

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No. 39597 of 2023**

(In the matter of an application under Articles 226 and 227 of the Constitution of India, 1950).

Debaraj Sahoo & Anr. *Petitioner(s)*

-versus-

Union of India *Opp. Party(s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Sankaracharya Choudhury, Adv.*

-versus-

For Opp. Party(s) :

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:- 13.12.2023

DATE OF JUDGMENT:- 08.02.2024

Dr. S. K. Panigrahi, J.

1. The Petitioners in the abovementioned Writ Petition challenge the order dated 27.09.2023 passed in O.A. No. 61/2020 by the Railway Claims Tribunal, Bhubaneswar wherein, the Tribunal initially scheduled the respondent's witness examination for 17.08.2023, which was missed by the petitioner's counsel due to illness, and later rescheduled for argument on 27.09.2023. However, the petitioners' request to recall the 17.08.2023 order for cross-examination was denied, leading to their current plea for this Court

to direct the respondent to allow the cross-examination of witnesses.

2. The relevant facts of the case are as follows:

- i. The petitioners had filed a case vide O.A. No. 61/2020 before the Railway Claims Tribunal, Bhubaneswar and praying therein for grant of compensation amount sum of Rs. 10,00,000/- to the petitioners (Applicants) for a rail accident. However, considering the grievance of the petitioners (Applicants), the learned Railway Claims Tribunal, Bhubaneswar issued a notice to the opp. party (Respondent) and O.A. No. 61/ 2020 was fixed for hearing. However, in the said O.A., the witnesses of the petitioners (Applicants) were supposed to be examined and also cross-examined.
- ii. Thereafter, the O.A. No. 61 / 2020 was posted on 17.08.2023 for examination of the witnesses of the opp. party (Respondent). But, due to illness, the counsel of the petitioners (Applicants) could not attend the concerned hearing and took time through the V.C. for another day. Subsequently, the O.A. No. 61 / 2020 was adjourned to 27.09.2023.
- iii. On 27.09.2023, when the counsel of the petitioners (Applicants) came to know from the court's case record that, two witnesses of the opp. party (Respondent) namely, Sri Anila Kumar Padhi and Pradyumna Kumar Jena had already been examined and also cross-examined by the Railway Claims Tribunal, Bhubaneswar on 17.08.2023 and the O.A. No. 61/2020 was fixed on 27.09.2023 for argument.

- iv. Resultantly, the petitioners (Applicants) filed a petition before the Railway Claims Tribunal, Bhubaneswar praying therein to recall the two witnesses of the opp. party (Respondent) namely, Anila Kumar Padhi and Pradyumna Kumar Jena for cross-examination, but, the learned Railway Claims Tribunal, Bhubaneswar by order dated 27.09.2023 rejected/disallowed the petition of the petitioners.
3. The counsel for the petitioner submitted that the witnesses of the opp. party (Respondent) named, Anila Kumar Padhi and Pradyumna Kumar Jena is an essential, vital, and relevant to the case of the petitioners (Applicants) vide O.A. No. 61 / 2020 pending before the Railway Claims Tribunal, Bhubaneswar.
4. It is asserted that the non-attendance of the petitioners' counsel during the cross-examination of the respondent's witnesses on 17.08.2023 lacked any malicious intent. Consequently, the petitioners should not be denied the opportunity to cross-examine the relevant witness, as their absence was not attributable to any fault on their part. Ergo, It is contended that failure to heed this request will result in the petitioners (applicants) experiencing irreparable loss and injury, causing significant prejudice.
5. The counsel for the respondents only made oral submissions and contended that the order of the Railway Tribunal is not arbitrary for the witnesses have been appropriately examined and there is no need for a recall order.
6. Heard the counsels for both the parties.

7. Justice must not only be done but must also be seen to be done. It is 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. These consequences may involve violations of property, personal rights, and substantive deprivations for the affected party. This fundamental right to be heard should not be compromised in the pursuit of administrative expediency or swiftness. Consequently, the proceedings and decisions of administrative and quasi-judicial bodies should be characterized by actual and demonstrable fairness.
8. The Supreme Court in a catena of cases has observed that cross-examination is an integral part and parcel of the Principles of Natural Justice. It held that Cross-examination is one part of the principles of natural justice. [*Maneka Gandhi v. Union of India*¹; *Maharashtra State Financial Corporation v. M/s. Suvarna Board Mills*²; *East India Commercial Company Ltd., Calcutta v. The Collector of Customs, Calcutta*³]
9. Ergo, it is clear that denial of cross-examination and non-production of witnesses for cross-examination was violative of principles of natural justice. Automatically, order dated 27.09.2023 passed by the Railway tribunal without allowing cross-examination is an act of gross violation of natural justice and deserves to be quashed.

¹ (1978) 1 SCC 248

² (1994) 5 SCC 566

³ AIR 1962 SC 1893

10. It is directed that the Railway Tribunal shall recall the concerned witness for cross-examination by the counsel for the petitioners. The said recall exercise will be complete within one month from the date of presentation of this order.
11. With the aforesaid observations, the present Writ Petition is disposed of being allowed.

(Dr. S.K. Panigrahi)

Judge

*Orissa High Court, Cuttack,
Dated the 8th Feb., 2024*

