

Basavarajappa (A.G.) Vs. State of Mysore

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Court : Karnataka

Decided On : Jan-30-1964

Reported in : ILR1964KAR479; (1968)IILLJ455Kant; (1964)1MysLJ314

Judge : G.K. Govinda Bhat and ;K.S. Hegde, JJ.

Acts : [Constitution of India](#) - Articles 226, 227, 311 and 311(2); Evidence Act; Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 - Rule 11(5)

Appeal No. : Writ Petition No. 1420 of 1962

Appellant : Basavarajappa (A.G.)

Respondent : State of Mysore

Judgement :

ORDER

Hegde, J.

1. In this petition under Arts. 226 and 227 of the [Constitution of India](#) (mere appropriately it should be a petition under Art. 226 of the Constitution), the petitioner challenges the legality of the order passed by the Government in No. FD 3 CSE 60, dated 22 September, 1962, hereinafter called 'the impugned order.' By means of that order, the Government of Mysore (respondent 1) reduced the

petitioner to the minimum of the grade of second division clerk for a period of three years after finding him guilty of charges 2 and 3 of the charges framed against him on 15 December, 1961.

2. The facts of this case lie within a narrow compass. The petitioner was a first division clerk in the office of the Commercial Tax Officer, Davangere, in the month of December 1959. In December he took one month's leave and came to Bangalore. On 26 December, 1959 he is said to have gone to the shop of one S. M. Seetharamayya (P.W. 1.) in Bangalore and told him that an anonymous petition (Ex. P. 1) had been sent against him to the Commercial Tax Officer alleging that he was evading sale-tax and that the same had been endorsed to him by the Commercial Tax Officer for enquiry. It is further alleged that the petitioner told P.W. 1, that in case he paid him Rs. 500 he would see that the matter is closed. The case for the State is that on that day P.W. 1 paid the petitioner a sum of Rs. 15 and told him that the balance amount would be paid to the petitioner on 28 December, 1959. On 28 December, 1959, the petitioner approached P.W. 1 to collect the balance amount. But in the meanwhile P.W. 1 had informed the anticorruption police about the demand made by the petitioner. P.W. 8, Deputy Superintendent, Anti-Corruption Department, arranged a trap. Fifteen marked 10-rupee currency notes were handed over to P.W. 1 to be given to the petitioner in case he approached him for the balance amount demanded; when the petitioner approached P.W. 1 on 28 December, 1952, P.W. 1 gave him those currency notes. Unaware of the trap laid against him, the petitioner put those currency notes in his pocket. Immediately P.W. 8 and others rushed to the spot and caught hold of the petitioner. The currency notes in question were recovered from the petitioner. A mahazar was immediately prepared at the spot for the recovery of the notes in question. Thereafter, the petitioner took P.W. 8 and others to his house and produced before them Ex. P. 1, the anonymous petition said to have been made use of against P.W. 1.

3. On receipt of the report from the Anticorruption Department, the Government decided to hold a disciplinary enquiry against the petitioner and appointed an enquiry officer. The enquiry officer framed three charges against the petitioner. They are :

(1) that he fabricated Ex. P. 1;

(2) that he received a sum of Rs. 15 from P.W. 1 on 26 December, 1959 as bribe; and

(3) that he received a bride of Rs. 150 from P.W. 1 on 23 December, 1959.

4. The enquiry officer, at the end of the enquiry, came to the conclusion that there was not sufficient proof to hold that the petitioner had fabricated Ex. P. 1. On the other two charges, he held against the petitioner. On receipt of the report of the enquiry officer, the Government passed the impugned order, after giving the petitioner an opportunity to make representation as against the report made by the enquiry officer.

The impugned order has been assailed on two grounds, viz.,

(1) that the enquiry officer had cast the burden of disproving the case on the petitioner, whereas he should have placed the burden for proving the case on the State; and

(2) that the petitioner had not been given reasonable opportunity for putting forward his defence.

5. There is absolutely no substance in the first grievance. We have been taken through the report of the enquiry officer. He has believed the testimony of P.W. 1, the complainant, P.W. 8, the Deputy Superintendent of Police, and P.Ws. 2, 5 and 6, the mahazer witnesses. Further, he has considered the defence put forward by the petitioner and has rejected the same as being unacceptable. The petitioner does not deny that on 28 December, 1959 he had received a sum of Rs. 150 from P.W. 1. His story is that he had contracted to purchase two bags of tur dhal from P.W. 1 some days prior to 28 December, 1959 on behalf of D.W. 2 and that he had given the entire price of Rs. 150 as advance, later on, the dhal that was contracted to be supplied was not required and, therefore, he cancelled his order and wanted P.W. 1 to refund the price paid; aggrieved by that demand P.W. 1 had filed a false complaint before the Anti-corruption Deputy Superintendent; and on 28 December, 1959 P.W. 1 paid to him Rs. 154 purporting to return the price paid

for the tur dhal as advance. There is hardly any doubt that this version is a highly artificial version. The same does not accord with human probability. It is difficult to believe that anybody would file a false complaint merely because an order to purchase two bags of tur dhal had been cancelled. It is not surprising that the enquiry officer was unable to accept this version. Further, it is not for this Court to decide whether the enquiry officer should have accepted that version or not. The grievance of the petitioner that he adopted a wrong approach to the case, namely, that he assumed the prosecution case to be true and cast the burden of disproving the same on the petitioner, is without basis. We have been taken through the material on record. The prosecution case is supported by oral as well as documentary evidence, which was believed by the enquiry officer and he has rejected the defence version. This Court is not competent to review the evidence adduced before the enquiry officer. Its duty is merely to see whether its conclusion is supported by any evidence. It is not open to this Court to go into the question of sufficient of evidence. That aspect is not open to judicial review. Further, the enquiry officer was not bound by technical rules of evidence. The proceedings before him are not governed by the provisions of the Evidence Act. Hence, the decision of the Gujarat High Court in *Ambalal Motibhai Patel v. State* : AIR1961 Guj1 and the decision of the Bombay High Court in *Pandurang Laxman Parab v. State of Bombay* : AIR1959 Bom30 cited by Sri Ullal have no relevance. The true position of law in this regard has been authoritatively laid down by the Supreme Court in *State of Orissa v. Muralidhar Jena* [A.I.R. 1963 S.C. 404] wherein it is held that in proceedings under Arts. 226 and 227 of the Constitution, the High Court cannot sit in appeal over findings recorded by a competent tribunal in a departmental enquiry so that if the High Court has purported to reappraise the evidence for itself, that would be outside jurisdiction; however, if it is shown that the impugned findings recorded by the administrative tribunal are not supported by any evidence the High Court would be justified in setting aside the said findings. The Supreme Court laid down in that case that departmental enquiries held by the administrative tribunals are not governed by the strict and technical rules of the Evidence Act.

6. It was strenuously contended by Sri Ullal, the learned counsel for the petitioner, that P.W. 1 is an accomplice and that P.Ws. 2, 5, 6 and 8 are partisan witnesses,

and therefore, the enquiry officer should not have acted on their evidence without independent corroboration. In the first place, we are unable to agree with Sri Ullal that P.W. 1 is an accomplice or that P.Ws. 2, 5, 6 and 8 are partisan witnesses. Their evidence could have been properly made the basis of a conviction even in a criminal case. That apart, the technical rules relating to the sufficiency of evidence do not apply to departmental enquiries. The enquiry officers, if they so choose, can act on the basis of uncorroborated testimony of accomplices or partisan witnesses. In the instant case, there is no need to trouble ourselves with these subtleties. The evidence adduced against the petitioner, judged by any standard, is sufficient to bring home the guilt to the petitioner. In fact what surprised us is the extreme leniency of the punishment, which is wholly inadequate to the gravity of the offence. Such misplaced sympathies are likely to defeat the purpose behind the law.

7. We shall now take up the contention that the petitioner had not been given adequate opportunity to defend himself. This plea is solely founded on the fact that the petitioner was not permitted to be represented by a legal practitioner in the course of the enquiry by the enquiry officer. As per his letter, dated 29 July, 1960, the petitioner requested the Government to permit him to engage an advocate to conduct his defence. That request was turned down by the Government as per its order dated 3 August, 1960. Thereafter, he again moved the Government to grant him permission to engage a counsel to conduct his defence before the enquiry officer. The Government passed on that request to the Commissioner of Commercial Taxes for consideration. The Commissioner, as per his order, dated 24 January, 1961, again rejected the request of the petitioner; but at the same time he stated :

'However, I have directed the enquiry officer to hear the accused officer on this point and to arrive at a decision.'

8. The Commissioner had opined that the facts of the case were not complicated nor was there any other justifying circumstance to permit the petitioner to engage a legal practitioner to conduct his defence.

Under rule 11(5) of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957

'the disciplinary authority or the specially empowered authority as the case may be, may nominate any person to present the case in support of the charges before the authority enquiring into the charges (hereinafter referred to as the enquiring authority). The Government servant may present his case with the assistance of any other Government servant approved by the disciplinary authority or the specially empowered authority as the case may be but may not engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority or specially empowered authority as the case may be is a legal practitioner or unless the disciplinary authority or specially empowered authority as the case may be having regard to the circumstances of the case so permits.'

9. The enquiry officer admittedly had not permitted the petitioner to engage a legal practitioner to defend him. This is said to have resulted in the denial of reasonable opportunity to the petitioner to defend himself. One of the grievances of the petitioner is that though the Commissioner of Commercial Taxes, in his order dated 24 January, 1961, directed the enquiry officer 'to hear the accused officer on this point and to arrive at a decision,' the enquiry officer neither heard the petitioner on that point nor considered his prayer. It does not appear from the order of the enquiry officer that the prayer in question was again pressed before him. The aforementioned rule 11(5) merely speaks of permission being granted. It does not contemplate any order as such. An accused officer will be entitled to be represented by a legal practitioner only if he gets the necessary permission from the enquiry officer. Here, admittedly no such permission had been granted. As mentioned earlier, on two occasions the prayer of the accused officer had been rejected. From the facts and circumstances of the case, we think that the prayer in question was rejected by the enquiry officer. The refusal to grant the permission prayed for need not be by means of a formal order.

10. For over three hours Sri. Ullal tried to impress on us that this is a complicated case and hence the enquiry officer should have permitted the petitioner to engage a legal practitioner to defend him. We are unable to accept this contention. The

case against the petitioner was mainly supported by the evidence of P. W. 1. No doubt it was corroborated by the evidence relating to the trap laid. So far as the evidence relating to the trap is concerned, the fact of the receipt of Rs. 150 and the production of fifteen ten-rupee currency notes before the Deputy Superintendent of Anti-corruption is admitted by the petitioner. On that aspect the real question for decision was whether the defence put forward by the petitioner was acceptable. The enquiry officer as well as the Government did not accept the same. There is an end of the matter. From the foregoing it is clear that the case against the petitioner was by no means complicated and hence the contention that he was deprived of reasonable opportunity to defend himself, because the case against him was of a complicated nature, fails.

11. Next it was contended that in every disciplinary enquiry the accused officer is entitled, as of right, to be represented by a legal practitioner of his choice, and if that right is denied, it should be held that the accused officer has been deprived of the reasonable opportunity ensured by Clause (2) of Art. 311 of the Constitution. In support of this contention reliance was placed on the decision of this Court in *T. Muniswami v. State of Mysore* [1963 - II L.L.J. 694]. The scope of that decision was considered by another Bench of this Court, of which one of us (Govinda Bhat, J.) was a member, in Writ Petition No. 1436 of 1960 which has laid down that an accused officer is not entitled, as of right, to be represented in a departmental enquiry by a legal practitioner and the question whether reasonable opportunity should be held to have been denied, by the refusal to permit a legal practitioner to defend, has to be decided on consideration of the facts of the particular case before the Court. No decision of this Court has held that rule 11(5) is invalid. In Writ Petition No. 1463 of 1960, the validity of the enquiry was upheld by this Court despite the fact the accused officer therein who had been charged with serious offences had been refused permission to be represented by a legal practitioner before the enquiry officer. In view of the later decision of this Court, it is unnecessary for us to go back to the decision in *Muniswami* case [1963 - II L.L.J. 694] (vide supra). It is true some of the observations in that decision lead support to Sri Ullal's contention that refusal of permission to an officer accused of serious charges, is per se violation of the reasonable opportunity guaranteed under Art. 311(2), to which proposition we are unable to assent. In our opinion, some of the

propositions stated in Muniswami case [1963 - II L.L.J. 694] (vide supra) may require consideration. In the instant case, it is sufficient to hold that on consideration of the facts and circumstances of the case, we are satisfied that the petitioner's defence, in fact, has not been prejudiced by the denial of the permission sought under rule 11(5) and consequently, the contentions that reasonable opportunity had been denied in the enquiry fails.

12. For the reasons mentioned above, this petition fails and the same is dismissed with costs. Advocate's fee Rs. 100.

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