
Rajanikanta Priyadarshy Vs Utkal University

Writ Petition (Civil) No. 22918 of 2013

Court: Orissa High Court

Date of Decision: Dec. 23, 2014

Citation: (2015) 1 OLR 212

Hon'ble Judges: Dr. B.R. Sarangi, J

Bench: Single Bench

Judgement

Dr. B.R. Sarangi, J.

The petitioner has filed this application seeking to quash the notification of the Utkal University dated 24.11.2010 vide

Annexure-9 and subsequent notification dated 20.12.2010 vide Annexure-10 cancelling his result in +3 Final Degree (Regular) Examination, 2010

(2007 Admission Batch) declaring him as "fail".

2. The short fact of the case in hand is that the petitioner after passing +2 Arts from CHSE, Odisha, Bhubaneswar was admitted to +3 Arts course

through distance education under opposite party No. 3. On successful completion of the course, the petitioner was declared to have passed the +3

Arts course in the year 2010 vide Annexure-3 with second class honours. Thereafter, the petitioner was admitted to Master in Finance Control

(MFC) in BJB Autonomous College, Bhubaneswar under the Utkal University and at the same time he has also registered his name under the

IGNOU in Post Graduate course in M.A. in Public Administration. After successfully completing the course of Master in Finance Control in BJB

Autonomous College, the petitioner appeared the examination conducted for the purpose by the Utkal University and has also been declared pass

and due certificates has also been granted by the University, which has been annexed as Annexure-4 to the writ petition. Similarly the petitioner has

also obtained his pass certificate and mark sheets in M.A. in Public Administration from the IGNOU in December, 2012 vide Annexure-5. While

the petitioner was searching for a job, he was confronted with the fact that the mark sheets and certificates of +3 examination do not carry the

registration number. Therefore, the petitioner approached the University authorities to get his mark sheets and certificate of +3 examination, 2010

corrected in order to place it for his employment. At that point of time, the petitioner was informed by the University that there is no such mark

sheet or provisional certificate in his favour in respect of +3 examination on the plea that he has already declared failed in the said examination by

the University since December, 2010 i.e. after six months of the publication of the result. The petitioner applied under the RTI Act with regard to

cancellation of his +3 result vide letter dated 3.8.2013 and information was supplied to him on 30.08.2013 declaring him fail which was received

on 31.08.2013. The petitioner came to know from the notice of the University that the revised mark sheet of the +3 examination has been issued

and vide notifications dated 24.11.2010 and 22.12.2010, the result of the petitioner has been cancelled vide Annexures-9 and 10 respectively

conducted by the Utkal University. It is stated that while canceling such result of the petitioner, no opportunity has been given to him. Hence, this

writ petition.

3. Mr. S.K. Das, learned counsel for the petitioner states that while canceling the result of the petitioner in +3 Arts examination pursuant to

notification under Annexures-9 and 10, there is gross violation of principles of natural justice. After declaration of the result, the petitioner has

already undergone higher studies and passed the degree in Maser in Finance Control from Utkal University and thereafter M.A. in Public

Administration from the IGNOU. Therefore, at a belated stage, the position which has been acquired by the petitioner cannot be changed. Hence,

the entire action is hit by principle of estoppels and this Court should interfere with the same and quash Annexures-9 and 10 respectively.

To substantiate his contention, Mr. Das, learned counsel for the petitioner relies upon the judgments of this Court in Miss Reeta Lenka v.

Berhampur University and another, 1992 (II) OLR 341, David C. Jhan Vs. Principal, Ispat College and Others, , Ambika Prasad Mohanty and

etc. Vs. Orissa Engineering College and Another, etc., and Dr. (Smt.) Pranaya Ballari Mohanty Vs. Utkal University and Others, .

4. Mr. T.N. Pattnaik, learned counsel appearing for the opposite party-Utkal University states that on subsequent verification of the result, the

petitioner was declared as failed because of wrong awarding of 35 marks in the subject ISC of Final Year Degree Examination although he had

secured in the said subject 15 marks. For such wrong awarding of mark, the petitioner was declared pass and when such mistake was detected,

the mistake was corrected and the petitioner was declared fail. The Controller of Examination informed the Director, DDCE, Utkal University to

intimate the change of result to the petitioner. If any mistake has been committed by the authority, they are competent to rectify their own mistake.

Accordingly, the correction of marks awarded in favour of the petitioner is wholly and fully justified and consequently action taken declaring the

petitioner fail suffers from no illegality and irregularity and therefore this Court should not interfere with the same and seeks for dismissal of the writ

petition.

5. Considering the contention raised by learned counsel for the parties and after going through the records, it is admitted fact that the petitioner has

appeared at the +3 Degree Examination in Arts under correspondence course of the Utkal University and he was declared pass with Second

Class Honours. Pursuant to such pass in the examination, provisional certificate and mark sheet had been issued to him vide Annexure-3 by the

competent authority and on such pass the petitioner had obtained higher qualification by appearing at the Master in Financial Control under the

Utkal University from BJB Autonomous College, Bhubaneswar and also passed M.A. in Public Administration from IGNOU in the year 2012.

After obtaining higher qualification when the petitioner applied for job in public organization, during selection he was confronted with the fact that

the mark sheet and certificates of +3 examination do not carry the registration number. Therefore, the petitioner approached the University

authorities to get the correct mark sheet and certificates of +3 examination in order to place it for his employment and at that point of time, the

petitioner was informed that there was no such mark sheet or provisional certificate in his favour in respect of +3 examination as he has declared

fail in the said examination by the University since December, 2010 after six months of the publication of the result. In order to find out the

correctness of the information received from the University authority, the petitioner applied for the same under the RTI Act and in compliance to

the same, intimation was provided to him declaring him fail vide Annexures-9 and 10. It is stated that while passing such order under Annexures-9

and 10, the minimum requirement law with regard to compliance of principles of natural justice has not been followed. Therefore, the impugned

orders under Annexures-9 and 10 have been passed in gross violation of principles of natural justice. Subsequently on the basis of the mark sheet,

since the petitioner prosecuted higher studies and obtained higher qualifications, at this stage, any action taken for cancellation of his result without

following due procedure of law cannot be sustained in the eye of law. In the peculiar facts and circumstances mentioned above, the following

question arises for consideration:

i) Whether there is non compliance of principles of natural justice;

ii) Whether the action taken by the University is hit by principle of estoppels.

i) Violation of principles of natural justice:

It appears from the documents available on record that while issuing Annexure-9, no communication has been issued to the petitioner. Rather,

Annexure-9 itself indicates that intimation has been issued to the Director, DDCE, Utkal University with a request to intimate the petitioner at their

end, but the Director, DDCE has not communicated any order to the petitioner with regard to the action taken by the university pursuant to

Annexure-9. Clause-7 of the said letter indicates that copy of the said letter was sent to the Editor, the Samaj, Prajatantra, Cuttack, the Sambad

and Dharitri, Bhubaneswar with a request to publish the news with free of cost for the benefit of the student. The petitioner verified that no such

article was published in the news paper nor any of the authority has informed the petitioner with regard to the notice issued for cancellation of the

result in subject ISC of +3 final degree examination, 2010 of Utkal University. Even in Annexure-10 also while canceling the result of the

petitioner, no such intimation was issued to the petitioner nor has any opportunity been given to the petitioner pursuant to Annexure-9 so also in

Annexure-10 with regard to such cancellation of result. Though the letter indicates that the same has been issued to the Director, DDCE Utkal

University to intimate the concerned students and surrender the old mark sheet and provisional certificate and to take a new one, only information

was sent to the Editor, the Samaj, Cuttack and the Dharitri, Bhubaneswar for publication of the said news in their esteemed dailies in the greater

interest of the students. It appears that no steps have been taken by the authorities by depositing actual fees before the print media to publish the

same nor any intimation was issued to the petitioner by the Director, DDCE, Utkal University and no receipt has been filed intimating that letter has

been communicated to the petitioner. Absence of any communication to the petitioner from the University makes it clear that there is gross violation

of principles of natural justice as no opportunity of hearing has been given to him before cancellation of the result in Annexure-9.

The meaning of "natural justice" has been considered several times by judicial pronouncements.

6. "Natural justice" has been used in a way "which implies the existence of moral principles of self evidence and unarguable truth". In Course of

time, judges nurtured in the traditions of British jurisprudence, often involved it in conjunction with a reference to "equity and good conscience".

Legal experts of earlier generations did not draw any distinction between ""natural justice"" and ""natural law"". ""Natural justice"" was considered as

"that part of natural law which relates to the administration of justice". Rules of natural justice are not embodied rules. Being means to an end and

not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. During the last two decades, the concept of natural

justice has made great strides in the realm of administrative law.

7. Before the epoch making decision of the House of Lords in Ridge v. Baldwin, 1964 AC 40 (196) : (1963) 2 All ER 66 (HL), it was generally

thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for that purpose, whenever a breach of the rule of

natural justice was alleged, courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the

exercise of its administrative or quasi-judicial power.

8. In India also, this was the position before the decision, dated February 7, 1967, of this Court in State of Orissa Vs. Dr. (Miss) Binapani Dei and

Others, wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with

the rules of natural justice.

9. In A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , the apex Court held that 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. Arriving at a just decision is the aim of both quasi-judicial

enquiries as well as administrative enquiries. An unjust decision in an administrative inquiry may have more far-reaching effect than a decision in a

quasi-judicial inquiry.

10. In the language of V.R. Krishna Iyer, J. Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, ,

..... subject to certain necessary limitations natural justice is now a brooding omnipresence although varying in its play Its essence is good

conscience in a given situation, nothing more - but nothing less.

11. In Canara Bank and Others Vs. Shri Debasis Das and Others, , the apex Court held that natural justice is the administration of justice in a

common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the

narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties.

12. In Canara Bank Vs. V.K. Awasthy, , it is held that natural justice, is another name for commonsense justice. Rules of natural justice are not

codified cannons. But they are principles ingrained into the conscience of man Natural justice is the administration of justice in a common sense

liberal way. Justice is based substantially on natural ideas and human values.

13. In Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, , it is held that rules of "" natural justice"" are not

embodied rules. The phrase ""natural justice"" is not capable of precise definition. The underlying principle of ""natural justice"" evolved under the

common law, is to check arbitrary exercise of power by the state or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair

play in action.

14. Natural justice has been variously defined. It is another name for commonsense justice. Rules of natural justice are not codified canons. But

they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is

based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations

which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has

to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the

rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an

order affecting those rights. These rules are intended to prevent such authority from doing injustice.

15. 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 framework of the statute under which the enquiry is held. The old distinction between a judicial act and an

administrative act has withered away. The adherence to principles of natural justice as recognized by all civilized states is of supreme importance

when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in

issue. Even an administrative order which involves civil consequence must be consistent with the rules of natural justice. The expression "civil

consequence" 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.

16. 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 process. 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 iudex in propria causa sua" that is, "no man shall be a judge in his own cause". The second

rule is "audi alteram partem" that is, "hear the other side". A corollary has been deduced from the above two rules and particularly the audi alteram

partem rule, namely, quilibet statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit" 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" or in other words, as it is now

expressed, "justice should not only be done but should manifestly be seen to be done".

17. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh

proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

18. Notice is the first limb of the principle that no one should be condemned unheard. It must be precise and unambiguous. It should apprise the

party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In

the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that party

should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It

is after all an approved rule of fair play. The concept has gained significance and shades with time.

19. In view of the fact that notice is the first limb of the principle that no one should be condemned unheard. In the present case while cancelling the

result of the petitioner no such notice was issued to him either by the University or by the Director, DDCE nor the same has been published in any

of the news papers so that the petitioner could have approached the authority by giving effective reply to such cancellation of the result.

20. In the counter affidavit filed by the opposite party-University, no specific answer has been given to such contention of the petitioner. Rather, it

is only stated that the petitioner has been provided necessary information under the RTI Act, 2005 regarding cancellation of his result as evident

from Annexure-6 series to the writ petition and the Director, DDCE has also requested to intimate the same to the petitioner to surrender his old

mark sheet and provisional certificate and take the new one. But nothing has been spelt out in the counter affidavit with regard to the manner and

mode of intimation to the petitioner or intimation thereof by giving notice with regard to cancellation of result. Even in reply to the rejoinder

affidavit, it has only been stated that the result having been declared by the university was provisional and it is well within the legal domain of the

university to revise the same. The error having been committed can never be allowed to be perpetuated at the hand of the authorities at the helm of

affairs. It is further stated that it is the settled position of law that the principle of estoppels does not apply against the statutes. But nothing has been

indicated with regard to giving notice to the petitioner regarding cancellation of his result. In absence of any specific contention on behalf of the

opposite party with regard to service of notice to the petitioner before taking recourse to cancellation of result, the inevitable conclusion is that

there is non compliance of principles of natural justice. Thereby the order under Annexures-9 and 10 cannot be sustained.

ii) Violation of Principle of estoppels:

21. Mr. S.K. Das, learned counsel for the petitioner referring to the judgment in Miss Reeta Lenka (supra) urged that once a student has been

declared pass and has taken admission to another course it implies that he has changed his position, his result cannot be changed or altered or

cancelled by the authorities.

22. In David C. Jhan (supra), this Court applying the law of estoppels directed the Board authorities not to cancel the result of the student, who

has already taken admission to the IA classes.

23. In Ambika Prasad Mohanty (supra), this Court held that once a student got permission to higher courses basing on the result given to him,

before canceling such result, he is required to be given opportunity to explain or to show cause. In absence of any show cause or opportunity to

the students concerned such cancellation is in violation of principles of natural justice.

24. This Court in Dr. (Smt.) Pranaya Ballari Mohanty (supra) has taken into consideration the principles of promissory estoppels laid down by the

apex Court. In paragraph-14 of the said judgment, this Court held as follows:--

14. The principle of promissory estoppel has been considered by the apex Court in Union of India (UOI) and Others Vs. Indo-Afghan Agencies

Ltd., , Chowgule and Co. Pvt. Ltd. Vs. Union of India (UOI) and Another, , Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh

and Others, , Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., , Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), ,

Bharat Singh and Others Vs. State of Haryana and Others, and many other subsequent decisions also"".

25. In view of the law laid down by the apex Court as well as by this Court discussed above, this Court re-affirms the position of law to the extent

that once the result has been published and on that basis the petitioner has already undergone higher studies and passed in different courses,

subsequently his initial result cannot be cancelled on the ground that he has failed in the said examination. It may be noted that while declaring him

fail, the minimum requirement of law in compliance to principles of natural justice has to be complied with by giving notice to the petitioner. In

absence of any such notice and without giving opportunity to the petitioner, the cancellation has been made, therefore the same cannot be sustained

in the eye of law.

26. In view of the aforesaid facts and circumstances of the case and taking into consideration the principles of natural justice and promissory

estoppels discussed above and applying the same to the present facts and circumstances, this Court is of the view that before cancellation of result

since no notice has been given to the petitioner and once the result has been published on the basis of which the petitioner had already acquired

higher qualification, the same cannot be changed subsequently, which is hit by the principles of promissory estoppels. Applying both the doctrine to

the present case, the orders dated 24.11.2010 and 20.12.2010 passed by the University under Annexures-9 and 10 respectively are hereby

quashed. Consequently, the petitioner is declared to have passed in +3 Final Degree Examination conducted by the DDCE in 2010 basing upon

which he has acquired higher qualification shall sustain.

27. Accordingly, the writ petition is allowed. However, no order to costs.