
(1991) 07 GUJ CK 0027
In the Gujarat High Court

Bhavabhai Bhadabhai Maru	Vs	APPELLANT
Dhandhuka Nagar Panchayat		RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 226
Gujarat Panchayat Service (Discipline and Appeal) Rules, 1964 — Rule 5, 7, 7(4)
Gujarat Panchayats Act, 1961 — Section 323

Citation : (1991) 2 GLR 1339

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Judgement

S.D. Shah, J.—"Fiat justitia, ruat caelum" Let justice be done, though the heavens should fall. "Let justice be done" was the sole cry of this Harijan sweeper, a thinly fleshed skeleton with folded hands entreated for mercy before mighty autocratic employer and unfortunately this employer-Dhandhuka Nagar Panchayat acted in the same manner as Emperor Piso acted while wrongly applying this "Fiat Justitia". How wrongly the phrase was used by Piso is quoted by Lord Denning in his book "THE FAMILY STORY" in following words:

In my coat of arms, I took as my motto, Fiat justitia-Let justice be done believing it to have a respectable origin. I have since discovered that it was first used to excuse the most outrageous injustice. It comes from a story told by Seneca. Piso sentenced a soldier to death for the murder of Gaius. He ordered centurion to execute the sentence. When the soldier was about to be executed, Gaius came for-ward himself alive and well. The centurion reported it to Piso. He sentenced all three to death. The soldier because he had already been sentenced. The centurion for disobeying orders. And Gaius for being the cause of the death of two innocent men. Piso excused it by the plea "Fiat justitia."

2. Exactly the same justice is done to the petitioner in the case by the respondent-Nagar Panchayat by applying rule of "hire and fire" and by depriving the petitioner of his source to livelihood by a stroke of pen, dated 14-2-1991

whereby he has been dismissed from service with effect from 15-2-1991.

3. This warrant of economic death penalty is the subject-matter of challenge and relevant facts, giving rise to the present petition, are as under:

(i) The petitioner who belongs to Scheduled Caste community came to be appointed as a Sweeper in the year 1962 by the respondent-Panchayat, and he has been discharging his duties, as such, till 15-2-1991. There is no dispute about the fact that he was a permanent employee of the respondent-Panchayat.

(ii) On 12th September, 1990, a notice to show cause was served on the petitioner enlisting therein as many as 12 irregularities and calling upon the petitioner to show cause as to why action should not be taken against him for the misconducts. The various allegations levelled in the said notice are spread over a period of more than 6 years and the first misconduct attributed to the petitioner in September, 1990 was referable to 25th December, 1984 when the petitioner was absent from duty without any report. It may be noted that it was an absence for a day only. For the said misconduct notice was given on 29-12-1984, and thereafter, the respondent-Panchayat thought it fit not to take any action.

(iii) The second misconduct relates to April, 1988 and it is alleged that the petitioner was not carrying out the work entrusted to him and that the heaps of garbage were lying in the area which was entrusted to the petitioner, and for that purpose notice was served on him.

(iv) The third allegation relates to the conduct of the petitioner in sending his daughter for the purpose of sweeping, and thereby, it is alleged that at times the petitioner has failed to attend his duties and that his daughter attended the duties and cleaned the area. However, realising that such a conduct may not amount misconduct, it is further alleged that his daughter talked insolently with the residents of the area. It is said that for this alleged conduct of the daughter he was answerable.

(v) The fourth allegation against the petitioner was that very often he was reporting late for duties and that he was not completing the work assigned to him. For this misconduct, it was alleged that complaints were received from the inhabitants and that in this behalf notice was given to the petitioner.

(vi) The fifth allegation is of similar type whereby it was alleged that on 6-4-1990 the Inspector visited the area which was entrusted to the petitioner for cleaning, and it was found that the said area was not cleaned. It was also found that the gutters of the area were overflowing.

(vii) It is further alleged that the petitioner was not remaining present for cleaning the area entrusted to him and that very often he was not present in the team of cleaners. It is further alleged that the petitioner was not cleaning the area entrusted to him and that he was not remaining present and he was negligent in the discharge of his duties. Based on these allegations the petitioner was called upon to file his written reply as to why disciplinary action should not

be taken against him.

(viii) By written reply, dated 15-9-1990 the petitioner denied the charges levelled against him and pointed out that for the incident of 25th December, 1984 there was no justification for taking action after a lapse of about 7 years. It may be noted that as stated by the petitioner in the memo of Special Civil Application on oath, in the month of December, 1984 his father expired and he was required to leave for his village and that was the reason why he remained absent from duty on 25th December, 1984. According to him this fact was reported by him when he resumed on the next day and therefore, in fact, no action was taken against him by the then elected panchayat. As regards other allegations he pointed out that on occasions when he was not keeping good health he used to take his daughter along with him for better work and that cleaning of the area entrusted to him was regularly done. As regards overflowing of gutters he has pointed out that, in fact, main gutter was broken and number of water connections were leaking and therefore there was overflowing of the gutters. He also pointed out that he was the oldest and the seniormost sweeper serving in the respondent-Panchayat and that, in fact, he was entitled to be promoted to the post of Mukaddam, but one newly appointed Punjabhai Bhanabhai was promoted to the said post and therefore, at his instance, action was taken against him.

(ix) From the reply of the petitioner it becomes clear that he has not admitted any of the charges levelled against him. He has specifically denied the charges and it was therefore not a case of admission of the guilt or misconduct by the employee.

(x) To the surprise of the petitioner, he thereafter, received order, dated 14-2-1991 whereby he was informed that the chargesheet, dated 12-9-1990 was given to him and that he was found guilty of all the charges levelled against him by the General Board of Dhandhuka Nagar Panchayat in its meeting held on 8-2-1991, and therefore, it was decided to dismiss him from service with effect from 15-2-1991. Those very charges are, thereafter, enumerated in the order and it is stated that for those charges the petitioner is dismissed from service.

(xi) It is this action of dismissal which is under challenge in this petition.

4. Mr. Ajit D. Padival, learned Advocate appearing for petitioner submits that the impugned order of dismissal dated 14-2-1991 is null and void since it is passed in disregard of statutory rules, namely, Rules 5 & 7 of Gujarat Panchayat Services (Discipline & Appeal) Rules, 1964. The said order is even otherwise null and void inasmuch as no reasonable opportunity of being heard to the petitioner, and hence, the same is required to be quashed and set aside.

5. Before I proceed to deal with the said submission of Mr. Padival, it would be necessary to deal with the preliminary objection raised by Mr. J.M. Patel on behalf of respondent-Panchayat. Mr. Patel learned Advocate for Panchayat submits that against the order of dismissal from service dated 14-2-1991 the petitioner has alternative remedy of preferring appeal to the Dist. Development Officer, and

thereafter, to prefer revision against the appellate order to the Development Officer. He, therefore, submits that since efficacious alternative remedy is available to the petitioner this Court should not exercise its extraordinary powers under Article 226 of the Constitution of India.

Alternative remedy

6. It may be stated that the existence of alternative remedy is a factor to be taken into consideration by the Court while entertaining the petition under Article 226 of the Constitution of India. It is well settled principle that existence of alternative remedy is not a total bar to exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. In catena of decisions large number of exceptions are created to the self-imposed restriction and by now it is well established that despite existence of alternative remedy the Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution of India, if the facts and circumstances of the case so demand. Secondly, when the petition is already admitted and the respondent-Panchayat has also filed its affidavit-in-reply justifying its action I do not see any reason as to why this Court should relegate the petitioner to the alternative remedy of departmental appeal when the order under challenge is patently a still-born order. Thirdly, relegating the petitioner to an alternative remedy which is likely to consume time and which would deprive the petitioner of his very means of sustenance, in my opinion would tantamount to refusing to exercise jurisdiction vested in this Court by Article 226 of the Constitution of India. Remedies which are burdensome and cause undue delay and hardship cannot be said to be suitable or adequate. Fourthly, it is well accepted that where the authority has acted in contravention of the principle of natural justice, existence of an alternative remedy is no bar. Fifthly, I suggest a new approach. It is approach of easy access to the Courts of justice. "We, the people of India" hunger for right and justice and they shall be answered not by bureaucrats but by effective access for the masses to legal tribunals which make judicial justice more than "a teasing illusion or promise of unreality". Power to enforce, at the instance of the lowliest victim of injustice is the measure of the democracy of remedies. Those who suffer wrongs struggle for redress. In order to free these humans from their sufferings a system of judicial remedies for people's maladies is required to be evolved. Justice Krishna Iyer brought out this very pithily:

And effective access to judicial processes to the humblest humans is, therefore, basic to the dynamic realism of the rule of law.

Access to justice, Civil Criminal and other, must be democratised, humanised and the doors of all be kept ajar for the citizenry, without the janitors of legal justice blocking the way and hampering the entry, initially and at higher levels, using various constraints.

7. Therefore, where the impugned action is per se ex-fade, null and void, to deny a just relief by asking the petitioner to approach other statutory tribunals is

nothing but to toss him from management-injustice to the Court-injustice. Let us not do it. To ask him to resort to a statutory remedy is no solution. I am reminded of what Gandhiji said in "Young India".

There is on the face of the earth no other country that has the problem that India has of chronic starvation and slow death-a process of de-humanization. The solution must, therefore, be original. In trying to find it, we must discover the causes of the tremendous tragedy.

In search of original solution the Court shall keep in mind that it shall not perpetuate the miseries of the litigant when the action under challenging is manifestly unjust and patently illegal. In such cases, Gandhiji gave a Talisman. Whenever you are in doubt, apply the following test:

Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use to HIM. Will he gain anything by it? Will it restore to him a control over his own life and destiny? In other words, will it lead to Swaraj for the hungry and spiritually starving millions? Then, you will find your doubt and yourself melting away.

8. When this Court asked the same question to itself as to whether step of relegating this Sweeper to statutory appeal is going to be of any use to him it got the answer that such a step will rather ruin him. I, therefore, reject this preliminary objection raised by Mr. Patel learned Counsel for respondent-Nagar Panchayat.

9. Mr. Patel has raised another preliminary objection and it is to the effect that in fact the petitioner has already approached the Conciliation Officer by way of application invoking provisions of I.D. Act. Mr. Ajit Padival, learned Advocate for petitioner states that the petitioner has not approached the Conciliation Officer and on enquiry being made by him, it is found that the Labour Union has directly approached the Conciliation Officer. I do not think that the petitioner can be denied the just relief solely on the ground that the Labour Union has directly approached the Conciliation Officer. By this objection the respondent-Panchayat wants to impress upon me not to exercise by jurisdiction when the petitioner has resorted to a remedy available to him. For the reasons stated above while overruling the first objection, I do not find any substance in this second preliminary objection also.

10. It is undisputed fact that the petitioner is a permanent employee of the respondent-Nagar Panchayat. It is also undisputed that he is dismissed from service for as many as 12 charges levelled against him by notice, dated 12-9-1990. It is also undisputed that the said charges are denied by the petitioner by his reply, dated 15-9-1990. There is no dispute about the fact that no enquiry is held into the charges levelled against the petitioner. Petitioner being permanent employee procedure prescribed by statutory rules framed u/s 323 of Gujarat Panchayats Act, 1961 shall have to be followed. Said rules are known as Gujarat Panchayat Services (Discipline and Appeal) Rules, 1964

referred to as the "said Rules". Penalties that could be imposed upon a permanent employee are prescribed by Rule 5 of the said Rules and one of such penalties is that of dismissal from service. Rule 7 of the said Rules prescribes procedure for imposing major penalties and, Mr. Patel does not dispute the fact that the penalty of dismissal is a major penalty. Mr. Patel is not in a position to satisfy me as to how the Nagar Panchayat has complied with Rule 7 of the said Rules. Rule is followed in breach. Every mandatory step prescribed by the said rule is not followed. Firstly, no enquiry whatsoever is held into the charges levelled against the petitioner, secondly, in the absence of any enquiry being held no report of the enquiry officer is received by the disciplinary authority. In the absence of any report of the preliminary enquiry, disciplinary authority has no occasion to determine as to whether there was a prima facie case against the petitioner for a formal enquiry or not. In fact, no order of formal enquiry is passed by the respondent-Panchayat. No definite charges are framed and there is no communication of charges along with statement of allegations as contemplated by Sub-rule (4) of Rule 7. Petitioner was never permitted to inspect the record or to take extracts from the record. In fact, stage of Sub-rules (5) to (9) of Rule 7 was never reached because no decision was taken to hold a formal enquiry. It is, thus, clear that without following any procedure, whatsoever, as provided by Rule 7 of the said Rules, the respondent-Panchayat proceeded to pass the impugned order, dated 14-2-1991. Since no opportunity was given to the petitioner to defend himself and since no enquiry worth the name was held after affording opportunity of producing necessary evidence, action of the respondent-Panchayat was in total disregard of mandatory provisions of Rule 7 of the said Rules. Firstly, no charge-sheet was served on the petitioner, secondly, no enquiry officer was appointed to hold a formal enquiry into the charges levelled against the petitioner, thirdly, no evidence worth the name was adduced in presence of the petitioner with an opportunity to cross-examine the witnesses, fourthly, no opportunity was provided to the petitioner to controvert the evidence or to lead his own evidence in defence. In the absence of any oral evidence many of the charges levelled against the petitioner could not be said to have been proved. In fact, no decision was reached by the disciplinary authority as to how and on what basis and on what evidence charges were said to have been proved against the petitioner. In absence of any enquiry such a conclusion could not have been reached by the respondent-Panchayat or by the disciplinary authority. The action taken by the respondent-Panchayat is, therefore, in absolute disregard of mandatory provisions of Rule 7 of the said Rules, and the same is, therefore, required to be quashed and set aside. The reasonable opportunity to defend in its barest minimal content is denied to the petitioner inasmuch as no enquiry, whatsoever, is held against the petitioner. The impugned order, therefore, is a non est and still-born order, and is required to be voided and hence same is hereby declared null and void as being a blatant disregard of rules of natural justice and in total disregard of mandatory provisions of Rule 7 of the said Rules.

11. When the order of dismissal is set the reinstatement of the petitioner in service must necessarily follow. Since the order of dismissal was in absolute violation of the mandatory provisions of statutory rules and since no enquiry worth the name was held into the charges levelled against the petitioner and since he was sought to be condemned absolutely unheard, back wages are also required to be awarded to the petitioner. Petitioner has specifically pleaded that he has been out of employment from the date of his dismissal and the respondents have failed to prove that he was gainfully employed during the said period.

12. I am, therefore, of the opinion that the direction for payment of back wages must also follow. I would, therefore, direct the respondent-Panchayat to reinstate the petitioner in the post of Sweeper and would further direct them to pay the back wages to the petitioner with effect from 14-2-1991 till he is actually reinstated in service in the post of Sweeper. Such back wages shall be paid within a period of one month from today.

13. At this stage, Mr. J.M. Patel, learned Advocate for respondent-panchayat states that the respondent-Panchayat should be permitted to hold enquiry afresh in accordance with law into the charges levelled against the petitioner. He further submits that the respondent-Panchayat is not, as such, desirous of taking any harsh action against the petitioner, if the petitioner works and does not shirk his responsibilities. Mr. Ajit Padival, learned Advocate for petitioner has some objections to the holding of enquiry into the charges and more particularly for the incident that has taken place in the year 1984. In view of the decision of this Court in the case of M.D. Parmar Vs. Y.B. Zala and Another, enquiry into the charges of 1984, as such, should not be permitted since incident relates to an absence from duty for a day when his father expired and there is no reason to doubt said defence of the petitioner. As regards the other charges it would be open to the respondent-Panchayat to hold enquiry in accordance with law after affording an opportunity to the petitioner to defend himself. However, it is required to be stated that looking to the nature of charges levelled against the petitioner and in view of the fact that the charge Nos. 7, 8 & 9 relate to the charge of negligence on 3-3-1990 there would not be any justification for the respondent-Panchayat to take any harsh action against such a lowly paid employee, if he sincerely works and attends for duties. Mr. J.M. Patel, learned Advocate for respondent-Panchayat also has stated that the Dandhuka Nagar Panchayat is not, as such, desirous of taking any harsh action, if the petitioner works in the area allotted to him. It is hoped that the petitioner would serve sincerely and if the petitioner serves sincerely without any break the respondent-Nagar Panchayat would not assiduously persist in taking action and in continuing the enquiry.

14. In the result, petition succeeds. The impugned order of dismissal from service, dated 14-2-1991 is hereby quashed and set aside, and the respondents are directed to reinstate the petitioner in service as Sweeper and to pay to him

the back wages as if his services have never come to an end within a period of one month from today. Rule is made absolute accordingly with no order as to costs.