

# ORISSA HIGH COURT : CUTTACK

**W.P. (C) No. 4495 of 2005**

***In the matter of an application under Articles 226 and 227 of the Constitution of India.***

-----  
Jitendra Narayan Mishra

...

Petitioner

Versus

Urduna Service Cooperative Society Ltd.

...

Opposite parties

***For petitioner***

-

***M/s. P.K.Pattnaik, A.K.Dwibedi,  
S.K.Das, S.K.Pattnaik, G.M.Rath  
and M.K.Mishra.***

***For opposite parties***

-

***M/s. S.C.Pradhan. K.K.Samal and  
T.K.Biswal.***

-----  
**P R E S E N T**

**THE HONOURABLE MR. JUSTICE S.K.MISHRA**

-----  
***Date of hearing – 31.08.2012***

***:***

***Date of judgment - 31.08.2012***  
-----

***S.K.Mishra, J.***

The petitioner in this case assails the order dated 08.12.2003 passed by the Member, Co-operative Tribunal, Odisha, Bhubaneswar in C.T. Revision No.3 of 2003, which has confirmed the sale executed by the opposite party in its favour in a proceeding under the Co-operative Societies Act.

2. The facts of the case are not disputed. In the year 1987, the petitioner availed Kharif loan of Rs.7162/- from the opposite party-Society and his mother has

similarly availed a loan of Rs.7110/- from the opposite party-Society. On account of severe draught in the year 1987, crops failed and in that respect, it was notified by the State Government as a natural disaster/calamity. Due to such unforeseen reason, the petitioner sustained substantial loss and that again for reasons directly attributed by the opposite party in the matter of crop insurance, the petitioner could not get the required claim from the Insurance Company. Consequently, the petitioner could not repay the loan for reasons beyond his control.

3. However, it is submitted by the learned counsel for the opposite party that the petitioner and his mother had availed two different loans amounting to Rs.7,162/- and Rs.10,314/- during the Kharif and Rabi season of 1987-88 respectively. The petitioner and her mother stood guarantor for each other at the time of sanctioning of loan as per loan ledger. The petitioner pleaded that the Society without giving any demand notice, initiated Dispute Case No.4 of 1988-89 in the court of the Assistant Registrar, Co-operative Societies, Bargarh for an amount of Rs.19,675/- which includes interest and cost. The petitioner was noticed to appear in the case, which was fixed to 14.12.1988. In response to the notice, the petitioner appeared in person before the A.R.C.S-cum-Arbitrator and submitted his reply on 19.12.1988. On the said occasion, the petitioner was asked to come on the next date of hearing, which would be communicated to him.

4. About a month thereafter, the petitioner has received an award passed in Dispute Case No.4 of 1988-89. On perusal of the award, it was learnt that the A.R.C.S.-cum-Arbitrator has in fact passed a decree/award on the first date of trial i.e. on 14.12.1988 for an amount of Rs.20,225/- showing the petitioner absent on the occasion. Thereafter, the Co-operative Society without even waiting till expiry of the appeal period, initiated the execution proceeding in E.P. Case No.875 of 1988-89 for

the awarded amount in a most arbitrary and high handed manner before the Principal Officer-cum-Assistant Registrar, Cooperative Societies, Bargarh. It was filed on 06.01.1989 and was admitted on the same day. Notices were issued, but the petitioner was not served with the same as he was absent, but a copy of the notice was served on Baidehi Mishra, petitioner's mother. Thereafter, the Execution Case was taken up and agricultural lands of Ac.10.25 decimals were attached. Again in E.P.No.873 of 1988-89 initiated against the mother of the petitioner, agricultural land of Ac.8.30 decs. was also attached. It was later on put up for sale without any notice to the petitioner, but it was proclaimed in the newspaper. Then the land of the petitioner was put to sale and as there was no bidder to the same, the Cooperative Society itself offered its bid and purchased the lands in its favour in due satisfaction of the loan outstanding dues against the petitioner.

Thereafter, the petitioner filed an objection before the Asst. Registrar, Co-operative Societies, Bargarh, before whom the proceeding for confirmation of sale was pending. Learned Assistant Registrar, by order dated 23.12.1992 passed in E.P. Case No.875 of 1988-89 confirmed the sale of Ac.4.94 decimals of valuable agricultural land and directed to release rest of the lands. Against the said order, the petitioner preferred a revision i.e. C.T. Revision Case No.05 of 1994 before the Cooperative Tribunal, Odisha. The learned Tribunal in order dated 03.12.1996 has allowed the Revision, set aside the order dated 18.06.1996 passed by the learned Registrar, Co-operative Society in Revision Case No.10 of 1993 and remanded the matter to the Registrar of Cooperative Society, Odisha to re-hear the revision in its right perspective and dispose of the case according to the law.

The Registrar, Cooperative Societies, Odisha, after the remand, by his order dated 19.10.2002 dismissed the Revision Case No.10 of 1993. Thereafter, the

petitioner filed a revision case before the Cooperative Tribunal, Bhubaneswar, which was numbered as C.T. Revision No.3 of 2003 and that was also dismissed. Against said order, the present writ petition has been filed.

5. Learned counsel for the petitioner, in course of hearing, raised a basic issue that the petitioner was not issued with a show cause notice to file a written statement in spite of the fact that he had appeared before the Arbitrator-cum-Asst. Registrar,. Cooperative Society, Atabira in person and on the date of appearance i.e. on 14.12.1988 by virtue of a printed order, which was filled up by means of a pen by the Presiding Officer, a decree has been passed against him. Hence, it is submitted that there is a violation of the principle of natural justice and there is no reason assigned by the Arbitrator for passing such an order in favour of the Cooperative Society.

6. Learned counsel for the opposite party, on the other hand, contends that since the petitioner has himself admitted that he has obtained a loan and wanted to repay the same and there was amicable settlement between him and the Cooperative Society, there is no need to issue a show cause notice for filing of a written statement before the Arbitrator and to give him an opportunity to contest the case. It is, therefore, further contended that since it is a case of Arbitrator and the petitioner, no reason is required to be given and a printed form is sufficient to take care of the dispute between the parties. Learned counsel for the opposite party has relied upon a reported case of **Gautam Sarup v. Leela Jetly and others, (2008) 7 SCC 85**; wherein the Supreme Court has decided that withdrawal of admission to the original statement by way of amendment is not permissible. The ratio decided in the case is not at all applicable to the case in hand keeping in view the facts of the case.

7. In course of hearing, this Court called for the original case records along with E.P. case and the Revision case. A perusal of the same made it clear that the petitioner was issued with a notice in Dispute Case No.4 of 1988-89 to appear on 14.12.1988 before the A.R.C.S.-cum-Arbitrator. I have gone through the notice, which is in vernacular. The notice had been issued to appear in the case, but no opportunity has been given to the petitioner to file show cause/written statement. As such, the notice itself is defective. Secondly, it is seen that the order passed by the A.R.C.S.-cum-Arbitrator in Dispute Case No.4 of 1988-89 is not a reasoned order. The judgment/decreed has been passed in a printed form and the blanks have been filled in by means of pen. Thus, it is apparent that the order impugned is a totally unreasoned order and there is no semblance of reasoning of the same.

8. In this context, the learned counsel for the petitioner has relied upon the reported decision of **the Film Development Corporation of Orissa Limited v. Sri Debendranath Mohanty and others, 1998 (II) OLR 209**; wherein the Division Bench of this Court has struck down the decree passed by the A.R.C.S. on the ground that the case was decided two days after the date of first appearance of the opposite party. The said observation is squarely applicable to this case also. In this case, as noted earlier, the judgment was pronounced on the same day when the petitioner appeared without affording any opportunity of filing written statement or showing cause and giving any evidence in that regard.

9. Secondly, learned counsel for the petitioner relies upon the ratio decided in the case of **Kranti Associates Pvt. Ltd. and another v. Sh. Masood Ahmed Khan and others, (2010) 1 SCC 496**; wherein the Supreme Court has examined the procedure and is of the opinion that the quasi-judicial authority must

record reasons in support of its conclusions as it serves the wider principle of justice.

At paragraph 51 of the said judgment, the Supreme Court has held as follows:

*“51. Summarizing the above discussion, this Court holds:*

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- b. A quasi-judicial authority must record reasons in support of its conclusions.*
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- g. Reasons facilitate the process of judicial review by superior Courts.*
- h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason s the soul of justice.*
- i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants’ faith in the justice delivery system.*
- j. Insistence on reason is a requirement for both judicial accountability and transparency.*

- k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*
- l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.*
- m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny.*
- n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.*
- o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".*

10. The order passed by the A.R.C.S. in this case is not supported by any reason and as noted above, it is only a printed form with the blanks filled in by means of pen. So, it can only be told that it is a standard format of judgment, which is not known in the common law. Even if the liability is admitted by the petitioner there is the issue of insurance compensation. The judgment and decree passed by the learned Arbitrator does not reveal how the compensation has been adjusted. This is a material omission.

11. In that view of the matter, this Court is inclined to quash the order passed by the learned Assistant Registrar, Co-operative Societies-cum-Arbitrator in Dispute Case No.4 of 1988-89 and direct that the same be re-heard giving enough opportunity of filing written statement to the petitioner, as there was disputed questions regarding the drought relief and insurance coverage of the petitioner.

12. Thus, on the aforesaid reasons, the writ petition is allowed. Annexures 1, 2, 3, 4, 5, 6 and 7 are hereby quashed. The parties are directed to appear before the Asst. Registrar, Co-operative Society, Bargarh on 24.09.2012. On such event, the Asst. Registrar shall take up the case, afford reasonable opportunity of hearing and filing of written statement in the case, re-heard the matter and dispose of the same by passing a reasoned order. No cost.

It is borne out from the record that the petitioner was directed by this Court to deposit a sum of Rs.37,452/- and interest @ 6% on Rs.20,225/- from 23.12.1992 till the date of actual payment before the A.R.C.S., Bargarh. If the said amount is deposited, the same may be kept with the A.R.C.S., Bargarh and in case, it is found that the petitioner is liable to pay any loan amount along with accrued interest, that may be adjusted towards loan amount.

The records be returned to the respective authorities.

.....  
**S.K.Mishra, J.**

*Orissa High Court, Cuttack,  
Dated, August 31, 2012/JNSahu*