

Jankinath Sarangi

Vs

State of Orissa

Civil Appeal No. 403 of 1966

(Hidayatullah CJI)

11.03.1969

JUDGMENT

HIDAYATULLAH, C. J. -

1. The appellant, Janki Nath Sarangi, was a no gazetted Government servant working as Sub-Divisional 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 October 30, 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. 31-B) 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 1st mile 3rd and 4th quarters, 6th mile 3rd and 4th quarters and 7th mile 1st quarter. In the first mile there was a discrepancy of 3137 c. ft. when the Executive Engineer' verified the measurements. This was said to have caused a loss of Rs.150/- to the Government. In the 5th mile and the 7th 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 10th October, 1956 holding them proved. The Member also recommended a punishment of dismissal against the appellant. The second show 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 principles 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 natural 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 be in which the present pleas arise 1 was as follows: The work was completed in the first mile in November, 1953 and January, 1954. The earth work was checked by measurement by the appellant on March 6, 1954. Later, the Executive Engineer rechecked the measurement on May 8, 1954 when the inflated measurements were detected. In the 6th 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 July 21, 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 earth work 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 1 foot but they were invariably found to be only 7 to 8 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 connection, the appellant wished to examine one Mr. Mohanty or one Mr. Pujari, retired Superintending Engineers as his witnesses. The Enquiring Officer did not examine these witnesses first because he had a technical man Mr. Dass, Superintending Engineer to assist him to whom the same questions could be referred and next that 8 instances which were the subject of debate between the appellant and the Department were referred by the Enquiring Officer to 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 are cited chief among which are *State of Bombay v. Narul Latif Khan* ((1965) 3 SCR 135); *State of Uttar Pradesh & Another v. Sri C. S. Sharma* ((1967) 3 SCR 848.) and *Union of India v. T. R. Varma*. ((1958) SCR 499.) 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 cases and cases. 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 scrutinised 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 6th and 7th 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. Anyway 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 fail and is accordingly dismissed, but we will make no order as to costs.

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