

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 582 of 2016**

Lallu Yadav, S/o. Shri Ramsurat Yadav, Aged About 34 Years, Occupation Panchayat Secretary, Village Panchayat Dhangaon, Janpad Panchayat Balrampur, P.S. Balrampur, District Balrampur- Ramanujganj, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh, Through Secretary, Panchayat & Rural Department, Mahanadi Bhawan, New Mantralaya, District Raipur, Chhattisgarh
2. The Collector/ District Coordinator (MNREGA) Balrampur, District Balrampur- Ramanujganj, Chhattisgarh
3. Chief Executive Officer, District Panchayat, Balrampur, District Balrampur- Ramanujganj, Chhattisgarh
4. The Ombudsman, Mahatma Gandhi Rashriya Gramin Rojgar Guaranty Yojna, District Panchayat Surguja Balrampur, District Balrampur Ramanujganj, Chhattisgarh
5. Nikhil Mitra, S/o. Nakul Mitra, R/o. Village Damodarpur, Post Tatapani, Gram Panchayat Dhangaon, P.S., Balrampur, District Balrampur Ramanujganj, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Sunil Tripathi, Advocate
For State/Respondents No.1 & 2	:	Ms. Richa Shukla, Govt. Advocate
For Respondent No.3	:	Mr. Anil S. Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****18.09.2019**

Heard.

1. The present petition is against the order dated 16.06.2015 whereby a liability has been imposed on the petitioner for payment of Rs.5,35,000/-.
2. It is contended on behalf of the petitioner that the petitioner was holding the post of Secretary of the Gram Panchayat Dhangaon, Janpad Panchayat Balrampur. On a complaint made, an enquiry proceeded about construction of road under MNREGA. The Ombudsman under the Mahatma Gandhi

Rashtriya Gramin Rojgar Guarantee Yojna conducted an enquiry without giving a notice to the petitioner; thereby the order dated 16.06.2015 has been passed.

3. Learned counsel for the petitioner submits that before passing such order, no opportunity of hearing was given to the petitioner, thereby the rule of *audi alteram partem* has been defeated. He relies on **2013 (1) C.G.L.J. 76** in case of **Setho Prasad Gupta & Others v. State of C.G. & Others** and submits under the similar circumstances when the opportunity of hearing was not given, the order of the like nature was quashed.
4. Per contra, learned State counsel would submit that the petitioner has an alternative remedy of filing of appeal before the Tribunal, which is constituted and placed a reliance of the order dated 31.01.2017 passed in WPC No.69 of 2017 by the coordinate Bench of this Court.
5. The only issue pertains is as to whether the petitioner was given a notice before such impugned order dated 16.06.2015 has been passed. The reply of the State is silent about such fact to demonstrate that before such order was passed, the petitioner was heard. The contention of the State that the petitioner has an alternative remedy cannot be appreciated on the principle that when the petitioner was not heard then in such case, the petitioner cannot be forced to avail the alternative remedy.
6. Admittedly, the order would show that prejudice would be caused and liability has been imposed; therefore, in view of the principles laid down by the Supreme Court in case of **Ashwin S. Mehta & Another v. Union of India & Others** reported in **(2012) 1 SCC 83**, which mandate that the rules of 'natural justice' is not capable of a precise definition, the underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by any authority, irrespective of whether the power which is conferred on a statutory body or Tribunal is administrative or

quasi judicial. The concept of “natural justice” implies a duty to act fairly i.e. fair play in action. As observed in *A.K.Kraipak v. Union of India*, the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.

7. Further in Para 42 of ***Ashiwin S. Mehta*** (supra) the Supreme Court has held as under :

“42. It is thus, trite that requirement of giving reasonable opportunity of being heard before an order is made by an administrative, quasi judicial or judicial authority, particularly when such an order entails adverse civil consequences, which would include infraction of property, personal rights and material deprivation for the party affected, cannot be sacrificed at the altar of administrative exigency or celerity. Undoubtedly, there can be exceptions to the said doctrine and as aforesaid the extent and its application cannot be put in a strait-jacket formula. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred; the purpose for which the power is conferred and the final effect of the exercise of that power on the rights of the person affected.”

8. In view of this, since apparently it appears that the petitioner was not heard before the impugned order has been passed, the order dated 16.06.2015 is quashed. The Ombudsman shall be at liberty to issue a fresh show cause and commence a proceeding *de novo* to enquire into the complaint made after providing an opportunity of hearing to the petitioner and thereafter may pass the suitable orders.
9. Accordingly, the petition is allowed to the above extent.

Sd/-
Goutam Bhaduri
Judge