
(1963) 11 KL CK 0010
In the High Court Of Kerala

Madhava Menon

APPELLANT

Vs

Assistant Educational Officer and Others

RESPONDENT

Date of Decision : 13-11-1963

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1966) 2 LLJ 225

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Judgement

P. Govindan Nair, J.—That the principles of natural justice had been transgressed in passing Exs. P. 3 and P. 7 orders, the first by the Assistant Educational Officer, respondent 1, to this writ application, and the second, Ex. P. 7, by the appellate authority, the District Educational Officer, respondent 2 to this writ application, is the complaint of the petitioner, who has been dealt with by these two officers. The facts of the case are as follows:

2. The petitioner was functioning as the headmaster in the school, of which respondent 3 is the manager. The school is called Pathempad A.L.P. School. A notice was issued to the petitioner on 12 January 1959, to show cause why disciplinary action should not be taken against the petitioner for an alleged misconduct said to have been committed by the petitioner. After receiving his explanation, a memorandum of charges dated 21 July 1959 was also issued to the petitioner. The petitioner's explanation thereto is dated 5 August 1959. Thereafter another notice dated 28 July 1959 was issued, to the petitioner and it is averred in Para. 9 of the counter-affidavit that in that memorandum, the petitioner was asked whether he desired an oral enquiry or a personal hearing. It is further averred that no reply was submitted by the petitioner to that memorandum. No such reply is seen in the files made available to me. I accept these statements.

3. It was thereafter that Ex. P. 3 order was passed. By that order, the petitioner was reverted to the post of an assistant teacher with effect from 1 May 1960,

and his increment of pay was stopped for one year with cumulative effect from 1 May 1960, The petitioner was instructed to hand over charge to the new headmaster whom " the manager will appoint." It appears that the petitioner did not comply with those directions to hand over charge and, therefore, he was suspended from service. Appeals were taken by the petitioner from the order, Ex. P. 3, as well as from the order of suspension, Ex. P. 5, and these appeals have been dealt with by a common order, Ex. P. 7.

4. On the above facts, the question to be considered is whether the petitioner is well-founded in his contention that there has been violation of the principles of natural justice. It appears to me that this question as to whether there has been violation of the principles of natural justice cannot be determined without reference to the relevant rules which govern the service conditions of the petitioner and without reference to the conduct of the individual and his failure to comply with the requirements of the rules. The relevant rules, as I see them, are contained in Rule 76 (2) in Chap. XIV-A of the Kerala Education Rules and "Rules 79 to 83 of the rules in the same chapter. Rule 76 (2) is in these terms :

76. (2) In every case where it is proposed to impose on the teacher any of the penalties specified in items (iii), (iv), (vii) and (viii) of Rule 65, the grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances, which it is proposed to take into consideration in passing orders on the case. He shall be required, to put in within a reasonable time a written statement of his defence and to state whether he desires an oral inquiry or only to be heard in person. If he so desires or If the authority concerned so directs, an inquiry shall be held.

At that inquiry documentary evidence may be adduced and oral evidence shall be taken as to such of the allegations as are not admitted, provided that the officer conducting the inquiry may for sufficient reasons to be recorded in writing refuse to call a witness. The person charged shall be entitled to cross-examine the witness called. After the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence.

If no inquiry is held and if he had desired to be heard in person, a personal hearing shall be given to him.

The proceedings shall contain a reasonably sufficient record of the evidence and a statement of the findings and the grounds thereof.

and Rules 79 to 83 read:

79. Appeals.—Every teacher shall be entitled to appeal, as hereinafter provided, from an order passed by an authority:

(a) imposing upon him any of the penalties specified in Rule 65;

(b) placing him under suspension under Rule 67.

80. (1) A teacher shall be entitled to appeal from an order imposing on him any of the penalties specified in Rule 65 or against an order placing him under suspension under Rule 67 if such an order was passed by an authority specified in Rules 68 to 75 to the next higher authority to whom the former authority is subordinate.

(2) No appeal preferred under this Rule shall be entertained unless It is preferred within one month of the date of the order appealed against.

81. (1) In the case of an appeal against an order imposing any penalty specified in Rule 65 or against an order placing an officer under suspension under Rule 67 the appellate authority shall consider?

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action;

(c) whether the penalty is excessive, adequate, or inadequate, and after such consideration shall pass such orders as it thinks proper confirming the order appealed against or remitting, reducing, or enhancing, the penalty:

Provided that no penalty shall be enhanced unless opportunity is given to the persons concerned to show cause why the penalty should not be enhanced.

(2) No order made by competent authority shall be reversed or altered on appeal or revision on account of any error, omission, or irregularity in the procedure unless it appears to the appellate authority or revisional authority as the case may be, that such error, omission or irregularity has, in fact, occasioned a failure of justice.

82. Every person preferring an appeal shall do so separately and in his own name.

83. Every appeal preferred under these rules shall contain all materials, statements, and arguments relied on by the appellant, shall contain no disrespectful or improper language, and shall be complete in itself. Every such appeal shall be addressed to the authority to whom the appeal is preferred and shall be submitted through the head of the institution to which the appellant belongs or belonged and through the authority from whose order the appeal is preferred and through the usual official channel.

5. I am referring to these rules, because I am fortified in my view, that the question of violation of the principles of natural justice cannot be determined without reference to these rules, by the decision of the Supreme Court. A passage from the decision of the Supreme Court in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, is apposite:

As already indicated, the rules make no provisions for the reception of evidence

oral or documentary, or the hearing of oral arguments, or even for the issue of notice of the hearing to the parties concerned. The entire proceedings are marked by a complete lack of formality. The several authorities have been left to their own resources to make the best selection. In this connexion reference may be made to the observations of this Court in the case of *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, . In that case, this Court has laid down that the rules of natural justice vary with the varying constitutions of statutory bodies and the rules prescribed by the Act under which they function; and the question whether or not any rules of natural justice had been contravened, should be decided not under any preconceived notions but in the light of the statutory rules and provisions. In the instant case, no such rules have been brought to our notice, which could be said to have been contravened by the appellate authority. Simply because it viewed a case in a particular light which may not be acceptable to another independent tribunal, it is no ground for interference either under Article 226 or 227 of the Constitution.

6. A specific notice dated 28 July 1959 was issued to the petitioner and he was asked whether he desired an oral enquiry or a personal hearing. The petitioner did not ask for an oral enquiry, nor did he request that he should be personally heard. It is clear from a reference to Rule 76 (2) that when the petitioner had not asked for a personal hearing, there is no duty on the part of the authority to give the petitioner a personal hearing. This is seen from Para. 3 of Rule 76 (2) of the rules extracted above. I am not prepared to say that this provision—that a personal hearing need be given only if asked for?by itself is violative of the principles of natural justice, I am, therefore, not able to discern any infringement of the rule of natural justice in passing Ex. P. 3.

7. The next question for consideration is whether there has been any infringement of the rules of natural justice by the appellate authority, respondent 2, in passing Ex. P. 7. A reference to Rule 83 extracted above shows that every appeal preferred shall contain all materials, statements and arguments relied on by the appellant. The petitioner made full use of this provision. It is after considering the materials and the statements contained in the appeal petition that Ex. P. 7 order, was passed. It is also not in violation of any of the rules. The right of being heard is a valuable right and the infringement of that right will amount to a violation of the principles of natural justice. But it is not clear as to what is meant by the right of being heard. This can be satisfied by the petitioner being given a full opportunity to explain his case stating therein the grounds, materials and arguments to refute the charges against him. If such an opportunity is afforded and if these statements and arguments of the petitioner are considered before passing an order, it cannot be said in all cases, that there has been an infringement of the principles of natural justice because there was no personal hearing.

8. Numerous authorities have been placed before me by counsel appearing in this case. These decisions may, at first, appear to contradict one another. But, if

the facts of these cases are studied closely, it will be seen that there is not much of conflict. No doubt, the decision relied on by counsel for the petitioner in *Dharani Mohan Barman v. State of Assam* AIR 1963 Guw 183 shows a categorical statement in Para. 3:

There would appear to be nothing in the Rule which requires an appellant to demand a personal hearing as an additional feature, in his appeal. It would have been a different matter if some such provision had been there in the rules. There being no such restriction, the normal right of an appellant to be heard in support of his appeal, before the same is rejected, should prevail.

9. The petitioner in his appeal petition against Ex. P. 3 order had specifically prayed for a personal hearing. It is contended by counsel for the petitioner that the petitioner having requested for a personal hearing and the petitioner admittedly not having been heard personally, this case stands on a different footing from the others. I think that the question does not depend on the petitioner asking for a personal hearing or refraining from doing so. In the absence of any specific provision as contained in Para. 3 of Rule 76 (2). The question must depend on the facts and circumstances of the case and the question always is whether the petitioner had been afforded a reasonable opportunity of placing his case and whether his case has been considered. The Supreme Court has decided as early as 1950 that the mere fact that there has been no personal hearing will not amount to an infringement of the principles of natural Justice. A passage from the decision of the Supreme Court in *A.K. Gopalan Vs. The State of Madras*, is illuminative :

Again, I am not prepared to accept the contention that a right to be heard orally is an essential right of procedure even according to the rules of natural justice. The right to make a defence may be admitted, but there is nothing to support the contention that an oral interview is compulsory. In *Local Government Board v. Alridge* 1915 A.C. 120 the respondent applied to the board constituted under the Housing Act to state a special case for the opinion of the High Court, contending that the order was invalid because

(1) the report of the inspector had been treated as a confidential document and had not been disclosed to the respondent, and

(2) because the board had declined to give the respondent an opportunity of being heard orally by the person or persons by whom the appeal was finally decided.

The board rejected the application. Both the points were urged before the House of Lords on appeal. Viscount Haldane, L.C., in his speech rejected the contention about the necessity of an oral hearing by observing :

But it does not follow that the procedure of every tribunal must be the same. In the case of a Court of law, tradition in this country has prescribed certain principles to which, in the main, the procedure must conform. But what that

procedure is to be in detail must depend on the nature of a tribunal.

10. In rejecting the contention about the disclosure of the report of the inspector the Lord Chancellor stated:

It might or might not have been useful to disclose this report, but I do not think that the board was bound to do so any more than it would have been bound to disclose all the minutes made on the papers in the office before a decision was come to ... What appears to me to have been the fallacy of the judgment of the majority in the Court of appeal is that It begs the question at the beginning by setting up the test of the procedure of a Court of justice instead of the other standard which was laid down for such cases in Board of Education v. Rice 1911 A.C. 179. I do not think the board was bound to hear the respondent orally provided It gave him the opportunities he actually had".

11. Reference may also be made to a decision in F.N. Roy Vs. Collector of Customs, Calcutta, . Their lordships said :

It was then stated that the petitioner had not been given personal hearing of the appeal that he preferred to the Central Board of Revenue and the application in revision to the Government. But there is no rule of natural justice that at every stage a person is entitled to personal" hearing.

12. Counsel appearing for the petitioner invited my attention to the decision of the Supreme Court In The Board of Revenue, U.P. and Others Vs. Vidyawati and Another, and urged that the decisions of the Supreme Court already referred to must at least be taken to have been modified in view of the observations made in the above judgment. He particularly invited my attention to a passage at p. 1220 reading as follows:

It Is true that in the present case the Act and the rules framed thereunder do not provide for a hearing by the Board of Revenue, when it is dealing with a matter u/s 56 (2) of the Act. But the question that is before the Board of Revenue u/s 56 (2) is of the construction of an instrument and the application of the Act to It. In many cases the decisions of the board, if it goes against the person executing the instrument, may result in payment of large amount as deficit stamp duty and even larger amounts as penalty. The question is purely a question of law in the circumstances. It seems to us, considering the nature of the duty cast on the Board of Revenue u/s 56 (2) requiring it to construe instruments submitted to it thereunder and the application of the Act to them which may result in payment of heavy amounts of deficit duty and even heavier amounts as penalty, that the legislature intended that the Board of Revenue should hear the person executing the documents before saddling him with large pecuniary liability. The question before the board u/s 56 (2) being one of the construction of an instrument and the application of the Act to it being a pure question of law which may result in payment of large amounts by the executants of the document, it would not in our opinion be improper to hold that for the determination of such a question the legislature intended that the party affected by the decision of the Board of

Revenue should be given a hearing and that the board should act judicially in deciding a pure question of law.

13. It is clear from what is stated above that their lordships, in construing the particular section of the statute, have said that the intention of the legislature was that in matters which are to be dealt with u/s 56 (2) by the Revenue Board, there should be a personal hearing. I do not find anything in that judgment which in any manner militates against the pronouncements of the Supreme Court already referred to.

14. In the result, I am unable to say that the order, Ex. P. 7, has been passed in violation of the principles of natural justice, I, therefore, dismiss this writ application. I make no order as to costs.