

The Superintending Engineer, Apseb Vs. S. Veeraiah

The Superintending Engineer, Apseb Vs. S. Veeraiah

SooperKanoon Citation : sooperkanoon.com/441870

Court : Andhra Pradesh

Decided On : Jul-23-1996

Reported in : 1996(3)ALT861

Judge : P.S. Mishra, C.J. and ;Syed Saadatulla Hussaini, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Writ Appeal No. 653 of 1996

Appellant : The Superintending Engineer, Apseb

Respondent : S. Veeraiah

Advocate for Def. : J. Sudhir, Adv.

Advocate for Pet/Ap. : C.V. Mohan Reddy, Standing Counsel

Judgement :

P.S. Mishra, C.J.

1. Heard.

2. Since the question - whether there is any violation of any of the principles of natural justice in fastening the liability to account for the loss/shortage of the property? - has been valid, we do not think it is necessary to go into any elaborate hearing of the matter beyond examining the above. Writ petitioner-respondent was

working as Foreman Grade-II in the appellant's organisation, namely, Andhra Pradesh State Electricity Board. It transpired that on certain allegations writ petitioner-respondent was put under suspension and a three member Committee was appointed to take inventory of the stores, custody of which stores was with him. After the inventory was prepared, he was served with a memo, dated 14-7-1983, to show cause why shortage in the stores of the property worth Rs. 2,36,060-72 be not recovered from him. Writ petitioner-respondent represented against the said memo that he was required to be furnished with some documents, alleging that he was not served with the documents sought for. He was again called upon to explain. He represented that the matter should be referred to the Lok Ayukta for enquiry. However, on 25-1-1985 the appellant directed for recovery of the amount of Rs. 2,36,060-72 from the petitioner-respondent.

3. Before learned single Judge in the proceeding under Article 226 of the [Constitution of India](#), writ petitioner-respondent contended that while he was put under suspension, the Committee appointed to prepare the inventory of the stores did so behind his back and since the inventory was prepared behind his back, he was denied the opportunity to explain the discrepancy, if any, in course of the preparation of the inventory. Learned single Judge has on the above, after considering the relevant facts, opined as follows:

'From the record referred to above, it is clear that the inventory was taken in the absence of the petitioner. However, copies of the inventory were furnished to him. The petitioner returned the copies of the inventory furnished to him. Thereafter, it is only on 19-7-1983 he requested for permission to see the excesses and shortages statement and on 29-7-1983, he requested for furnishing the documents, to which the respondent readily acceded and stated that it is open to the petitioner to inspect the records at any time. However, it seems that the petitioner has not taken any positive steps either to inspect the records or to reconcile the statement of inventory prepared by the respondent on the basis of which the amount is sought to be recovered. On the other hand, the petitioner went on complaining that he was not permitted to inspect the record. Therefore, it is clear that in spite of giving ample opportunity, the petitioner has not availed the same on some pretext or the other. Nothing prevented him to inspect the records

on receipt of the letter dt.27-12-1983 of the respondent from inspecting the records in order to reconcile the inventory and the records that were available with the respondent. He has not taken any steps. Therefore, now the petitioner cannot complain that the inventory was taken behind his back and therefore, it cannot be relied upon. It is true that according to the memo of the Government dated 10-5-1973, the order of suspension comes into effect only after the stock verification is made. However, that cannot be relied upon as a shield and contend that the inventory was taken behind his back. It is his duty of the petitioner to reconcile the statements of inventory made by the respondent when he was given an opportunity after verifying the records available with the respondent. Therefore, the contention that the inventory was taken behind his back and there is a violation of the principles of natural justice, cannot be accepted as the petitioner was given ample opportunity which he has not availed of. It is true that the impugned order does not give any reasons. However, since the petitioner has not offered any plausible explanation explaining as to how he is not liable to pay the amount, the respondent has no other alternative except to pass the order exclusively relying upon the inventory. Therefore, the contention of the learned counsel for the petitioner that the order is not a speaking order and therefore, it is liable to be set aside also cannot be countenanced.'

Learned single Judge has, however, accepted the contention, which has been raised on behalf of the writ petitioner-respondent, that because on the basis of the inventory the appellant has found some shortages, unless there is a finding that the writ petitioner-respondent was negligent and he was responsible for the shortages, no liability can be fastened on him.

4. Having heard learned counsel for the parties, we have no hesitation in coming to the conclusion that on the facts as above, when the notice in respect of shortages was served upon the writ petitioner-respondent and since he was in the custody and control of the stores, it was his duty to explain the discrepancy. He cannot decline to account for the loss or shortage and seek shelter under some facet of the natural justice for a finding as to the negligence by him. Courts have drawn a line of distinction between the violation of the rule of audi alteram partem in which case the action is without jurisdiction and some of the facets thereof in

which case, unless prejudice is shown to have been caused to the defence of the employee who has been proceeded against, the order is not vitiated. The instant case, in our opinion, falls in the second category of one of the facets of natural justice and for the consideration whether, on the facts of this case, notwithstanding the fact that writ petitioner-respondent was in the custody and control of the stores, unless it is found that loss or shortage has been caused on account of his negligence, he has no liability. It is not possible, on the facts of this case, to hold that writ petitioner-respondent has no liability to explain the loss-shortage unless it is shown to him by a specific finding that he has been negligent. A person in custody of any property which belongs to another is in the position of a trustee and he has to account for the loss of such property to the owner thereof. If he is not able to do so, his liability is clear and he has to account for.

5. On the facts of the instant case, however, it will be fair if the writ petitioner-respondent is given an opportunity to explain discrepancies and bring to the notice of the competent authority that the loss or the shortage has not been caused for the reason of any lapse on his part and that notwithstanding that he has been in the custody of the property, there is a possibility of some other cause intervening and some other person being responsible for the loss or shortage. This can be achieved, in our view, without interfering with the order passed by the competent authority and resorting to the procedure of extending an ex-facto opportunity to the writ petitioner-respondent. The appellant shall receive any further explanation or cause shown by the writ petitioner-respondent and if so advised, make such enquiries as are necessary on such explanation or cause shown by the writ petitioner-respondent and pass suitable orders. In case there is any reason to recall the order, the appellant shall do so. If, however, there is no reason to do so, the appellant shall accordingly make a speaking order and communicate the same to the writ petitioner-respondent.

6. With the modification as above in the impugned order, the appeal is disposed of.