

Jankinath Sarangi vs State Of Orissa on 11 March, 1969

Equivalent citations: (1970)ILLJ356SC, (1969)3SCC392

Bench: M. Hidayatullah, G.K. Mitter

JUDGMENT

M. Hidayatullah, C.J.

1. The appellant, Janki Nath Sarangi, was a non-gazetted Government servant working as Subdivisional Officer in the Public Works Department of the Orissa State. As a result of disciplinary proceedings against him he was ordered to be dismissed by the Chief Engineer on 30 October 1957. Two charges were framed against him of which the second charge is no longer in dispute because it was dropped. The first charge related to his misconduct which is described as Joining hands with a contractor by inflating the work done by him in the annual repairs of the Aur Ring Bund (Embankment No. 31B) of Brahmani river under Mahanadi Division by falsely certifying that he had checked measurements in the measurement book which measurements were later found to be incorrect. This first charge concerned certain pits from which earth was extracted in the first mile, third and fourth quarters; sixth mile, third and fourth quarters; and seventh mile first quarter. In the first mile, there was a discrepancy of 3,137 c. ft., when the Executive Engineer verified the measurements. This was said to have caused a loss of Rs. 160 to the Government. In the fifth mile and the Leventh mile, the measurements were said to have been inflated by about 27,367 c. ft. entailing loss of Rs. 438 to the Government.

2. These charges were enquired into by a member of the Administrative Tribunal, Orissa, who gave his findings on 10 October 1956 holding them proved. The member also recommended a punishment of dismissal against the appellant. The second chow-cause notice against the punishment was given to the appellant who duly showed cause but it was not accepted. The order of dismissal as stated above was passed against him.

3. The High Court dismissed the petition which had been filed before it questioning the order of dismissal on the ground that prinolplen of natural justice were violated in making the enquiry. The present appeal is by special leave of this Court.

4. In this appeal it is also contended that the principles of nature justice were violated in the conduct of the enquiry and in support it is urged that the appellant was denied the right of leading his evidence in defence and also that he was not given inspection of some material which was used against him but was collected behind his back. The second instance in which the present pleas arise was as follows. The work was completed in the first mile in November 1953 and January 1954. The

earthwork was checked by measurement by the appellant on 6 March 1954. Later, the Executive Engineer re-checked the measurement on 8 May 1954 when the inflated measurements were detected. In the sixth mile the work was completed in October 1953 and January 1954. The measurements were checked by the Enforcement Department in the presence of the Executive Engineer on 21 July 1954 and the inflated measurements were discovered. The case of the appellant was that due to natural causes such as rain, flood, etc, the pits and the witnesses had got obliterated. The report against him was that false witnesses had been created and the earthwork between the pits had been artificially raised to show a deeper digging, than was actually done. In fact the pits were supposed to go to a depth of one foot but they were invariably found to be only seven to eight inches deep. The question was whether the action of rain and/or floods was responsible for obliterating the true measurement and giving a wrong picture at the time of re checking. In this connexion, the appellant wished to examine one Mohanti or one Pujari, retired Superintending Engineers, as his witnesses. The enquiring officer did not examine these witnesses first because he had a technical man Dass, Superintending Engineer, to assist him to whom the same questions could be referred and next that eight instances which were the subject of debate between the appellant and the department were referred by the enquiring officer, the Chief Engineer, for his opinion. The replies of the Chief Engineer do not appear to have been shown to the appellant. In the first instance although he admits that they were placed in his hands at the time when the second notice was issued to him.

5. From this material it is argued that the principles of natural Justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings is cited chief among which are *State of Bombay v. Nurul Latif Khan* 1966-II L.L.J. 595; *State of Uttar Pradesh and another v. C.S. Sharma* 1969-I L.L.J. 509 and *Union of India v. T.R. Varma* 1958-III L.L.J. 259. There is no doubt that if the principles of natural Justice are violated and there is a gross case, this Court would interfere by striking down the order of dismissal; but there are oases and oases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right. Here, the Question was a simple one, viz., whether the measurement book prepared for the contract work had been properly scrutinized and checked by the appellant or not. He did the checking in March 1954 and immediately thereafter in May 1954, the Executive Engineer re-checked the measurements and found that the previous checking had not been done properly. Between March and May there could not be much rainfall, if at all, and the marks of digging according to the witnesses could not be obliterated during that time. It is, however, said that at the sixth and seventh mile the checking was done in July and by that time rains might have set in. Even so, the witnesses at the sites of the pits could not be so considerably altered as to present a totally wrong picture. If anything had happened, the earth would have swollen rather than contracted by reason of rain and the pits would have become bigger and not smaller. Any way the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representations and curiously enough he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in this case by not examining the two

retired Superintending Engineers whom he had cited or any one of them. The case was a simple one whether the measurement book had been properly checked. The pleas about rain and floods were utterly useless and the Chief Engineer's elucidated replies were not against the appellant. In these circumstances a fetish of the principles of natural Justice is not necessary to be made, We do not think that a case is made out that the principles of natural justice are violated. The appeal must fall and is accordingly dismissed, but we will make no order as to costs.