

Babu Ahmed, Vs. the State

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Court : Delhi

Decided On : Sep-13-1984

Reported in : 1984(2)Crimes819; 1985(8)DRJ16

Judge : D.R. Khanna, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(2)

Appeal No. : Criminal Appeal No. 249 and 251 of 1974

Appellant : Babu Ahmed, ;sada Nand and ;musaddi Lal

Respondent : The State

Advocate for Pet/Ap. : D.R. Sethi,; R.L. Mehta and; Urmila Kapoor, Advs

Judgement :

D.R. Khanna, J.

(1) These three appeal arise out of z common judgment dated20-8-1974 of Mr. M.L. Jain, special Judge, Delhi, whereby Musaddi Lai and Sada Nand were convicted under Section 5(2) of the Prevention of Corruption Act and Section 1634 I.P.C., and Babu Ahmed was convicted under Section 109 Indian Penal Code read with Section 5(2) of the Prevention of Corruption Act and Section 165-A I.P.C. Each of the first two was sentenced to undergo rigorous imprisonment for two years and a fine of Rs. 200.00, in default of payment of which further rigorous

imprisonment for two months was to be undergone. Babu Ahmed was sentenced to rigorous imprisonment for one year under Section 109 Indian Penal Code read with Section 5(2) of the Prevention of Corruption Act, and like term under Section 165-A I.P.C., both to run con-currently.

(2) The prosecution case was that Smt. Budho Devi had been in unauthorised occupation of a portion of plot No. 2631-34, Ward No. Viii, Asaf Ali Road, New Delhi, for a number of years, and was running a fire wood stall there. The plot belongs to the municipal corporation. She was, however, keen to get her possession regularised. Musaddi Lal, appellant who was the Rent Collector of the Municipal Corporation, used to visit her and told her that in case she paid Rs. 1000.00 as bribe to him, the plot could be allotted to her permanently. At that time she was not paying any rent for the plot.

(3) On 23-1-1973, Musaddi Lal again visited her and threatened that unless he was paid the bribe of Rs. 1000.00, he would harass her and would not allot the plot in her name. She agreed to the same, and it was settled that he would collect the amount at 5 p.m. on that day. She managed to secure ten currency notes of Rs. 100.00 each, and then went to the Anti Corruption Branch of the police to report the matter. Her statement Ex.P.W.1/A was recorded by the Inspector. Two panch witnesses were then called, and they were Mrs. Madhuri Saxena, Probation Officer Grade-1, and Vishnu Dev Rai, Case Worker, Samaj Kalyan Vibhag, Delhi Administration. The currency notes were then treated with phenol philhellene powder and demonstration was given by touching right hand fingers of Mr. Roy and then dipping them in a solution of Sodium carbonate which turned its color less shade to pink, to show that whosoever touched or came in contact with the treated currency notes, would get accordingly polluted. Their numbers were also noted. The raiding party then headed by Gurbux Rai, Inspector, left the office of the Anti Corruption at 5.35 p.m. in taxies for Asaf Ali Road, and reached there around 6.00 pm. Budho Devi and the panch witnesses went ahead to the fire wood stall, while the Inspector with the rest of the party took position on the roundabout. About 15 minutes later, Budho Devi informed the Inspector that Musaddi Lal and another Corporation employee had come to her at the stall, and had enquired about the bribe money and on her affirmation, directed her to come to the stall of

Hukma invalid Arya Samaj. She then along with the two panch witnesses was sent by the Inspector to Hukma's stall, and the police party followed. Musaddi Lal and Sada Nand were sitting on a cot inside Hukma's stall, while Babu Ahmed was sitting on the steps of stairs near the cot. In the meanwhile, Ramji Lal, a neighbour of Budho Devi. had also come there. Budho Devi then told Musaddi Lal that the plot should be allotted in her name, and she should not be harassed anymore. Musaddi Lal replied that this would be done. She then handed the tainted money of Rs. 1000.00 to him, who received that in his right hand, and passed that on to co-accused Sada Nand, who put that in his coat pocket. Ramji Lal then told the accused that if they had received Rs 1000.00 from the poor lady, they should issue a proper receipt of allotment of the plot to her. Sada Nand then took out the money from his pocket and passed that on to Babu Ahmed who after taking the same, put that in his own coat pocket, Musaddi Lal then prepared receipt. Ex. P. 1 for Rs. 46.20 p. and passed that on to Budho Devi. This was signed by both Musaddi Lal and Sada Nand. Vishnu Dev Rai, one of the panch witnesses, then gave the agreed signal, and the police party rushed there and recovered the ten currency notes from Babu Ahmed. Their numbers were found to tally with the numbers which had been noted earlier before the raiding party started from the office of the Anti Corruption department. The test with the solution of sodium carbonate was then carried out, which rendered the hands of the three accused pink, the also the coat pockets of Sada Nand and Babu Ahmed. The three accused were then taken into custody.

(4) This prosecution version has been proved by the evidence of Budho Devi as PW. 1 the two panch witnesses as P.Ws. 2 and 3, Ramji Lal as PW7 and Inspector Gurbux Rai as PW.9. Budho Devi in her cross-examination stated that Ramji Lal belonged to her brotherhood, and she had known him since childhood. He makes 'chappals'. According to her, she collects broken pieces of wood at the railway siding, and she had obtained a contract for six years for this purpose. She had purchased a house in Bhogal for Rs. 33,000.00. It was about a fortnight prior to the Republic Day of that year, that Musaddi Lal had for the first time demanded bribe from her. She was then alone. She denied the suggestion that she had told her neighbor Rattan Lal that she had brought this case at the instance of Ramji Lal. Rs. 1,000.00, she stated, belonged to her. Hukma and his nephew at that time

were sitting at a distance of about 5 yards from the verandah of his shop. They, however, did not come at the spot after the arrival of the police. The currency notes were handed over by her in a folded packet to Musaddi Lal who passed that on to Sada Nand. Sada Nand threw them on Babu Ahmed when the police came there and Babu Ahmed put them in his pocket.

(5) During her cross-examination a tape was sought to be played incourt, but the same was found by the court to be not clear and intelligible. Budho Devi denied that it was her voice in the tape. Budho Devi also denied the suggestions that she owed Rs. 1500.00 to Babu Ahmed out of which she had already paid Rs. 600.00 to him, or that she herself gave Rs. 1000.00 at Hukma's stall to Babu Ahmed for counting, or that he told her that he was deducting Rs. 900.00 which were due to him and returned one currency note of Rs. 100.00 to her which she gave to Musaddi Lal. She also denied that Musaddi Lal asked Sada Nand to give the balance of Rs. 54.00 to her, and that as the change was not available Sada Nand gave that currency note of Rs. 100.00 also to Babu Ahmed for giving him change or bringing the same from the bazar.

(6) Public Witness 2 Madhuri Saxena denied the suggestion in cross-examination that Musaddi Lal told the Inspector when apprehended, that he had some quarrel with Ramji Lal who had got him involved, but added that from the place where she was standing, Babu Ahmed was not visible to her.

(7) Public Witness 3 Vishnu Dev Rai had given the signal when the money had passed from Budho Devi to the accused. He and Madhuri Saxena both stated that they did not hear the talk which Musaddi Lal and Sada Nand had with Budho Devi at the latter's stall when she was purported to have been told to come to Hukma's stall. He denied the suggestion that Budho Devi had handed over the currency notes to Babu Ahmed, or she had any talk with him. According to him, Musaddi Lal did tell something to Sada Nand, and he handed over the currency notes to latter, but he did not hear the same. He could not say if Musaddi Lal had told Sada Nand to give the balance. He also denied that Sada Nand had uttered the word 'BHAN', while handing the money to Babu Ahmed. He also denied that Sada Nand had told Babu Ahmed on the latter's enquiry that the money was being given

to him for the purchase of Vespa scooter agreed to be sold to him.

(8) Public Witness 7 Ramji Lal stated that he on noticing Budho Devi going with some strangers at about 7.00 P.M. to the shop of Hukma, went there. He then narrated the passing of the money, and the rushing in of the police. In cross-examination, he added that he and Budho Devi are both harijans. His statement was not recorded by the police on the same day as according to him, he was having abdominal pain. He denied the suggestion that he had accompanied Budho Devi to the office of Anti Corruption, or that he was present at the stall of Budho Devi, when two of the accused had come there. Hukma and his nephew, he added, were not at the former's stall when the money passed. It was when the police party had entered the shop that Sada Nand handed over the currency notes to Babu Ahmed. He denied the suggestion that he was working as a social worker in the area, and had been collecting money in the names of any officers, or that Musaddi Lal had assaulted and reprimanded him about a month earlier for collecting money, and that on this ground he had got the accused trapped through the good offices of Budho Devi.

(9) Public Witness 9 Inspector Gurbux too stated in his cross-examination that he did not notice Hukma, the proprietor of the stall, or his nephew at the time of the incident. They stayed there for about five hours. According to him, he was not told by Babu Ahmed at the spot that he had received the money for sale of some scooter to Sada Nand.

(10) Public Witness 4 Kashmiri Lal Gupta is the Tehsildar of the Municipal Corporation of Delhi, who stated that it was the duty of Musaddi Lal to recover/damages/license fee from the occupants of the municipal properties, and Sada Nand was his Inspector. Seven occupants of plot Nos. 2631-34, Ward No. VIII, had submitted representation to the Prime Minister Secretariat that they were in unauthorised occupation of that plot, and that rent should be levied on them. This was in November, 1972. That representation was marked to Sada Nand accused, on which he submitted a report on 2-1-73 narrating the extent of space with each of the occupants, and the damages that should be charged from them in pursuance of the Committee's resolution. In cross-examination, he added that the

scheme for realisation of damages from unauthorised occupants was sanctioned by the Standing Committee of the Corporation.

(11) Public Witness 8. B.R. Tamta, Commissioner, Municipal Corporation, had accorded sanction of the prosecution of Musaddi Lal and Sada Nand accused.

(12) Both Musaddi Lal and Sada Nand accused in their statements under Section 342 Cr. P. C. admitted that Budho Devi was in illegal occupation of a portion of the Municipal Corporation's plot No. 2631-34, Asaf Ali Road, and further that they were public servants. It was denied that a demand of Rs. 1000.00 was raised by Musaddi Lal for regularisation of the possession. Both, however, admitted that they had visited the stall of Budho Devi on that evening, and told her to come to the plot of Hukma. There she did come with two other witnesses. Babu Ahmed was also there, and Ramji Lal too had come. They further admitted that the currency notes of Rs. 1000.00 the numbers whereof tallied with the numbers in raid report were recovered by the police from Babu Ahmed, and that wash rest was carried out which confirmed that they had come in contact with the treated currency notes. They were then put under arrest. According to them, months of January and March were recovery months, and on 22-1-73, Musaddi Lal had gone to recover damages from Budho Devi as arrears office-six years were due from her. She, however, wanted to pay only one month's damages, which Musaddi Lal had declined, and told her to arrange for the entire amount of damages by the next day. Their case, further has been that on the following day, Laxmi narain, Naib Tehsildar (D.W. 1) of the Corporation called Sada Nand accused, and told him about a complaint against Musaddi Lal that he was not furnishing receipt to Budho Devi, and directed that he should receive whatever was offered to him and issue receipt accordingly. They had gone to recover rent from Hukma in respect of his municipal site, and met Budho Devi in the way. When enquired if she had arranged the amount she affirmed. Since they were getting late, they told her to come to the stall of Hukma, when Hukma and Raghbir were also present. Hukma served them with water, by which time Budho Devi Along with one lady and a person came there and she handed over a bundle of notes in folded form to Babu Ahmed who separated one of the currency notes, and returned that to Budho Devi who in turn handed the same over to Musaddi Lal, and the latter to Sada Nand,

saying that he should pay back the balance to Budho Devi. They further admitted that receipt Ex. P. 1 was issued for Rs. 46.20 p. to Budho Devi. This was signed by both of them. The police party then came and recovered the currency notes.

(13) Musaddi Lal stated that he was falsely involved by Ramji Lal as earlier he had reprimanded and slapped him for taking bribe in the name of the Corporation officials, and that he had been given only one currency note in folded form. Sada Nand stated that he had received one currency note only for giving the change, and was in no way connected with the transaction.

(14) Babu Ahmed accused admitted the recovery of the tainted money, and that the same had been passed on to him by Sada Nand. He also admitted the wash test. He, however, did not state that one currency note was taken back by Musaddi Lal, or that Sada Nand asked him to get any change. According to him, he was the neighbour of Hukma and had been called by him. He had not heard the talk that the two accused had with Budho Devi, as he was then at a distance of about 20 feet. He next added that Sada Nand had earlier agreed to purchase a scooter from him, and had called him and passed on ten currency notes of Rs. 100.00 each to him, saying that the same was the earnest money for the scooter. He had no knowledge that the same was bribe money.

(15) Four witnesses were examined in defense by Musaddi Lal and Sada Nand. D.W. 1 Laxmi Narayan was a Naib Tehsildar of the Municipal Corporation in those days. According to him, Ramji Lal had come along with Budho Devi to him in the last week of January, 1973, and said that Budho Devi wanted to deposit part damages for unauthorised occupation of the plot, but the Rent Collector insisted on having full payment. The witness then instructed Sada Nand, Circle Inspector, that since Musaddi Lal had accepted part payment in other cases, he should receive that in the case of Budho Devi also. In cross-examination he added that no written complaint in this regard was submitted by Ramji Lal or Budho Devi. Ramji Lal and Budho Devi had told him that about Rs 3000.00 were due from Budho Devi. They, however, stated that they wanted to pay Rs. 200.00 to Rs. 400.00 which was not being accepted by Musaddi Lal. D.W. 2 Mahesh Kumar has his premises opposite to the stall of Hukma. He stated that he was present

when Budho Devi had panch witnesses had come there, and the former handed over the bundle of currency notes to Babu Ahmed. One currency note was then given by Babu Ahmed to Budho Devi. The rest he stated, he had kept with himself towards what was due to him. She then gave that currency note to Musaddi Lal and asked him to make receipt. Musaddi Lal passed that on to Sada Nand, saying that the balance amount should be returned to Budho Devi, Sada Nand gave that to Babu Ahmed, and asked him to give change. There was, however, not enough change, and, therefore, Babu Ahmed kept the currency note in his pocket. In the meanwhile, the police party came there. Musaddi Lal had then told the police party that it was Ramji Lal who had falsely involved him in the case.

(16) D.W. 3 Bishamber is the nephew of Budho Devi's husband. According to him, Musaddi Lal accused had visited the stall of Budho Devi and the latter told him that he should knish receipt for one month's rent. Musaddi Lal, however, said that she should pay five-six years' rent, and then the receipt could be prepared. Later, Ramji Lal came and told Budho Devi that he knew some persons in the Corporation, and she should accompany him there, and that if the Corporation authorities did not agree to what they desired, he would falsely involve them as the police was known to him.

(17) D.W. 4 Raj Kumar stated that in December, 1972, he saw Ramji Lal and Musaddi Lal fighting with each other near Balmiki Mandir, Musaddi Lal then told Ramji Lal that he was squeezing money from the people in the name of the Corporation, and was disrupting them. Ramji Lal denied that. Musaddi Lal then mentioned that he had taken Rs. 100.00 from Cola wala in his name and gave a slap to Ramji Lal. They were then separated.

(18) With this state of the evidence on record, and the defense setup, it is obvious that substantial facts remain undisputed. Thus Smt. Budho Devi being in unauthorised occupation of a portion of municipal plot at Asaf Ali Road. New Delhi, her attempts to get the possession regularised, and Musaddi Lal as the municipal rent collector demanding rent/damages from her, stand admitted. Similarly the anti-corruption branch of the police organizing a raiding party, and associating two panch witnesses, namely, Mrs. Mathuri Saxena and Vishnu Dev Roy and Budho

Devi taking with her Rs. 1000.00, the numbers of which were noted, and which were also treated 'with phenol patellae powder, and the going by them at the fuel stall of Budho Devi where Musaddi Lal and Sada Nand also reached shortly thereafter, have not been disputed. It is further admitted that Musaddi Lal asked Budho Devi to come to the stall of Hukma and he and Sada Nand went there and waited for Budho Devi who reached there along with the raiding party and the panch witnesses. Budho Devi next gave Rs. 1000.00 to Musaddi Lal who passed them on to Sada Nand, and the latter threw them on to Babu Ahmed when the police party interposed, has been the case of the prosecution. It is here that the defense version is different, and inter-secured persons is also varying. According to Musaddi Lal and Sada Nand, the currency notes were given by Budho Devi to Babu Ahmed who was said to be due Rs. 900.00 out of an advance of Rs. 1500.00 which he had earlier given to Budho Devi, and out of which Rs. 600.00 had already been received by him. The remaining Rs. 100.00 were given by Babu Ahmed to Musaddi Lal who gave that to Sada Nand for giving change as the rent receipt issued was for Rs. 46.20. It was as such that these two accused stated that their hands and Sada Nand's pocket became red when dipped in the solution of Sodium Carbonate. Babu Ahmed on his part has not owned any such transaction of loan of Rs. 1500.00 or that Rs. 900.00 were paid by Budho Devi to him. His version tallies with that of the prosecution that the entire money was first taken by Musaddi Lal from Budho Devi who passed that on to Sada Nand. The latter in turn gave that money to him towards part payment of a scooter which he was said to be purchasing through him.

(19) So far as Musaddi Lal is concerned his conduct pervades through out the course of events. It has been he who had been meeting Budho Devi earlier, and having talks with her about regularisation of her possession over the plot. It was he who had demanded Rs. 1000.00 for that regularisation, and had agreed to visit Budho Devi on the evening of 23-1-1973 at the latter's stall, obtain money, and issue the regularisation slip. He, infact, came there that evening. Budho Devi had in the meanwhile contacted the anti-corruption department, and the currency notes of Rs. 1000/ were given the requisite treatment as aforesaid. The mere fact that the raiding party reached Budho Devi's stall after she agreed time of 5.00 p.m., need not be given any significance as the going of the raiding party there as well

as of Musaddi Lal, has not been disputed. From there, Musaddi Lal required her to come to the stall of Hukma. They then went there as aforesaid. After considering the evidence of the panch witnesses and Budho Devi. I have nothing to doubt their testimony, or interfere in any manner with the assessment of the evidence in this regard by the learned trial court. None of witnesses is shown to be inimical to this accused or specially interested to falsely implicate him. Both the panch witnesses are independent and disinterested. Similarly Budho Devi would not have collected Rs. 1,000.00, gone all the way to the anti corruption department, and got the raiding party organized if Musaddi Lal was inclined to issue the rent receipt on her paying Rs. 46.20 p. only. The fact that steps in the direction of regularisation were in the offing is borne out from the defense evidence as well when it was mentioned that as a result of some representation to the Prime Minister's office, the matter relating to the charging of rent/damages commensurate with the area in possession of each of the occupiers was under consideration. Musaddi Lal in the circumstances appears to have sought to exploit the situation, and it was unfortunate that this old women was made the victim who earns her livelihood by collecting broken pieces of wood from the railway siding. Her evidence as well as of the panch witnesses, is quite clear that it was he who had received the entire money from Budho Devi, and then passed that onto Sada Nand. The alleged loan by Babu Ahmed to Budho Devi, and the return by the latter to him of Rs. 900.00, has been disowned by Babu Ahmed, In case any such payment to Babu Ahmed was intended by her, she would not have mixed the two transactions together, and given a consolidated amount to Babu Ahmed, and leaving it to him to give Rs. 100.00 currency note to the other two accused. Musaddi Lal was thus rightly convicted by the learned Special Judge.

(20) Adverting to the case of Sada Nand, it is apparent that he came into the picture for the first time on the evening of 23-1-1973 when Musaddi Lal was to be given Rs. 1000.00 by Budho Devi. At no stage earlier, it is shown that he had met Budho Devi, or demanded any money from her or assured that her possession over the plot would be regularised. The deal was thus entirely between Budho Devi and Musaddi Lal. At the same time, it cannot be ignored that Musaddi Lal was working under Sada Nand, and he was certainly connected with the department which was competent to collect rent/damages from occupants of municipal lands

and regularise possessions interims of the policy of the corporation. His thereforee, coming along with Musaddi Lal at the lime when the latter was to receive illegal gratification from Budho Devi, seeing the passing of that money, receiving the same from Musaddi Lal, and then also signing the rent receipt which Musaddi Lal issued in favor of Budho Devi, brings out his complicity to share the tainted money. Furthermore by signing on the rent receipt along with Musaddi Lal, he sought to create an authenticity in the same so far as Budho Devi was concerned. He as an officer of Musaddi Lal or even as his colleague, should naturally have objected to the obtaining of Rs. 1000.00 from Budho Devi when the receipt of Rs. 46.20 only was being issued. His was thus not an innocent conduct, or just being a by-stander who had per chance happened to accompany Musaddi Lal at that time. Mr. Mehta, appearing from his side, has vehemently contended that so far as the offences under the Prevention of Corruption Act, and Section 161 Indian Penal Code were concerned, they were complete as soon as Musaddi Lal had struck a deal with Budho Devi, and had obtained Rs. 1000.00 from her. According to him, what transpired thereafter, and in what manner Musaddi Lal utilised or shared the money with anyone, would not make the other guilty of the same offence, or bring any common intention. However, as already observed above, he had special position over Musaddi Lal, and it could not be that his subordinate would take bribe in his presence without his connivance, he would also not lend authenticity to the receipt issued by Musaddi Lal by as well signing the same. The issue of the receipt was part of the illegal deal struck. His throwing the money on Babu Ahmed when the police party interposed, further brings out his guilty mind. I thereforee, do not-see how he can escape the conviction as made by the trial court.

(21) Coming lastly to Babu Ahmed, he was not an employee of the corporation, nor is shown to be otherwise, in any manner, connected with Musaddi Lal or Sada Nand in their errands of corrupt practices. He was just present there. Nothing has been brought on record which can point out to his prior complicity with the other two accused, or any other design or conspiracy between them. As a laymen he just appeared to have pocketed the money when passed to him by Sada Nand, not knowing the implication thereof. In any case, this plea from his side cannot be said to be improbable. He has, of course, tried to set up the defense of a scooter

deal with Sada Nand. Whether that was there or not, the circumstances of the case do not beyond reasonable doubt, establish his complicity. Moreover, his role, if at all was after the commission of the crime, when the money had passed between Budho Devi and the accused. In case he was a third person kept by the other- accused there so that the money could hurriedly be passed on to him in case of detection by the police or other authorities, then his guilt would be more in the nature of attempt conceal and provide a cover-up to the crime. He has not been charged for the same. Moreover if his role v/as to provide a protection to the other co-accused, then it would have appeared more natural if they had asked Budho Devi to give the money straight to him. In that case, they would not have themselves touched the money. In any case, the matter is not free from reasonable doubt. He as such is acquitted.

(22) Mrs. Urmila Kapoor, appearing on behalf of Musaddi Lal, has raised an objection that the entire trial was vitiated inasmuch as before the Commissioner of the Municipal Corporation sanctioned the prosecution of the accused, he had not issued a show-cause notice to the accused. In this manner, there was stated to be a violation of the principle 'or' natural justice. So far as the appliance of the mind by the Commissioner on the facts of the case, his sanction order shows that he was well aware of them. It could not, therefore, be said that the sanction was given mechanically or without due appliance of mind. The crucial question to be considered is whether before according the sanction, the accused persons were entitled to be given hearing. Reliance in this regard has been placed upon two decisions of the Supreme Court in the cases of *Swadeshi Cotton Mills v. Union of India*, : [1981]2SCR533 , and *National Textile Workers' Union etc. v. P. R. Ramakrishnan and others*, : (1983)ILLJ45SC . It has been observed that the rules of natural justice are not exclusively principle of administrative law. They are part of judicial procedure which are imported into the administrative process because of their universality. At the same time, they can supplement the law, but cannot supplant it. If a statutory provision either specifically or by inevitable implication excludes the application of the rules or natural justice, then the court cannot ignore the mandate of the legislature. Whether or not the application of the principles of natural justice in a given case has been excluded, wholly or in part, in the exercise of statutory power, depends upon the language and basic scheme of the provision

conferring the power, the nature of the power, the purpose for which it is conferred and the effect of the exercise of that power. In the case of Swadeshi Cotton Mills (supra), it has further been observed..that this rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle-as distinguished from an absolute rule of uniform application-seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alter imparted rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a gravenature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

(23) In the Swadeshi cotton Mill's case (supra) there was a take over of the management of the whole of the industrial undertaking without an hearing being provided to the undertaking. The act of taking over thus of its own acquired finality, and there was no post-decisional hearing contemplated. This circumstance alone distinguishes the present case, inasmuch as there has been a proper post-decisional trial in the present case. In the circumstances, it has to be constructed that the audi alteram partem rule was excluded at the pre-decisional stage. No invalidity, therefore, can be imputed to the grant of sanction by the Commissioner of the Municipal Corporation in the present case.

(24) The convictions of both Musaddi Lal and Sada Nand having been maintained, the next question to be considered is how much should be the quantum of sentences. It has been pointed out from their side. that they have been under suspension from January, 1973, and have now lost their jobs. They have passed through term oil ful time. As such it is pleaded that a lenient view of the matter bs taken. Reference in this regard has been made to the decision of the Supreme Court in the case of B. C. Goswamiv. Delhi Administration, : 1974 CriLJ243 , wherein the pendency of proceedings for seven years in a conviction based under Section 5(1)(d)(2) of the Prevention of Corruption Act, and Section 161 Indian Penal Code by invoking the presumption of Section 4(1) of the Act was considered justification to reduce the sentence to imprisonment already undergone, but the fine was increased from Rs. 200.00 to Rs. 400.00. Similarly in Mangat Ramv. The State 1982 Cri. L.J. 2044, the Delhi High Court after considering that the accused had undergone mental agony and harassmt for a long period of 11 years during which the proceedings had gone on, held that this could be special reason for awarding lesser sentence (3 months) than the minimum of one year prescribed for offence under Section 5(2) of the Prevention of Corruption Act. The convict was further found to be studying for Law, and though 42 years of age, it was observed that long sentence would disrupt his studies and destroy his future career. The Orissa HighCourt in Rasananda Patra v. State : 54(1982)CLT171 reduced the sentence to already undergone where 12 years had elapsed after the occurrence. This was also a case under the Prevention of Corruption Act.

(25) After considering the totality of the circumstances, and keeping in view that delay in disposal of cases unfortunately has come to stay in our courts because of large pendencies, I reduce the sentence of imprisonment to one year. The fine of Rs. 200.00 in each case will remain, but imprisonment in default of its payment would be 15 days rigorous imprisonmentonly. I would have been inclined to reduce still further the sentence of SadaNand as he entered the arena belatedly to share the ill-gotten money and sign on the receipt, but for the fact he was a senior officer of Musaddi Lal, and it was his duty to have checked Musaddi Lal from indulging in unlawful activity. His conduct more seems to reflect the unfortunate trend sometimes noticed of complicity of seniors in the illegal collection of money by the subordinates and then sharing the booty.

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