(1966) 09 MAD CK 0023

In the Madras High Court

Arunchalam Pillal (V.P.) APPELLANT

Vs

Revenue Divisional Officer and Another RESPONDENT

Date of Decision : 09-09-1966

Acts Referred:

Citation : (1968) 1 LLJ 776

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Judgement

Venkatadri, J.—The petitioner, who is the permanent karnam of Naranapuram village in Sankarankoil taluk, filed this petition to quash the

order of suspension of five years passed by the Revenne Divisional Officer, Kovilpatti, in R.O.C. No. B. 684/63, dated 15 February 1963, and

that of the District Revenue Officer, Tirunelveli. in R.O.C. No. Q. 1 17872/63G, dated 19 August 1963. on the ground that he failed to attend the

kist centres conducted by the District Ravenue Officer, Tirunelveli, on 28 November 1962 and 26 December 1962. at Sivagiri camp, that he

attacked his superior officers in his written explanation to the tahsildar, Sankarankoil, dated 12 December 1962. and that he is a nonresident in the

duty village and he is residing at Vasudevanaliur village.

2. The gravamen of the charge of the petitioner seems to be that he was not given a reasonable opportunity in the conduct of the enquiry

conducted by the Ravenue Divisional Officer, Kovilpatti.

3. The facts in the instant case reveal that on 17 January 1963, charges were framed and an oral enquiry was fixed on 31 January 1963 On the

said date, the petitioner filed a written statement to the effect that he desired to examine the tahsildar and the revenue inspector and wanted to send for the records especially the register maintained under Rule 8 of the Board''s Standing Orders to prove that he did not recive the summons in

respect of the first charge, numbers that he failed to attend the kist centre conducted by the District Revenue Officer on 38 November 1962. At

the same time it was brought to my notice by the learned Government Pleader that the cautioner dispensed with the oral evidence. But the

petitioner now contends before me that he never waived the production of the records to prove his case. When the case was called on 15

February 1963, the enquiry was conducted and closed ; on a consideration of the evidence placed before him the Ravenue Divisional Officer

pronounced the punishment as mentioned above. It is this procedure that, the petitioner contends is not only faulty but also a fatal one to the

conduct of the enquiry. The enquiry under Sections 7 and 8 of Act 3 of 1895, as it originally stood, contemplated that where it is proposed to take

action against a village officer, definite charges should be framed and communicated to him fixing a date to appear for an enquiry. On the day set

for the enquiry, he is required to put in a written statement for his defence and to state whether he desires an oral enquiry or only to be heard in

person. At that enquiry he can put forth his witnesses and he can cross examine the witnesses who depose against him. If there is any documentary

evidence it should be properly proved. After the completion of the enquiry, the person charged should be entitled to put in a further statement of

his defence. This was the original procedure contemplated under the Act. Subsequently, this rule has been enlarged and expended by an

amendment dated 7 January 1957. According to the new procedure as amended, after the enquiry referred to has been completed, the Revenne

Divisional Officer shall pass orders on the charges. If, however, he considers that the punishment of removal or dismissal is called for, he shall

arrive at a provisional conciusion in regard to punishment which he proposes to impose on the village officer and the village officer shall be called

upon to appear before the Revenue Divisional Officer on a certain date fixed by him to show cause against the particular punishment proposed to

be imposed. Any representation made on that date by the village officer shall be recorded and shall be duly taken into consideration before final

orders are passed. I have to reiterate once again that the procedure contemplated under Sections 7 and 8 of the Act was not followed. After the enquiry was closed on 15 February 1963, what the officer should have done was that he should have passed orders on the charges framed against

the petitioner. If he comes to the conclusion that a punishment of removal or dismissal or suspension is called for, he should have called upon the

petitioner and told him that he proposes to impose the intended punishment on him. Then he should be called upon to appear before him show

again on a certain date fixed by him to show cause against the particular punishment proposed to be imposed on him. Any representation made on

that date by the village officer shall be recorded and shall be duly taken into consideration before final orders are passed. It is this last step that is

lacking and absent in the conduct of the enquiry by the Revenue Divisional Officer. The petitioner complains that he was not given a reasonable

opportunity to contend that the charges framed against him do not merit the particular punishment mated out to him, that though he might be guilty

of some misconduct, this was not of such character as to merit the heavy penalty of suspension of five years especially when he had put in service

of more than twenty years and that, in any event a lesser punishment could have been sufficient in his case. I entirely agree with the learned Counsel

for the petitioner when he contends that the procedure adopted by the Revenue Divisional Officer was not in accordance with the procedure

contemplated by Sections 7 and 8 of Act 3 of 1895. But what the learned Counsel for the State contends is that in the case of disciplinary

proceedings the Court should be hesitant to question the validity of the orders.

4. It is true that Lord Goddard in Ex Parte Fry [(1954) 1 W.L.R. 730] stated that disciplinary powers should be beyond Judicial control. But in

subsequent cases the Court of Appeal did not entirely agree with him. The Court of Appeal was of the opinion that Judicial control must be

confined to cases where there was some complaint of real injustice. What is a reasonable opportunity is explained in Khem Chand Vs. The Union

of India (UOI)and Others, , in which the Chief Justice S.R. Das, delivered Judgment on behalf of the Court (at p. 176):

(a) an opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the

allegations on which such charges are based ;

(b) an opportunity to defend himself by cross-examming the witnesses produced against him and by examining himself or any other witnesses to

support his defence and finally;

(c) an opportunity to make his representations as to why the proposed punishment should not be inflicted on him which he can do only if the

competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government

servant, tentantively proposes to inflict one of the three major punishments and communicates the same to the Government servant.

5. Its is this last stage that is lacking in the procedure adopted by the Revenue Divisional Officer. Even assuming that this is a minor or trivial

technicality, it still goes to the root of the matter and leads to complete denial of Justice to the petitioner. It affects the fundamental procedure of

justice. The rules of natural Justice very with the varying constitutions of statutory bodies and the rules prescribed by the legislature under which

they have to Act and the question whether in a particular case they have been contravened must be judged not by any preconceived notion of what

they may be but in the light of the provisions of the relevant Act.

6. Therefore, I am of opinion that since the enquiry conducted by the Revenue Divisional Officer is lacking in not giving a reasonable opportunity to

the petitioner, the order of suspension must be and is quashed. The writ petition is allowed. No costs.