

(2002) 12 KAR CK 0041

In the Karnataka High Court

Case No : Writ Petition No"s. 16618 to 16691 of 2000

Martandappa B. Hosalli and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Karnataka Municipalities Act, 1964 — Section 306
Karnataka State Universities Act, 1976 — Section 8, 8 (8)

Citation : (2003) 2 KarLJ 419 : (2003) 2 KCCR 98 SN

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Subhash B. Adi, for the Appellant; L.K. Srinivasamurthy, Government Advocate for Respondents-1 and 2 and N.B. Bhat, for Respondents-3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Vishwanatha Shetty, J.—Though these petitions are listed in the orders" list, with the consent of the learned Counsels appearing for the parties, these petitions are taken up for final hearing and disposed of by this order.

2. Some of the petitioners in these petitions are either Group "D" employees or Junior Assistants in the employment of the 4th respondent-University (hereinafter referred to as "the University"). In these petitions they have called in question the correctness of the Government Order dated 30th March, 2000, a copy of which has been produced as Annexure-A. In Annexure-A, the 1st respondent in exercise of the power conferred on it under Sub-section (8) of Section 8 of the Karnataka Universities Act, 1976 (hereinafter referred to as "the Act"), nullified the Resolution Nos. 26 and 27, dated 24th December, 1998 passed by the Syndicate of the University. In Resolution No. 26, the Syndicate of the University took a decision to extend the benefit of pay scale of Rs. 80-145 to all Group "D" employees and in Resolution No. 27 the Syndicate of the University took a decision to confer the status of Junior Assistants on all those Group "D"

employees who had passed S.S.L.C. examination.

3. Sri Adi, learned Counsel appearing for the petitioners challenging the correctness of the Government Order, Annexure-A made two submissions. Firstly, he submitted that since Order, Annexure-A has been passed without hearing the petitioners and without giving an opportunity to the petitioners, the said order is liable to be quashed on the ground that the same came to be passed in disregard of the principles of natural justice. Elaborating this submission, Sri Adi pointed out that though the University was heard while passing the impugned order as required under the proviso given to Sub-section (8) of Section 8 of the Act, the petitioners who are directly affected on account of the impugned decision were not heard by the 1st respondent. It is his submission that since the University had passed the resolutions in question keeping in mind the disparity in pay scales of Junior Assistants who are working as Lab Assistants and also the Group "D" employees there is absolutely no justification to pass the impugned order without hearing the petitioners. In support of this submission that the petitioners should have been heard before passing the impugned order he relied upon the decision of the Hon"ble Supreme Court in the case of State of Haryana Vs. Ram Kishan and Others, , and also referred to me the observation made-by the Hon"ble Supreme Court in the case of The Scheduled Caste and Weaker Section Welfare Association (Regd.) and anothers Vs. State of Karnataka and others, , and also in the case of Mahiboobsab Vs. Chief Officer, Town Municipal Council and Another, .

4. Secondly, Sri Adi submitted that the conclusion reached by the State Government that the resolution impugned passed by the Syndicate runs counter to the provisions of the statute and the Act and is erroneous in law. The University having taken a decision to extend the benefit of pay parity to the Group "D" employees and also to confer the status of Junior Assistants on such of those Group "D" employees who have passed S.S.L.C., and the University having framed a statute and sent the same for the approval of the Chancellor as provided under Sub-section (4) of Section 43 read with Section 36 of the Act, it was not permissible for the State to nullify the resolution passed by the Syndicate of the University on the ground it runs contrary to the statute and the Act of the University. In support of his plea that the statute framed by the University was forwarded to the Government, Sri Adi referred to me a copy of the statute which has been produced as Annexure-H to Writ Petition Nos. 17145 to 17205 of 2000 which is heard along with these petitions. He pointed out that the benefit of the pay scale having already been extended to the petitioners and several other employees who had already retired from service, it is not permissible for the State Government to pass the impugned order directing the University to recover the payment already made to the petitioners and other employees of the University who had retired from service.

5. However, Sri Srinivasamurthy, learned Additional Government Advocate while strongly supporting the impugned order pointed out that the only requirement of

law as provided under proviso given to Sub-section (8) of Section 8 of the Act before passing the impugned order was to hear the University and the same having been done, the petitioners cannot make any grievance of the order impugned on the ground that they were not heard, He submitted that since there is no provision in the Act providing for an opportunity to the petitioners, it was not necessary for the State to hear the petitioners before passing the impugned order. In support of his submission that the petitioners were not required to be heard before passing the impugned order, he also referred to me the decision of this Court in the case of B. Gangadhar Vs. State of Karnataka and Others, wherein this Court has taken the view that the person affected need not be heard while the State makes an order in exercise of the power conferred on it under Sub-section (8) of Section 8 of the Act. Sri Srinivasamurthy also supported the order on merits countering the submission of Sri Adi. However, Sri N.B. Bhat, learned Counsel appearing for the University submitted that the University is required to comply with the direction given by the State Government in the impugned order.

6. In the light of the rival submissions advanced by the learned Counsels appearing for the parties, the two questions that would emerge for my consideration are:

(i) Whether the impugned order is liable to be quashed on the ground that the same came to be passed in disregard of the principles of natural justice?

(ii) Whether the impugned order is liable to be quashed on the ground that the finding recorded by the State Government that the resolution passed at Item Nos. 26 and 27 by the Syndicate of the University did not contravene any provisions of the statute of the University or the provisions of the Act?

Regarding first question.--Before proceeding to consider the rival contentions it is useful to refer to the relevant portion of the Order, Annexure-A passed by the Government which reads as hereunder,

From the reading of the impugned order, it is dear that the 1st respondent has nullified the resolution passed by the University at Item Nos. 26 and 27 referred to above and directed the University to recover the payment already made to the employees of the University. There cannot be any doubt that if the impugned order is allowed to be given effect to it would seriously affect the service conditions of the petitioners inasmuch as the petitioners would be denied of the benefit of the higher pay scale extended to them and also will be compelled to refund the amount which had already been paid to them. Further, the order also denies the benefit of higher grade in the grade of Junior Assistants to such of those employees in the cadre of Group "D" employees who have passed S.S.L.C, Some of the employees of the University who got the benefit of higher pay scale have also retired from service and if the impugned order is given effect to, they will have to refund the amount already drawn by them. It is well-established principle of law that when any order is made affecting the interest of a person

which results in civil consequences, the person affected is required to be heard before passing such an order. The proviso given to Sub-section (8) of Section 8 of the Act, only provides for giving an opportunity to the University. No doubt, that the said provision in explicit terms does not contemplate giving of an opportunity to the parties who are likely to be affected on account of the decision to be taken by the Government. However, the question is that when an order impugned seriously affects the service conditions of the petitioners and results in civil consequences, whether the principles of natural justice do not demand that the parties affected should be heard. To my mind it appears that they should be heard. Merely because the proviso contemplates for giving of an opportunity to the University, it does not dispense with the obligation on the part of the State Government to give an opportunity to the petitioners who are directly affected on account of the impugned order. Proviso given to Sub-section (8) of Section 8 positively mandates the University being heard before any order is passed by the State Government nullifying the decision of the University. There may be decisions of the University which does not affect the rights of the third parties and under these circumstances, third parties who are not affected by a decision of the University are not required to be heard and it would be sufficient if the University alone is heard. However, if the decision of the State Government nullifying the resolution of the University is likely to affect the rights of the third parties, they are required to be heard. The principles of natural justice demands in such circumstances that the persons who are affected should be heard. It is also necessary to point out that neither Section 8 of the Act nor in any other provision of the Act specifically denies the principles of natural justice to a person who is likely to be affected on account of the order passed by the Government under Sub-section (8) of Section 8 of the Act. Under these circumstances, the provision will have to be interpreted as implying to preserve such a right to the persons affected on account of the decisions to be taken by the State Government. The view I have taken above is supported by the decision of the Supreme Court in the case of State of Haryana, supra relied upon by Sri Adi. It is useful to refer to the observation made in paragraph 8 of the judgment which reads as hereunder:

"8. Considered in this light, the section must be interpreted to imply that the person who may be affected by such a decision should be afforded an opportunity to prove that the proposed step would not advance the interest of mines and mineral development. Not to do so will be violative of the principles of natural justice. Since there is no suggestion in the section to deny the right of the affected persons to be heard, the provisions have to be interpreted as implying to preserve such a right. Reference may be made to the observations of this Court in Baldev Singh and Others Vs. State of Himachal Pradesh and Others, , that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, such rule would apply. The cases, Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc., , Dr. D.C. Saxena Vs. State of Haryana and Others,

and State of Tamil Nadu Vs. Hind Stone and Others, , relied upon by Mr. Mohanta do not help the appellant. The learned Counsel placed reliance on the observations in paragraphs 5 to 7 of the judgment in Union of India's case, supra, which were made in connection with legislative activity which is not subject to the rule of the audi alteram partem. The principles of natural justice have no application to legislative activities, but that is not the position here. It has already been pointed out earlier that the existing mining leases were not brought to their end directly by Section 4-A itself. They had to be terminated by the exercise of the executive authority of the State Government. Somewhat similar was the situation with regard to Section 4-A of Haryana Board of School Education Act, 1969 which was under consideration in D.C. Saxena's case, supra. A matter of policy was adopted and included by the Legislature in the impugned section. Besides, the validity of the section was not under challenge there, as was expressly stated in paragraph 6 of the judgment. So far as the case, State of Tamil Nadu, supra, is concerned, the learned Counsel for the appellant cited it only with a view to emphasise the importance of the mineral wealth of the nation which nobody denies. We, therefore, hold that a final decision to prematurely terminate a lease can be taken only after notice to the lessee".

Similar view is also taken by the Hon'ble Supreme Court in the case of Scheduled Caste and Weaker Section Welfare Association, supra. In the said judgment at paragraph 15, the Hon'ble Supreme Court after referring to the decision of the Supreme Court in the case of The Government of Mysore and Others Vs. J.V. Bhat and Others, , has observed as follows:

"15. 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. 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 and the rule of natural justice operates in areas not covered by any law validly made. What particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the audi alteram partem rule could be imported. Thus in applying the test to the provisions of the earlier Act, the Mysore Slum Areas (Improvement and Clearance) Act, 1958, this Court held in Government of Mysore's case, supra, thus.--

"There can be no two opinions about the need to hear the affected persons before declaring an area to be a slum area u/s 3 or an area as a clearance area u/s 9 or before taking action u/s 10. All these difficulties will be removed if the affected persons are given an opportunity to be heard in respect of the action

proposed" ".

(emphasis supplied)

Further, in the case of Mahiboobsab, supra, while considering the provisions of Section 306 of the Karnataka Municipalities Act, I have taken the view that before the Government nullifies the resolution of the Municipal Council, the person affected is required to be heard.

7. In the case of Nagaraj and Ors., v State of Karnataka and Ors., W.P. Nos. 35736 to 35754, DD: 27-11-2002, this Court by its order dated 27th November, 2002 made in Writ Petition Nos. 35736 to 35754 after referring to the decision of this Court in the case of Mahiboobsab, supra and of the Supreme Court in the case of Scheduled Caste and Weaker Section Welfare Association, supra, has while considering the provisions of Section 306 of the Municipalities Act has taken the view that the persons affected are required to be heard by the Government. It is useful to refer to paragraph 14 of the judgment which reads as hereunder:

"14. Section 306 of the Act may be silent with regard to the hearing of persons who will be affected by the orders made by the State Government except the Municipal Council, but when certain rights are created in a person by the resolutions passed by the City Municipal Council, that person requires to be heard before passing any order that would directly or indirectly affect his interest. In the present case, the Municipal Council by passing the resolutions has created a right in favour of these petitioners and that right cannot be nullified without affording an opportunity of hearing to these petitioners. Even if there is no provision in the statute about giving of notice and right of hearing, if the order in question affects the rights of an individual, notice and hearing must be given. Since that has not been done in the present case, in my view, the orders passed by the respondent-Authorities is arbitrary, illegal and in violation of the principles of audi alteram partem rule. Therefore, those orders cannot be sustained by this Court".

(emphasis supplied)

8. However, it is no doubt true that this Court in the case of B. Gangadhar, supra, while considering the effect of proviso given to Sub-section (8) of Section 8 of the Act has taken the view that the persons likely to be affected are not required to be heard. In my view, the said observation in the said case mainly proceeded on the basis of the statement made by the University in the statement of objections conceding that the appointment of the petitioner in the said case as Administrative Officer in the services of the University was not in conformity with the provisions of the Act and the University statutes. This is clear from the observation made at paragraph 23 of the judgment. It is useful to refer to the relevant portion of the observation made at paragraph 23 which reads as hereunder:

"23. There is yet another reason to hold that the impugned order is not in violation of principles of natural justice. In the instant case, the University concedes in its objections statement that the appointment of the petitioner as Administrative Officer in the services of the University is not in conformity with the provisions of Act and University Statutes".

No doubt, in paragraph 22 of the judgment, this Court has also observed that since the University was heard, the person affected need not be heard. However, the said observation seems to me was made by this Court, as observed by me earlier, in the backdrop of the admission made by the University conceding the appointment of the petitioner, in the said case, as Administrative Officer in the services of the University was not made in conformity with the provisions of the Act and the University Statutes. This is clear from the view taken by His Lordship who has rendered the decision in the case of Nagaraj, *supra*, while considering Section 306 of the Municipalities Act wherein His Lordship has observed that "Section 306 of the Act may be silent with regard to the hearing of persons who will be affected by the orders made by the State Government except the Municipal Council, but when certain rights are created in a person passing any order that would directly or indirectly affect his interest". Such person should be heard. However, if the observation made by this Court in the case of B. Gangadhar, *supra*, is to be understood as contended by the learned Additional Government Advocate as this Court is laying down the law that a person affected need not be heard, in my view, the said enunciation of law would not be correct in the light of the judgment of the Hon"ble Supreme Court in the case of State of Haryana, *supra* and in the case of Government of Mysore, *supra*, referred to by me earlier and also in the light of the decision of the Hon"ble Supreme Court in the case of Baldev Singh, *supra*. In the case of Baldev Singh, *supra*, the Hon"ble Supreme Court has laid down that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, such rules would apply. It is useful to refer to the observation made in the said case, which reads as hereunder:

". . . It is a fact that the Orissa Act provides in clear terms a right of hearing whereas Section 256 of the Himachal Act makes no such provision, but the settled position in law is that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, the rules of natural justice would apply. . . ."

In the case of Government of Mysore, *supra*, the Hon"ble Supreme Court has observed that it is one of the fundamental rules of our Constitution set up that every citizen is protected against exercise of arbitrary authority by the State or its officers; and 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 and the rule of natural justice operates in areas not covered by any law validly made. Therefore, the impugned order is liable to be quashed on the short ground that the same came to be passed in disregard of the principles of natural justice.

Regarding second question.--In view of my conclusion that the impugned order is liable to be quashed on the ground the same came to be passed in violation of the principles of natural justice, it is not necessary to consider the second question referred to above. All contentions urged on merits are left open to be considered by the State Government.

9. Therefore, in the light of the discussion made above, I make the following order:

(i) The Order, Annexure-A, dated 30th March, 2000 is hereby quashed. The matter is remitted to the 1st respondent-State Government for reconsideration.

(ii) The State Government shall do so after hearing the petitioners and giving an opportunity to the petitioners.

10. Before parting with this order it is necessary to point out that the benefit of this order shall be given to all those employees who are similarly situated like the petitioners even if they have not approached this Court making a grievance of the impugned order.

11. In terms stated above, these petitions are allowed and disposed of. Rule is issued and made absolute.