

Thakoorjee and anr. Vs. State of Madras (Now Adnhra) and anr.

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Court : Andhra Pradesh

Decided On : Feb-04-1955

Reported in : AIR1955AP168

Judge : Satyanarayana Raju, J.

Acts : [Constitution of India](#) - Article 311 and 311(2)

Appeal No. : Writ Pent. Nos. 858 and 863 of 1953

Appellant : Thakoorjee and anr.

Respondent : State of Madras (Now Adnhra) and anr.

Advocate for Def. : Govt. Pleader and ;D.V. Reddi Pantulu, Adv. for ;Govt. Pleader

Advocate for Pet/Ap. : A.V. Krishna Rao, Adv

Judgement :

ORDER

(1) In W. P. No. 858 of 1953 one Thakoorjee is the petitioner . He prays for the issue of a Writ of Certiorari or any other papropriate Writ or order calling for the records in G. O. Ms. No. 1793 (Revenue Department) dated 26-6-1953 and to quash the order therein. In W. P. No. 863 of 1953 one M. V. Joga Rao is the petitioner and he prays for the issue of a Writ of Certiorari or any other appropriate

writ, to call for the records and to quash the proceedings in G. O. Ms. 1753 dated 26-6-1953. Both these petitions raise identical questions for consideration and can be conveniently dealt with in a common Judgment.

(2) The petitioner in w. P. No. 858 of 1953 was the Revenue Inspector in Vashakapatnam Taluk, having put in ten years' service as a clerk. During the years 1950-1951, he worked as Special Revenue Inspector for loans for a period of six months. On a charge of corruption, a preliminary enquiry was started by the Sub-Collector, Vizianagaram, against the petitioner and as a result of the enquiry, the matter was handed over to the Crime Branch for investigation. The Crime Branch made an investigation and the petitioner eventually had to face proceedings before the Disciplinary Proceedings, Tribunal. The Tribunal held an enquiry and sent its report to the Government recommending dismissal of the petitioner. The Government communicated a copy of the Tribunal's report and issued a 'show cause notice' to the petitioner. The petitioner submitted his written explanation and in G. O. Ms. No. 1793 dated 26-6-1953 the Government ordered the dismissal of the Petitioner.

(3) In W. P. No. 863 of 1953, the petitioner was a permanent Tahsildar of Vishakapatnam District and in 1950 he worked as Special Tahsildar for loans, Vishakapatnam. there was a preliminary enquiry by the Sub-Collector, Vizianagaram against the petitioner on charges of corruption and the investigation was made over to the Crime Branch. The petitioner ultimately had to face an enquiry before the Tribunal for Disciplinary Proceedings. The Tribunal made an enquiry and in its report to government recommended dismissal of the petitioner from service. The Government communicated a copy of the report of the Tribunal and directed the petitioner to show cause. He submitted a written explanation. The Government eventually accepted the recommendation of the Tribunal and in G. O. Ms. No. 1793 dated 26-6-53 ordered the dismissal of the petitioner from service.

(4) Mr. A. V. Krishna Rao appearing for the petitioners in the two Writ Petitions, contended before me that the notice issued to the petitioners by the Government does not satisfy the requirements of law; that there has been violation of the rules which according to him, has resulted in substantial prejudice to the petitioners, and

that, therefore, the order of the Government is vitiated and must be quashed. The learned counsel submits that the following are the violations of the rules:

(a) that there was a joint trial of the petitioners for which there is no provision;

(b) that the investigation was conducted by the investigating officer and not by the Director of Prosecutions, which is contrary to Rule 5(1) of the Madras Civil Service (Disciplinary Proceedings Tribunal) Rules;

(c) that Rule 8(a) enables the accused officer to examine himself in his defence; that in W. P. No. 863 of 1953 the accused officer examined himself as D. W. 4 and the Tribunal did not accept his evidence on the sole ground that his evidence is interested and this ground that his evidence is interested and this ground on which is evidence was rejected is against the spirit of Rule 8(a);

(d) that the statements of the prosecution witnesses had been marked as Exhibits for the prosecution and the procedure is irregular and has caused prejudice to the accused officers;

(e) that the Government's order shows that the Board of Revenue has been consulted which is contrary to the rules and that the order of the Government is bad; and

(f) that the final order of the Government must indicate the grounds on which the punishment has been imposed and that the order in question is, therefore, vitiated, in that it does not contain the grounds.

(5) Except one small point with regard to the non-examination of the petitioner in W. P. No. 858 of 1953 at the enquiry before the Tribunal, the other points are common for both the petitioners.

(6) The learned Government pleader contended that there has been a complete compliance with the statutory rules and the rules of natural justice; that the procedure is neither irregular nor illegal, that, in any view, no prejudice has been caused the petitioners by reason of any alleged defect or irregularity in the matter of procedure and that there are no grounds for interference under Art. 226 of the

Constitution.

(7) The statutory provisions, which govern the matter in dispute are embodied in Article 311 of the Constitution. That Article reads thus:

'(1) No person who is a member of a Civil Service of the Union or an All India Service or a Civil Service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed;

(2) No such person, as aforesaid, shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.....'

(8) The first contention of the learned counsel for the petitioners involves the construction of the expression 'until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' occurring in Art. 311(2).

(9) The notice which preceded the final order of the Government in G. O. Ms. No. 1793 dated 26-6-1953 is as follows:

'Government of Madras -- Revenue Department. (Confidential)

Memorandum No. 53596/G/52-7 dated 7th January 1953.

Sub: Public Servants -- (Vishakapatnam) -- Sri S. Thakoorjee -- Departmental enquiry No. 4 of 1952

Ref: From the Chairman, Tribunal for Disciplinary Proceedings letter No. 2834/52 dated 29-7-1952.

.....

A copy of the report of the Tribunal for Disciplinary Proceedings on the subject mentioned above is communicated to Sri S. Thakoorjee, formerly Special Revenue Inspector for loans, Vishakapatnam. The Government agree with the findings of

the Tribunal in respect of the charges as well as its recommendation regarding the punishment and have arrived at a provisional conclusion that the accused officer should be dismissed from service. Sri S. Thakoorjee is accordingly directed to show cause within one month from the date of receipt of this Memo why he should not be dismissed from service.

2. The available records relating to the case have been sent to the office of the Tribunal for Disciplinary Proceedings. Sri S. Thakoorjee is informed that he may peruse there records and take copies or notes thereof, if required at the office. No extension of time beyond the limit specified in para 1 above will however be granted under any circumstances.'

(10) In response to the notice, which is similar in the case of the petitioner in W. P. No. 863 of 1953, the petitioner submitted written explanations. Mr. Krishna Rao contends that the notice shows that the Government have already decided to agree with the findings of the Tribunal in respect of the charges as well as its recommendations regarding the punishment and the statement that the Government 'have arrived at a provisional conclusion that the accused officer should be dismissed from service' is illusory, the same being merely a formal compliance with the provisions of Statute, and that, therefore, the notice does not satisfy the requirements of law.

(11) On a fair reading of the notice, it cannot be said that the Government have finally determined on their acceptance of the recommendations of the Tribunal to dismiss the petitioners from service. What the Article requires is that the accused Officer should be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. In order that Government might satisfy this requirement, they must come to a prima facie conclusion which should be capable of revision on their being satisfied, after the receipt of the explanation by the officers concerned, that their prima facie view is right or wrong; but what is necessary is that the Government must come to a provisional conclusion. The notice in question, in fact, does not say anything more than that. The provisional conclusion which the Government arrived at must be communicated to the petitioner, in order that he might be given an opportunity of showing cause against

the proposed action to be taken and the language of the notice does not, therefore, suffer from any infirmity. In fact, the employment of the word 'provisional' in the notice must make the intention of the Government clear, that what all has been stated, is merely provisional. Therefore, the learned counsel's contention that the Government have finally made up their mind in regard to the merits and also with regard to the punishment which is sought to be imposed, and that, the notice is merely formal and in a sense illusory, must fail. I may at once state that this objection has not been taken in the written explanation filed by the petitioner before the Government, which shows that the accused officer had no doubt as to what the notice really meant.

(12) In -- 'High Commissioner for India v. I. M. Lal', AIR 1948 PC 121 (A), their Lordships of the Privy Council had to construe the provisions of Sec. 240 of the Government of India Act. which is in pari materia with Article 311 of the Constitution. At pp. 124-125 their Lordships posed the questions and gave their answers as follows:

'Three important questions of construction arise for decision viz., 1st: Is sub-section (1) of Sec. 240 qualified by sub-section (3)?; secondly, is sub-section (3) mandatory or permissive?; thirdly, what is the proper construction of the words in sub-section (3) 'the action proposed to be taken in regard to him'.'

At page 126 their Lordships of the Privy Council state thus:

'.....the provision as to a reasonable opportunity of showing cause against the action proposed is now put on the same footing as the provision now in sub-section (2) of S. 240 which was the subject-matter of the decision in -- 'Rangachari v. Secy. of State', AIR 1937 PC 27 (B) and that it is no longer resting on rules alterable from time to time, but is mandatory and necessarily qualifies the right of the Crown recognised in sub-section (1) of Sec. 240 of 1935'.

Their Lordships agreed with the view taken by the majority of the Federal Court which was expressed by the learned Chief Justice of the Federal Court and which is as follows:

'It does however seem to us that the sub-section requires that as and when an authority is definitely proposing to dismiss or reduce in rank a member of the civil service he shall be so told and he shall be given an opportunity of putting his case against the proposed action, and as that opportunity has to be a reasonable opportunity, it seems to us that the section requires not only modification of the action proposed, but of the grounds of which the authority is proposing that the action should be taken and that the person concerned must then be given a reasonable time to make his representations against the proposed action, and the grounds on which it is proposed to be taken. It is suggested that in some cases it will be sufficient to indicate the charges, the evidence on which those charges are put forward and to make it clear that unless the person can on that information show good cause against being dismissed or reduced if all or any of the charges are proved, dismissal or reduction of rank will follow. This may indeed be sufficient in some cases.'

'In our judgment, each case will have to turn on its own facts but the real point of the sub-section is in our judgment that the person who is to be dismissed or reduced must know that that punishment is proposed as the punishment for certain acts of omission on his part and must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed.....'

At pp. 126-127, their Lordships held as follows:

'If the civil servant has been through an enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the enquiry.'

(13) In -- 'Samabandam v. General Manager S. I. Railway', : AIR1953 Mad54 (C), Rajamannar C. J., and Venkatarama Iyer J., had to consider the scope of these provisions once again. After noticing the decision in -- 'High Commissioner for India v. I. M. Lall (A)', the learned Judges held as follows:

'In other words in a case governed by S. 240(3) there will be two stages, firstly an enquiry after notice into the charges against the civil servant and this is the rule of natural justice that no person should be condemned without a hearing a secondly after the enquiry is over and a punishment decided on a further notice in terms of sub-section (3) informing the civil servant of the action proposed to be taken and given him an opportunity to show cause against that action and this a statutory requirement.'

(14) In -- 'John Joseph v. State of Madras', C. M. P. No. 4296 of 1951 (Mad) (D), Rajamannar C. J. and Venkatarama Iyer J., had to consider the questions raised in the present Writ Petition. The learned Judges held therein as follows:

'We shall assume that the petitioner is right in his contentions that there were irregularities in the conduct of the enquiry in the sense that technically the Tribunal which succeeded the Special Officer must be deemed to be a new TribunalThe petitioner can, at the most, complain that there were errors in the procedure and that there was a charge as regards his right of appeal between the time when the enquiry started and the time when the final report of the Tribunal was sent up. Even assuming that there were irregularities and even assuming that the rules were not strictly observed, the question nevertheless remains whether the petitioner has any right to invoke our jurisdiction to set aside the order of dismissal passed by the Government. Has he any cause of action against the Government because there were irregularities committed in the procedure adopted in the departmental enquiry? In our opinion, so long as the petitioner had sufficient opportunity to put forward his defence, any irregularity to put forward his defence, any irregularity as such would not in the least enable the petitioner to attack the validity of the order of dismissal. This conclusion follows from the provisions of the Constitution in the light of the decisions of the Privy Council in --'AIR 1937 PC 27 (B); -- 'Venkata Rao v. Secretary of State for India', AIR 1937 PC 31 (E) and -- AIR 1948 PC 121 (A)'.

(15) The learned Judges pointed out that the provisions of Sec. 240 of the Government of India Act, 1935, were substantially similar to the provisions of Section 96B of the Government of India Act, 1915, which are now embodied in

Article 311 of the Constitution and held that 'the only statutory limitation imposed on the power of the Crown is to dismiss at pleasure, namely tht 'no person shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him'. The learned Judge ultimately held that:

'It must therefore be taken as well estbalsihed that any disregard to any of the rules made under Sec. 240 cannot give a dismissed servant a right of action against the State. The right of the Crown to dismiss any member of the civil service at pleasure is only subject to two conditions and they are the conditions expressly mentioned in sub-sections (2) and (3) of Section 240 of the Government of India Act, 1935.'

(16) The learned Judges finally held that they were deciding the case no doubt under the provisions of Sec. 240 of the Government of India Act, 1935, but that they would have reached no different conclusion, even if they had applied the provisions of the new Constitution to the case, because the meterial provisions are in pari materia with the provisions of the Government of India Act, 1935. This unreported decision in C. M. P. No. 4296 of 1951 (Mad) (D), had been followed by Mr. Justice Subba Rao (as he then was) in Writ Petn. No. 145 of 1952 (Mad) (F). In the case before him, the irregularities complained of were that there was a joint trial which has prejudiced the accused officer. The learned Judge dealing with the objections, referred to the decision in C. M. P. No. 4296 of 1951 (Mad) (D), above cited and held that the irregularities complained of did not make the opportunity given to the accused-petitioner in that case illusory and that the accused officer did not suffer any prejudice on that ground.

(17) In the light of the principles settled by these decisions, I shall now consider the contentions which have been raised by the learned counsel for the petitioner. With regard to the first objection as to the joint trial, I may state that the transaction in respect of which the accused Officers in both the writs have been charged with is corruption in respect of matters arising out of the same transaction. The accused officers have been charged with instances of bribery and corruption while both of them were in charge of disbursements of loans, and the witnesses spoke

to the incidents, with which the petitioners have been charged are common and in any view the transactions which have given rise to the enquiries against the petitioners are contemporaneous in point of time. The Officers were working at the same place. On a consideration of the materials placed before me, I am satisfied that the joint trial has not in the least affected the fair trial of the accused officer nor have they suffered any prejudice on that ground.

(18) When a complaint is made that there should not be a joint trial of accused officers, it must be borne in mind that the provisions of the Code of Criminal Procedure regarding the joint trial of the accused are not to be imported with regard to enquiries made against officers charged with corruption and bribery. The essential requirement is that the accused officers should be given a fair and reasonable opportunity of putting forward their defence, and so long as that requirement is satisfied, the fact that there have been other irregularities in the trial, even if true, would not vitiate the ultimate order of the Government imposing the punishment.

(19) The second irregularity complained of is that the investigation has been conducted not by the Director of Public Prosecutions, but by the investigating officer which is contrary to R. 5 (f). Rule 5 (f) runs as follows :

'There shall be a Director of Prosecutions to conduct enquiries on behalf of the Government in disciplinary cases before the Tribunal and the accused officers concerned shall be allowed to be represented by counsel.'

Here again, I am not satisfied that the conduct of the prosecution by the investigating Officer and not by the Director of Public Prosecutions has resulted in any prejudice to the accused. Nor am I satisfied that the fact that the Tribunal has not accepted the evidence of the accused officer who has examined himself as D.W. 4. in W. P. No. 863 of 1953, vitiates the finding of the Disciplinary Proceedings Tribunal, nor renders illegal the ultimate order of the Government. These are, at best, irregularities which do not render the punishment awarded illegal. The further submission of the learned counsel for the petitioners is that the statements of the prosecution witnesses at the enquiry had been marked as Exhibits for the prosecution. Here again, there is no evidence that it has resulted in

any prejudice to the accused officers.

(20) The learned counsel for the petitioners also contended that the Board of Revenue was consulted. It is really a matter in which the Board of Revenue should be consulted. It was done in pursuance of an order of Government G. O. No. 329 (Public Services) dated 23.1.1950, as subsequently amended, which provides that the Revenue Department should consult the, Board of Revenue before imposing the punishment on the persons who have been serving in that department. The rules do not, of course, provide for consultation with the Board of Revenue before the punishment is imposed, but there is no express or implied prohibition anywhere in the rules against such consultation. In fact, the consultation with the Board of Revenue was made with a view to get the antecedent history of the accused officers who have been serving in the Revenue Department which is under the superintendence of the Board of Revenue. This is not a matter about which the accused officers can have any grievance.

(21) Finally, it has been contended that the order of the Government does not ex facie show that they have given due consideration to the representations made by the accused Officers. This contention of the learned counsel for the petitioners proceeded on a misapprehension of the final order of the Government in G. O. 1763 of 30.6.1953. The typed papers supplied by him to the court do not contain the recital that the petition of Mr. Joga Rao is also taken into consideration. This was pointed out to the learned counsel for the petitioners and he accepted that there has been a mistake in the typed copy.

(22) Taking all the circumstances of the case, it must be held that the statutory provisions as to reasonable opportunity being afforded to the accused officers before they are dismissed have been amply complied with in this case and there have been really no irregularities in the matter of procedure, which resulted in any prejudice to the accused officers. On the findings arrived at by the Tribunal which have been accepted by the Government after due consideration of the representation received from the accused officers, it must be held that the accused officers have been given every opportunity of submitting their cases i.e., of examining the witnesses and of putting forward their case.

(23) Mr. A. V. Krishna Rao relied upon the decision of Mr. Justice Rajagopalan in -- 'Ayya Gounder v. State of Madras', W. P. No. 739 of 1953 (Mad) (G). In that case, the learned Judge reached the finding that there has been a violation of specific rule of procedure which has materially affected the finding of the Tribunal, in that the Tribunal refused to call a witness, which the accused desired to be examined on the ground 'that it is not its duty to summon witnesses to help the accused'. I am in respectful agreement with the view of the learned Judge. The learned Judge rightly held that where the Tribunal refused to examine witnesses which the accused desires to be examined, on the ground that it is not its duty to summon witnesses to help the accused, such a refusal is opposed to every principle of justice and good conscience, which governs both courts and Tribunals. In this case no such complaint has been made, nor could be made.

(24) In the result, these Writ Petitions are dismissed with costs of the Government Pleader, Advocate's fee in each Writ is Rs. 150/-.

(25) V. S. B. Petitions dismissed.

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