

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT PETITION No.19329 of 2016

Between:

G.Ambarish

..Petitioner

And

The Joint Director, Animal Husbandry,
Nizamabad, and others

..Respondents

JUDGMENT PRONOUNCED ON: 17th June, 2016

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD**

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| 1. Whether Reporters of local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment
may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether their Ladyship/Lordship
wish to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD**

+ **WRIT PETITION No.19329 of 2016**

% 17.06.2016

G.Ambarish

..Petitioner

Vs.

\$ The Joint Director, Animal Husbandry,
Nizamabad, and others

..Respondents

! Counsel for the petitioner: Mr.K.Sarath

Counsel for respondent Nos.1 to 4: Government Pleader for
Services (TS)

Counsel for respondent No.5: --

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>Head Note:

? Cases referred:

1. (1973) 3 SCC 333
2. (1978) 1 SCC 405
3. (1978) 1 SCC 248
4. (1981) 1 SCC 664
5. 1964 AC 40
6. (1969) 2 SCC 262
7. AIR 1967 SC 1269
8. (2011) 5 SCC 553
9. AIR 1952 SC 16

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Counsel for respondent No.5: --

The Court made the following:

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ORDER: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The common order, dated 31.05.2016, in O.A.Nos.1008 and 1015 of 2016 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, (for short 'the Tribunal') – respondent No.5, to the extent it relates to the unsuccessful applicant in O.A.No.1008 of 2016, is assailed in this writ petition.

2. We have heard Mr.K.Sarath, learned counsel for the petitioner, and the

learned Government Pleader for Services (TS) appearing for respondent Nos.1 to 4.

3. The petitioner was appointed as Office Subordinate on 20.10.1997. At the time of his initial appointment, his educational qualification was intermediate. He, however, later acquired Typewriting Higher Grade in English and Telugu languages and thereby, qualified himself for the post of Typist. He was subsequently promoted through appointment by transfer to the post of Typist, *vide* proceedings in Roc.No.809/B/2014, dated 10.06.2014, of respondent No.1. More than two years after the petitioner was promoted, respondent No.1 issued notice No.419/B/2015, dated 22.02.2016, stating therein that the petitioner and another person *viz.*, M.Shiva Prasad – the applicant in O.A.No.1015 of 2016, were irregularly appointed as Typist and Clerk-cum-Typist respectively through appointment by transfer and hence, they were directed to explain why they should not be reverted to the lower posts of the Office Subordinates within a period of one week from the date of receipt of the said notice. On receipt of the said notice, the petitioner submitted his explanation, dated 24.02.2016.

4. A perusal of the aforesaid explanation, dated 24.02.2016, shows that the petitioner sought to explain in detail as to how his promotion is in order. However, it is not necessary for this Court to advert to these reasons, having regard to the manner in which it is proposing to dispose of this writ petition. On receipt of the said explanation from the petitioner, respondent No.1 issued memo *vide* Roc.No.809/B/2014, dated, 01.03.2016, reverting the petitioner to the post of Office Subordinate. For proper appreciation, the relevant portion of the said memo is reproduced hereunder:

“In pursuance of the orders issued *vide* reference 1st and 2nd cited above, instructions were issued to take immediate action for reversion of promotion given to Sri G.Ambarish, Office subordinate, Rural Livestock Unit, Adloor Yellareddy and Sri M.Shiva Prasad, Office subordinate, O/o Assistant Director (AH), Nizamabad who have been irregularly appointed as Typist and Clerk cum Typist in the district without following the Roster system and issued promotion orders during the ban period *vide* G.O.Rt.No.2147, GAD (DPC-I) Dept., dt.16.05.2014.

A notice has been issued to the above individuals for reversion of promotion as per rules *vide* reference 3rd cited above.

Sri G.Ambarish, Typist, O/o Assistant Director (AH),

Banswada is hereby reverted to the cadre of Office subordinate with immediate effect and posted O/o Assistant Director (AH), Banswada.”

Assailing the abovementioned memo, the petitioner filed O.A.No.1008 of 2016 and M.Shiva Prasad filed O.A.No.1015 of 2016. After the official respondents filed counter-affidavits, the Tribunal dismissed both the O.As.

5. A perusal of the notice, dated 22.02.2016, of respondent No.1 shows that except making the cryptic allegation that the petitioner was irregularly appointed as Typist, it was not stated therein as to for what reasons the appointment of the petitioner was irregular. More astonishing is the manner in which respondent No.1 issued the memo, dated 01.03.2016, the relevant portion of which was already reproduced hereinabove. Respondent No.1 has not even referred to the petitioner’s explanation, dated 24.02.2016, receipt of which is not disputed by the said respondent. Thus, non-reference of the explanation of the petitioner reduced the procedure of issuing notice followed by respondent No.1, to a mere ritual and denied the petitioner, reasonable opportunity of being heard.

6. The law is well settled that before any order adversely affecting the interests of a person is passed, he shall be put on notice and given a reasonable opportunity of explaining his case. A three-Judge Bench of the Supreme Court in **Sayeedur Rehman v. State of Bihar**^[1] dealt with the width and ambit of the rule of *audi alteram partem*. It is instructive to reproduce paragraph-11 of the said judgment hereunder.

“This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties.”

In **Mohinder Singh Gill v. Chief Election Commissioner**^[2], Krishna Iyer, J, speaking for himself, Beg, C.J., and Bhagwati, J, succinctly explained the rule of hearing in the following words.

“43. Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has, many colours and shades, many forms and shapes and, save where valid law excludes it, applies when people are affected by acts of authority. It is the hone of healthy Government, recognized from earliest times and not a mystic testament of Judge-made law. Indeed, from the legendary days of Adam -- and of *Kautilya's Arthashastra* -- the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these depths for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system.

.... ...

48. Once we understand the soul of the rule as fair play in action - and it is so - we must hold that it extends to both the fields. After all, administrative power in a democratic set-up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Nor is there ground to be frightened of delay, inconvenience and expense, if natural justice gains access. For fairness itself is a flexible, pragmatic and relative concept, not a rigid, ritualistic or sophisticated abstraction. It is not a bull in a china shop, nor a bee in one's bonnet. Its essence is good conscience in a given situation: nothing more -- but nothing less. The 'exceptions' to the rules of natural justice are a misnomer or rather are but a shorthand form of expressing the idea that in those exclusionary cases nothing unfair can be inferred by not affording an opportunity to present or meet a case. Text book excerpts and ratios from rulings can be heaped, but they all converge to the same point that *audi alteram partem* is the justice of the law, without, of course, making law lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation.”

In **Maneka Gandhi v. Union of India**^[3], Bhagwati, J, speaking for himself and Untwalia and Fazal Ali, JJ, observed:

“...The *audi alteram partem* rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law 'lifeless, absurd, stultifying, self-defeating or plainly contrary to the common sense of the situation'. Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the *audi alteram partem* rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field

of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalized hearing may have the effect of stultifying the exercise of the statutory power, the *audi alteram partem* should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances. The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.”

Sarkaria, J, speaking for himself and Desai, J, in **Swadeshi Cotton Mills v. Union of India**^[4], surveyed English and Indian case-law, and referred to and relied upon the judgments in **Ridge v. Baldwin**^[5], **A.K. Kraipak v. Union of India**^[6], **Mohinder Singh Gill** (2 supra), **Maneka Gandhi** (3 supra), and **State of Orissa v. Dr. Binapani Dei**^[7], and held that the rule of *audi alteram partem* must be complied with even when the Government exercises power under Section 18-AA of the Industries (Development and Regulation), Act, 1951, which empowers the Central Government to authorise taking over of the management of industrial undertaking.

In **Radhy Shyam v. State of U.P.**^[8], Singhvi, J, speaking for the bench, referred to the entire case-law on the subject and reiterated the legal principles laid down therein as discussed above.

7. The law is equally well settled that in the process of giving an opportunity, the notice issued by the authority concerned must contain the relevant grounds on which the action is proposed to be taken. As noted hereinbefore, the notice, dated 22.04.2016, is bereft of any grounds on which respondent No.1 termed the petitioner’s appointment as Typist as irregular.

Further, the failure of respondent No.1 in even adverting to the petitioner's explanation, leave alone, considering its contents renders the memo issued by him reverting the petitioner, void, as the same is in blatant violation of the principles of natural justice. Unfortunately, the Tribunal failed to advert to these basic principles of administrative law and dismissed O.A.No.1008 of 2016 by going into the merits of the case. Since the notice, dated 22.02.2016 contained no reasons in support of the alleged irregular appointment, the official respondents were not entitled to supplement those reasons by way of affidavits as held by the Apex Court in **Commissioner of Police, Bombay Vs. Gordhandas Bhanji**^[9] and **Mohinder Singh Gill** (2 supra). Thus, the Tribunal has fallen into an error in placing reliance on the averments contained in the counter-affidavit.

8. For the aforementioned reasons, the order of the learned Tribunal along with the order of respondent No.1 *vide* memo, dated 01.03.2016, are set aside. The petitioner shall be restored to the post of Typist forthwith. This order, however, does not preclude respondent No.1 from initiating fresh proceedings by following due procedure as indicated above. The Writ Petition is, accordingly, allowed.

9. As a sequel to allowing the Writ Petition, W.P.M.P.No.23715 of 2016 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

17th June, 2016

Note: L.R. copies to be marked.

(B/o)
GHN

[\[1\]](#) (1973) 3 SCC 333

[\[2\]](#) (1978) 1 SCC 405

[\[3\]](#) (1978) 1 SCC 248

[\[4\]](#) (1981) 1 SCC 664

[\[5\]](#) 1964 AC 40

[\[6\]](#) (1969) 2 SCC 262

[\[7\]](#) AIR 1967 SC 1269

[\[8\]](#) (2011) 5 SCC 553

[\[9\]](#) AIR 1952 SC 16