

(1963) 08 MAD CK 0023
In the Madras High Court
Case No : Writ App. No. 51 of 1962

N. Ranganathan Pillai

APPELLANT

Vs

Commissioner, Cuddalore Municipality and Others

RESPONDENT

Date of Decision : 09-08-1963

Acts Referred:

Citation : AIR 1964 Mad 491 : (1965) 2 LLJ 66

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Ramamurti, J

Bench : Division Bench

Advocate : P.S. Balakrishna Aiyar and P.S. Ramachandran, for the Appellant;
The Addl. Govt. Pleader and M.M. Ismail, for the Respondent

Final Decision : Dismissed

Judgement

Ramamurti, J.—The appellant herein was a permanent Upper Division Clerk of the . Cuddalore Municipality. In January 1954 quinquennial revision of the property tax of the Municipality took place. The rules of the Municipality provide for revision petitions being filed to the Commissioner against the orders of the authority levying the property tax and further appeals to the Municipal Councils from the orders passed by the Commissioner. In August .1955 six charges were framed against the appellant, the main charge being that he was mainly responsible for tampering with the dates of service of the orders of the Commissioner upon tax payers as entered in the books of the Municipality, and that such tampering has taken place with the ulterior object of enabling the assesseees to prefer appeals to the Municipal Council even though the time prescribed under the rules had expired.

After the framing of the charges the usual enquiry was conducted and the Commissioner found the appellant guilty of all the charges. The appellant was reduced to the rank of a lower division clerk from the upper division clerk's post, and he was also placed at the minimum scale of pay in the lower division. The appellant preferred an appeal to the Inspector of Local Boards. The punishment was modified by his being placed at the top of the lower division for one year.

2. The appellant preferred W. P. No. 512 of 1959 for quashing this order of the Municipal Commissioner, on the ground that the proceedings before the Municipal Commissioner were conducted contrary to principles of natural justice, and that the appellant has not been given an adequate opportunity to establish his innocence. The learned Judge did not accept the contention and dismissed the writ petition, and hence the present appeal.

3. The only point that was urged by learned counsel for the appellant was based upon rule No. 4 relating to the appointment and punishment of officers and servants of Municipal Councils, G.O. No. 3648 L. S. G. dated 18-8- 1936. The portion of the rule relevant for the purpose of the present appeal is as follows :

"If he so desires or if the authority concerned so directs an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person" and to have such witnesses called as he may wish, provided that the person conducting the inquiry may, for special and sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof."

In this case, some witnesses were examined at the enquiry by the Officer concerned and statements were taken from those witnesses as to what they knew relating to the charges in question. At the enquiry in the presence of the appellant the statements of these witnesses already recorded were read over to each of the witnesses as he came forward to give evidence. After each one of the statements was confirmed by the witnesses as correct a copy of the same was given to the appellant who cross-examined the witnesses aforesaid in the light of what they had stated in the statements recorded. It is common ground that the statements already recorded from the witnesses were read over to the witnesses to the hearing of the witnesses as well as the appellant, and that the officer conducting the enquiry had taken the particular precaution of verifying with the witnesses that the statements which were already recorded and read out to him were correct and it was only after such verification that the cross examination of these witnesses took place.

4. Before the learned Judge, Ganapatia Pillai J., on behalf of the appellant, it was contended that as the cross-examination had to proceed immediately after the statements were read out the appellant had not sufficient time to think about his lines of cross examination, and that therefore he had been considerably handicapped in the conduct of the defence. In other words, the contention was that the enquiry was opposed to principles of natural justice on the ground that the appellant did not have adequate opportunity to cross examine witness examined on the other side.

At the hearing of the appeal, learned counsel however presented his argument in a slightly different form. He urged that principles of natural justice required that

the examination of the witnesses should be conducted viva voce in the presence of the person charged, and that such a requirement is necessary to eliminate chances of witnesses being tutored to give false evidence. Learned counsel further urged that the statements obtained behind the back of a person might be completely different from a statement which a witness would make in a court or before a domestic tribunal in the presence of the person against whom charges were made and that the truth of the evidence given by the witnesses could be assessed only if the entire evidence of the witnesses were taken in the presence of the accused.

Learned counsel also contended that, in any event, the rule No. 4 extracted above clearly provided that the oral evidence of the witnesses should be recorded in the presence of the person charged.

5. In support of this contention learned counsel relied upon the judgment of a Bench of the Allahabad High Court in *State of U.P. and Another Vs. C.S. Sharma*, , which reversed the judgment of a single Judge of the same High Court in *C.S. Sharma Vs. State of Uttar Pradesh and Another*, . Learned Judge in *C.S. Sharma Vs. State of Uttar Pradesh and Another*, held that the procedure of domestic tribunals need not be in strict conformity with the, procedure obtaining in courts of law, and that rules of justice only required that an officer against whom a charge was framed should note what the witnesses had said against him in respect of the charges, and that, he should be given an opportunity to adduce evidence to establish his innocence. It was also held that if these two conditions were satisfied, it was not further necessary to insist that the witnesses should be examined personally in detail in the presence of the person charged.

6. On appeal, however, this decision was reversed by a Bench of the Allahabad High Court relying upon certain observations of the Supreme Court in *Union of India (UOI) Vs. T.R. Varma*, , as supporting the view that it was necessary that the person charged must have the evidence which would be used against him taken in his presence and that he should have an opportunity to cross examine those witnesses.

7. It is true that in the judgment of the Supreme Court in *Union of India (UOI) Vs. T.R. Varma*, , there are some observations to that effect. The Supreme Court has observed at page 885 as follows :

"Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence, on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross examining the, witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them."

The question came up for direct consideration in a recent judgment of the Supreme Court in *State of Mysore Vs. S.S. Makapur*, . That case related to the

dismissal of an employee in the Police department in the district of Dharwar. In the preliminary enquiry that was conducted by the Deputy Superintendent of Police, some witnesses were examined in respect of the charges framed against the employee. At the final enquiry those witnesses were recalled by the officer conducting the enquiry. Their previous statements were brought and after putting a few questions to them, those witnesses were tendered for cross-examination. All those witnesses were then cross-examined by the employee and he was ultimately found guilty.

In that case it was contended that the procedure adopted by the officer conducting the enquiry was opposed to principles of natural justice as the entire evidence of the witnesses who gave evidence in the enquiry was not recorded in the presence of the person charged. In support of this contention reliance was placed upon the judgment of a Bench of the Bombay High Court in *State of Bombay Vs. Gajanan Mahadev Badley*, and the decisions of the Supreme Court in *Union of India (UOI) Vs. T.R. Varma*, and *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, . Their Lordships of the Supreme Court explained the scope of their observations in the earlier judgment and summed up the law in these terms :

"When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word and sentence by sentence is to insist on bare technicalities and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them.....But in our opinion, the purpose of an examination in the presence of a party against whom an enquiry is made is sufficiently achieved, when a witness who has given a prior statement is recalled, that statement is put to him and made known to the opposite party, and the witness is tendered for cross-examination by that party."

8. From the foregoing it will be clear that it is not necessary that in a domestic enquiry the entire oral evidence of the witnesses should be recorded in the presence of the person charged, and that there will be no violation of the principles of natural justice if the copies of statements of witnesses recorded in the absence of the person charged are however given to him and the witnesses were also tendered for his cross-examination.

In view of this statement of the law in the recent judgment of the Supreme Court, we are of opinion that it cannot be laid down as an abstract general rule that in a domestic enquiry the entire evidence of the witnesses should be

recorded in the presence of the person charged.

It is true, that in this case, the rules suggest that the oral evidence should be recorded in the presence of the person charged. But we think that the fact that there has been a deviation from that procedure does not affect the validity of the proceedings as there has been a substantial compliance with the provisions of the rule and there is no violation of any principle of natural justice. No doubt it would have been better if, as provided for in the rule, the witnesses had been examined in the presents of the person charged. But, that omission as indicated in the judgment of the Supreme Court, does not go to the root of the matter. The procedure adopted by the Municipality in this case is in substantial compliance with the rules and the appellant has been given adequate and ample opportunity to meat the charges. It may also be mentioned that the objection in this form was not raised before the learned Judge, and this shows that he has not been in any way prejudiced by the procedure adopted at the enquiry.

9. There is no substance in the appeal, which is dismissed with costs.