IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.2886 of 2018
CNR No. ODHC010015022018

In the matter of an application under Article 226 & 227 of the Constitution of India, 1950.

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Ananda Chandra Behera .... **Petitioner**

-versus-

Odisha State Ware Housing Corp., MD, Cuttack & Ors. .... **Opp. Parties**

For Petitioner : Mr. *A.* Behera, Advocate

For Opp. Parties : Mr. S. Das,
Addl. Standing Counsel
Mr. B.K. Sahoo, Adv. for O.P.3

PRESENT:

THE HONBLE JUSTICE BIRAJA PRASANNA SATAPATHY

Date of Hearing: 21.09.2026 and Date of Judgment: 21.09.2026

Biraja Prasanna Satapathy, J.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical) Mode.

2. Heard learned counsel appearing for the Parties.

3. Petitioner has filed the present Writ Petition *inter alia* with the following prayer:-

> *"The petitioner, therefore, prays that your Lordships would be graciously pleased to admit this writ petition, call for the records and after hearing the parties allow the issue writ/writs in the nature of certiorari/same, mandamus and/or any other further writ/direction, and quash the order dated 06.01.2018 passed by Managing Director, Odisha State Warehousing Corporation directing recovery of Rs. 23,88,921/- from the petitioner under Annexure-1.*
>
> *And for this act of kindness, the petitioner shall as in duty bound ever pray."*

4. It is contended that Petitioner while continuing as an employee under the Opposite Party-Corporation, he retired from service on attaining the age of superannuation on 30.09.2016.

4.1. It is contended that much after his retirement, Petitioner was issued with the impugned order dtd.06.01.2018 under Annexure-1, wherein Petitioner was directed to pay a sum of Rs.23,88,921/- recoverable from his retiral dues.

4.2. Learned counsel for the Petitioner while assailing the impugned order contended that prior to issuance of the impugned order under Annexure-1, Petitioner was never show caused nor principle of natural justice was followed.

4.3. It is also contended that such recovery from the retiral dues of the Petitioner, is not permissible as per the service regulation / rule governing the field.

4.4. It is accordingly contended that since prior to directing the Petitioner to pay a sum of Rs.23,88,921/- toward recovery vide order under Annexure-1, principle of natural justice was never followed, the same is not sustainable in the eye of law.

4.5. In support of his submission, reliance was placed to a decisions in the case of ***Menaka Gandhi vs. Union of India***, ***AIR 1978 SC-597, State of Orissa vs. Binapani Das, AIR 1967 SC-1269, State Bank of India And Others Vs. Rajesh Agarwal & Ors., (2023) 6 SCC 1, Dushyant Mainali Vs.Diwan Singh Bora & Another, SLP (C) No.15191 of 2022 and Krishnadatt Awasthy Vs. State of M.P & Others, Civil Appeal NO(s) 4806 of 2011 (2025 INSC 126).***

4.6. In ***Menaka Gandhi (supra)***, Hon'ble Supreme Court in Paragraphs-57, 58 and 61 has held as under:-

> *"**57.** The question immediately arises : does the procedure prescribed by the Passports Act, 1967 for impounding a passport meet the, test of this requirement ? Is it 'right or fair or just' ? The argument of the petitioner was that it is not, because it provides for impounding of a passport without affording reasonable opportunity to the holder of the passport to be heard in defence. To impound the passport of a person, said the petitioner, is a serious*

matter, since it prevents him from exercising his constitutional right to go abroad and such a drastic consequence cannot in fairness be visited without observing the principle of audi alteram partem. Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21. Now, it is true that there is no express provision in the Passports Act, 1967 which requires that the audi alteram partem rule should be followed before impounding a passport, but that is not conclusive of the question. If the statute makes itself clear on this point, then no more question arises. But even when the statute is silent, the law may in a given case make an implication and apply the principle stated by Byles, J., in Cooper v. Wandsworth Maneka Gandhi vs Union Of India on 25 January, 1978 Indian Kanoon - http://indiankanoon.org/doc/1766147/ 57 Board of Works(2). "A long course of decision---, beginning with Dr. Bentley's case and ending with some very recent cases, establish that, although there are no positive words in the statute requiring that the party shall be heard, yet-the justice of the common law will supply the omission of (1) [1974]2S.C.R.348. (2) [1863]14C.B.N.S.180. the legislature". The principle of audi alteram partem, which mandates that no one shall be condemned unheard, part of the rules of natural justice. In fact, there are two main principles in which the rules of natural justice are manifested, namely, Nemo Judex in Sua Causa and audi alteram partem. We are not concerned here with the former, since there is no case of bias urged here. The question is only in regard to the right of hearing which involves the audi alteram partem rule. Can it be imported in the procedure for impounding a passport ?

58. *We may commence the discussion of this question with a few general observations to emphasise the increasing importance of natural justice in the field of administrative law. Natural justice is a great humanising principle intended to invest law with' fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Lord Morris of Borth- y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club : "We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm*

that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a "majestic" conception ? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance ? I believe that it is very much more. If it can be summarised as being fair play in action-who could wish that it would ever be out of action ? It denotes that the law is not only to be guided by reason and by logic but that its purpose %, will not be fulfilled; it lacks more exalted inspiration." (Current Legal Problems, 1973, Vol. 26, p. 16) And then again, in his speech in the House of Lords in Wiseman v. Borneman(1), the learned Law Lord said in words of inspired felicity: "that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair play in action." Nor do we wait for directions from Parliament. The common law has abundant riches : there we may find what Byles, J., called "the justice of the common law". Thus, the soul of natural justice is fair play in action' and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative hearing is regarded as essential requirement of fundamental fairness. And in England too it has been held that 'fair play in action' demands that before any prejudicial or adverse action is taken against a person, he must be given an opportunity to be heard. The rule was stated by Lord Henning, M.R. in these terms in Schmidt v. Secretary of State for Home Affairs(1) :-where a public officer has power to deprive a person of his liberty or his property, the general principle is that it has not to be done without his being given an opportunity of being heard and of making representations on his own behalf". The same rule also prevails in other Commonwealth countries like Canada, Australia and New Zealand. It has even gained access to the United Nations. Vide American Journal of International Law, Vol. 67, page 479. Magarry, J., describes natural justice "as a distillate of due process of law". Vide Fontaine v. Chesterton(2). It

is the quintessence of the process of justice inspired and guided by fair play in action'. If we look at the speeches of the various law Lords in Wiseman's case, it will be seen that each one of them asked the question "whether in the particular circumstances of the case, the Tribunal acted unfairly so that it could be said that their procedure did not match with what justice demanded", ,or, was the procedure adopted by the Tribunal 'in all the circumstances unfair'? The test adopted by every law Lord was whether the procedure followed was "fair in all the circumstances" and 'fair play in action' required that an opportunity should be given to the tax payer "to see and reply to the counter-statement of the Commissioners" before reaching the conclusion that "there is a prima facie case against him." The inquiry must, therefore, always be : does fairness in action demand that an opportunity to be heard should be given to the person affected?.

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61. *This Court, speaking through Hegde, J., in ,I. K. Kraipak's case quoted with approval the above passage from the judgment of Lord Parker, C.J., and proceeded to add : "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-Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the, application of the rules of natural justice. The validity of that limitation is now 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 an administrative enquiry may have more far reaching effect than a decision in a quasi- judicial enquiry. As observed by this Court in Suresh Koshy George v. The University of Kerala and Ors. (1969)1 S.C.R. 317 the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a*

complaint is made before a court that some principles of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of the case." This view was reiterated and re-affirmed in a subsequent decision of this Court in D.F.O. South Khari v. Ram Sanehi Singh(1). The law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.

4.7. In ***State of Orissa vs. Binapani Das,*** Hon'ble Supreme Court in Paragraph-12 has held as under:-

> ***"12.*** *It is true that some preliminary enquiry was made by Dr. S, Mitra. But the report of that Enquiry Officer was never disclosed to the first respondent. 'The rafter the first respondent was required to show cause why April 16, 1907, should not be accept das the date of birth and without recording any evidence the order was passed. We think that such an enquiry and decision were contrary to the basic concept of justice and cannot have any value. It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State."*

4.8. Hon'ble Apex Court in the case of ***Rajesh Agarwal*** in Para 41 & 42 has held as follows:-

> ***"41.*** *In State of Orissa v. Binapani Dei [State of Orissa v. Binapani Dei, AIR 1967 SC 1269], a two-Judge Bench of this Court held that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. This Court further held that an administrative action which involves civil consequences must be made consistent with the rules of natural justice : (AIR p. 1271, para 9)*

"9. ... The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed : it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

42. *In Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248] , a seven-Judge Bench of this Court held that any person prejudicially affected by a decision of the authority entailing civil consequences must be given an opportunity of being heard. This has been reiterated in a catena of decisions of this Court."*

4.9. Hon'ble Apex Court in the case of ***Dushyant Mainali***, in para-5 of the said judgment held as follows:

> ***5***. *There is no necessity to reiterate that even the Courts, including a highest court of the Country, are bound by principle of natural justice. Nobody can be condemned unheard.*

4.10. Hon'ble Apex Court in the case of ***Krishnadatt Awasthy*** in para-68 of the said judgment held as follows:

> ***68***. *The principle of audi alteram partem is the cornerstone of justice, ensuring that no person is condemned unheard. This principle transforms justice from a mere technical formality into a humane pursuit. It safeguards against arbitrary decision-making, and is needed more so in cases of unequal power dynamics.*

5. Mr. B.K. Sahoo, learned counsel appearing for Opposite Party No.3 on the other hand made his submission basing on the stand taken in the counter affidavit so filed. It is contended that after his retirement, basing on the letter issued by the Orissa State Civil Supply Corporation, wherein suggestion was made to recover the amount, the impugned order dtd.06.01.2018 under Annexure-1 was issued.

5.1. It is accordingly contended that since after the retirement of the Petitioner, Orissa State Civil Supply Corporation suggested to recover the amount because of mis-appropriation caused by the Petitioner, the impugned order under Annexure-1 has been issued.

5.2. It is accordingly contended that no illegality or irregularity can be found with the same.

6. Having heard learned counsel appearing for the Parties and considering the submissions, it is found that Petitioner while continuing under the Opposite Party-Corporation, he retired on attaining the age of superannuation on 30.09.2016. However, vide the impugned order dtd.06.01.2018 under Annexure-1, Petitioner was directed to deposit a sum of Rs.23,88.921/- toward recovery.

6.1. Considering the submission made by the learned counsel appearing for the Petitioner that principle of natural justice was never followed prior to issuance of Annexure-1 and this Court since could not find any document enclosed to the counter affidavit, showing issuance of any show cause prior to issuance of the order at Annexure-1, basing on the suggestion given by the Orissa State Supply Corporation, the impugned order under Annexure-1 could not have been issued.

6.2. This Court on the ground of non-compliance of the principle of natural justice and placing reliance on the decisions as cited (supra), is inclined to quash order dtd.06.01.2018 so passed under Annexure-1 by Opposite Party No.3. While quashing the said order, this Court permits Opposite Party-Corporation to re-

determine the liability in accordance with law and by following the principle of natural justice.

7. Accordingly, the Writ Petition stands disposed of.

(Biraja Prasanna Satapathy)
Judge

Orissa High Court, Cuttack
Dated the 21st September, 2026/Subrat

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