must be appreciated that the function is quasi-judicial requiring the authority to pass a speaking order showing the reasons adopted to reach the amount levied. Compensation cannot be levied *interrorem* but must have a, rational basis to some ?ascertained factors. The adoption of such a procedure is not only necessary in the interest of the person against whom compensation is determined but also for the benefit of the authority itself since it would liquidate any charge of arbitrariness and unreasonableness against him. Besides it would also enable the appellate authority and higher forums to know the reasons for levying the compensation.

7. The discussions made above however do not apply to the compensation determined on the interim reports, in O.J.C. No. 960 of 1980 of Rs. 7,595/- as

modified by the appellate order in Annexure-6/1 in that case. The order is not liable for any interference.

8. In the result both the writ petitions are allowed with costs and the orders in Annexure-6 in both the writ petitions as also the compensations levied by the Divisional Forest Officer in Annexure-4/2 in O.J.C. No. 960 of 1980 and in Annexure-4 in O.J.C. No. 961 of 1980 are quashed and the matters are remitted back to the Divisional Forest Officer. Ghumsur North Division. Bhanjanagar, for passing fresh orders under Rule 26 of the Orissa Forest Contract Rules, 1966 in accordance with law keeping in view the observations made above.

Hearing fee is assessed at Rs. 250/- in each case.

P.C. Misra, J.

9. I agree.