
(1996) 05 OHC CK 0005

In the Orissa High Court

Case No : Original Jurisdiction Case No. 3840 of 1995

Tanuja Kumar Rout and Others

APPELLANT

Vs

District Panchayat Officer and Others

RESPONDENT

Date of Decision : 03-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1996) 1 OLR 575

Hon'ble Judges : S. Chatterji, Acting C.J.; P.K. Mohanty, J

Bench : Division Bench

Advocate : S. Mishra-2, S. Mantry, R.C. Rath and A.K. Sharma, for the Appellant; Government Advocate for O.Ps. 1 to 2, B.P. Das and D.N. Mohanty for O.P. No. 3 and B.Pr. Das, S. Das and B.M. Sarangi for O.P. No. 4, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanty, J.—The petitioners assail the selection and appointment of opp. party No, 4 in the post of Secretary, Choramara Grama Panchayat inter alia, on the ground of gross violation of the rules of natural justice, fair-play and procedural Irregularities.

2. The short fact of the petitioners' case is that on constitution of a new Gram Panchayat namely Choramara Gram Panchayat, one Laxmidhar Rout was elected as its Sarpanch. The Sarpanch with a view to appoint his son as the Secretary of the Grama Panchayat invited applications for the post of new Secretary of the Gram Panchayat, without a valid resolution of the Gram Panchayat and without giving due publicity to the advertisement for the post. Even a Selection Committee was constituted without the knowledge of Gram Panchayat members and resolution of the Gram Panchayat and procedures under the Rules were deliberately not followed. The petitioners along with others including opp. party No. 4 were applicants for the post.

It is the petitioners' case that in the Selection Committee constituted for the

purpose of selection of the Secretary, the Sarpanch Sri Laxmidhar Rout was a member, whereas one of the applicants for this post was his son Pabani Kanta Rout, opp. party No. 4. The Selection Committee interviewed the candidates and submitted the select list to the Sarpanch and in turn, the Sarpanch without placing the select list for acceptance by the Gram Panchayat, moved the Block Development Officer, opp. party. No, 2 to get the approval of the District Panchayat Officer, opp. party No. 1 for appointment of this son opp. party No. 4 as the Secretary of the Grama Panchayat. It has been alleged that under the Rules, the Gram Panchayat is required to move the District Panchayat Officer for approval whereas the Sarpanch sent the proposal to the Block Development Officer, who moved opp. party No. 1 for approval of the said appointment. The District Panchayat Officer, without applying his mind and satisfying himself as to the validity of the selection and whether due procedure and other formalities have been complied with by the Gram Panchayat or not, has illegally approved the selection of opp. party No. 4 as the Secretary of the Gram Panchayat on extraneous consideration.

3. The opp. parties 1 to 3 and 5 have chosen not to file any return but the opp. party No. 4 Sri Pabani Kanta Rout, the selected Secretary of the Gram Panchayat has filed a counter affidavit raising, inter alia, the plea of maintainability of the writ petition on the ground that a civil suit filed by one of the unsuccessful candidates challenging the validity of selection is pending adjudication before the Civil Judge (Junior Division), Balasora in O. S. No. 104 of 94-I inasmuch as he has controverted the allegation giving in details the procedure adopted by the Gram Panchayat in making the advertisement for the post, the procedure followed during the selection and the consequential steps taken by the Sarpanch for filling up the post. It has been stated that the Selection Committee for appointment was constituted as per the guidelines laid down in Government Circular dated 13-6-1994 and as per the said Circular, the Sarpanch is required to be a member of the Committee. It is his assertion that the viva voce test was conducted by four out of five Committee members individually who interviewed six candidates including the petitioners and opp. party No. 4. It is also again said that the petitioners were interviewed by the G. P. E. O. and opp. party No. 4 by the Ward Member. But opp. party No. 3 (the Sarpanch) had not interviewed any candidate. It is asserted that presence of Sarpanch (wrongly described in counter as opp. party No. 3, since Gram Panchayat is impleaded as opp. party No. 3) in the Selection Committee is not violative of principles of natural justice, inasmuch as the opp. party No. 4 was eligible for the post and only because his father was the Sarpanch,, the selection cannot be questioned, it was further stated, inter alia, that the G. P. E. O. was made Chairman of the Selection Committee by Resolution dated 12-7-1994, a copy of which is Annexure-C/4 and the membership of opp. party No. 3 in Selection Committee was required as per guidelines of the Government. The approval of appointment is said to be made subject to result of Original Suit No, 1041 of 1994 because of pendency of the suit.

4. Sri Srinibas Mishra-2, the learned Senior Counsel appearing for the petitioners, referring to the relevant averments in the counter-affidavit and the annexures had contended that in view of the admitted position at the Sarpanch, Sri Laxmidhar Rout was a member in the Selection Committee and is the father of opp., party No. 4 Sri Pabani Kanta Rout, who has been selected as the Secretary of the Gram Panchayat and that the Sarpanch was present and participated in the Selection Committee which interviewed the candidates including opp., party No. 4, his son, the selection and appointment made pursuant thereto is vitiated because of violation of rule of natural justice fair play and as such should be quashed on that ground alone. Mr. Mishra has drawn our attention for our decision of the Hon'ble Supreme Court in case of the Ashok Kumar Yadav and Others Vs. State of Haryana and Others, in support of his contention. It is his further submission that the procedures, prescribed under Rules 212 and 213 of the Orissa Gram Panchayat Rules have not been followed in inviting the application for the post, constitution of Selection Committee and the selection made by it is based on extraneous consideration and with a positive bias in favour of opp., party No. 4 who is none other than the son of the Sarpanch. It is the further contention that the recommendation of the Selection Committee has not been placed before the Gram Panchayat, the appointing authority, which is the Panchayat having not accepted the recommendation, the Sarpanch was not authorised under the Rules to send the proposal for approval of the appointment in favour of the opp., party No. 4.

5. The learned counsel appearing on behalf of opp., party No. 4 does not dispute the relationship but, on the other hand, submits that the mere presence of the Sarpanch in the Selection Committee without active participation and proof of influencing the Committee in favour of his son, opp., party No. 4, does not violate the principle of natural justice, vitiating the selection and consequential appointment. It is his submission that the Sarpanch has not individually interviewed any candidate, inasmuch as in terms of the Government Circular dated 13-6-1994 in Annexure-A/4 he is required to be a member of the Committee and as such, his presence therein cannot be faulted to nullify the selection.

6. Having heard the learned counsel for the parties the first question that arises for consideration is whether in view of the admitted relationship of opp., party No. 4, with the Sarpanch as father and son and the presence and participation of the father in the selection Committee, which interviewed the candidates for the post of Secretary of the Gram Panchayat including opp., party No. 4, could create a reasonable apprehension in the mind of the other candidates for the interview that there is likelihood of bias in favour of opp., party No. 4 affecting and vitiating the selection.

A similar question was considered by the Hon'ble Supreme Court in Suresh Koshy George v. University of Kerala, reported in AIR 169 SC 198. The Hon'ble Court observed that the rules of natural justice are not embodied rules and what

particular rule of natural justice should apply to a given case must depend to a great extent on the facts of the case, the frame-work of the law under which the enquiry is held and the constitution of the body of persons appointed for the purpose. The Hon"ble Court further observed that where a complaint is made before the Court that some principles of natural justice have been contravened, the Court has to decide whether the observance of the rule was necessary for just decision of the facts of the case.

7. In the case of A. K. Kraipak v. Union of India reported in AIR 1970 SC 50 the Hon"ble Supreme Court at para 20 of the judgment observed as follows :

"The aim of the rules of natural justice Is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recant years. In the past it was thought that it included just two rules, namely "1) no one shall be a Judge in his own cause (Nemo dehet essa judes proprie causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (adul alteram parterm). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of she Courts that unless the authority concerned is required by the law under which it functioned to act judicially there was no room for the. application of the rules of the natural justice. The validity of that limitation is not questioned, if the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry.

XX XX XX" The Hon"ble Court on consideration of the matter having found one of the candidates (Nagishbund) was a member of the Selection Board and his participation where the names of his rival officers were considered for selection and took part on the deliberation of the Selection Board while they prepared the list of the selected candidates in order of preference, even though he did not sit in the Selection Board at the time when his name was considered for selection, the presence vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection.

8. The Hon"ble Supreme Court in the case of Ashok Kumar Yadav and Others Vs. State of Haryana and Others, referring to the Kraipak"s case (supra) observed at para 18 thereof as follows :

"We must straightway point out that A.K. Kraipak and Others Vs. Union of India (UOI) and Others, is a landmark in the development of administrative law and it has contributed in a large measure to the strengthening of the rule of law in this country. We would not like to whittle down in the slightest measure the vital principle laid down in this decision which has nourished the roots of the rule of law and injected justice and fair play into legality. There can be no doubt that if a selection committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the selection committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection....."

On consideration of the facts of the present case, in the matrix and the ratio of the decision in the aforesaid case, we entertain no doubt that the participation of the Sarpanch, the father of opp. party No. 4, in the process of selection, vitiates the selection, being in violation of rules of natural justice. The apprehension of the petitioners that there was likelihood of bias for selection of opp. party No. 4 cannot be said to be unreasonable. In that view of the matter, the selection and appointment of opp. party No. 4 as the Secretary of Choramara Gram Panchayat and the order of approval given by opp. party No. 1 to such proposal are not sustainable in law and are hereby quashed.

In view of our finding that the selection and appointment of opp. party No. 4 is not sustainable in law, the other questions raised by the learned counsel for the petitioners need not be gone into and determined.

In the result the writ application is allowed, but, in the facts and circumstances of the case, there shall be no order as to costs.

S. Chatterji, A.C.J.

I agree.