

(2004) 09 GUJ CK 0071

In the Gujarat High Court

Case No : Special Civil Application No's. 4475 and 6776 of 1984

H.B. Gorasia since Deceased thro his Heirs

APPELLANT

Vs

New India Assurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:

General Insurance (Conduct, Discipline and Appeal) Rules, 1975 — Rule 23(F), 31, 4, 40

Citation : (2004) 09 GUJ CK 0071

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : Bhaskar P. Tanna and Nikhil S. Kariel, for Petitioner Nos. 1-1/3 in Special Civil application No. 4475 of 1984 and Bhaskar P. Tanna and Nikhil S. Kariel, in Special Civil application No. 6776 of 1990, for the Appellant; P.V. Nanavati, in Special Civil Application No. 4475 of 1984, Vibhuti Nanavati, in Special Civil Application No. 4475 of 1984 and Rajni H. Mehta, for Respondent Nos.1-3 in Special Civil Application No. 6776 of 1990, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—Precisely, in this group of two writ petitions, under Article 226 of the Constitution of India, the following question is, repeatedly, placed in focus for consideration and adjudication:

"Whether omission or inaction on the part of the Disciplinary Authority, while deciding and determining the issue of delinquency of an employee in a domestic Tribunal, after the report of the Inquiry Officer is submitted and before the further order for departmental punishment is recorded, in not addressing itself to the question of prejudice having been caused or not for non-supply of the Report of the Inquiry Officer, even prior or before the effective date of 20th November, 1990, in terms of case-law expounded in "Mohd. Ramzankhan"s" Case and irrespective of pleading or arguing, ipso-facto would vitiate the impugned order of punishment like dismissal or removal from the services?"

2. With a view to appreciating the merits of the only aforesaid question, which has been raised and canvassed, on behalf of the petitioners, in this group of two petitions, let there be a skeleton projection of relevant factual profile.

3. The original-petitioner, Mr. H.B. Ghorasia, since deceased during the pendency of the petition, legal heirs and representatives having been substituted in his place, in writ petition No.4475 of 1984 (First Petitioner) questioned the legality and validity of his dismissal by an order, dated 3rd July, 1984, recorded by the Assistant General Manager, from the post of Insurance Inspector at the relevant time, working, at Ahmedabad Office, with Respondent No.1, New India Assurance Company Limited, ("Insurance Company") which followed after holding the Departmental Inquiry held under the provisions of "General Insurance (Conduct, Discipline and Appeal) Rules", 1975 ("Rules"), wherein, the Inquiry Officer appointed by respondent No.1 found the original-petitioner delinquent and guilty of serious charges under the Rules.

4. Upon the consideration and evaluation of the said Report, the Disciplinary Authority accepted it, and after observing necessary and requisite provisions of the Rules, recorded the order of dismissal from the service.

5. The charges against the original-petitioner, delinquent an Insurance Inspector of Insurance Company, inter-alia included: fraud, tampering with the insurance policies; indulgence in dishonesty in transaction of the Company's business; failure to discharge the office of Inspector with integrity, devotion and diligence, leading to financial loss to the Insurance Company and thereby, committing grave and serious misconduct under several provisions incorporated in Rule 4 of the Rules.

6. The original-petitioner, without availing the opportunity of a Departmental Appeal against the order of dismissal recorded by the Disciplinary Authority, provided under Rule 31 of the Rules, and also by passing the provisions providing further departmental redressal incorporated in Rule 40 for presenting the Memorial, which empowers an employee, whose Appeal under the Rules, having been rejected to approach to the Chairman or the Chairman-cum-Managing Director, opted for direct Constitutional writ remedy-redressal provided under Article 226 of the Constitution of India.

7. Whereas, in Special Civil Application No.6776 of 1990, the petitioner (hereinafter referred to, as the "second petitioner" for brevity sake), who was, also, working as Insurance Inspector of Respondent No.1, Insurance Company, at Amreli, in the office of Insurance Company, has challenged the order of removal from the service of respondent No.1, which came to be recorded in terms of Rule 23 (F) of the Rules, by the Regional Manager and the Disciplinary Authority, after accepting the report of the Inquiry Officer appointed in the matter of disciplinary proceedings in a Domestic Inquiry against the petitioner which, also, was confirmed by an appellate authority in a Departmental Appeal filed under Rule 31 and subsequently, confirmed in the hearing of the Memorial filed by the

petitioner under Rule 40 of the Rules.

8. Let it be manifested and articulated that the serious charges against the second-petitioner inter-alia in the charge-sheet included following charges; that:

- i. He, whilst working as Inspector, at Harij, under Mehsana DO, has printed premium receipt books and had authorised his agents to issue such receipts, although he was not authorised to do either.
- ii. He had, also, not deposited the premium collected by issuing his own receipts.
- iii. He had also issued certain covernotes and has misappropriated the premium amount received on these cover notes.
- iv. He had, also, intentionally issued various covernotes without showing the interest of the Bank, with a view to misappropriate the amount of commission which was not payable.
- v. He had also issued a letter of cover, covering Fire Risk to M/s Thakkar Ashok Kumar Parsuram for the period 09-03-1985 to 09-03-1986, but the premium on this risk had not been deposited till date.
- vi. He had issued fire cover notes, as well as, letter covering Fire Risk, although, the same is beyond his authority.

9. Although the petitioners questioned the dismissal or removal orders from the service from the post of Insurance Inspector of respondent No.1, on various grounds; at the time of marathon hearing, the only point which has been canvassed is, with regard to causing of prejudice in not considering and examining the issue of prejudice, precisely as mentioned hereinabove, at the inception of the judgment, and thereby, seeking the direction of this Court for quashment and remand for reconsideration by the Disciplinary Authority to examining the issue of prejudice having been caused or not, on account of, non-supply of the Report of the Inquiry Officer, the Disciplinary Authority accepted it and upon consideration and passed the impugned order, which came to be recorded, on 8th July, 1987, and thus, before 20th November, 1990 (date of pronouncement of judgment) in Union of India and others Vs. Mohd. Ramzan Khan, , which is popularly known as "Mohd. Ramzan Khan's case", and, therefore, it is referred to, as such.

10. Since this Court has been addressed on the sole point at the time of hearing, other aspects would not have any survival value. Otherwise, also, both petitions are squarely covered by the latest proposition of law, enunciated in a recent decision of this Court rendered in "Dilip H. Shah Vs. New India Assurance Company Limited 2003 (2) CLR 221" (Coram: J.M. Panchal, J.).

11. The sole contention raised with regard to the issue of non-consideration of prejudice in non-supply of the Report of the Inquiry Officer to the delinquent, even prior to the date of 20th November, 1990, admittedly, does not fall within the procedural requirement. Rules of 1975 do not cast any incumbency upon the Disciplinary Authority to consider the said question in such a case, wherein punishment is recorded on or before 20th November, 1990.

12. However, it is submitted that such an incumbency could be a part of the principles of natural justice. When such a question is exposed to the domain of

natural justice, the Court is obliged to consider that in a plea of causation of prejudice to the delinquent-employee, which is otherwise not forming an integral part of the procedural adjudicative disposition, the question of the emergence of the prejudice, has to be particularised, pleaded and specifically raised, as one of the principles of natural justice, and it demands and commands, also, that whatever it is not procedurally or substantively forming a part of the requirement in an adjudicative process or disposition of the dispute, the person raising such a dispute has to first raise it and then satisfy the decision-making authority or the Court concerned that non-supply of Report of the Inquiry Officer or for that purpose any document, which is contractually, statutorily or with the aid of principles of natural justice, has operated adversely against the raiser of such a dispute must come clearly. Not only that merely raising before the concerned authority, but it has to be shown to the satisfaction of the Court being sustainable after raising it. What is expected by virtue of the sole question, which is, precisely, formulated above is, with due respect, remains unsupportable, unsustainable and in reality very startling proposition, but it is rightly said, "A drowning man will always try to catch a straw". What is not a part of procedural, substantive or contractual obligation, is sought to be introduced by this sole submission, which is not only lame but blind as well.

13. Time and again, the jurisdictional sweep and the scope of the judicial review under the provisions of Article 226 are explored and expounded in various judicial pronouncements. It is very well settled and celebrated that, while exercising the powers of judicial review, the Court is, mainly, concerned with the decision-making process than the quality and the merit of the decision impugned. The writ court does not sit as an appellate authority and cannot re-weight, re-appreciate and re-evaluate the factual findings based on evidence. The main anxiety, while dealing with the merits of the petition, under Article 226 of the Constitution of India, is, as to whether the outcome from the result of the decision-making process, is in any way affected or influenced on account of impermissible or extraneous consideration. The legality, the rationality and the reasonability could be the test and not the degree or extent of evaluation of the facts or evidence or the type and the category of the quality, or the type of the decision-making process, which could be screened or examined under the judicial review.

14. If the authority concerned having, under the legal sanction, has reached a conclusion, this is not the Court, which can substitute its own views or wisdom, merely, because a better view could have been taken or that the quality or the type of the decision-making process could have been higher or better. What is required out of the sole submission is to introduce such an obligation on the part of the Disciplinary Authority, which is not even remotely contemplated in the rules, procedure or any contract or under any legal obligation, and that even without pleading or raising, it is, really, an attempt to make an issue out of a non-issue. The judicial review process, under Article 226 is in the nature of supervisory jurisdiction.

15. In the opinion of this Court, in the aforesaid factual backdrop, the settled legal settings, the principles of natural justice, the sole contention, which is raised for the first time, in this group of two writ petitions, is, absolutely, meritless and baseless and there is no case for interference, whatsoever, in exercise of the powers under Article 226.

16. Since the sole question was placed in focus, it has been addressed. Otherwise also, the disputes raised by the petitioners in both the petitions are, squarely, covered by the latest proposition of law in a similar matter so beautifully elucidated and propounded and succinctly expounded by this Court in "Dilip H. Shah Vs. New India Assurance Company Limited" (supra). This Court has taken into consideration such a dispute in a similar case from various angles and various decisions. The learned Advocates appearing for the respondent Insurance Company in both the petitions have drawn the attention of this Court to the observations made by the Hon'ble Apex Court in the following cases:

- i. "Union of India Vs. Mohd. Ramzan Khan" (supra) [Para 17]
- ii. "Managing Director, ECIL, Hyderabad and Ors. Vs. B.Kaunakar And Ors." [Paras 27, 61, 20, 43, 63, 65 and 68].
- iii. B.C. Chaturvedi Vs. Union of India and others, [Para 18]
- iv. "Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr. 1991 LAB I.C. 1565" [Paras 31 and 36]
- v. Lalit Popli Vs. Canara Bank and Others, [Paras 16, 17 and 18]
- vi. R.S. Saini Vs. State of Punjab and Others, . [Para 16]

17. It is, rightly, submitted on behalf of the respondent Insurance-Company that acceptance of the proposition canvassed will culminate in the emergence of incumbency on the part of the Disciplinary Authority to probe and to go into unfathomable province, even in absence of raising such a pleading and non-particularising, as to how, prejudice has been generated and how and what, it has cast the adverse impact upon the delinquent-employee.

18. Upon true analysis, correct appraisal of the factual profile, the relevant propositions of law and the latest decision of this Court, rendered in "Dilip H. Shah Vs. New India Assurance Company" (supra) wherein, the entire relevant case-law has been addressed and threadbare discussed, this Court does not deem it further necessary to divulge on all those issues raised in the petitions but not argued, nonetheless, they are, also, covered by the said decision. The only legal fate, therefore, the petitioners, in both these petitions, must receive is rejection with costs. Rule discharged.