

(1994) 04 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10127 of 1992

G. Chandrakanth

APPELLANT

Vs

Guntur Dist. Milk Producers" Union Ltd.

RESPONDENT

Date of Decision : 23-04-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1994) 2 ALT 253 : (1995) 1 LLJ 668

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Judgement

S.R. Nayak, J.—This writ petition is directed against the proceedings culminating in the impugned order bearing proceedings No. 3752/A1/2-91 dated 5-8-1992 removing the petitioner from the services of the Guntur District Milk Producers" Co-operative Union Limited. Vadlamudi.

2. When the petitioner was working as Assistant Manager (Stores) in the office of the Sangam Dairy, Guntur district he was charged with certain misconducts under the relevant Bye-laws by issuing a charge memo dated 27-11-1991. The Management, not being satisfied with explanation offered by the delinquent petitioner proceeded to hold the delinquent petitioner proceeded to hold departmental enquiry against the petitioner. Accordingly, the disciplinary authority appointed an advocate as enquiry officer on 18-1-1992. The Enquiry Officer held an enquiry and submitted his report to the Disciplinary Authority on 6-5-1992. After receipt of the enquiry report the Disciplinary Authority issued final show cause notice to the delinquent petitioner on 6-6-1992. Thereafter words the Boards of Directors, of Society on 29-7-1992 resolved to remove the petitioner from services of the Society. In pursuance to the resolution of the Board of Directors the impugned order came to be issued on 5-8-1992. The petitioner aggrieved by the said order dated 5-8-1992 has approached this Court by way of this writ petition filed under Article 226 of the Constitution of India praying for question the impugned order.

3. The learned Counsel appearing for the parties were hearing

4. The learned Counsel appearing for the petitioner submitted that -

(1) The charge memo issued to the delinquent officer is vague, imprecise and not capable of understanding correctly and therefore it does not conform to the standards set by a series of decisions of the Apex Court and the High Courts. Consequently the impugned charge should be held to be bad in law and the superstructure built upon such a charge memo should also fall to ground.

Further the learned Counsel for the petitioner submitted that even taking what is stated in the charge memo is true and correct, it will not constitute a misconduct within the meaning of the relevant Bye-laws governing disciplinary proceedings.

(2) As per Bye-law 27 of the Bye-laws the Disciplinary Authority may itself hold the domestic enquiry to be held against a delinquent official by appointing any other authority superior in rank to the employee charged and in the instant case an outsider-advocate was appointed as an enquiry officer. The appointment of a outsider like an advocate as an enquiry officer is wholly illegal and on that count also the entire proceedings stand vitiated and the impugned order based on such a report should also fall to the ground.

(3) The learned Counsel also submitted that three officials including the petitioner who were alleged to have been involved in the commission of alleged misconduct and in that view of the matter the Disciplinary Authority was required in law to hold a joint and common enquiry against all the delinquent officials. But, the Disciplinary Authority held separate and individual enquiry against each of these three delinquent officials and such a procedure adopted by the Disciplinary Authority is wholly invalid and illegal.

(4) Fourthly, the learned Counsel for the petitioner contended that after holding department enquiry against the other two delinquent officials the Disciplinary authority has exonerated them for the charges, whereas the petitioner delinquent official is imposed with the punishment of removal from service. According to the learned Counsel this tantamounts to discrimination violating the mandate of Articles 14 of the Constitution of India.

(5) Lastly, the learned Counsel also contended that the punishment imposed on the delinquent official is very severe and disproportionate to the alleged misconduct committed by the delinquent official.

5. The learned Counsel appearing for the Management-Disciplinary authority supported the impugned order of the Disciplinary authority by countering claims of the petitioner. Both learned Counsel appearing for the parties placed number of authorities both in assailing and defending the impugned order. Although the impugned order was attacked on several grounds noted above by the learned Counsel appearing for the petitioner. I do not think it necessary for this Court to deal with all those contentions because the Court after going through the pleadings of the parties and hearing the learned Counsel for the parties is of the

opinion that the impugned proceedings resulting in the impugned order suffers from atleast two apparent fatal errors of procedure adopted by the Disciplinary authority.

6. At the outset, it is relevant to note the requirements of a proper and valid charge-sheet. It is needless to state that a charge-sheet is the charter of disciplinary action. The domestic enquiry commences with the service of the charge-sheet. In other words, before proceeding with the domestic enquiry against a delinquent official he must be informed clearly, precisely and accurately of the charges levelled against him. The charge-sheet should specifically set out all charges which the workman is called upon to show-cause against and should also state all relevant particulars without which he cannot defend himself. The objects of this requirement is that the delinquent employee must know that he is charged with and have the amplest opportunity to meet the charge and to defend himself by giving a proper explanation, after knowing the nature of the offence or misconduct with which he is charged; otherwise it will amount to his being condemned unheard. Fair hearing pre-supposes a precise and definite catalogue of charges so that the person charged may understand and effectively meet it. If the charges are imprecise and indefinite, the person charged could not be able to understand them and defend himself effectively and the resulting enquiry would not be a fair and just resulting enquiry would not be a fair and just enquiry. The charged person ought to be informed of the charge levelled against him as also of the grounds upon which they are based. Charge of misconduct should not be vague. The charge-sheet must be specific and must set out all the necessary particulars irrespective of the fact whether the delinquent knows all about the charges. Whether he knows it or not he must be told about the charges and it was not his duty to connect the charge-sheet with his alleged understanding or knowledge of the charge. As contended by the learned Counsel for the respondent - Disciplinary authority that the charge need not be framed with the precision of a charge in criminal proceeding. But it must not be vague or so general as to make it impossible of being traversed. The test is whether the charge conveys to the delinquent employee concerned the exact nature of the alleged misconduct in a way that would enable him to meet the charge effectively. If a vague charge is given to delinquent, it is fatal defect which vitiates the entire proceedings. It is also relevant to note that vagueness in the charge is not excused on the plea that the employee concerned should be deemed to have known the facts correctly. It should not be left to the delinquent official to find out or imagine what the charges against him are and it is for the employer to frame specific charges with full particulars. What is stated supra is a settled position in law. In that back-drop we have to examine the validity of the charge memo issued to the delinquent official in the present case.

7. The charge memo issued to the delinquent official on 27-11-1991 reads thus :

"THE GUNTUR DISTRICT MILK PRODUCERS" CO-OPERATIVE UNION LIMITED,
SANGAM DAIRY, VADLAMUDI.

Office of the General Manager, Sangam Dairy, Vadlamudi Dt. 27-11-1991.

Charge Memo No. 3952/A1-2/91-1

Sub : Estt.- The GDMPCU Ltd., Vadlamudi - Sri G. Chandrakanth, A. M. (Stores) - Disposal of scrap material - Delivery of unaccounted stock to the scrap contractor - Charges framed - Regarding.

Ref : Note of Manager (Materials) dated 14-11-1991 and 25-11-1991.

It is noticed by the undersigned that Sri G. Chandrakanth A. M. (Stores) (working as I/c. General Stores) on 12-11-1991 has planned to deliver the unaccounted polythene scrap liners and polythene sauchets scrap to the scrap contractor by expecting some bribes from the contractor. The particulars are as follows :

Actual Qty. Kg.	Excess for	Qty. ex-	Rate/ delivered	Amount No.	scrap quantity in	Specified D.C.	Name of the delivered cess Qty.
Rs. 1.	Polythene	2850	1005	1845	2,060	38,007.00	sauchets
2015	1955	60	23-45	1,407.00	Liner	scrap	-----
							Total : 39,414.00

On enquiry it is also found that the individual has intentionally weighed the material in two places (i.e.) at C. F. P. and General Stores. He prepared the gate pass on 11-11-91, before payment of scrap value and accepted the cash from the contractor instead of D. D. against the general practice and remitted the cash in bank on behalf of the contractor on a later day.

As per the common service rules under C. D. A. rules in Rule No. 5(1) (2) and (25) the above acts counts misconduct. Hence he is directed to explain the reasons as to why suitable action cannot be taken against him. His written explanation should reach this office within 7 days from the date of receipt of this charge memo, failing which it will be construed that he has no explanation to offer and action deemed fit will be initiated against him as per the union rules.

Sd/- R. Koteswara Rao, General Manager. To, Sri G. Chandrakanth, A. M. (Stores) House No. 2-8-118. Vempativari Street, Gandhinagar, Tenali-Regd. Post with ack. due. Copy to Manager (Materials) /spare-3".

8. The reading of the charge memo clearly makes it very clear that it is wholly vague, imprecise and incapable of understanding correctly as contended by the learned Counsel for the petitioner. The charge memo speaks about the plan of the delinquent petitioner to deliver the unaccounted polythene scrap liners and polythene sauchets scrap to the scrap contractor by expecting some bribes from the contractor. This charge, if it is taken on its face value, does not tantamount to misconduct. When the disciplinary authority charges an employee with bribery or corruption it is necessary to specifically state in the charge memo as to when the delinquent official demand bribery giving the date and time and when the

bribe-giver the lacking in the charge memo issued to the petitioner. However, the learned Counsel appearing for the respondent disciplinary authority submitted that though the charge memo issued to the petitioner might not have conformed to the standards set by the Courts, the delinquent official correctly understood the charges levelled against him and in that view of the matter it is not a case for interference on the ground that the charge memo is vague and imprecise. This submission of the learned Counsel for the respondent is not acceptable to the Court. As already pointed out supra vagueness in the charge is not excused on the plea that the employee concerned should be deemed to have known the facts correctly and it should not be left to the delinquent official to find out or imagine what the charges against him are and it is for the management to frame specific charges with full particulars. Further it is also relevant to note that even taking whatever stated in the charge memo is true and correct that will not tantamount to commission of a misconduct under the relevant Bye-laws. Planning to do a thing is different from doing that thing. What is alleged against the deliver certain goods to the contractor "expecting some bribes". It is not the case of the disciplinary authority that the delinquent official has accepted the bribe for certain favour shown to the contractor. The allegation is that he was expecting some bribe. Therefore he cannot be charged with misconduct of bribery or corruption unless the disciplinary authority is of the opinion that the delinquent official has received the bribe or some illegal gratification as consideration to show certain official favour in favour of the contractor. Therefore, as rightly contended by the learned Counsel for the petitioner the charge framed against the petitioner is not only vague, imprecise and ambiguous but also does not constitute a misconduct within the meaning of bye-laws. In view of this finding it is needless to state that the superstructure built upon this invalid charge memo should also fall to the ground. In other words the enquiry held by the Disciplinary authority, enquiry report and even the final order are liable to be declared as invalid and illegal.

9. The procedure adopted by the Disciplinary authority in the matter of appointing enquiry officer is also defective and violative of Bye-law 27(2) of the Bye-laws. Bye-law 27(2) reads thus :

"27 (2) Initiation of Disciplinary Proceedings :

(a) The appointing authority or any authority to which it is subordinate or any other authority authorised in that behalf by the federation by a resolution shall initiate disciplinary proceedings against an employee in a case calling for disciplinary action under these Rules.

(b) The Competent Authority under Clause (a) above may itself conduct enquiry in accordance with the provisions of Rule 29 or subject to the order of the Managing Director or any other authority superior in rank to the employee charged to conduct an enquiry.

Note : The authority conducting an enquiry in clause (b) shall be referred to as

Inquiring Authority."

10. Clause (a) of Bye-law 27(2) is not happily worded. But nevertheless there cannot be any doubt that clause (a) of Bye-law 27(2) provides that the appointing authority or any other authority to which it is subordinate or any other authority authorised in that behalf by the Federation by a resolution shall initiate disciplinary proceedings against a delinquent employee in a case calling for disciplinary action under the Rules. Clause (b) of Bye-law 27(2) further provides that the competent authority under clause (a) may itself conduct the enquiry in accordance with the provisions of Bye-law 29 or cause an inquiry to be held by any other authority superior in rank to the employee charged subject to the order of the Managing Director. As pointed supra, the Bye-law 27(2) is not happily worded but it should be lie in the mouth of the disciplinary authority to contend that Bye-law 27(2) should be ignored altogether and the Court should hold that there is no such Bye-law governing the appointment of an enquiry officer. It is stated at the bar that Bye-law 27(2) is the only Bye-law which governs the matter of appointment of enquiry officer and if that is so, the disciplinary authority must have understood the purport of the provision of bye-law 27(2) all these years and applied the same whenever it chose to hold departmental inquiries against the delinquent officials. But one thing is quite certain. Bye-law 27(2) does not permit appointment of an outsider as an enquiry officer. Domestic enquiry may be held either by the appointing authority or any other authority superior in rank to the employee charged, subject to the order of the Managing Director. Therefore the submission of the learned Counsel for the respondent that sense Bye-law 27(2) is unintelligible and does not make sense it could be ignored totally and if that is ignored it is always open to the disciplinary authority to appoint even an outsider as an enquiry officer, is not acceptable to the Court.

11. A Bye-law of the society is a term of contract which binds the parties to it and therefore a Bye-law can be enforced against each other who are bound by it. There is no dispute that Bye-law 27(2) binds both the Management and the employees. It is settled position in law that power to appoint enquiry officer must be exercised subject to governing rules. It is also settled position in law that if an enquiry is held by a incompetent and unauthorised person, incompetent and unauthorised under the relevant Conduct regulations or rules, then it invalidates the entire proceedings and such a defect cannot be considered as a mere irregularity and consequently it cannot be regularised by showing that the competent authority itself had applied its mind and reviewed the enquiry records. Even if such a competent officer went through the enquiry records and recorded his agreement with the findings recorded by the incompetent enquiry officer, it is not sufficient when the rules do not permit the disciplinary authority to appoint an outsider as enquiry officer. Since I have held that Bye-law 27(2) of the Bye-laws does not permit the disciplinary authority to appoint an outsider as enquiry officer the enquiry proceedings conducted by the advocate-enquiry officer should be held to be illegal and improper. Further, even the final impugned order passed

against the petitioner should also be held illegal and improper because it is based on the enquiry report submitted by the advocate-enquiry officer.

12. In view of my findings recorded on the charge memo and the appointment of enquiry officer, it is not necessary for the Court to consider the other contentions placed by the learned Counsel for the petitioner.

13. For the reasons stated above, the writ petition is allowed. The impugned order is quashed and rule made absolute. It is made clear that the petitioner employee is entitled to all benefits which flow from the quashing of the impugned order.

14. Having regard to the facts and circumstance of the case the parties are directed to bear their own costs.