

Orissa High Court

Gouri Shankar Mohapatra vs State Of Orissa And Ors. on 24 July, 1984

Equivalent citations: AIR 1985 Ori 30

Author: K Mohapatra

Bench: R Patnaik, K Mohapatra

JUDGMENT K.P. Mohapatra, J.

1. This is a petition under Articles 226 and 227 of the Constitution for issuance of a writ of mandamus to quash the order of dismissal of the petitioner from the Orissa Police Force.

2. The case of the petitioner is that he joined the Orissa Police Force in 1965 as a Writer Constable. In due course he was promoted to the cadre of Assistant Sub-Inspector. In the year 1970 he was posted as such a Fagu anti-smuggling post under Raruan Police Station in Mayurbhanj district. While serving in such capacity, allegations of corruption were made against him. After preliminary enquiry a disciplinary proceeding was started and charge was framed against him in proceeding No. 34 of 1972 for misconduct on the grounds of acceptance of illegal gratification and disobedience of orders and instructions of higher authorities. He submitted his statement dt. 5-9-72 denying the charges (Annexure 1). In the year 1973 he was transferred to Khunta Police Station. On a single occasion he attended the disciplinary proceeding at Raruan Police Station, but on account of non-attendance of witnesses the proceeding was adjourned. In the same year he was transferred to Phulbani district and while on transit he received copies of statements of witnesses recorded in his absence and without any notice to him on 18-3-73 (Annexure 2). In Phulbani district he came to be posted at Boudh Police Station. On 21-5-75 the Officer-in-charge of Boudh Police Station received a wireless message from the Superintendent of Police, Phulbani directing the petitioner to appear before the Circle Inspector, Karanjia on 24-5-75 to take part in the disciplinary proceeding. The Officer-in-charge, Boudh Police Station gave a reply message to the effect that the petitioner was undergoing treatment at the Government hospital at Boudh since 18-5-75. Again on 18-6-75 the said Officer-in-charge received a wireless message in which the petitioner was directed to attend the aforesaid proceeding on 19-6-75 and 20-6-75 at Raruan Police Station before the Circle Inspector, Karanjia. The Officer-in-charge, Boudh sent a reply to the effect that as the message was received on 18-6-75, it was not possible on the part of the petitioner to proceed to Raruan Police Station by covering the long distance within a very Short time. Besides, the Superintendent of Police was expected to inspect the police station during the month. So he requested for an adjournment of the proceeding. Adjournment was, however, refused and witnesses were examined in the absence of the petitioner. On 27-6-75 the Officer-in-charge, Boudh Police Station received another message directing the petitioner to submit a written explanation. A reply was sent to the effect that on account of the inspection of the Superintendent of Police, the police officers of the station were busy and the car festival was ahead. He requested to fix a date after 25-7-75 for submission of the written explanation. Without paying any heed to the aforesaid request the Enquiring Officer completed the proceeding ex pane and submitted his report on 1-7-75, wherein, he found that all the charges brought against the petitioner were established. On receipt of the report of enquiry, the Superintendent of Police Mayurbhanj, by order dt.. 28-8-75, accepted the same and directed the petitioner to show-cause by 15-9-75 as to why he should not be dismissed from the police force. The petitioner showed cause (Annexure 3/2). The Superintendent of Police, Mayurbhanj, however, by

order dt. 25-9-75, dismissed the petitioner from service (Annexure 4). The petitioner thereafter appealed to the Deputy Inspector-General of Police, Central Range, Cuttack against the order of dismissal. The appeal was rejected by order dt. 5-6-76 (Annexure 5). He submitted a revision petition before the Inspector-General of Police which was also rejected on 4-3-78 (Annexure 6). Ultimately his representation to the State Government was rejected on 7-11-79 (Annexure 7). It is inter alia contended that the order of dismissal (Annexure 4) was passed without giving opportunity to the petitioner to defend himself in the disciplinary proceeding and so there was flagrant violation of the principle of natural justice. Accordingly, the order of dismissal of the petitioner from the Orissa Police Force (Annexure 4) and all subsequent orders of the authorities (Annexure 5, 6 and 7) are liable to be quashed.

3. In the return filed on behalf of the opposite parties it has been stated that while the petitioner was serving in the position of the Assistant Sub-Inspector of Police, Fagu anti-smuggling post under Raruan Police Station a disciplinary proceeding was initiated against him for acceptance of illegal gratification., insubordination, disobedience of orders and acting contrary to law on 28-12-72 in proceeding Nos. 34 of 72. After his transfer to Khunta Police Station he was duly intimated to appear on 18-3-73 to take part in the proceeding. On 17-3-73, however, the Circle Inspector of Udala requested the Enquiring Officer to fix up a date after 25-3-75 as the petitioner was to remain busy for the Dola festivals. The message was received in the office of the Circle Inspector, Karanjia on 19-3-73. Although the petitioner was absent on 18-3-73, the witnesses present were examined and copies of their statements were communicated to the petitioner. The proceeding was then posted to 24-4-75 on which date the petitioner neither turned up nor sent any intimation for adjournment. Therefore, the witnesses present were examined despite his absence. The proceeding was again posted to 21-5-75. The Enquiring Officer did not receive any intimation from the petitioner and so he posted the proceeding to 19-6-75 and 20-6-75. On the aforesaid dates the petitioner was not present and so despite his absence the Enquiring Officer examined witnesses. A wireless message was, however, received on 25-6-75 for adjournment of the proceeding. The Enquiring Officer sent copies of statements of the witnesses and called upon him to adduce his defence on 28-6-75. But the petitioner did not adduce any defence nor furnished any written defence. On 30-6-75 the petitioner sent a letter to the Enquiring Officer requesting him to fix the date of enquiry after the car festival. The prayer was rejected and the Enquiring Officer having closed the proceeding submitted his report on 1-7-75. The Superintendent of Police, Mayurbhanj accepted the report of enquiry by which the charges brought against the petitioner had been held to have been proved. Therefore, he issued second notice to the petitioner to show-cause why he should nor be dismissed from the police force. The petitioner showed cause and after considering the same, the Superintendent of Police, Mayurbhanj passed the order of dismissal of the petitioner from the Orissa Police Force which took effect on 8-10-75. It is further stated that his appeal, revision and representation were rightly rejected by the authorities concerned. It is averred that principles of natural justice were not at all violated and the petitioner was given sufficient opportunity to defend himself in the disciplinary proceeding. Therefore, the writ petition is liable to be rejected.

4. In the rejoinder the petitioner has stated that when he was posted at Khunta Police Station after being transferred from Fagu anti-smuggling post, he had been deputed to perform duty during Dola festival at Sainkala at a distance of about 20 kilometres. He was not intimated about the date of

enquiry, namely, 18-3-73. The Circle Inspector of Udala on his own intimated the Enquiring Officer to adjourn the enquiry to 25-3-73. Therefore the absence and non-participation of the petitioner in the proceeding on 18-3-73 was not wilful. As a matter of fact he had no information of the date. While he was posted at Boudh Police Station, he did not receive any communication to attend the enquiry either on 24-4-75 or on 21-5-75. The Enquiry Officer directed him to submit a written explanation by 28-6-75. The intimation was received on 27-6-75 and a reply message was sent to the Officer-in-charge, Boudh Police Station on 29-6-75. In view of the above, rejection of the prayer for time was improper. Therefore, no opportunity was afforded to him to adduce defence evidence.

5. Learned counsel appearing for the petitioner strenuously contended that the disciplinary proceeding against the petitioner was conducted behind his back without giving him opportunity to participate therein and defend himself. Therefore, there was gross violation of the principle of natural justice. Accordingly the order of dismissal passed by the Superintendent of Police, Mayurbhanj and all subsequent orders are liable to be quashed and the petitioner reinstated in service. The learned Standing Counsel appearing for the State made a feeble attempt to support the version of the opposite parties that reasonable opportunity was given to the petitioner to defend himself in the disciplinary proceeding and so there was no violation of the principle of natural justice. The contentions require careful examination.

6. The Enquiring Officer, Circle Inspector, of Karanjia, posted the disciplinary proceeding for examination of witnesses on 18-3-73. Obviously, the Circle Inspector, Udala received the intimation of the date, but he could not spare the petitioner to proceed to the place of enquiry for the purpose of participation because, he had been deputed on duty on the occasion of Dola festival at Sainkala. Therefore, on 17-3-73 he sent a message to the Enquiring Officer to adjourn the Enquiry to 25-3-73. The Enquiring Officer did not adjourn the enquiry as requested, but examined some witnesses despite the absence of the petitioner.

It is significant to note that there was no direct notice to the petitioner intimating him that the disciplinary proceeding was posted to 18-3-73 for examination of witnesses. There is nothing on record to show that the Circle Inspector, Udala on getting information from the Enquiring Officer intimated the petitioner that he was required to attend and participate in the disciplinary proceeding on 18-3-73. It is, therefore, clear from the aforesaid facts that on 18-3-73 witnesses were examined by the Enquiring Officer against the petitioner without due notice to him.

7. In the disciplinary proceeding some witnesses were examined on 24-4-75. There is nothing on record to show that the petitioner received any notice to appear on the aforesaid date before the Enquiring Officer. So patently witnesses were examined behind his back.

It is stated in para 9 of the writ petition that on 21-5-75 the Officer-in-charge, Boudh Police Station received a wireless message from the Superintendent of Police, Phulbani directing the petitioner to appear before the Circle Inspector, Karanjia on 24-5-75 to participate in the disciplinary proceeding. But a reply was sent on the same day to the effect that the petitioner was undergoing treatment at Boudh hospital since 18-5-75. On reference to the records of the disciplinary proceeding, however, it appears that it was not posted for enquiry on 24-5-75. As a matter of fact, statements do not appear

to have been recorded on that day. Reference to the date '24-5-75' perhaps is a mistake for the date '24-4-75'.

8. The next dates of the enquiry were 19-6-75 and 20-6-75. The records do not disclose that the petitioner received any intimation directly to attend the enquiry on the aforesaid dates. On the other hand, it appears that a message was received by the Officer-in-charge, Boudh Police Station on 18-6-75 directing the petitioner to attend the proceeding on 19-6-75 and 20-6-75. A reply was sent to the effect that it was not possible to spare him on account of inspection of the Superintendent of Police and an adjournment was asked for. Besides, the petitioner was at Boudh in Phulbani district and the place of enquiry was at Raruan or Karanjia in Mayurbhanj district at a great distance. It was impossible for the petitioner to travel a long distance so as to attend the enquiry on 19-6-75 even if he had started from Boudh on 18-6-75. Despite the aforesaid fact, witnesses were examined on 19-6-75 and 20-6-75 in the absence of the petitioner.

9. After examination of all witnesses in the disciplinary proceeding the petitioner was called upon to submit his "final defence explanation" to the Enquiring Officer by 28-6-75. The message was received on 27-6-75 at Boudh Police Station and so patently it was not possible to furnish the explanation by 28-6-75. By a return message an adjournment was asked for after 27-5-75, but it seems it was refused

10. Thereafter on 1-7-75 the Enquiring Officer submitted his report (Annexure 3) recording that all the charges were established, on consideration of which the Superintendent of Police, Mayurbhanj issued second show cause notice to the petitioner and after receipt of the same, he passed the impugned order of dismissal

11. Narration of the aforesaid facts patent from the affidavits sworn in by the parties, as well as, the records of the disciplinary proceeding will show that on material dates when witnesses were examined to speak against the petitioner in support of the charges, which were manifestly grave in nature, the petitioner did not get reasonable opportunity to appear before the Enquiring Officer and defend himself. As a matter of fact, the entire disciplinary proceeding was conducted ex parte followed by an order of dismissal. The petitioner exhausted all remedies and ultimately his representation to the State Government was rejected in December, 1979 (Annexure 7). In (1978) 1 SCC 248 : (AIR 1978 SC 597) *Mrs. Maneka Gandhi v. Union of India*, it was held that the principle of audi alteram partem, which mandates that no one shall be condemned unheard is a part of the rules of the natural justice. In this case this golden principle was not followed. We are, therefore, of the firm view that there was gross violation of the principle of natural justice and accordingly the order of dismissal and subsequent orders contained in Annexures 4, 5, 6 and 7 are liable to be quashed

12. In the result, the writ petition is allowed and a writ of mandamus be issued quashing Annexures 4, 5, 6 and 7. In the circumstances of the case, parties to bear their own costs.

R.C. Patnaik, J.

13. I agree.