

Surendra Samal and ors. Vs. State of Orissa and anr.

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Court : Orissa

Decided On : Jan-16-2006

Reported in : 101(2006)CLT448; 2006(I)OLR501

Judge : N. Prusty, J.

Appeal No. : W.P. (C) No. 13309 of 2005

Appellant : Surendra Samal and ors.

Respondent : State of Orissa and anr.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : A.K. Rath,; A.K. Panda and; A.K. Nath, Advs.

Judgement :

N. Prusty, J.

1. This application has been filed by the petitioner challenging the Order dated 5.9.2005 passed by the Learned Commissioner, Consolidation & Settlement, Orissa, Bhubaneswar, in R.P. No. 173 of 2005 (Annexure-3), on the ground that without assigning any reasons only on the insistence and vehement objection made by the Learned Addl. Standing Counsel, the case was dismissed, in spite of the observations made by the Learned Commissioner himself in Paragraph 4 of the impugned order.

2. Dr. Rath, Learned Counsel for the petitioner submits that since no reason has been assigned by the Learned Commissioner while passing the impugned order, which is also completely against his own observations made in paragraph 4 of the order, the same is liable to be set aside and the matter has to be remanded back for its fresh adjudication and disposal, in accordance with law, by passing a reasoned/speaking order.

3. Even though the matter was listed for admission, keeping in view the nature of the grievance made by the Learned Counsel of the petitioner and on consent of the Learned Addl. Government Advocate, the same is taken up for final disposal at the stage of admission.

4. Heard Dr. Rath, Learned Counsel for the petitioners and Learned Addl. Government Advocate for the state.

5. Learned Counsel for the petitioner in support of his contention has relied upon and cited the decision in the case of MMRDA Officers Association Kedarnath Rao Ghorpade v. Mumbai Metropolitan Regional Development Authority and Anr. reported in : (2005)2SCC235 .

Paragraph 5 of the above cited decision runs as follows :

Even in respect of administrative orders Lord Denning, M. P. in Breen v.. Amalgamated' Engg. Union reported in (1971) 1 All ER 1148 observed : (All ER p. 1154h). 'The giving of reasons is one of the fundamentals of good administration.' In Alexander Machinery (Dudley) Ltd. v. Crabtree reported in 1974 ICR 120 (NIRC) it was observed :

Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx,' it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a

sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The 'inscrutable face of the sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance (Chairman and Managing Director, United Commercial Bank v. P. C. Kakkar reported in : (2003)IILLJ181SC .

6. Considering the submission made by the Learned Counsel for both the parties and after going through the impugned order as well as keeping in view the observation made in the case of Alexander Machinery (Dudley) Ltd. v. Crabtree (supra) to the effect that 'failure to give reason amounts to denial of justice' and the observation of Lord Denning, M.R. made in the case of Breen v. Amalgamated Engg. Union (supra) to the effect that 'The giving of reasons is one of the fundamentals of good administration', without expressing any opinion on merits of the case, the impugned order dated 5.9.2005 passed by the Learned Commissioner, Consolidation & Settlement, Orissa, Bhubaneswar, in P.P. No. 173 of 2005 is set aside and the matter is remitted back to the Learned Commissioner to hear it afresh and dispose of the same by passing a speaking order, recording the reasons in support of his conclusion.

Writ Petition is accordingly disposed of.

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