

(2005) 01 MAD CK 0070
In the Madras High Court
Case No : W.A. No. 85 of 2005

C. Shanmugam

APPELLANT

Vs

Tamil Nadu Housing Board

RESPONDENT

Date of Decision : 31-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 CTC 555 : (2005) 2 LLJ 625 : (2005) 2 LW 307 : (2005) 2 MLJ 109

Hon'ble Judges : Markandey Katju, C.J;D. Murugesan, J

Bench : Division Bench

Advocate : S.V. Ramasubramanian, for the Appellant; D. Veerasekaran, for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, C.J.—This Writ Appeal is filed against the impugned order dated 11.3.2004 passed by the learned single judge.

2. The writ-petitioner/appellant was working as Man Mazdoor in Salem Housing Unit of the respondent-Board. He was charge-sheeted for

misappropriation of money and, after enquiry, he was found guilty. The finding of guilt is a finding of fact and we cannot interfere with the same in

writ jurisdiction. Admittedly, the appellant was given an opportunity of hearing in the enquiry and hence, the principles of natural justice have been

complied with.

3. Learned counsel for the appellant submitted that the person who was more guilty, viz., the Revenue Inspector has been let off with a minor

punishment whereas the appellant suffered the punishment of dismissal from service. Learned counsel submitted that though this point was urged

before the learned single Judge, there is no discussion of the same in the impugned order and, therefore, this point may now be considered by this Court.

4. We cannot permit the learned counsel for the appellant to raise this new point before us at this stage. The presumption in law is that a Judge deals with all the points which are pressed before him in his judgment. If a point is not dealt with in the judgment, then the presumption, which is of course a rebuttable one, is that that point was never raised and argued before the Judge. It is quite common in practice that in a writ petition or in an appeal though more than one point or ground (say ten points or grounds) may be taken in the petition or in the memorandum of appeal, only a few points or grounds (say two or three), are pressed at the time of hearing by the learned counsel. Obviously, the learned Judge will deal in his judgment with only those points which were urged before him in his judgment and the presumption is that the other points, though raised in the pleadings, were never pressed before the learned Judge. This, of course, is a rebuttable presumption and if the learned counsel submits that a particular point or ground, though raised and urged before the learned Judge, was not dealt with in the judgment, the proper course for him is to move an application before the very same learned Judge who has passed the judgment and urge before him that a point (or points) was raised and urged before him but it was not dealt with in the judgment. If such an application is filed and the learned Judge, after hearing the counsel, is satisfied that the point was in fact urged before him, he can pass such appropriate order as he deems fit.

5. In *Ram Bali v. State of Uttar Pradesh*, 2004 (18) ILD 880, the Supreme Court observed as follows:

We notice that the High Court specifically records that only two points were urged before it. It has to be noted that the statement of as to what transpired at the hearing, the record in the judgment of the Court are conclusive of the facts so stated, and no one can contradict such statement on affidavit or by other evidence. If a party thinks that the happenings in Court have been erroneously recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges who have made record to make necessary rectification. That is the only way to have

the record corrected. It is not open to the appellant to contend before this Court to the contrary State of Maharashtra Vs. Ramdas Shrinivas

Nayak and Another, ; Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, and Roop Kumar Vs. Mohan Thedani, .

In Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , the Supreme Court observed as follows:

Before parting with the case, we may notice that Mr. Tanna appearing on behalf of South Gujarat University in CA No. 1540 of 2002 submitted

that various other contentions had also been raised before the High Court. We are not prepared to go into the said contentions inasmuch as

assuming the same to be correct, the remedy of the appellants would lie in filing an appropriate application for review before the High Court.

Incidentally, we may notice that even in the SLP no substantial question of law in this behalf has been raised nor has any affidavit been affirmed by

the learned advocate who had appeared before the High Court or by any officer of the appellant who was present in court that certain other

submissions were made before the High Court which were not taken into consideration.

It is pertinent to note that even in this appeal, it has not been mentioned by the appellant that he had actually urged the aforesaid point before the

learned single Judge. Hence, we cannot permit the learned counsel to raise that point before us. As already stated, the proper course open to the

appellant is to approach the very learned single Judge who has passed the impugned order with a proper application and affidavit in which he could

state that though a particular point was urged and argued in the writ petition but it has not been dealt with in the impugned order. If such an

application is made, the learned single Judge will consider the same, and if satisfied that the point was indeed urged before him, he may pass

appropriate orders thereon.

6. With these observations, the writ appeal is dismissed.