

(1975) 12 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 109 of 1973

Abdul Gani Patwari

APPELLANT

Vs

S.M.Rizvi and Another

RESPONDENT

Date of Decision : 03-12-1975

Acts Referred:

Jammu and Kashmir Governments Prevention of Corruption Commission (Amendment) Act, 1969 — Section 17(5)

Citation : (1975) JKLR 731 : (1976) KashLJ 359

Hon'ble Judges : Mian Jalal-Ud-Din, J

Bench : Single Bench

Advocate : M.M.Shahdad, A.K.Malik, Advocates appearing for the Parties

Judgement

(1) The petitioner seeks to set aside the findings, conclusions and recommendations of the AntiCorruption Commission (NonGazetted) dated

iQ1073 and also order of dismissal issued by the Governor vide. Dy. Secretary General Department order No. 68GR dated 27973 as being

violative og Article 311 (2) of the Constitution of India read with section 126 of the State Constitution and also the relevant sections of the

Prevention of Corruption Act of 1962 and the Rules made there under :

(2) The petitioner also claimed relief under Art. 14 of the Constitution, but the right to claim the said relief has been withdrawn by him by means of an application.

(3) The petitioner has averred that he was posted as patwari in Halqa Tokina Tehsil Pulwama in the year 1966. A complaint was lodged with the

Anti Corruption Commission that the petitioner in his capacity as patwari demanded and accepted illegal gratification on Rs. 105 from one Mohd

Guroo of the said village. The commission charge sheeted the petitioner. But the

petitioner was not given an opportunity to engage a lawyer with the result that the prosecution witnesses could not be properly cross examined. The petitioner was not directed by the Commission to fill his statement or to produce evidence in defence. This violation of the Statute by the Commission resulted in practically resorting to ex parte proceedings against the petitioner which has occasioned miscarriage of justice in his case. There was no evidence to support the prosecution story that the accused had accepted the amount of Rs. 105/as bribe. The Commission returned an ex parte finding of guilty against the petitioner and recommended the following punishments :

(a) the pay of the accused be reduced by five stages in his time scale of pay for a period of 5 years :

(b) the accused shall be debarred for promotion for a period of five years :

(c) a sum of Rs. 105/be recovered from the accused and the same be refunded to the complainant Shri Mohd Guroo S/O Khalip Guroo R/O Ghat

Tokina, Tehsil Pulwama against a proper receipt.

(4) The commission submitted its findings to the Governor. On receipt of the findings the Governor addressed a notice to the petitioner asking him

to show cause why the ex parte penalty of dismissal from Government Service not be imposed upon the petitioner. The advice tendered by the

Commission was ignored. The 'notice nowhere stated that the Government had accepted the findings and conclusions of the Commission, nor did

the notice give any reason for enhancing the punishment as recommended by the Commission to that of dismissal and for ignoring the advice of the

Commission as such the petitioner was not given reasonable opportunity to show cause against his dismissal, as he could not know the grounds on

which the punishment as recommended had been enhanced. This according to the petitioner is violative of Article 311(2) of the Constitution of

India and also Section 126 of the State Constitution. The said show cause notice also suffers from legal infirmity as it indicates that the Governor

has already accepted the report of the commission. In spite of the petitioner's reply the Governor made an order of dismissal which the petitioner as

alleged as far beyond in exercise of the recommendations of the Commission. The enquiry did not comply with requirements of statute and Rules

made there under and as such the order of punishment was bad in law.

(5) Shri S. M. Rizvi. Anti corruption Commission (Non Gazetted) has sworn in a reply affidavit in which he has affirmed that a complaint was

lodged with the AntiCorruption (Organization Investigating Branch) Non gazetted against the petitioner that he had accepted an amount of Rs.

105/as illegal gratification from Mohd Guroo the complainant. The investigating agency submitted its final report to the Commission. As a prima

facie case was disclosed the Commission framed appropriate charge against the petitioner. Pursuant to this the petitioner appeared before the

Commission. The petitioner filed preliminary written statement on 16671. Thereafter prosecution evidence was recorded in presence of the

petitioner who was given full opportunity to cross examine them. The prosecution closed its evidence on 23.8.72 when the petitioner was directed

to file his supplementary written statement on 6972 but on this date the petitioner absented himself in consequence of which exparte proceedings

were taken against him. Thereafter petitioner did not appear before the Commission and the enquiry pending against him was, therefore, concluded

exparte. Final report was made to the Government on 10101972.

(6) Syed Ghulam Hussian Dy. Secretary to Government of Jammu and Kashmir (Vigilance) General Department has also filed a reply affidavit. In

his reply affidavit he has reiterated the averments made by Shri S. M. Rizvi, Besides this he has affirmed that it was found by the Governor that the

punishment recommended by the Commission was not commensurate with the gravity of the offence committed by the petitioner. Having regard to

the facts and circumstances of the case the Governor provisionally concluded that the punishment of dismissal be imposed to the petitioner.

Accordingly a show cause notice was given to him against the proposed punishment of dismissal from the Govt. service. In response to this notice

the petitioner submitted his explanation which was duly considered by the Governor. Upon consideration of all the material facts the Petitioner was

dismissed from service under order No. 68GR of 73 dated 27973. The Commission acted strictly in accordance with the procedure prescribed.

The recommendation of the Commission respecting the punishment to be proposed on the petitioner was not binding on the Governor and the

Governor was within his right to arrive at his own conclusion in this regard. The Petitioner was given opportunity to show cause against the

punishment proposed by the petitioner by the Governor. The Governor was under no obligation to communicate, to the petitioner the reasons

prevailed with him for proposing a different punishment than the one recommended by the Commission. The petitioner was served with a copy of

the report made by the Commission. Therefore the provisions of Act were substantially complied with. The punishment awarded to the petitioner is

perfectly legal and the same does not suffer from any infirmity. There was no mala fide on the part of the authorities. The allegation made by the

petitioner in this behalf has been completely denied.

(7) I have heard the learned counsel for the parties at great length. Learned counsel appearing on behalf of the petitioner has raised a number of

pleas inter alia that there has been non compliance with the provisions of Sec. 13(4) of the Jammu and Kashmir Government Servants' Prevention

of Corruption (Commission (Amendment) Act, 1964 (Act No. 1 of 1964) and also of the provisions of Section 17 (5) of the Jammu and Kashmir

Government Servants' Prevention of Corruption (Commission (Amendment) Act, 1969, (Act No. 18 of 1969) and also that no notice

incorporating the reasons of dismissal of the petitioner was issued to the petitioner. He has also taken the plea that there is no legal evidence on the

record warranting a finding of guilt against the accused.

(8) In the first instance it may be mentioned that there is no force in the contention that there has been a failure on the part of the Commission to

observe the mandatory provisions of Sec. 13 (4) of Act No 1 of 1964. The record discloses that the evidence was recorded in the presence of the

accused petitioner by the Commission and when the evidence concluded he thereafter remained absent. Ex parte proceedings were therefore taken

against him. In such a situation how could the Commission direct the accused to file a written statement as required by Sec. 13 (4) of the Act No.

1 of 1964. The proceedings thereafter were taken against the accused in absentia. There is therefore no merit in this argument of the learned

counsel for the petitioner.

(9) Nor can the provisions of Art. 311 of the Constitution of India (corresponding to Sec. 126 of the State Constitution) be attracted to the

present case. After the Commission made its recommendation in regard to the proposed punishment, the Governor also issued a notice to the

petitioner calling upon him to show cause as to why the proposed penalty of dismissal be not imposed upon him. There are no statutory rules requiring the Governor to give reasons for awarding the proposed penalty. There can therefore be said to be no case of noncompliance of any of the constitutional provisions.

(12) The argument that the Governor could not award higher punishment than the one recommended by the commission and that the extreme

penalty of dismissal was uncalled for in the case and the same militates against the spirit of the Act has got no force, because there is nothing in the

Act limiting the power of the Governor to impose higher punishment. In fact a Division Bench of this Court has considered the matter and has

negated this contention of the petitioner in that case (Ved Yash Bhasin Vs. State of J & K). However it is a matter that is left for the

consideration of the appropriate authority when this case is reconsidered by it.

(11) The writ must however, succeed on a short point that no copy of the proceedings of the enquiry as required by Sec. 17 (5) of Act No. 18 of

1962 was supplied to the petitioner, Section 17 (5) provides as follows ::

(5) After the Commission submits its recommendation and after the Governor arrives at a provisional conclusion in regard to the penalty to be

imposed the accused shall be supplied with a copy of the proceeding of the inquiry and called upon to show cause by a particular date why the

proposed penalty should not be imposed upon him.

(12) Record discloses that notice dated Dec. 16, 1972 served on the petitioner does not have with it a copy of the proceedings of the enquiry,

only a copy of the report of the Commission is enclosed with it The proceedings of inquiry as required by Sec. 17 (5) of Act No. 18 of 1969 do

not mean only the report but include the entire proceedings of the inquiry as contemplated by the language of the SubClause itself. The word

'proceeding' in its general sense means form and manner of conducting judicial business before a court of judicial tribunal or commission. It is a

comprehensive expression. Proceeding of the inquiry ordinarily relate to the mode in which judicial transactions are conducted. It means a

prescribed course of action for enforcing a legal right and hence it necessarily embraces all the requisite steps by which the judicial action is

invoked and judicial work conducted. Therefore, in my opinion the expression""

copy of the proceedings of the inquiry"" as used in the said sub sec.

means not only copy of the final report of the Commission, but also copies of the complaint, the statement of the accused, statements of the

witnesses recorded by the Commission. All these have not been supplied to the accused in the present case. It may be stated here that previously

before the enactment of Act NO. 18 of 1969 no such thing was required to be done. But after the amendment to the principle Act vide Act. No.

19 1969 this has been specifically engrafted in the section that copy of the proceedings of the inquiry shall be supplied to the accused. The word

used in section is not ""proceeding"" but ""the ' proceedings."" It is a mandatory requirement and failure to supply the copy of the proceedings to the

petitioner vitiates the order. It was especially required so as the accused had been set exparte and the case was decided by the commission in

absentia. As this has not been done in the present case, therefore the impugned order stands vitiated.

(13) The result is that the writ petition is allowed and proceedings taken from the stage of the non compliance of section 17(5) are quashed. The

order of dismissal of the petitioner from the Govt. service is consequently set aside.