
(1984) 07 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 4787 of 1976

N. Srinivasamurthy

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-07-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 218

Citation : (1984) ILR (Kar) 722

Hon'ble Judges : Malimath, C.J;Mahendra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mahendra, J.—On a reference made by Chandrakantharaj Urs,J. this Writ Petition is posted before us for hearing.

2. The Petitioner - Srinivasamurthy who was a Police Constable has challenged his dismissal in this Writ Petition.

3. The facts of the case are these :

The Petitioner was a Police Constable attached to Chamarajpet Police Station in Bangalore City. On a written complaint made by one Chandriah making certain allegations of misconduct against him the Circle Inspector of Police, Central Sub-Division, held a preliminary investigation and submitted his report on 23-4-1973 to the Deputy Commissioner of Police, Law and Order, Bangalore City, who after being satisfied that a prima facie case existed for further action, made an order suspending the Petitioner from service with effect from 4-5-1973 and appointed the Assistant Commissioner of Police, Central Division, Bangalore City, as an Inquiring Authority. The Inquiring Authority framed the following charges.

"That you, Sri Srinivasamurthy, PC. 3904 attached to Chamarajpet Police Station now under suspension was on beat duty in X Beat of Chamarajpet Police Station on the night of 17-4-1973 and committed grave misconduct being yourself a

Government Servant in the following instances against Chandraiah and Ramiah on the night of 17-4-1973.

(a) In that, you took to your custody Sriyuths : (1) Chandraiah son of Nanjappa of Ramachandra Agrahara, Chamarajpet and (2) Ramaiah son of Munirathnam Naidu, Chamarajpet, on the night of 17-4-1973 and assaulted them and further detained them illegally in the Police Station on the pretext that they were found gambling till they were released by Sri Y. Subbanna Bhatta, Sub-Inspector of Police, Law and Order, Chamarajpet Police Station, at about 1-30 p.m. on 18-4-1973.

(b) Further you prevented Chandriaah son of Nanjappa from attending his S.S.L.C. Examination on 18-4-1973 for which he had appeared by detaining him illegally in the Police Station from the night of 17-4-1973 to about 1-30 p.m. on 18-4-1973".

4. On the Petitioner denying the charges, the Inquiring Authority held a regular enquiry. Five witnesses were examined in the enquiry to establish the charges. The Petitioner did not examine any witness. The Inquiring Authority, on the evidence produced during enquiry held the charges against the Petitioner are proved and submitted his report to the Deputy Commissioner of Police, Law and Order, Bangalore City - the Disciplinary Authority, who agreeing with the findings recorded by the Inquiring Authority served a notice on the Petitioner to show cause why he should not be dismissed from service. After considering the cause shown by the Petitioner, the Disciplinary Authority by his order made on 5-6-1974 dismissed the Petitioner from service. The Commissioner of Police, Bangalore City, dismissed the Petitioner's appeal on 26.11.1974. The Petitioner's representation to Government was also dismissed on 23-1-1976.

4. Mr. S.K. Venkataranga Iyengar, learned Counsel for the Petitioner, argued that in appointing the Assistant Commissioner of Police as the Inquiring authority to conduct the enquiry the Disciplinary Authority has contravened Rule 433 of the Karnataka Police Manual and therefore the enquiry in its entirety is vitiated and the penalty is liable to be quashed. The said rule reads :

"433(1) Once the disciplinary authority is satisfied that an inquiry is necessary, or he is directed by higher authority to hold an inquiry, the first step will be to appoint an Inquiring Authority . If the higher authority has directed the officer to hold the enquiry himself, he himself will be the Inquiring Authority.

(2) While appointing the Inquiring Authority the competent authority should ensure that the officer selected to conduct the Inquiry is a person who has not conducted the preliminary enquiry and who has not at any time, before being so appointed, expressed an opinion about the guilt of the accused. Police Officer.

(3) xxx xxx xxx(4) xxx xxx xxx

Sub-rule (2) provides that while appointing the Inquiring Authority, the Competent Authority should ensure that the officer selected to conduct the

enquiry should not be a person who has conducted the preliminary enquiry and who has not at any time before being appointed expressed an opinion about the guilt of the accused officer. According to Mr. S. K. Venkataranga Iyengar, the Assistant Commissioner of Police while forwarding the report of the Circle Inspector who held the preliminary investigation, had expressed that there was a prima facie case against his client and therefore he had already expressed an opinion about the guilt of his client and therefore Rule 433 (2) is a bar for his being appointed as an Inquiring Authority to conduct the enquiry.

5. The question to be considered therefore is whether this Rule in the Police Manual has statutory force and a contravention of this rule vitiates the enquiry and the penalty imposed on the Petitioner. No statutory provision enabling the Government to issue the rules in the Police Manual is brought to our notice. The Order No. HD 250 PEC 66 dated the 2nd March, 1967 clearly states that the Manual does not supersede any statutory rule, service rules or other orders issued by the Government, from time to time, and if there is any conflict, the latter will prevail. It appears, with the coming into force of the Karnataka Police Act, 1963, this common Police Manual, was compiled keeping in view the statutory provisions of the said Act. All the three volumes of the Police Manual as is seen from the preface by the Inspector General of Police "are confidential and are for departmental use only" and every officer to whom the Manual is supplied is directed to "ensure that it does not go to the hands of unauthorised persons".

6. The effect of contravention of a Rule in the Bombay Police Manual came up for consideration before this Court in Virupaxappa Virappa Kadampur -v.- State of Mysore 1961 Mys. L.J. 1000. One of the grounds on which the validity of the conviction of the appellant was assailed in that case was that Rule 542(1) of the Bombay Police Manual debars the prosecution of a Police Officer without the prior permission of the D.S.P. In considering this ground raised, this Court held :

" This rule does not appear to have any statutory force. It does not deal with jurisdiction of this Court to take cognizance of an offence u/s 218 IPC. It is merely an administrative instruction. Therefore the non-compliance with that Rule does not vitiate the trial in any manner".

7. We are therefore satisfied that the Rules in the Police Manual are only administrative instructions compiled and issued to the Police Officers for their guidance in discharge of their duties and are not statutory rules and any non-compliance with Rule 433 (2) does not vitiate the departmental enquiry or the penalty imposed.

8. It was next urged on behalf of the Petitioner that the Assistant Commissioner of Police, who was appointed to conduct the departmental enquiry was biased and therefore the entire proceedings are vitiated. Mr S. K. Venkataranga Iyenger argued that the decision of this Court in Vijaya charya Hosur -v.- State of Mysore² taking the view that only in cases of actual demonstrable bias, it could be said that there would be violation of natural justice, requires reconsideration

in the light of the decision of the Supreme Court in *S. Parthasarathi Vs. State of Andhra Pradesh*, . According to him, the facts in Parthasarathi's case are similar to the facts in this case and the penalty of dismissal is vitiated by bias and has to be quashed.

9. Let us, in the first instance, consider whether the decision of this Court in *Vijaya charya's*, W.P. No. 1463 of 1960 c/w W.P. Nos. 1434 & 1435 of 1960 - D.D. 9-8-1963 case requires to be reconsidered in the light of the pronouncement of the Supreme Court in Parthasarathi's case.

10. In *Vijaya charya* and connected two cases the petitioners were dismissed from Government service, after they were held guilty of misconduct in discharge of their duties after holding disciplinary proceedings. On receipt of complaints alleging illegal activities, misappropriation and defalcation of Government monies against certain officials, preliminary investigation was got conducted by the Government by the Special Officer, Efficiency Audit, who found 28 officials including the three Petitioners were responsible for the defalcation. Government on being satisfied that there was sufficient material to hold a regular Departmental Enquiry appointed the Special Officer, Efficiency Audit as the Specially Empowered Authority to hold an enquiry in accordance with the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957. The specially empowered authority framed the charges and held the enquiry and recorded his findings that each of the delinquents including the three petitioners were guilty of the charges. Government accepted the findings and after affording an opportunity of showing cause why they should not be dismissed, and after considering the cause shown passed orders dismissing them from service.

11. One of the grounds urged on behalf of the Petitioner was that the preliminary investigation having been made by the Special Officer of the Efficiency Audit Department, the departmental enquiry by the officer who is the Head of the department must be held to be vitiated by bias. In this case, it was not the Special Officer, Efficiency Audit, who conducted the preliminary investigation who was appointed as the Inquiring Authority. It was, however, contended that the officer who conducted the enquiry being the Head of the very department which had originally been required to conduct the preliminary investigation, it was highly likely that such an officer would start with a bias in favour of the opinion expressed in the investigation report.

12. This Court rejected the contention that it was highly likely that such an officer would start with bias in favour of the opinion expressed in the investigation report and observed:

"Although, the argument may appear to be attractive, the weakness of the argument consists in the fact that there is absolutely nothing to suggest any personal bias against the officer who conducted the enquiry All the circumstances relied upon and the suggestions made are merely those which may raise some suspicion but are not sufficient to come to a definite conclusion that the officer

actually acted with bias or that his report is vitiated by bias".

The Court further found that the Inquiring Officer had complied with the principles of natural justice in holding the enquiry and had considered and discussed all the evidence and arguments raised by the petitioners and held that they are unable to say that the Inquiring Officer was affected by such bias as vitiates his report or findings. As there was nothing to suggest personal bias against the Inquiring Authority, the view taken by this Court in *Vijaya charya's* case, W. P. Nos. 1463, 1434, and 1435 of 1960 - D. D. 9-8-1963 is in accordance with the decision of the Supreme Court in *State of Uttar Pradesh v. Mohamed Nooh*.

13. In *S. Parthasarathi Vs. State of Andhra Pradesh*, the Petitioner filed a suit for quashing the order passed by the Government of Andhra Pradesh on November 10, 1961, retiring him compulsorily on the basis of findings in a disciplinary proceedings against him. The Trial Court decreed the suit. On appeal by the Government of Andhra Pradesh, the High Court allowed the appeal and dismissed the suit. In the appeal by Parthasarathi before the Supreme Court against the said decree, one of the contentions raised was that the Inquiring Officer, Manvi, was biased against the appellant and the enquiry by him was vitiated.

4. AIR 1953 S.C. 86 14. Parthasarathi - the appellant, was under the immediate administrative control of Manvi who was the Deputy Director of Information and Public Relations Department . The Trial Court relied on certain circumstances for its conclusion that the Inquiring Officer was biased against the appellant. Besides these circumstances, it was further established that Manvi wanted to get rid of the services of the appellant on the ground of his mental imbalance and it was for that purpose he tried to get a certificate from Dr. R. Natarajan to the effect that the appellant was mentally unsound and it was only after Doctor Natarajan said :

" Unfortunately, I cannot, on medical grounds, advise his Retrenchment or removal and therefore, I would suggest you to deal with him departmentally and take appropriate action according to the seriousness of the offers he has committed in the office. This is a case that would be dealt with departmentally and disciplinarily and I am sorry I will not be able to help you further as he cannot be termed insane in the spirit in which it is understood."

Manvi started disciplinary proceedings against the appellant . The Supreme Court on these facts held :

"That the cumulative effect of the circumstance stated above was sufficient to create in the mind of a reasonable man the impression that there was a real likelihood of bias in the Inquiring Officer. There must be a " real likelihood " of bias and that means there must be a substantial possibility of bias. The Court will have to judge the matter as a reason-able man would judge of any matter in the conduct of his own business (See *R. V. Suderind J*) (1901) 2 K.H. 357)"

and as the Court was satisfied that there was real likelihood of bias declared that the enquiry and the order based on the enquiry was bad. In Parthasarathi's case the Court found that the Inquiring Officer was biased even before he was appointed to hold the enquiry and declared that the enquiry and its order based on such an enquiry were bad. While in Vijaya charya's case there was absolutely nothing even to suggest any personal bias against the Inquiring Officer and therefore it was necessary to find out whether the Inquiring Officer adopted a procedure which is contrary to the rules of natural justice or to the rules regulating the holding of the departmental enquiries resulting in the order based on his enquiry being vitiated and liable to be quashed. This view taken by this Court in Vijaya charya's case, W. P. Nos. 1463, 1434, and 1435 of 1960 - D. D. 9-8-1963 is in accordance with the principle laid down by the Supreme Court in Mohammad Nooh's case AIR 1953 S.C. 86 which is also referred to in S. Parthasarathi Vs. State of Andhra Pradesh, . We are therefore of the opinion that the decision of this Court in Vijaya charya's case does not require reconsideration.

15. The Assistant Commissioner of Police, the Inquiring Authority in this case, it was submitted on behalf of the Petitioner, had expressed an opinion about the guilt of the Petitioner even before he was appointed to hold the enquiry and therefore biased against the Petitioner and therefore the enquiry and the order based on such an enquiry are vitiated.

16. The Circle Inspector of Police who was directed to conduct a preliminary investigation by the Disciplinary Authority, after holding the preliminary investigation submitted his report and papers through his immediate superior officer, the Assistant Commissioner of Police to be forwarded to the Disciplinary Authority. The Assistant Commissioner of Police while forwarding the report of the Circle Inspector to the Disciplinary Authority made a note as under :

" There is a prima facie case against P.C. 3904 Srinivasamurthy of Chamarajpet Police Station for his highhandedness in bringing the Petitioner and his friend to Chamarajpet Police Station on the night of 17-4-1973 at about 12-30a.m. without any valid reasons, and detained there in the Police Station lock up and the said Police Station till they were released by the Sub-Inspector of Police (Law & Order) on 18-4-1973 at about 1-30 p.m. and thereby the said P.C. had prevented the Petitioner from attending the S.S.L. Public Examination paper on 18-4-1973".

" Thereby P.C. 3904 Srinivasamurthy is liable for grave official Misconduct being himself a Government Servant."

" In the circumstances, I suggest that a Departmental Enquiry may be ordered to be taken against the said P.C. The P.C. may be kept under suspension till the case is over."

17. Relying on this note it was argued that the Assistant Commissioner of Police who had stated that there is a prima facie case against the Petitioner had already

formed an opinion against the Petitioner and therefore he was biased against the Petitioner.

18. Even the Disciplinary Authority, in the first instance, directs a preliminary investigation and if on consideration of the report of preliminary investigation and the connected papers, is satisfied there is a prima facie case i.e., there is sufficient material to hold a departmental enquiry, directs a departmental enquiry to be held. The Assistant Commissioner of Police in this case who has forwarded the report and the papers of the preliminary investigation to the Disciplinary Authority has only stated that there is sufficient material to start a departmental enquiry against the Petitioner. He has not recorded any finding that the Petitioner is guilty of any misconduct. No reasonable man or right minded person would think it probable or likely that the Disciplinary Authority or any other officer will be prejudiced or biased against the delinquent merely because they are satisfied on the basis of the preliminary investigation report there is material to start a departmental enquiry. It is only after the Disciplinary Authority is satisfied after perusal of the preliminary investigation papers that there is sufficient material or that there is a prima facie case he directs a departmental enquiry. It was not therefore argued before us and in our view rightly, that the Disciplinary Authority who on being satisfied that there is sufficient material for holding a departmental enquiry directs a departmental enquiry to be held, has already formed an opinion about the guilt of the delinquent official or is biased against him. Whether or not the delinquent official is guilty of the charges has to be decided on the basis of the evidence produced in the departmental enquiry. We cannot therefore accept the argument that the Assistant Commissioner of Police while forwarding the preliminary investigation report to the Disciplinary Authority had stated that there was sufficient material to hold an enquiry and it was therefore highly likely that he would start with a bias in favour of the opinion expressed by him on the preliminary investigation report of the Circle Inspector. Even if the Inquiring Officer had no personal bias as in this case, if he adopts, a procedure which is contrary to the rules of natural justice or a procedure in utter disregard of the relevant rules regulating the holding of the departmental enquires the ultimate decision based on his report of enquiry is vitiated and liable to be quashed. It is not the case of the Petitioner in this case that the Inquiring Authority in the conduct of the enquiry adopted a procedure contrary to the rules of natural justice or in disregard of any provision of the relevant rules regulating the holding of the departmental enquiries and this is a case of actual demonstrable bias vitiating the enquiry and the final order based on his report is also vitiated. The attack that the order of dismissal is vitiated because of bias therefore fails.

19. It was next argued that the Inquiring Authority has failed to consider two circumstances emerging from the evidence and therefore the findings recorded by him are unsustainable. The evidence, according to the learned Counsel, discloses that the student Chandraiah was not appearing for the S.S.L.C. Examination for the first time in April 1973 but was a student who was taking the

examination for a number of years and the evidence establishes that he was not in the lock-up after 9-30 A.M. on 18-4-1973 and if the Inquiring Authority had taken into consideration this evidence he could not have recorded a finding against his client. It was also argued that non-examination of Shankarlingiah another Police Constable is also a circumstance to show that his client had not detained Chandraiah and Ramaiah as alleged. Chandraiah has admitted in his evidence that he had failed in S.S.L.C. Examination in the year 1968 in Part-II (English) and Part-IV (Physics, Chemistry and Mathematics) and he was appearing for these subjects in the examination held in April, 1973. He had appeared for examination in English on 12-4-1973 and the examination for the subject in Part IV had to commence on 18-4-73. He has produced Ex. p-1 the Time-Table and Ex. p-2 the admission ticket for the said examination issued to him by the Secondary Education Examination Board. These documents the genuineness of which was not questioned at any time clearly establish that Chandriah was a student taking the S.S.L.C. Examination held in April 1973 and he had to attend his examination in Physics on 18.4.1973. The question for consideration being whether or not Chandraiah had to take his Examination in Physics on 18-4-1973. Chandraiah having failed in some subjects in the previous years and not taking the examination for the first time in the year 1973 have no relevance.

20. Chandraiah's evidence discloses that he must have been released only after 1-30 P.M. on 18-4-1973. No doubt he has stated that at about 9-30A.M. on 18-4-1973 the Sentry P.C, opened the lock-up and allowed him and Ramaiah to go up to the hall and they were in the hall. His evidence further discloses that the Police Inspector Mr. Bhatta came there at about 1-00 P.M., and thereafter their statements were taken and they were allowed to go. Chandraiah and Ramaiah being permitted to come out of the lock-up and go up to the Hall in the Police Station in the presence of other police staff cannot be understood as releasing them and permitting them to go whenever they liked. The evidence is clear and admits of no doubt that Chandraiah and his friend were in police custody till about 1-30 P.M. on 18-4-1973 till they were ordered to be released by Mr. Bhatta. It is in evidence of Chandraiah that when he and his friend were being taken by the petitioner to the Police Station on the night of 17-4-1973 Shankarlingiah another Police Constable met them and even beat them. May be he could also have been examined. But the question for consideration being whether the evidence on record supports the finding record-ed by the Inquiring Authority, the non-examination of Shankarlingiah, another Police Constable does not in any way vitiate the finding.

21. This Court is not a Court of Appeal under Article 226 of the Constitution of India, over the decision of the authorities holding departmental enquiries against public servants. This Court can only determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed and whether the rules of natural justice are violated. If there is some evidence which the authority holding the enquiry has accepted and such evidence reasonably

supports the conclusions reached by such authority holding the charges are proved, it is not open to this Court to review the evidence and arrive at a different conclusion. It is not the case of the Petitioner before us that the findings recorded by the authority are based on no evidence or are influenced by inadmissible evidence. In effect the contention is that the evidence is inadequate or unsatisfactory to sustain the findings. These are within the exclusive jurisdiction of the authorities and are not amenable in these proceedings under Article 226 of the Constitution of India.

22. We are therefore satisfied that there is no merit in the contentions urged on behalf of the Petitioner and the Writ Petition is liable to be dismissed.

23 In the result, for the reasons stated above, this Writ Petition is dismissed and the rule is discharged.

24. In the Circumstances of the case, we make no order as to costs.