

**Ashok Kumar Vs. Manager, Laxman Public School and ors.**

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**Court :** Delhi

**Decided On :** Sep-25-2013

**Judge :** Valmiki J. Mehta

**Appellant :** Ashok Kumar

**Respondent :** Manager, Laxman Public School and ors.

**Advocate for Def. :** Mr. A.K. Singla, Mr. Deepak R. Dahiya

**Advocate for Pet/Ap. :** Mr. Sandeep Phogat

**Judgement :**

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) No.5556/1998 25th September, 2013 % ASHOK KUMAR ..... Petitioner Through: Mr. Sandeep Phogat, Advocate with petitioner in person. versus MANAGER, LAXMAN PUBLIC SCHOOL & ORS. .... Respondents Through: Mr. A.K. Singla, Sr. Advocate with Mr. Deepak R. Dahiya, Advocate CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. By this writ petition, petitioner impugns the order dated 13.8.1998 of the Delhi School Tribunal (DST) dismissing the appeal of the petitioner against the termination order dated 15.12.1993 passed by the respondent No.1-school. Petitioners services were terminated pursuant to the report of the enquiry officer given after enquiry proceedings whereby petitioner, who was working as a Peon-cum-Driver in the respondent No.1-school, was found

guilty of illegally obtaining and leaking/selling question papers to students of the school. The papers were with respect to the annual examinations of the year 1992.

2. Before me, learned counsel for the petitioner argued the following points: (i) Principles of natural justice are violated inasmuch as enquiry officer has not conducted proceedings in accordance with law. It is argued that petitioner was not given an opportunity to lead evidence in support of his defence. (ii) Petitioner asked for Hindi translation of documents, but the said documents were not supplied and hence again there is violation of principles of natural justice. (iii) Finally, it is stated that petitioner is not guilty of the charges against him and the enquiry officer wrongly concludes that petitioner was guilty. The enquiry officers report dated 6.7.1992 is challenged as being insufficient to hold the petitioner guilty. It is also contended that report of the enquiry officer is without the management leading any evidence or filing any document and, therefore, enquiry officers report is also liable to be set aside for this reason.

3. So far as the aspect of violation of principles of natural justice is concerned, the same contains different heads of arguments, which are stated above including the petitioner not being given opportunity to lead his evidence, and petitioner not being given Hindi translation of documents. So far as the issue of giving Hindi translation of documents are concerned, it is to be noted that enquiry officer gave his report on 6.7.1992 and there is no document on record before this Court that the petitioner, in any manner, asked for Hindi translation of the show cause notice or any other document prior to the conduct of the enquiry proceedings as also prior to giving of the report on 6.7.1992. In this regard the respondent No.1-school in its counteraffidavit has clearly stated that the request for Hindi translation was made as an afterthought much later on 26.9.1992 although the enquiry officer after conducting the enquiry proceedings had already given his report dated 6.7.1992. I, therefore, reject the argument that principles of natural justice are violated because petitioner was not supplied with the Hindi translation of the documents.

4. Another facet of natural justice which is argued to be violated by the petitioner is that petitioner was not given any opportunity to lead evidence. Once again this argument is without any merit because proceedings before the enquiry officer

dated 29.6.1992 shows that after reading out the earlier statements which were made by Sh. Ashok Kumar/petitioner as also statements of two other charged employees, namely, Sh. Sushil Kumar and Sh. Umesh Shah, petitioner was asked that if he wants to say anything about the issue and to which all that the petitioner said is that he made some enquiries with respect to the conduct of Sh. Ghosh, who got angry and did not talk to the petitioner like before. There is also the statement of the student who purchased the exam papers. There is nothing recorded in the enquiry proceedings on 24.3.1992 when the petitioner asked for leading of any evidence. Therefore, in my opinion, the contention of the petitioner is an afterthought that the principles of natural justice have been violated because petitioner was not given opportunity to lead evidence. It is settled law that principles of natural justice are not inflexible hidebound rules. Application of principles of natural justice varies as per the facts of each case. Similarly, strict rules of Evidence Act do not apply to departmental proceedings such as the present. Documents need not be formally proved (as is done in a Civil Court) before enquiry officer looks into such documents. The Supreme Court in its judgments reported as *State Bank of India and Others Vs. Narendra Kumar Pandey* (2013) 2 SCC 740 and *Maharashtra State Board of Secondary and Higher Secondary Education vs. K.S.Gandhi and Ors.* (1991) 2 SCC 716 has held that provisions of Evidence Act do not apply to departmental enquiries and strict rules of proving facts as applicable to a civil court do not apply to departmental proceedings. Supreme Court has further observed in these judgments that compliance of principles of natural justice depends on facts of each case in the departmental proceedings. The relevant para of the judgment in the case of *State Bank of India* (supra) is para 23 which reads as under:

23. The Inquiring Authority has examined each and every charge levelled against the charged officer and the documents produced by the presenting officer and came to the conclusion that most of the charges were proved. In a departmental inquiry, the disciplinary authority is expected to prove the charges on preponderance of probability and not on proof beyond reasonable doubt. Reference may be made to the judgments of this Court reported in *Union of India v. Sardar Bahadur* (1972) 4 SCC 618 and *R.S. Saini v. State of Punjab and Ors.* (1999) 8 SCC 90. The documents produced by the bank, which were not

controverted by the charged officer, supports all the allegations and charges levelled against the charged officer. In a case, where the charged officer had failed to inspect the documents in respect of the allegations raised by the bank and not controverted it is always open to the Inquiring Authority to accept the same.

5. Paras 17,22,32 and 37 of the judgment in the case of Maharashtra State Board of Secondary and Higher Secondary Education(supra) are relevant and which read as under :17. The students involved at the examination of secondary education are by and large minors but that by itself would not be a factor to hold that the students were unfairly treated at an inquiry conducted during the domestic inquiry. Assistance of an Advocate to the delinquent at a domestic enquiry is not a part of the principles of natural justice. It depends on the nature of the inquiry and the peculiar circumstances and facts of a particular case. The regulations and the rules of enquiry specifically excluded the assistance of an Advocate at the inquiry. Therefore, the omission to provide the assistance of a counsel at the inquiry is not violative of the principles of natural justice. The show cause notice furnished wealth of material particulars on which the tampering was alleged to be founded and given the opportunity to each student to submit the explanation and also to adduce evidence, oral or documentary at the inquiry. Each student submitted the explanation denying the allegation. At the inquiry the questionnaire in the pro-forma was given to each student. It is undoubted that the allegation of fabrication was stated to have been done at the behest of either the student/parents or guardians and the parents or guardians were not permitted to participate in the inquiry. Inspection of documents was given. Their answer-sheets and marks secured were perused by the students and were asked to testify whether the answer-books belongs to him or her and to identify the marks awarded by the examiner to each answer to the question and the total marks awarded. It was also asked to verify and state whether the moderator's marks-sheets were tampered in the concerned subject or subjects as the case may be. The student could easily identify and in fact identified his or her answer books and verified the marks awarded and answered positively that the marks were fabricated in the moderators' mark-sheets. The questionnaire was also given to indicate their educational background in the previous school years and also the marks they expected at the final examinations. The need of the assistance of the

parents/guardians was thus absolutely nil. Further question in the proforma was to ascertain from the students, due to tampering, whether or not the marks were increased to his or her advantage. It could be answered by a mere look at the marks. No outside assistance is needed. All the students have admitted that the answer books belong to them. They also admitted the marks initially awarded by the examiner or added or subtracted, if any, by the moderators. They also admitted that the fabrication in the moderators' marks-sheets in the subject or subjects and the marks were increased to their advantage. They also denied the complicity of him or her or of parents or guardians. It is not the case of the respondents that they were coerced to answer the questions in a particular manner. It is obvious from the record that they had prior consultations with the counsel. Thus it could be seen that the procedure adopted at the inquiry is fair and just and it is not vitiated by any procedural irregularity nor is violative of the principles of natural justice. The absence of opportunity to the parents or guardians, in this background does not vitiate the legality or validity of the inquiry conducted or decision of the Committee.

22. From this perspective, the question is whether omission to record reasons vitiates the impugned order or is in violation of the principles of natural justice. The omnipresence and omniscience of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a straight jacket formula as an abstract proposition of law. It depends on the facts of the case nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances. It is seen from the record and is not disputed, that all the students admitted, the talcum of fabrication and it was to his or her advantage and that the subject/subjects in which fabrication was committed belong to him or her. In view of these admissions the Inquiry Officer obviously did not find it expedient to reiterate all the admissions made. If the facts are disputed, necessarily the authority or the Inquiry Officer, on consideration of the material on record, should record reasons in support of the conclusion reached. Since the facts are admitted, the need to their reiteration was obviated and so only conclusions have been stated in the reports. The omission to record reasons in the present case is neither illegal, nor is violative of the principles of natural justice.

Whether the conclusions are proved or not is yet another question and would need detailed consideration.

32. It was held that in evaluating the evidence of circumstantial nature it is the duty of the prosecution that all the circumstances must be fully established. Circumstances should be consistent only with the hypothesis of the guilt of the accused. This standard of proof also is not relevant not to be extended to consider the evidence in an inquiry by the domestic tribunal. The ratio in *Bank of India v. J.A.H. Chinoy* AIR 1950 PC 90 that the appellate court would be reluctant to differ from conclusion of the trial Judge if his conclusion is based on the impression made by a person in the witness box is also not germane for the purpose of this case. It was laid therein that inferences and assumptions founded on a variety of facts and circumstances which, in themselves, offer no direct or positive support for the conclusion reached, the right of the appellate court to review this inferential process cannot be denied. While dealing with proof of fraud it was held that speculation is not enough to bring home a charge of fraudulent conspiracy.

37. It is thus well settled law that strict rules of the Evidence Act, and the standard of proof envisaged therein do not apply to departmental proceedings or domestic tribunal. It is open to the authorities to receive and place on record all the necessary, relevant, cogent and acceptable material facts though not proved strictly in conformity with the Evidence Act. The material must be germane and relevant to the facts in issue. In grave cases like forgery, fraud, conspiracy, misappropriation, etc. seldom direct evidence would be available. Only the circumstantial evidence would furnish the proof. In our considered view inference from the evidence and circumstances must be carefully distinguished from conjectures or speculation. The mind is prone to take pleasure to adapt circumstances to one another and even in straining them a little to force them to form parts of one connected whole. There must be evidence direct or circumstances to deduce necessary inferences in proof of the facts in issue. There can be no inferences unless there are objective facts, direct or circumstantial from which to infer the other fact which it is sought to establish. In some cases the other facts can be inferred with as much practicality as if they had been actually observed.

In other cases the inferences do not go beyond reasonable probability. If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a straight Jacket formula. No mathematical formula could be laid on degree of proof. The probative value could be gauged from facts and circumstances in a given case. The standard of proof is the same both in civil cases and domestic enquiries.

(underlining added) 6. In a case such as the present where the issue is of leakage and selling of question papers, surely there is no question of much or in fact any documentary evidence. There would only, and in fact, exist the statements of persons with respect to the issue. Statements of persons were made earlier in the preliminary enquiry proceedings and were reiterated in the enquiry proceedings. I do not think there is any gross illegality in such a procedure being followed on the ground that the same is violative of the principles of natural justice because the ultimate object of enquiry is to enable the charged official to respond to the case against him. There are no strict steps to be followed, as stated in the Civil Procedure Code (CPC) as are required in a suit filed in a Civil Court, and departmental proceedings can be decided on preponderance of probabilities by whatever evidence is available before the enquiry officer. Therefore, in my opinion, earlier statements which have been reiterated in the enquiry proceedings, are sufficient for the enquiry officer to come to a finding of guilt against the petitioner once the petitioner was put to notice of the same. In this regard, the following portion of the report of the enquiry officer against the petitioner is relevant and the same reads as under:

Mr. Ashok Kumar was issued a charge sheet by Mr. R.D. Goyal, Manager of the School for the Managing Committee on 4/4/92 and was charged with indulging in corruption, malpractice with reference to the examinations of the School, and loss

of integrity. He was directed to submit his written statement in respect of these allegations and charges latest by April 16, 1992 failing which it would be presumed that he had no explanation to offer and admitted the charges. It appears that Ashok Kumar did not submit any statement in reply to Mr. Goyals charge sheet. Mr. Ashok Kumar was therefore, given the full opportunity on June 29th to defend himself through oral or written evidence. He read aloud the statement submitted by him to the Enquiry Comm. on 24/3/92. I asked him if the statement was correct and if he wished to add anything further. Since he stated that he had nothing further to submit, I asked him to writ this and sign his statement. (enclosed).

7. In the letter dated 26.9.1992, petitioner in para 2 talked of making various requests and writing letters of giving of Hindi translation, however, there are no dates of the alleged letters which have been given. Petitioner refers to the letter dated 15.7.1992 and which aspect has no merits for two reasons. Firstly, this letter was sent after the enquiry officer had already given his report on 6.7.1992 and secondly, this letter has not seen the light of the day either before the DST or before this Court. Therefore, I do not find the contention of the petitioner that the principles of natural justice are violated or the charges against the petitioner are not proved, and the same being a misconceived argument is therefore rejected.

8. The scope of hearing a petition before this Court under Article 226 of the Constitution of India is limited. Unless there is gross perversity or clear cut violation of natural justice which caused prejudice, Courts cannot interfere in the orders passed by the departmental authorities. In my opinion, schools cannot run if employees start leaking and selling question papers. In a case such as the present, and as held by the Supreme Court, strict rules of Evidence Act do not apply for proving the documents and also it is enough if the charge is proved by preponderance of probabilities. Petitioner in fact said to have not acted single handedly, but acted in a group of three persons and were charge-sheeted, however, the very fact that the other two persons were exonerated and only the petitioner was found guilty shows that respondent No.1-school had acted fairly and dispassionately.



9. In view of the above, I do not find any merit in the writ petition and the same is, therefore, dismissed, leaving the parties to bear their own costs. SEPTEMBER 25 2013 godara W.P.(C) No.5556/1998

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