

(2007) 06 OHC CK 0008
In the Orissa High Court
Case No : O.J.C. No. 1994 of 2001

Orissa State Cooperative Marketing Federation Ltd.	APPELLANT
Vs	
Prahallad Chandra Mohanty	RESPONDENT

Date of Decision : 19-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311(2)
Orissa Co-operative Societies Act, 1962 — Section 67B

Citation : (2007) 06 OHC CK 0008

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : S.K. Pattnaik and U.C. Mohanty, for the Appellant; S.C. Parija, P. Behera and M.R. Tripathy, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—The Petitioner, Orissa State Cooperative Marketing Federation Ltd., being an apex Society registered under the Orissa Cooperative Societies Act, 1962 (in short, "the Act") in this writ application challenges the legality and validity of judgment dated 28.9.2000 passed by the Co-operative Tribunal, Orissa, Bhubaneswar, in Service Dispute Case No. 78/98 u/s 67-B of the Act (Annexure-15).

2. The brief facts leading to this writ application are that the Petitioner-Orissa State Co-operative Marketing Federation Ltd. (in short, "Federation") is a Cooperative Society and the opposite party while working under the Society as Area Manager at Jagatsinghpur from 17.7.92 to 25.9.95 faced a disciplinary proceeding on fifteen different charges levelled against him under Annexure-4. The Enquiry Officer of the said disciplinary proceeding held the opposite party guilty of all the charges excepting charge Nos. 11 and 12. After considering the findings arrived at by the Enquiry Officer during the detailed enquiry and the reply submitted by the delinquent-O.P. to the second show cause notice and on the enquiry report, the Disciplinary Authority, i.e., the Managing Director of the

Society on being satisfied that the delinquent-O.P. was not fit to be retained in the service of the Federation imposed punishment of termination of his service with immediate effect and treated the period of suspension as such vide the order dated 30.12.96 (Annexure-10). According to the Petitioner, the Disciplinary Authority was also satisfied that no confidence could be reposed on the opposite party in view of his conduct. Against the aforesaid order (Annexure-10), the opposite party filed an appeal before the Chairman of the Federation, who by his order dated 7.10.1997 (Annexure-12) confirmed the order of termination of service of the O.P. Against the aforesaid orders dated 30.12.1996 and 7.10.1997, the opposite party filed Service Dispute Case No. 78/98 before the Co-operative Tribunal and the Tribunal by its order dated 28.9.2000 (Annexure-15) quashed the said orders.

3. Mr. S.K. Pattnaik, learned Counsel for the Petitioner-Federation, submitted that the Tribunal has misdirected itself by holding that opportunity of hearing should have been given to the opposite party before passing the order of suspension and even though the O.P. was not a civil servant, the provision of Article 311(2) of the Constitution of India was relied upon by the Tribunal while deciding the case of the opposite party. He further submitted that the Tribunal has not recorded any finding as to how the delinquent-opposite party was prejudiced due to the alleged non-supply of the documents and lack of opportunities. It was further argued that when the Disciplinary Authority took the view that the conduct of the delinquent justified the termination of service, the Tribunal had no jurisdiction to quash the charges and nullify the order of penalty when the charges were proved during the enquiry. Mr. Pattnaik, learned Counsel for the Petitioner, in this regard relied upon the decision of the Supreme Court in *Government of Tamil Nadu and another Vs. A. Rajapandian*, wherein it was observed thus:

The Administrative Tribunal cannot sit as a Court of Appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supports the conclusion reached by the disciplinary authority, it is not the function of the Administrative Tribunal to review the same and reach a different finding than that of the disciplinary authority.

Mr. Pattnaik then relied upon Anr. decision of the Supreme Court in *State Bank of Patiala and others Vs. S.K. Sharma*, and submitted that violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed if it does not fall under "no notice", "no opportunity" and "no hearing" categories and in this case, no finding was recorded to that effect by the Tribunal, Mr. Pattnaik further relying upon the decision in *Damoh Panna Sagar Rural Regional Bank and Another Vs. Munna Lal Jain*, submitted that it is not a case of "no opportunity" and argued that it was also not a case where the punishment imposed by the Disciplinary Authority is shockingly disproportionate and shocks the conscience of the Tribunal, for which the order of the Tribunal is

illegal. The finding recorded therein is as follows:

xxx Unless the punishment imposed by the disciplinary authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten the litigation it may in exceptional and rare cases, impose appropriate punishment by recording cogent reason in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the appellate authority to reconsider the penalty imposed.... Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative law. Xxx

Mr. Pattnaik relying upon the decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., reiterated the same argument that the present case is also not a case of refusal of natural justice and on the similar line, he drew my attention to the decision Khem Chand Vs. The Union of India (UOI)and Others, .

4. In reply to the arguments of the learned Counsel for the Petitioner, learned Counsel for the opposite party submitted that there is no illegality or irregularity in the impugned order. A counter affidavit has been filed by the opposite party, wherein it is stated that the Tribunal at the time of hearing not only heard from both the sides but examined various relevant documents and materials on record very carefully and analysed the charges thoroughly with reference to the findings in the enquiry report and documentary evidence filed by the opposite party and held the charges as vague and baseless and not definite. It is further stated that the allegation of non-recording of any finding of actual prejudice caused to the delinquent is not correct as the Tribunal in paragraph-12 of its judgment has categorically held that the disciplinary proceeding was conducted by the Enquiring Officer in a most improper and illegal manner in gross violation of the principles of natural justice and the procedures prescribed in the Staff Service Rules, 1990 of the Federation, thereby causing serious prejudice to the opposite party, for which the proceeding is liable to be quashed.

5. Considering the rival contentions of the parties, let me first find out whether there is any infirmity in the impugned judgment. I have gone through the impugned judgment of the Tribunal and I find that the Tribunal in paragraph-12 of the said judgment has recorded a finding that the charges levelled against the opposite party-Plaintiff were not definite and moreover, they had not been proved by any evidence. The Tribunal also found that the Marshalling Officer failed to examine any witness in support of the charges and that too, there was violation of principles of natural justice because the right of the opposite party to submit his case in defence had been taken away by closing the defence case abruptly and arbitrarily. The Tribunal further found that no inquiry was held in true sense of the term and no evidence was examined. The Tribunal came to this finding after framing three issues, namely, a) whether the dispute is maintainable, (b) whether the order of termination passed by Defendant No. 1 on 30.12.1996 is legal and binding on the Plaintiff and (c) to what relief the

Plaintiff is entitled. As it appears, each issue was answered against the Petitioner-Federation by the Tribunal after going through the evidence on record.

So in my considered opinion, it would not be proper to set aside the judgment dated 28.9.2000 passed by the Co-operative Tribunal, Bhubaneswar, in Service Dispute Case No. 78/98 in a proceeding under Articles 226 and 227 of the Constitution of India. I also do not find any infirmity in the impugned judgment warranting interference in the same.

The writ application is accordingly dismissed.