

(1968) 12 GUJ CK 0004

In the Gujarat High Court

Case No : Spl. Civil Application No. 1061 of 1963

Chitranjan Manilal Shah

APPELLANT

Vs

Mane Patil and Others

RESPONDENT

Date of Decision : 11-12-1968

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1970 Guj 67 : (1970) 11 GLR 273

Hon'ble Judges : Mehta, J

Bench : Single Bench

Advocate : V.J. Desai, for the Appellant; G.T. Nanavati, Asst. Govt. Pleader and M.G. Doshit, Addl. Govt. Pleader, for the Respondent

Judgement

1. The petitioner Chitranjan Manilal Shah challenges in this petition the appellate order passed by respondent No. 2 Director of Civil Supplies, on 29th November 1963, who confirmed the order passed by the Collector on 6th August 1963 cancelling the fair price shop authorisation of the petitioner and forfeiting the full amount of his deposit on the ground that he had illegally disposed of rice from the approved shop and this act amounted to serious misconduct.

2. The petitioner's case is that the Gujarat Foodgrains Dealers licensing Order, 1963, issued u/s 3 of the Essential Commodities Act, 1955, he is a licensed dealer. Under a subsequent order known as the Imported Foodgrains (Prohibition of Unauthorised Sale) Order, 1958, issued on 1st November 1958 by reason of clause 3 thereof, no person other than the authorised dealer could sell or store or offer for sale imported foodgrains in any quantity. Authorised dealer was also defined under clause 2(a) as a dealer authorised by the Central Government or a State Government or by a duty authorised officer of the Central Government or the State Government, to run a fair price shop or ration shop at which imported foodgrains are or may be sold. The petitioner's fair price shop was accordingly authorised by an authorisation which was issued to the petitioner. In 1958 on his

executing agreement. Ex. 13, dated 6-10-1968 and it was from time to time renewed every year. His licence under the Licensing Order, 1963, and the authorisation under the aforesaid order were valid at the relevant time. On 30th November 1962 a notice was issued to the petitioner as after taking delivery of American long rice on his permit through his broker Hemaji, the said rice had not been sold from the fair price shop on cards to the card-holders but was directly sold and delivered to private merchant Jayantilal Shah in breach of the orders of the authority issued in this connection. In the said notice a reference was made to the statements made by the broker Hemaji Navaji, the other broker Bhutaji Premaji and other labourers to the effect that said rice was delivered in a truck to the shop of Jayantilal. Such rice was found from Jayantilal's shop on search in a huge quantity and as a result of which a criminal complaint was filed against him. Even the huge sale of American rice on 13th and 14th in the stock register convinced the authority that the petitioner had misused the authorisation licence and had illegally sold the said rice given to him by the Government. The petitioner was, therefore, called upon why his authorisation should not be cancelled and the deposit forfeited. The petitioner gave an explanation denying the charge that he had illegally sold away the American rice to Jayantilal Shah and not to the card-holders. His explanation was that he did not know broker Bhutaji and had no relation with him and the statements made by those persons must be under threats of the police. The erasures in the stock register were explained as by way of mistakes and the heavy sale on those days was explained on the ground that there was great rush of customers on those days. The Collector refused to accept this explanation and he accordingly cancelled the authorisation and forfeited the deposit by the order, dated 6th August 1963. In appeal the respondent No. 2 having confirmed the order, the petitioner has filed this petition to challenge these two orders.

3. At the outset the learned Assistant Government Pleader Mr. G. T. Nanavati raised a preliminary objection that such a petition was not legally competent. The scheme of fair price shops is a distribution scheme undertaken by the State Government which is not a statutory scheme. The petitioner was merely holding authorisation as per the terms of the agreement and for enforcement of this contractual agreement or contractual rights therein no such writ petition is competent. The learned Assistant Government Pleader in this connection relied upon the decision of the Supreme Court in *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, . The Supreme Court in terms pointed out that a writ of mandamus may be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge that statutory obligation. The chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdiction. In that case the Supreme court found that the appointment of the appellant as a manager by the Custodian by virtue of his power u/s 10(2)(b) of the Administration of the Evacuee Property

Act, 1950, was contractual in its nature and there was no statutory obligation as between him and the appellant. The Supreme Court further observed that any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a writ under Art. 226 of the Constitution. The learned Asstt. Govt. Pleader also relied upon the decision of the Supreme Court in *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, at page 296. The Supreme Court in terms approved the view taken by the Judicial Committee of the Privy Council in *Francis v. Municipal Councillors of Kuala Lumpur* (1962) 3 All E.R. 633, and in *Barber v. Manchester Regional Hospital Board* 1958 (1) All. E. R. 322 and in *Vidyodaya University of Ceylon v. Silva* 1964 3 All E.R. 865. In these cases the authority appointing a servant was acting in exercise of statutory authority but the relation between the person appointed and the employer was contractual and it was held that the relation between the employer and the person appointed being that of master and servant, termination of relationship will not entitle the servant to a declaration that his employment had not been validly determined. That is no doubt a normal principle that unless there is a right to an office the contract of employment could not be specifically enforced and, therefore, no such petition for a declaration that the employment had not been validly determined and the person continued in office could be filed. In *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, however, the Supreme Court pointed out that the power to appoint Vice-Chancellor had its source in the University Act. At page 297 it was, therefore, held that once the appointment is made in pursuance of a Statute, though the appointing authority is not precluded from determining the appointment, the decision of the appointed authority to terminate the appointment may be based only upon the result of an inquiry held in a manner consistent with the basic concept of justice and fairplay. The Supreme Court followed the decision in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, where it was observed;

"It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed., it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

In those circumstances it is held that the power to appoint a Vice-Chancellor has its source in the University Act; investment of that power carried with it the power to determine the employment but the power is coupled with duty. The power may not be exercised arbitrarily, it can be only exercised for good cause, i.e., in the interests of the University and only when it is found after due inquiry held in manner consistent with the rules of natural justice, that the holder of the

office is unfit to continue as Vice-Chancellor. The nature of the inquiry even in such cases of termination of office of the Vice-Chancellor has been therefore, held to be quasi-judicial. The case falling in the third category of cases considered by the House of Lords in *Ridge v. Baldwin* 1964 S.C. 40 and the tenure of the office of the Vice-Chancellor could not be interrupted without first informing him of what was alleged against him and without giving an opportunity to make his defence or explanation. The Supreme Court confirmed the order on the ground that while making an inquiry all the relevant material was disclosed and the Vice-chancellor was given an opportunity to controvert the material used against him. Therefore, the nature of the inquiry is as per the test adopted by Lord Loreburn L.C. in *Board of Education v. Rice* 1911 A.C. 179 and not an elaborate inquiry by way of oral hearing by examining witnesses.

4. These decisions would not help the learned learned Assistant Government Pleader in this case to contend that the petitioner had only a contractual right which cannot be protected under the Essential Commodities Act, 1955. Under S. 3 the Central Government had issued the Imported Foodgrains (Prohibition of Unauthorised Sale) Order 1958 clause 3 provided for prohibition of unauthorised sale of imported foodgrains or storing or offering it for sale in any quantity except by authorised dealers who were authorised to run a fair price shop at which imported foodgrains could be sold under Clause 2 (a). Therefore, the authorisation which was issued to the petitioner for giving him imported foodgrains had its source in this statutory order. This authorisation was not a mere contractual authorisation but it enured for the purpose of the imported Foodgrains (Prohibition of Unauthorised Sale) Order, 1958. Once this authorisation is cancelled, the petitioner's fundamental rights to trade in the imported foodgrains would come to an end and he would be hit by the prohibition under clause 3 of that Order Under the scheme of authorisation which is issued to the petitioner Ex. A, the authorities have a right under clause 3 to cancel it in accordance with the terms of the agreement. Annexure "B" or at the discretion of the Collector. This contractual power has not been exercised and so it is not necessary to go into that question in the present case the authorities acted upon clause 8 of this authorisation at Ex. A which provides that the holder of the authorisation shall be liable for departmental action, prosecution or both, as the case may be, for any contravention of the terms of the agreement or directions or orders issued by the Collector or any officer duly authorised by the Collector, Ahmedabad. Therefore this is a penal order passed against the authorised dealer in terms of clause 8 which entails such serious penal consequences in case of such a cancellation of the authorisation which is issued to the petitioner in pursuance of the aforesaid Control Order, 1958. If rule of law is to prevail it is implicit that the State executive cannot act on such matters arbitrarily or on mere humour or caprice. The order passed against the petitioner which visits with such serious consequences and which is a penal order can only be passed in accordance with the principles of natural justice as laid down by the Supreme Court in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . This position is

now well settled by some of the recent decisions of the Supreme Court in this connection. In *Union of India v. Anglo Afghan Agency* AIR 1968 S.C. 718 , the question arose as to whether the authorities could reduce the Import licence entitlement which the petitioner earned on making the exports under the Export Promotion Scheme as per the promises held out by the Government. At page 725 the Supreme Court pointed out that the effect of the decision in various cases discussed was that the Court was competent to give relief in appropriate cases if contrary to the scheme, the authority declined to grant a licence or import certificate or the authority acted arbitrarily. The Supreme Court even assumed that the scheme was not legislative but only executive in nature, even so the Government and its officers were not entitled at their whim to ignore the promises made by the Government. The Textile Commissioner could not be deemed to be the sole judge of the quantum of import licence to be granted to an exporter, and that the Courts were not powerless to grant relief, if the promised import licence is not given to an exporter who has acted to his prejudice relying upon the representation. To concede to the departmental authorities that power would be to strike at the very root of the rule of law. At page 726 the Supreme Court in terms pointed out that what the petitioners were doing was not to enforce any contractual right but they were really seeking to enforce compliance with the obligation which was laid upon the Textile Commissioner by the terms of that scheme and even if the scheme was executive in character, the persons aggrieved by the failure to carry out the terms of the scheme were entitled to seek resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the scheme be ordered to be carried out. The claim was sought to be raised only on equitable grounds and even in such case when the order was passed without any inquiry it was held to have been rightly quashed. Again, in *Bharat Barrel and Drum Mfg. Co. Vs. L.K. Bose and Others*, a question arose before the Supreme Court as regards the order of Iron and Steel Controller cancelling the allotment orders in favour of the petitioner. When the matter was questioned in a writ petition at an earlier stage, a consent order had been arrived at under which the Controller was to hear the parties and ascertain as to whether the petitioner was at fault. At page 365 the Supreme Court observed that it was well settled that while considering the question of breach of the principles of natural justice, the Court should not proceed as if there were any inflexible rules of natural justice of universal application. The Court, therefore has to consider in each case whether in the light of the facts and circumstances of the case the nature of the issues involved in the inquiry, the nature of the order passed and the interests affected thereby a fair and reasonable opportunity of being heard was furnished to the person affected. The Supreme Court considered a number of earlier decisions at page 366 and pointed out that mere refusal to record oral evidence did not necessarily mean contravention of the rules of natural justice. The Supreme court in this connection distinguished the decision in *Union of India (UOI) Vs. T.R. Varma*, on the ground that the Court in that case was concerned with a inquiry held under Art. 311 of the Constitution and the observations made in that case, therefore,

would bear no analogy to the inquiry held by the Controller in the aforesaid case. Further proceeding at page 367 the Supreme Court observed that the Controller was not a judicial tribunal in the sense of a Court of law and though inquiry held by him was a quasi-judicial inquiry it certainly was not a trial. The inquiry was confined to one question only viz., whether he should reconsider the order made by him in favour of the petitioner by determining as to whether he was at fault. The consent order even provided for hearing, but it did not contemplate that the Controller should follow any elaborate procedure. It did not lay down any such procedure or any procedure at all with the consequence that the Controller was left to devise his own procedure. So long as the procedure devised by him gave a fair and adequate opportunity to the parties to put forward and explain their respective cases such procedure would be sufficient and could not be challenged on the ground of any contravention of natural justice. Therefore, according to these decisions in the matter of such licence and allotment of quota in pursuance of the executive schemes under the relevant Control Legislation, the orders of the authorities which affect are held to be subject to judicial review when such orders result in such serious consequences. Even the principles of natural justice are held to be applicable and the authorities must act judicially in deciding such serious questions affecting the rights of the persons concerned. The Supreme Court has also clarified the nature of such inquiry when there is a duty to act judicially by pointing out that a refusal to record oral evidence would not necessarily means a contravention of principles of natural justice. In the absence of the relevant statutory rules all that is necessary is that the person must be given an opportunity to be heard by making his representation and no material should be used against him unless he is given an opportunity to explain or controvert that material. Therefore, the learned Assistant Government Pleader's contention cannot be accepted that in this matter the petitioner was enforcing any contractual right. What the petitioner is challenging is that his authorisation which is issued to him in pursuance of the Control Order, 1958, is purported to be terminated by the void order which is in contravention of all principles of natural justice and, therefore, he continues to hold such authorisation. Such a petition is clearly competent, especially when the authorities have also not exercised the contractual power of termination of the authorisation licence but have chosen to exercise disciplinary jurisdiction against the petitioner by cancelling his authorisation on the ground of misconduct committed by him. The order being a penal order, it can be passed only in accordance with the principles of natural justice.

5. The controversy, however, centres on the question as to whether the principles of natural justice would require any elaborate procedure taking the oral evidence or the inquiry fulfilling Lord Loreburn's test would be sufficient. This question also stands concluded after the decision of the Supreme Court in *Bharat Barrel and Drum Mfg. Co. Vs. L.K. Bose and Others*, . Even in *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, , where the office of the Vice-Chancellor was terminated, the principles of natural justice were held not to have been

contravened if the inquiry satisfied Lord Loreburn's test. Mr. Desai, however, relied upon the decision of the Supreme Court in *Union of India (UOI) Vs. T.R. Varma*, . That decision is distinguished by the Supreme Court in *Bharat Barrel & Drum Mfg. Co.'s case*, AIR 1961 S.C. 361 at page 367 by in terms, observing that in that case the inquiry was one under Article 311 of the Constitution and it could not bear analogy to the inquiry held by the Controller in that case. Mr. Desai next relied upon the decision of the Supreme Court in *State of Mysore Vs. S.S. Makapur*, which is also the case of a Government Servant. Finally, Mr. Desai relied upon the decision under the Industrial law, in *Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others*, . Just like Art. 311 even the Industrial law makes a departure from the ordinary law and the principles evolved in industrial adjudication for a just inquiry in case of industrial employees could not be invoked in the present case. The disciplinary control in the present case was sought to be exercised against the authorised dealer. There were no statutory rules or standing orders which required any elaborate oral inquiry by recording evidence. In the absence of any such elaborate procedure laid down by the statutory rules or standing orders, the requirements of natural justice would be fulfilled if the inquiry is held as per Lord Loreburn's test.

6. Mr. Desai argued that even in this view of the matter the present inquiry has contravened principles of natural justice, in that (1) the copies of the ex parte statements relied upon against the petitioner had not been supplied and, (2) no witness was examined in the presence of the petitioner. The petitioner has in terms pleaded these two infirmities and even in the reply filed by the authorities these allegations are not disputed. It must, however, be kept in mind that the petitioner had not demanded copies of the statements of the witnesses recorded at the preliminary inquiry. He was given the gist of the statements even in the show cause notice dated 30-11-1962. The statements of the brokers and the labourer has been specifically mentioned but the petitioner in his explanation merely denied having any relation with the broker Bhutaji Premaji. As regards the other broker Hemaji Navaji who had actually under the petitioner's instructions delivered these goods to the merchant Jayantilal has not disowned. There was only the bare allegation that these statements were under pressure of the police which theory was discarded in view of the fact that the statements were taken in the preliminary investigation by the authorities themselves. No attempt was made by the petitioner to rebut the materials sought to be relied against him. Even as regards huge rise in the sales on those two days 13th and 14th and the erasures in the stock register the petitioner's explanation could not be relied upon by the authorities. The authorities are, therefore, right in stating in their affidavit that the petitioner never insisted on examining a witness and had not even asked for any opportunity to lead any evidence. In fact, after the order of the Collector, the petitioner was heard even in the appeal. Therefore, the relevant material used against him has been disclosed to the petitioner. If the petitioner never asked for any copies the authorities were not bound to supply those copies. In any event when the petitioner was given due opportunity to

tender all his explanation and he had actually submitted his reply and when he had not led any evidence to rebut this serious charge against him for which prima facie material was disclosed to him, the order cannot be said to be one in contravention of the elementary principles of natural justice even if the inquiry were to comply with Lord Loreburne's test. Therefore, on this ground the petitioner has failed to make out any case. No other ground is urged in this petition.

7. In the result this petition fails. Rule is discharged with costs.

8. Petition dismissed.