**Velusamy Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/49335

**Court** : Chennai

**Decided On :** Mar-18-2015

**Judge** : R.S.Ramanathan

**Appellant** : Velusamy

**Respondent** : State

**Judgement** :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

26. 11.2009 CORAM: THE HONOURABLE MR.JUSTICE P.JYOTHIMANI W.P.No.16210 of 2008 R.Ravi .. Petitioner Vs.

1. The Director of Town Panchayat Kuralagam, Chennai 600 108.

2. The Collector Coimbatore District Coimbatore. .. Respondents PRAYER: Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus to call for the proceedings of the second respondent in Na.Ka.No.1266/2007/P2, dated 11.1.2008 as confirmed on appeal by the first respondent in Na.Ka.No.1138/2004/A4, dated 9.6.2008, to quash the same and to consequently direct the respondents to reinstate the petitioner with all back wages and consequential benefits. For Petitioner : Mr.R.Thiagarajan Senior Counsel for M/s.V.Vijay Shankar For Respondents : Mr.T.Seenivasan Additional Government Pleader

ORDER

The writ petition is directed against the order of the second respondent dated 11.1.2008, removing the petitioner from service, as confirmed by the first respondent/Appellate Authority in its order dated 9.6.2008. 2.1. The writ petitioner, who has jointed as a Bill Collector and subsequently, promoted as Junior Assistant, Executive Officer Grade II and finally as Executive Officer Grade I, was working in Veerakeralam Town Panchayat in Coimbatore District from 15.9.2006 to 15.3.2007. The second respondent/Collector issued a charge memo against the petitioner on 10.4.2007, framing six charges in relation to his functioning as Executive Officer. The charges mainly relate to the allegations of abuse of powers regarding grant of approval of unapproved sites. The petitioner has submitted his explanation on 12.4.2007 to the effect that the grant of approval was as per the resolution of the Town Panchayat Council, etc. 2.2. The Executive Officer of Kalapatti Town Panchayat, who was appointed as an Enquiry Officer, has called the petitioner for enquiry in July, 2007. It is the case of the petitioner that at the time of the enquiry no witnesses were examined by the Department and the Enquiry Officer has only put few questions and concluded the enquiry and there was no evidence let in oral or documentary, and therefore, there was no opportunity for the petitioner to cross-examine any of the witnesses. It is stated that the Enquiry Officer has acted as a prosecutor as well as the Enquiry Officer and that none of the documents relied upon in the charge memo have been served. It is stated that the Enquiry Officer has submitted his report on 12.7.2007 holding that charges 1 to 4 are proved and charges 5 and 6 are not proved. 2.3. The petitioner was asked to submit his explanation by furnishing the report of the Enquiry Officer. However, before the petitioner could submit his explanation, the second respondent has informed the petitioner on 6.11.2007 that the Enquiry Officer has been directed to give further report and thereafter, another enquiry report dated 29.10.2007 has been submitted by the Enquiry Officer, in which he has held all six charges as proved. 2.4. It is stated that the petitioner has submitted his explanation on 7.11.2007 and by order dated 11.1.2008, the second respondent, while accepting the second report of the Enquiry Officer dated 29.10.2007, has removed the petitioner from service. As against the said order, the petitioner has filed an appeal to the first respondent, being the appellate authority, who has dismissed the appeal by confirming the order of punishment

passed by the second respondent and challenging the said orders, the writ petition has been filed.

3. The main ground of challenge in this writ petition is that no enquiry has been conducted as contemplated under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules (for brevity, "the Rules"); that no oral evidence was let in; that no documents were marked; that the Enquiry Officer has put certain questions and concluded the enquiry; that the Enquiry Officer has acted both as a prosecutor as well as the Enquriy Officer; that there was no presenting officer; that the obtaining of the second report from the Enquiry Officer is illegal; that even as per the allegation there is no revenue loss; that on the merits of the case the petitioner has acted as per the resolution of the Town Panchayat by granting approval on receipt of Re.1/- per sq.ft.; and that he has also acted strictly as per G.O.Ms.No.59, MAWS Department, dated 25.7.2006. 4.1. On the other hand, it is the case of the respondents in the counter affidavit that the charges against the petitioner were grave in nature and he has granted approval to unapproved sites by collecting Re.1/- per sq.ft. in violation of G.O.Ms.No.59, MAWS Department, dated 25.7.2006, which resulted in revenue loss to the Town Panchayat and therefore, proceedings under Rule 17(b) of the Rules were initiated by framing the charges. It is stated that the Enquiry Officer has conducted enquiry and he has held that all six charges are proved. 4.2. It is stated that the petitioner is not competent to approve layouts as per the rules and the executive instructions issued by the Town and Country Planning Department. It is also stated that the charges were framed based on documents, which were against the rules laid down for the approval of unapproved house sites. It is specifically stated that as the enquiry was conducted on the basis of records, there was no necessity for cross-examination of any witnesses and it has been indicated in Annexure IV to the charge memo that there was no witness to be examined. It is also stated that the petitioner should have asked for copies of documents before submitting his reply. 4.3. It is also admitted that the Enquiry Officer originally has filed report in July, 2007 holding charges 1 to 4 as proved and charges 5 and 6 as not proved and it was at the instance of the second respondent, the Enquiry Officer has prepared another report during October, 2007 holding that all charges stood proved. The Enquiry Officer has conducted enquiry on 12.7.2007 and submitted

his report on 13.7.2007. It is stated that the request for further report from the Enquiry Officer was to direct the Enquiry Officer to give correct finding on charge Nos.5 and 6. 4.4. It is also denied that any revenue loss has not been caused to the Town Panchayat. It is also stated that the first respondent/Appellate Authority has also passed a speaking order. It is also stated that the petitioner has not preferred appeal within sixty days as prescribed under the Rules and therefore, he cannot question the validity of the order of the first respondent/Appellate Authority. While it is admitted that the Enquiry Officer has stated that there is no revenue loss, it is stated that the motive to cause loss is proved against the petitioner. It is also stated that reasonable opportunity has been given and that there is no witness necessary in cases where charges stood proved on record.

5. Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner would submit that on the admitted facts, where no documents were produced or evidence was let in during the departmental proceedings, the disciplinary proceedings has to be held as invalid. He would rely upon the judgments in A.Yesoda v. Collector, Thiruvannamalai, [2007]. 5 MLJ1172 K.Govindaswamy v. Tamil Nadu Civil Supplies Corporation Limited, [1998]. 2 MLJ323 State of Uttaranchal and others v. Kharak Singh, [2008]. 8 SCC236 and Roop Singh Negi v. Punjab National Bank and others, [2009]. 2 SCC570to substantiate his contention that the entire disciplinary proceeding is vitiated by patent illegality.

6. On the other hand, it is the contention of Mr.T.Seenivasan, learned Additional Government Pleader that opportunity has been given to the full extent and therefore, the petitioner cannot have any complaint regarding the violation of principles of natural justice. 7.1. On a reference to the charge memo it is seen that the second respondent has framed six charges against the petitioner on 10.4.2007. All the charges relate to the alleged collection by the petitioner of Re.1/- per sq.ft. for grant of planning permission. The first charge relates to such grant of no objection certificate to four persons of the same family, viz., Janaki, Sugandhi, Jayanthi and Vijayakumar, by collecting Re.1/- per sq.ft. which is opposed to G.O.Ms.No.59, dated 25.7.2006. It is stated that in respect of 38 plots instead of collecting as per G.O.Ms.No.11, dated 19.1.2006, he has collected by applying G.O.Ms.No.59, dated 25.7.2006 wrongly, causing loss to the Town

Panchayat to the extent of Rs.10,83,433/-. 7.2. The second charge relates to grant of permission to one Shanmugasundaram in respect of 1.10 Acres by applying G.O.Ms.No.59, dated 25.7.2006 wrongly, which is also opposed to G.O.Ms.No.11, dated 19.1.2006, thereby causing revenue loss to the tune of Rs.5,90,202/-. 7.3. The third charge also relates to grant of permission in respect of 2.69 Acres of land in favour of Sundarakantha Kareer and Leena Kareer, which is also opposed to G.O.Ms.No.11, dated 19.1.2006, causing revenue loss to the tune of Rs.11,13,979/-. 7.4. Similarly, the fourth charge also relates to the allegation of grant of permission in favour of one Velusamy in respect of 2.08 Acres in violation of G.O.Ms.No.11, dated 19.1.2006, causing revenue loss to the extent of Rs.10,73,967/-. 7.5. Charge No.5 relates to non maintenance of registers by the petitioner and non mentioning about 169 petitions regarding its regularization. 7.6. Lastly, the sixth charge is that the petitioner has acted dishonestly and against the Rules, especially Rule 20 of the Rules.

8. The petitioner, in his explanation dated 12.4.2007, while denying all the allegations, has stated that in respect of the first charge, the then Executive Officer has already granted permission for the revised plan and in fact, subsequent officers have also granted such permission in respect of the said land and therefore, it cannot be said to be a fresh permit given by the petitioner. The earlier permission given was regularised as per G.O.Ms.No.59, MAWS Department, dated 25.7.2006 and there is no illegality. That is also the case of the petitioner in respect of the other charges. Therefore, generally, it is the case of the petitioner that the approval by division has already been granted by the previous authorities and it is only for regularization the matter came up before him and in those circumstances, he has applied the Government orders and collected Re.1/- per sq.ft. and he has not done anything which is illegal.

9. The fact that the Enquiry Officer has originally given a report on 12.7.2007 holding that charges 1 to 4 are proved and charges 5 and 6 are not proved is not disputed. In fact, very strangely, after receiving such report dated 12.7.2007, the second respondent has requested the Enquiry Officer to given fresh report regarding charges 5 and 6, as specifically admitted in the counter affidavit. In the counter affidavit, the reason given for getting further report from the Enquiry

Officer is as follows: "After perusal of the enquiry report, the disciplinary authority asked the enquiry officer to submit the enquiry report based on the principles laid down in the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the findings he had made."

It was thereafter, the Enquiry Officer has submitted another report dated 29.10.2007 finding that all charges against the petitioner stood proved. There is absolutely no convincing reason as to under what circumstances, the second respondent has asked for a fresh report from the Enquiry Officer.

10. In the admitted fact that in the report dated 12.7.2007 the Enquiry Officer has held charges 1 to 4 are proved and charges 5 and 6 stood not proved, if really the second respondent wanted to disagree with the report of the Enquiry Officer, he has to necessarily follow the procedure of giving further notice to the petitioner and asking for explanation. On the other hand, the second respondent, having sent the report of the Enquiry Officer dated 12.7.2007 to the petitioner asking for further explanation, even before the petitioner could give explanation for the said report has obtained another report from the Enquiry Officer, who, in fact, has strangely submitted his report on 29.10.2007 changing the stand. This is certainly not the usual practice which is to be followed by the disciplinary authority.

11. The more serious aspect of the matter is about the way in which the disciplinary proceeding was conducted. The specific case of the petitioner that during the time of enquiry no documents were produced, no witnesses were examined and within few minutes of participation in the enquiry the proceedings were closed, has not been denied by the respondents at all. On the other hand, the second respondent has clearly admitted that since enquiry was conducted based on records, there is no necessity for examining witnesses. It is stated in the counter affidavit in this regard as follows: "As the enquiry was conducted on the basis of records there was no necessity for any witnesses, for cross examination and moreover it has been clearly indicated in Annexure IV to the charge memo that, there were no witnesses to be examined."

12. As far as the requirement of furnishing of the documents, it is stated in the counter affidavit that it is for the delinquent officer to seek for the copies. The said

procedure, in my considered view, is most unfortunate, bereft of any legal sanction.

13. Even the impugned order of the second respondent shows that the second respondent has only elicited the various findings of the Enquiry Officer and in respect of each of the charges, he has only given a single line order, of course finally stating as follows: "It is proven that serious irregularities have been committed by Thiru R.Ravi, in violation of G.O.Ms.No.59, dated 25/7/2006 of M.A.W.S. Department and omissions in following office procedures as proved in charges and I therefore take a decision to remove the individual from service for the irregularities committed by him in the capacity of Executive Officer, Veerakeralam Town Panchayat."

This shows the total non application of mind on the part of the second respondent in passing the impugned order.

14. On the admitted fact that no witnesses have been examined at the time of the enquiry and no documents have been marked through witnesses, we have to approach the issue while deciding about the legality of the entire proceedings.

15. The principles of natural justice which are the backbone of conducting departmental proceedings and which are necessary ingredients, cannot be said to be empty formality and the manner in which the same has to be implemented in departmental proceedings has been laid down in hierarchy of judgments of the Apex Court. In the latest judgment in State of Uttaranchal and others v. Kharak Singh, [2008]. 8 SCC236 P.SATHASIVAM,J., while reiterating the nature of enquiry to be conducted in disciplinary proceedings, after discussing various judgments on the issue, has laid down the following principles:

"5. From the above decisions, the following principles would emerge: i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities. ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer,

during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer. iii) In an enquiry, the employer /department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him. iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

16. Holding that departmental enquiry is quasi-judicial proceeding and reiterating the above said view, the Supreme Court in Roop Singh Negi v. Punjab National Bank and others, [2009]. 2 SCC570has disapproved a case where the Management witnesses merely tendered documents and did not prove the contents thereof, in the following words:

"4. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

17. In K.Govindaswamy v. Tamil Nadu Civil Supplies Corporation Limited, [1998]. 2 MLJ32 P.SATHASIVAM,J., as His Lordship then was, has observed as follows regarding the procedure to be followed in conducting departmental proceedings:

"3. Further, it is settled law that it is for the Management to prove the charges beyond any doubt. Merely because the petitioner did not seek opportunity that would not mean that charges were established. As observed by Shivaraj Patil, J.,

in a decision reported in N. Radhakrishnan v. T.N.C.S. Corporation Ltd. (1995) 2 L.L.N. 1081, it was for the management to establish the charges by the materials on record. As a matter of fact, in our case, it is seen that the petitioner not only denied the charges but also sought permission to examine witnesses on his side even in the Questionnaire form. The said procedure has not been followed. Kanakaraj, J., in W.P.No.11145 of 1987 dated 19.2.1991 has taken the same view that failure to follow the said principle vitiates the enquiry and ultimate Order passed by the respondents. Abdul Wahab, J., in a decision reported in K. Mohan Doss v. Tamil Nadu Civil Supplies Corporation (1997) 2 L.L.N.

892. has held that without examining any witness and marking documents, submission of a report by the Enquiry Officer and basing on that report, imposition of punishment cannot be sustained and the procedure adopted for enquiry is not proper. In Writ Appeal No.782 of 1992 dated 18.3.1997 the Division Bench of this Court, in a similar circumstance has held as follows: ...We are of the view and it is by now well settled that in a domestic enquiry, as in a regular trial the burden of proof of establishing the guilt on a charge is always on the accuser and not on the accused and this burden must be discharged fully in conformity with the principles of natural justice. The employer should take steps first to lead evidence against the workmen charged, give him an opportunity to cross-examine the said evidence and then should ask the concerned workman whether he wants to give any explanation about the evidence led against him. Before asking the workman to produce his evidence, it was also held in catena of cases, that it is not fair at the very outset to closely cross-examine even at the commencement of the domestic enquiry the delinquent officer concerned and act upon the answers given or materials gathered during the preliminary enquiry, without making it part of the regular enquiry during the course of the domestic enquiry held by the Enquiry Officer appointed for the purpose. The procedure adopted by the domestic Enquiry Officer in this case as also the materials relied upon could not be said to be a legal one and enquiry is vitiated seriously. The Order of punishment passed on the basis of such enquiry and the enquiry report cannot also be sustained by us."

18. The said view was reiterated by N.PAUL VASANTHAKUMAR,J.

in A.Yesoda v. Collector, Thiruvannamalai, [2007]. 5 MLJ1172as follows:

"0. So far as the contention that the shortage of stock is due to the lack of weighing by the then Manager while handing over the stock to the petitioner, the contention of the petitioner cannot be accepted. As per Article 144 of the Tamil nadu Financial Code Volume-I, the relieving Government Servant should verify the stock and accounts taken over and report the result of verification to his immediate superior. Petitioner being the Manager of the Scheme, is bound to take the charge after properly weighing the materials available in the godown. However, the charge having been framed under rule 17(b), a fulfledged enquiry by examining the witnesses in the presence of the delinquent officer giving an opportunity to cross-examine the witnesses who deposed against her is mandatorily to be given as required under the procedures to be followed as per Rule 17(b) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. Even according to the counter affidavit it is not stated that the enquiry was conducted only after giving opportunity to the petitioner to cross-examine the witnesses. A mere bald statement is given that the Enquiry Officer after conducting the enquiry and perusing the records submitted his report. A perusal of the enquiry report clearly demonstrates that the petitioner was not given opportunity to cross-examine the witnesses and the witnesses were not examined in the presence of the petitioner and the enquiry having not been conducted in a fair and proper manner, the principles of natural justice is violated by the enquiry officer. The enquiry officer's report is the basis for imposing punishment. Hence the impugned order is bound to be set aside for not following the procedures prescribed in conducting enquiry by the Enquiry Officer."

19. Applying the consistent yardstick regarding the nature of enquiry which has been repeatedly held by judicial decisions to the facts of the present case wherein the second respondent has specifically admitted that the charges are based on records only and no witnesses are necessary, it has to be necessarily concluded that there is a flagrant violation of the principles of natural justice. In cases where the management fails to produce witnesses to prove the charges against the petitioner by proving the contents of the documents, even if the documents are the only basis on which the enquiry proceedings are conducted, there is absolutely no

possibility for the delinquent officer to disprove the contents of such documents. Law is well settled that it is for the management to prove the case with credible evidence and without letting in witnesses and proving the correctness or otherwise of the document, it cannot be expected that the delinquent officer should prove his innocence at the first instance. The stand of the respondents in this case that the Enquiry Officer need not examine any witnesses or prove the documents relied upon shows the illegality with which the enquiry has been conducted in this case.

20. It has been repeatedly held by the Supreme Court that non supply of documents if they form part of the charge and are relied upon by the prosecution is a substantial error in conducting the disciplinary proceedings. Of course, the only defence available for the non supply of such documents is that the same does not prejudicially affect the interest of the delinquent. That is based on the principle that the natural justice is not an empty formality and not in all cases irrespective of the relevancy or otherwise all documents called for should be supplied.

21. But, on the facts and circumstances of the present case, especially when the respondents have taken a stand in the counter affidavit that it was for the petitioner to call for the documents without furnishing the same, I do not find any reasonableness in the stand of the respondents in this regard. I am supported by the ruling of the Apex Court in Syndicate Bank and Others v. Venkatesh Gururao Kurati, [2006]. 3 SCC150for arriving at such a conclusion.

22. The conduct of the second respondent directing the Enquiry Officer to give further report by the proceedings dated 6.11.2007, without even giving opportunity to the petitioner, shows the scant respect to the principles of natural justice by the second respondent in this case. The reason given that the Enquiry Officer who has found charges 5 and 6 not proved has been directed to give report as per the Rules, can only be deemed as threatening attitude and the consequential conduct of the Enquiry Officer in changing his report holding that all the charges stood proved are all matters which speak volumes about the illegality committed in not only conducting the enquiry by the Enquiry Officer, but also the way in which the second respondent has acted in this case, which cannot be approved by any judicial forum. Quasi-judicial authorities who are expected to act in fairness are to

be necessarily prevented in cases of arbitrariness and patent illegality for maintenance of rule of law and the procedure in this regard followed by the second respondent in calling for the second report is again illegal and not answered properly. It is not as if the second respondent is left in lurch even if the Enquiry Officer states that some of the charges are not proved. There are procedures available for him to differ from the views of the Enquiry Officer by following the method known to law and not abruptly by asking the Enquiry Officer to give further report.

23. That apart, the first respondent/Appellate Authority, while considering the appeal of the petitioner has not chosen to give reasons, except to state as follows: "Perused all the relevant records, recorded my opinion, in tabulated statement, which is self-explanatory. There is no flaw as far as the procedures followed by the Collector was concerned, neither any merit in the claim made by the delinquent. Therefore, I take a decision to reject the appeal and confirm the stand taken by the Collector."

24. It is well settled that when the Appellate Authority passes orders confirming the orders of the Original Authority, no elaborate reasoning is required, but there must be some material to show that the Appellate Authority has, in fact, applied its mind and not acted as a rubber stamp to approve mechanically whatever the Original Authority as done. The Apex Court in Narinder Mohan Arya v. United India Insurance Co. Ltd., AIR 2006 SC1748has held as under:

"8. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.

29. In Apparel Export Promotion Council v. A.K. Chopra, MANU/SC/0014/1999 : (1999)ILLJ962SC which has heavily been relied upon by Mr. Gupta, this Court stated: The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its

own conclusion, on facts, being the sole fact-finding authorities.

30. The appellate authority, therefore, could not ignore to exercise the said power. The order of the appellate authority demonstrates total non-application of mind. The appellate authority, when the rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do. The expression 'consider' is of some significance. In the context of the rules, the appellate authority was required to see as to whether (i) the procedure laid down in the rules was complied with; (ii) the Enquiry Officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive."

25. On a reading of the order of the first respondent/Appellate Authority, there is nothing to show that the first respondent has independently applied its mind for arriving at a conclusion in confirming the original order of the second respondent.

26. In such circumstances, even though the order of the first respondent/Appellate Authority contemplates a further appeal, taking note of the entire illegal procedure followed throughout, I do not think that this is a case where the petitioner should be driven to go before another Appellate Authority against the impugned orders passed by the Original Authority and the First Appellate Authority. For the reasons aforesaid, the writ petition stands allowed and the impugned orders of the respondents stand set aside with a direction to the respondents to reinstate the petitioner within four weeks from the date of receipt of a copy of this order. No costs. 26.11.2009 Index : Yes Internet : Yes sasi To:

1. The Director of Town Panchayat Kuralagam, Chennai 600 108.

2. The Collector Coimbatore District Coimbatore. P.JYOTHIMANI,J.

[sasi]. W.P.No.16210 of 2008 26.11.2009