

(2006) 06 MAD CK 0313

In the Madras High Court

Case No : Writ Petition No. 10215 of 2005 and W.P.M.P. No. 10916 of 2005

M. Jamalutheen

APPELLANT

Vs

The Director of School Education and Others

RESPONDENT

Date of Decision : 26-06-2006

Acts Referred:

Citation : (2006) 06 MAD CK 0313

Hon'ble Judges : M.E.N. Patrudu, J

Bench : Single Bench

Advocate : Isaac Mohan Lal, for the Appellant; R. Balasubramaniam, R1 to R3 and M. Valliyappa, for R4 and R5, for the Respondent

Final Decision : Allowed

Judgement

M.E.N. Patrudu, J.—The Head Master of Higher Secondary School is the Petitioner.

2. There are five Respondents. The Respondents 1 to 3 are the officials of the state. The Respondents 4 & 5 is the correspondent of the School.

3. The grievance of the Petitioner is that he was subjected to a major penalty of reduction in rank, without adhering to Principles of natural Justice.

4. Mr. Isaac Mohan lal appeared for the Petitioner.

5. Mr. Mr. R. Balasubramaniam. learned Additional Government Pleader has appeared for the Respondents 1 to 3

6. Mr. M. Valliyappa, learned Counsel appeared for the Respondents 4 & 5.

7. The admitted facts are that the Petitioner joined the school on 08.10.1993 as B.T. Assistant (History) and the appointment of the Petitioner was approved by the Education Department of the State. Thereafter, he was appointed as Post-Graduate Assistant (History) and later he was promoted as Head Master on 01.06.1991.

8. The case of the Petitioner is that the fifth Respondent became the CorRespondent of the School in April 2005. There were misunderstandings between both of them, resulting the fifth Respondent has issued a charge memo dated 23.08.2005, levelling seven charges against the Petitioner. The Petitioner has submitted his explanation on 29.08.2005, in respect of the charges framed against him. The management has constituted a Nine Member Committee for enquiry and he was directed to appear before the Committee on 18.09.2005. In the enquiry only five members were present. One among them was the fifth Respondent the Correspondent himself. The allegation of the Petitioner is that the Correspondent dominated the enquiry and he had induced the Petitioner to tender an unconditional apology so that he would be let off from the charges. Believing the assurance, the Petitioner gave statement admitting the charges with a hope that he will be exonerated. Later, he learnt that he is going to be victimised by using his own statement. Immediately, on the next day, the Petitioner has sent a registered letter dated 20.09.2005, requesting to hold fresh enquiry. It appears that there is no reply. Thereafter on 03.10.2005, a memo was served on him stating that the committee had accepted the enquiry report and decided to impose a punishment of reduction in rank and accordingly, the rank of the Petitioner was reduced from the post of Head Master to that of Assistant.

9. The enquiry report was sent by the 5th Respondent, directing the Petitioner to submit his explanation within seven days. While-so, on 21.10.2005, the Petitioner submitted letter for voluntary retirement. No action is taken by the 5th Respondent till 07.11.2005. Thereafter, the impugned order of reducing his rank from the post of Head Master to the post of P.G. Assistant(History) has been served and the same is questioned in this Writ Petition.

10. The fifth Respondent alone has filed the counter affidavit.

11. Allegations with regard to enmity are denied by him. It is stated in para (7) of the counter affidavit that an opportunity was given to the Petitioner and witnesses were examined in his presence and he has cross-examined them and as the charges are proved he had pleaded guilty. It is stated that the 5th Respondent has not played any role for his admission of the charges. It is further stated that the President of the Committee presided over the enquiry, hence the 5th Respondent cannot play any major role. It is also stated that on receiving the letter from the Petitioner on 20.09.2005 requesting for fresh enquiry a memo was issued on 03.10.2005 accepting the enquiry request.

12. It is stated that the Petitioner sought for voluntary retirement after the completion of disciplinary action and as charges framed against him are proved. Therefore, the punishment is imposed without accepting his request for voluntary retirement.

13. Heard arguments of both sides.

14. In this Writ, two important questions are involved.

(i). The principles of the natural justice

(ii). Why a fresh enquiry was not held?

15. Principles of natural justice:

The principle of natural justice mean the principles relating to the procedure required to be followed by authorities entrusted with the task of deciding disputes between the parties when no procedure is laid down by rules.

It has been recognized from ancient times that authorities are required to observe some procedural rules to ensure fairness to a party against whom order is sought to be passed.

Indeed, natural justice is a pervasive facet of secular law where a spiritual touch enlivens legislation, administration and adjudication, to make fairness a creed of life. It has many colours and shades, many forms and shapes. It is the hone of healthy government, recognized from earliest times and not a mystic testament.

From the legendary days of Adam and of Kautilya's Arthashastra - the rule of law has had this stamp of natural justice which makes it social justice.

Importance of Principles of natural justice in conducting departmental enquiries is very obvious.

In A. K. Kraipak v. Union of India,

the Honourable Supreme Court of India, has clearly observed that the aim of rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. They do not supplant the law but supplement it.

AIR 1953 SCC 150,

In India, the Constitution is above all other laws and all powers, be they legislative, executive or judicial are derived directly or indirectly from the Constitution. In the Constitution of India there are some rights which are recognized as fundamental rights and they are described in part III of the Constitution. The principles of natural justice are not recognized as fundamental rights under the Constitution of India unlike the Provisions of "due process clause" in America. The effect of this omission is that even if a law might violate the principles of natural justice the law will have to be enforced by the Courts.

The Supreme Court of India has clearly held in Maneka Gandhi case, A.K. Gopalan case and many such cases that the principles of natural justice will have their own weight and right.

16. The principle "audi alteram partem" goes back many centuries in our law and appears in a multitude of Judgments of the highest authority.

17. In Maclean v. Workers' Union (i) it is observed

The truth is that justice is a very elaborate concept, the growth of many

centuries of civilization: and even now the concept differs widely in countries usually described as civilised. So, the rules of natural justice as understood in modern legal parlance are really the rules which experience has shown as essential to prevent unfairness in judicial or administrative proceedings.

18. In *C. Gabriel v. State of Madras*, (ii)

this Court has set out the requirements of natural justice in the following words.

(i). (1929) 1 Ch 602,

(ii) *Kumari C. Gabriel Vs. The State of Madras running the National Employment Organisation and Others*, ,

All enquiries, judicial, departmental or other, into the conduct of individuals must conform to certain standards.

One is that the person proceeded against must be given a fair and reasonable opportunity to defend himself.

Another is that the person charged with the duty of holding the enquiry must discharge that duty without bias and certainly without vindictiveness. He must conduct himself objectively and dispassionately not merely during the procedural stages of the enquiry, but also in dealing with the evidence and the material on record when drawing up the final order. These requirements are basic and cannot be whittled down, whatever be the nature of the enquiry.

19. Therefore, those who are concerned with the justice system must uphold the familiar statement that it is not sufficient that justice is done but that justice should also manifestly appear to be done. These rules are intended to prevent such authority from doing injustice. Herein, the enquiry must be an impartial tribunal, i.e., a person, who is neither directly nor indirectly a party to the case should not hold the enquiry.

Nemo debet, esse judex in propria causa

In one of the famous cases,

Frome United Breweries Company v. Bath Justice, (i)

it was held that one who has an interest in the litigation is already biased against the party concerned. Therefore, he should be opted out of the enquiry.

20. The principles of natural justice are mainly based on two maxims. They are

(i). *Nemo debet, esse judex in propria causa* (no one should be judge in his own cause)

(ii). *Audi alteram partem* (hear the other side)

21. These are treated as fundamental principles to be observed by every authority in the enquiry.

(i).(1926) AC 586.

In the words of Sir Edward Coke, M. Bikhari Lal case (i) vocate, (ii) interrogate, and (iii) judge, that is to say, call, question, and adjudicate and it is purely based on the impartiality of the authority by giving adequate opportunity to be heard thereafter consideration and finally solemn Judgment.

22. No one will be judge in his own cause and no decision can be given against a party without affording him a reasonable hearing and the enquiry should be held in good faith without bias and not arbitrarily or unreasonably.

23. In the instant case, the Court has noticed two main irregularities. They are, the President of the Committee and the 5th Respondent i.e., the CorRespondent participating in the enquiry as the members of the Committee and found the Petitioner guilty. The 5th Respondent is the person, who was issued charge memo: The President has passed the final order. The 5th Respondent is the person who is instrumental for framing charges. The fifth Respondent is the person who has initiated the departmental proceedings against the Petitioner. The fifth Respondent is the person, who has received the explanation from the Petitioner. He is the Correspondent of the school and he has initiated the departmental proceedings and initiated the action. Having initiated the departmental proceeding he is not expected to sit on judgment in the enquiry. The enquiry should be conducted by some other 3rd party.

The second irregularity is, in the counter affidavit of the 1 st Respondent it is stated that an important person of the school Committee, who is none other than the President of the Muslim Orphanage Committee, Al-haj M. Jamal Mohammed was presided over the enquiry and he has controlled the proceedings.

24. It is also stated that the said person is the most respectable and powerful President of the institution. The admitted fact is that the school is under the control of the Muslim Orphanage Committee. Its President has all powers for administration of the said institution and has participated in the enquiry and he is the person who has ultimately passed the impugned order and communicated through the 5th Respondent.

25. G. Nageswara Rao v. A.P.S.R.T. Corporation, (i)

The Apex Court of India, has clearly held

i). No one will be judge in his own cause

ii) Justice should not only be done but should manifestly and undoubtedly seem to be done and if a Member of a judicial body-is subject to bias in favour or against any party or is in such a position that bias might be assumed to exist he ought not to take part in the decision.

26. Therefore, the very presence of the President and the CorRespondent of the School as members of the enquiry committee is attracting the doctrine of bias and specific allegation is levelled, against the 5th Respondent Thus it is cleared

that in this case both the President as well as the CorRespondent who have some interest in the disciplinary matter have participated in the enquiry. Thereby, the very object of natural justice are defeated.

(i).AIR 1959 308.

27. In J. Mohapatra and Company v. State of Orissa, (i)

it has been clearly held

no one will be judge in his own cause. The reason is that one of the members can influence the mind of the other members whether the other members are actually influenced or not cannot be determined. What is material is the possibility of bias and not actual bias. Although, the principle of bias can be excluded by the doctrine of necessity but that is not applicable in all cases. The mere fact that the interested persons did not participate in the discussion or he withdrew from the deliberations of the Committee, was not sufficient because this will be kept in mind by the remaining members of the Committee.

28. Therefore, the Supreme Court has gone to the extent that even if interested persons are withdrawn from the

(i) J. Mohapatra and Co. and Another Vs. State of Orissa and Another, .

deliberations or kept out of the discussions even then, the said fact will influence the other members of the Committee.

29. Therefore, the fifth Respondent and the President of the Committee ought not to have been the Members of the Committee enquired into the allegations against the Petitioner. On this ground alone, the impugned order is liable to be set aside.

30. Request for fresh enquiry:

Adding further, the admitted fact is that the Petitioner requested for fresh enquiry. The enquiry was on 18.09.2005. The Petitioner admitted the charges. While-so on 20.09.2005, he sent a registered letter requesting to hold fresh enquiry. The reasons are also furnished in the said letter. Yet, no fresh enquiry is held. There is no reply to this request; The request is not respected; The order is issued on 03.10.2005. But holding the charges are proved; Thus there is violation of principles of natural justice. The Rule of natural justice that hearing to be given before action is taken includes that the delinquent should be heard before the action taken.

31. In the instant case, Five Members have assembled out of nine and the delinquent admitted the guilt and the verdict is not passed; Thereafter the delinquent sought for fresh enquiry. It is on the next day without accepting rejecting his prayer the order was issued. The admission of the delinquent is voluntary or by force is immaterial. When the delinquent is asking for fresh enquiry, disclosing the reasons for such fresh enquiry, it is the duty of the

authority to give another reasonable opportunity to the Petitioner.

32. Under the principles of "audi alteram partem", the person should have the opportunity to know the allegation against him and the said person should be given reasonable and fair opportunity of questioning the same and the person should know the material, which is sought to be used against him and the said person also have to be permitted to be represented by an expert and the said person also must be given a reasonable personal hearing and finally, decision should be made in a good faith and the decisions must be on valid reasons.

33. In the instant case, when the delinquent Petitioner requested for fresh enquiry on the next day of the earlier enquiry, the same is denied; I do not know the reason for denying such opportunity. This attitude of the 5th Respondent is with bias and vindictiveness. Thus the Court cannot be a silent spectator for such illegal activities of the School CorRespondent.

34. It is unnecessary for me to re-produce the various land mark Judgments of the other High Courts of the country and these aspects because the law is well settled and we have to respect the law. The individual, who respects the law alone will get respect from the society.

35. For the foregoing reasons, I hold that the impugned order is liable to be set aside and accordingly the impugned order dated 07.11.2005, issued by the fifth Respondent is quashed. If the management of the School intends to enquire into the allegation levelled against the Petitioner, they are at liberty by appointing on independent, respectable Enquiry Officer, who is not connected either with the Management or the teaching affairs of the School. It is advisable that an official of the State can enquire.

36. The fifth Respondent has filed a supplementary counter affidavit, stating that the Petitioner was relieved from the post of Head Master on 07.11.2005 and one S.A.F. Abdul Kader, was appointed as temporary Head Master and he took charge of the Head Master on 07.11.2005, immediately.

37. It is stated that the Petitioner left the school on receipt of the order dated 07.11.2005, without any permission and he sent a telegram applying for casual leave for half day on 07.11.2005 and 8th to 11th November 2005 and the request for the casual leave was rejected by the Management. Thereafter, the Petitioner applied for medical leave for ten days and periodically applying for extension of medical leave and thereafter, he is not attending the duty from 07.11.2005 to till date.

38. Since, the impugned order is reducing the rank from the post of Head Master, the Petitioner is entitled to continue the said post and the temporary appointment of Mr. S.A.F. Abdul Kader, is illegal and the Petitioner is on leave from 07.11.2005, till date and he is not received any salary, as there is no work. Since, the Petitioner is seeking for voluntary retirement and he made a representation to that effect on 21.10.2005, it is for the Respondents to consider

the same and pass suitable orders, immediately, on receipt of this order.

39. The reduction of rank of the Petitioner is set aside. The Petitioner is entitled to continue in the post of Head Master.

40. With the above observations, the Writ Petition is allowed. Consequently, the connected W.P.M.P. No. 10916 is closed. No costs.