

irappa Vs. Management of M/S Karnataka State Construction Corporation Ltd.

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Court : Karnataka

Decided On : Apr-06-1994

Reported in : ILR1994KAR1429; 1995(4)KarLJ708

Judge : Tirath S. Thakur, J.

Appeal No. : W.P. No. 8664 of 1987

Appellant : irappa

Respondent : Management of M/S Karnataka State Construction Corporation Ltd.

Judgement :

ORDER

Tirath Singh Thakur, J.

1. The petitioner was working as a Resident Engineer with the Respondent-Corporation and was put in charge of its Davanagere Unit. It appears that the Respondent took-up the work of construction of K. S. R. T. C. Bus Stand at Davanagere and while the same was in progress, a portion of its roof collapsed on the 12th April, 1985. The petitioner being in charge of the work, was placed under suspension and an enquiry started against him. It was alleged that the collapse had occurred on account of the negligence on the part of the petitioner in the

discharge of his official duties resulting in loss to the Corporation to the extent of Rs. 20,000/-.

2. In response to the charge sheet served upon the petitioner he submitted his reply in which he denied that he was negligent or had committed any act subversive of discipline.

3. The explanation submitted by the petitioner not having been found satisfactory, a Departmental Enquiry was initiated against him for which purpose one Mr. S. K. Patil of M/s. R. & M. Associates, Bangalore, was appointed as the Inquiry Officer.

4. The Inquiry Officer submitted his Report holding the petitioner guilty of the charges framed against him. After giving the petitioner a show cause notice, he was finally served with an order dated 23rd of May 1986 impugned in the present Petition, by which he was reduced to the minimum of time scale held by him and was directed to pay a sum of Rs. 12,000/- on account of the loss suffered by the Corporation. It is against this order of punishment that the present Petition has been filed by him in this Court.

5. I have heard the learned Counsel for parties and perused the record.

6. Mr. V. Gopalagowda, learned Counsel appearing for petitioner submitted that the enquiry conducted by Mr. Patil was in total violation of the principles of Natural Justice. He urged that in the course of the enquiry the inquiry Officer neither furnished nor arrange to supply the documents demanded by the petitioner nor were the witnesses cited by him summoned for examination. He was therefore not given a fair and reasonable opportunity of defending himself which vitiates the enquiry as also the order passed on the basis thereof.

7. Mr. Murthy, learned Counsel appearing for Respondent-Corporation, however, tried to support the report of the Inquiry Officer and also the impugned order. He submitted that the petitioner had not been prejudiced on account of the alleged non supply of the documents demanded by him.

8. It is not in dispute that in a Departmental Enquiry like the one conducted in the instant case, the Inquiry Officer discharges a quasi Judicial function. It is also not

disputed that Report which the Inquiry Officer prepares and submits to the Management finally becomes the basis for the imposition of any punishment upon the employee. the fact that such an enquiry is bound to adversely affect the civil rights of an employee is also not in dispute nor was it urged by the learned Counsel for Respondents that the principles of Natural Justice were not attracted to an enquiry like the one conducted against the petitioner. It is in the above background that the validity of the enquiry held against the petitioner will have to be judged in the instant case.

9. One of the requirements of a fair and proper enquiry is that the person against whom the same is being conducted must be informed of the material that is sought to be used against him in the course of the enquiry. Disclosure of the material is important because unless the same is done, he will have no opportunity to meet the same. Yet another requirement of a fair and proper enquiry is that the employee concerned must have a fair and reasonable opportunity of producing his defence whether by way of oral or documentary evidence. There is no gainsaid that any enquiry which denies to the delinquent employees such an opportunity would fall short of the legal requirements of audi alteram partem.

10. Have the above requirements been fulfilled in the instant case, is however the crucial question A reference to the report submitted by the Inquiry Officer clearly shows that the petitioner had requested for certain documents to be produced in the course of the enquiry. These documents were not admittedly produced as is apparent from the following excerpts from the report of the inquiry Officer.

'the C. E. requested for certain documents to be produced by M. R. The proceeding were adjourned to 23.12.85 at 11.30 a.m. xxx. The M. R. produced Ex-7 and M-B. The C. E. did not agree that these were the documents as required by him. The M. R. did not produce other documents as required by C. E. and said that they are not available.'

11. In the Writ petition filed in this Court, the petitioner has made a specific grievance about the non-production of the documents by the Respondent and the consequent prejudice suffered by him in defending himself. The petitioner has stated thus :

'Even though, specifically requested, the petitioner was not supplied with the copies of documents like copy of the preliminary enquiry report alleged to have been held and the copy of the soil testing report of the spot and the copy of the letter dated 27.4.1985 from the Executive Engineer, K. S. R. T. C.'

12. The Respondents have not disputed the above contentions of the petitioner in the objections filed by it, and was not disputed even before me by the learned Counsel appearing for Respondent that these documents had not been supplied. The fact that these documents pertained to the reasons behind the collapse is also not in dispute. Their relevance to the enquiry was therefore beyond doubt.

13. The non-production of documents which the employee had prayed for and which were admittedly relevant to the issue being enquired into, in my opinion, amounts to denial of a fair opportunity to the employee to defend himself. The report of the enquiry allegedly conducted into the incident, the soil testing report as also the Executive Engineer's letter upon which the Inquiry Officer, has placed reliance appear to have been unfairly withheld. The withholding of these documents, in my opinion, is sufficient to vitiate the enquiry as also the order impugned in this Petition.

14. I also find considerable force in the submission made by Mr. Gopalagowda, that the petitioner had not been given a fair opportunity of producing evidence in his defence. It is not in dispute that the petitioner had prayed for summoning two witnesses from the K. S. R. T. C. The said request was, however, rejected without assigning any reason. As a matter of fact, it appears that the rejection came not from the Inquiry Officer, but from the Management Representative who ironically was not only the prosecutor in the case but also the sole witness against the employee. The Inquiry Officer has in this connection observed thus :

'The C. E. requested for management of write to two witnesses from KSRTC which M. R. refused. The proceedings were concluded on that day.'

15. As to why the Inquiry Officer had sought the permission of the Management representative to summon the two witnesses cited by the employee is not understandable. It is one thing to invite objections of the Management

representative to the request of the employee but another thing to entirely abdicate his function in his favour. The Inquiry Officer was under an obligation to act independently and pronounce upon the request of the employee fairly and objectively. No reasons are available from the report submitted by the Inquiry Officer as to why were the witnesses not summoned nor have any such reasons been suggested to me in the course of the hearing I have therefore no option but to hold that the Inquiry Officer failed to conduct the enquiry fairly and properly.

16. There is yet another aspect of the matter which also needs to be mentioned. The Inquiry Report prepared by the Inquiry Officer is a confused and highly unsatisfactory exercise conducted by him. The report is singularly silent about the reasons let alone the process of reasoning by which he has arrived at the finding of guilty against the petitioner. It is well settled that an Inquiry Officer discharges quasi-judicial functions and is obliged to record his reasons for the conclusions that he draws. It is indeed a case in which the report prepared by the Inquiry Officer is simply based on his ipse dixit. The requirement that an Inquiry Officer must record his reasons is meant to safeguard against the Inquiry Officer's acting arbitrarily and thereby jeopardising the valuable rights and means of livelihood of an employee. It is in this connection fruitful to refer to what Their Lordships of the Supreme Court said in *Anil Kumar v. Presiding Officer & Ors.* : (1986)ILLJ101SC in a similar situation.

'It is well settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. v.*

Union of India, : [1966]1SCR466 , this Court observed that a speaking order will at best be a reasonable and as its worst be at least a plausible one. The public should not be deprived of this only safeguard. Similarly in Mahabir Prasad v. State of Uttar Pradesh. : [1971]1SCR201 , this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi judicial enquiry may result in deprivation of livelihood or attach a stigma to the character.'

17. In the result I allow this Writ Petition and quash the orders impugned. I would have let the matter rest at that as considerable period has elapsed since the occurrence of the mishap but keeping in view the fact that the incident was of a serious nature involving injuries to a number of persons besides the loss to the Corporation, I do not propose to prevent the Respondent from holding a proper enquiry de novo. In such an enquiry it would be proper for the Respondent to appoint a Senior Officer from within or outside the Corporation for holding a fresh enquiry into the matter giving the petitioner a proper opportunity of defending himself keeping in view the observations made hereinabove.

18. No orders as to costs.