
(2013) 06 MAD CK 0019
In the Madras High Court
Case No : Writ Petition No. 12323 of 2009

P. Perumal

APPELLANT

Vs

Additional Commissioner (Revenue Administration) and
Others

RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Citation : (2014) LabIC 977 : (2013) 7 MLJ 710

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : K. Shahul Hameed, for the Appellant; R. Vijayakumar, Additional Government Pleader, for the Respondent

Final Decision : Partly Allowed

Judgement

T. Raja, J.—The present writ petition has been directed against the impugned order passed by the first respondent, the Additional

Commissioner (Revenue Administration), Chennai in proceedings Na.Ka.Mu.Mu.Pani. No. 5(2) 11194/08 dated 5.3.2009, to quash the same as

illegal with a consequential direction to the third respondent to declare that the petitioner had already retired from service and thereupon to release

all the retirement benefits. The learned counsel for the petitioner pleaded that the petitioner, being an ex-Village Munsif, was appointed as Village

Administrative Officer on 28.5.2000 vide appointment order issued by the third respondent, the Revenue Divisional Officer, Dharmapuri.

Subsequently, his services were regularised by G.O.Ms. No. 453, Revenue Department dated 28.6.2006 from the date of his appointment. While

in service, the petitioner was issued with a charge memo on 17.01.2005 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal)

Rules containing two charges, namely, that without verifying the fact in respect of five persons belonging to Elangalapatti village, he recommended

for issuance of patta, even though they had land and houses. Secondly, the petitioner, in view of the above charge, has rendered himself

unbecoming of a Village Administrative Officer. Immediately after receiving the charge memo, the petitioner submitted his explanation pinpointing

that he had to recommend for the issuance of patta to them only in view of their long and continuous possession of the land in the said village.

Moreover, in respect of the same lands, pattas cannot be issued to some other persons, as the five persons were already in occupation of the said

lands. The petitioner also replied to the said charges stating that since the higher authorities had fixed a target for issuing pattas, in order to cope up

with the target fixed by the higher authorities, the petitioner had identified the natham land for issuing pattas and the five beneficiaries were actually

the occupants of the lands for a long time. Moreover, it was not possible to recommend these lands to any other persons, as it will create further

problems in the village. Further, it was also stated that though the petitioner as Village Administrative Officer has recommended for issuance of

patta, the then Revenue Inspector, Palacode, who was holding a higher post, could have refused after conducting an enquiry along with the Village

Administrative Officer regarding the issuance of patta. But unfortunately, based on the recommendation given by the Revenue Inspector, the

Tahsildar, the fourth respondent herein, had issued the pattas. Therefore, the charges levelled against the petitioner cannot be legally maintained, as

the petitioner had made only a recommendation. Thereafter, the disciplinary authority, finding that the explanation was not satisfactory, proceeded

with the enquiry by appointing an enquiry officer. On completion of enquiry, he found all the three officials guilty of the charges. In the meanwhile,

although the petitioner denied all the charges in his reply, the third respondent, without producing any witness or marking any document, concluded

the enquiry giving a finding that the charges are proved. Thereafter, when the petitioner was issued with the copy of the report along with the

second show cause notice calling upon him to submit his further explanation, one another detailed representation was presented requesting not to

accept the report of the enquiry officer, since neither any witness was produced nor any document was marked to support the charges. Although

the disciplinary authority imposed the major punishment of dismissal from service, the petitioner came to know that in respect of other co-delinquents viz., the Revenue Inspector and the Tahsildar, the disciplinary authority imposed only a lighter punishment. When the petitioner again sought for information under the Right to Information Act in respect of the punishment imposed against the Tahsildar, it came to light that the second respondent, the District Collector, Dharmapuri has imposed the punishment of stoppage of increment for one year without cumulative effect. Further, the said order stated that the Zonal Tahsildar was relieved off the charges. In regard to the punishment imposed against the Revenue Inspector, the respondents declined to disclose any information. Therefore, the petitioner filed Writ Petition No. 27958 of 2007, but the said writ petition was dismissed on the ground of existence of alternative remedy by order dated 23.8.2007. In view of the order passed by this Court in the above writ petition, the petitioner filed an appeal before the first respondent, who also refused to interfere with the order of punishment. Aggrieved by the same, he pleaded, the petitioner has come to this Court. Adding further, the learned counsel for the petitioner submitted that when several other officers were involved in a similar charge, the second respondent, while imposing a lighter punishment against the Tahsildar, who was the higher officer, for having issued the patta, ought not to have inflicted the major punishment of dismissal from service. The second respondent-District Collector wantonly, with an oblique motive, conducted different enquiries and imposed different punishments in a biased manner for the same charges. There are no reasons mentioned for imposing different quantum of punishments on different officers in spite of the fact that the same charges against the petitioner and other officers were held proved. When the charge memo was issued by the third respondent, viz., the Revenue Divisional Officer, Dharmapuri, the final order was passed by the second respondent, the District Collector. Finally, he pleaded that in any event for the alleged charge of issuance of pattas, when the petitioner, Revenue Inspector and the Tahsildar were involved, after imposing only a minor punishment to the other officers, the major punishment of dismissal from service imposed on the petitioner is not only disproportionate to the proved charges, but also discriminatory and runs against the equality clause, violating Article 14 of the Constitution of India.

Therefore, the impugned order cannot stand to the test of reasonableness under Article 14 of the Constitution of India.

2. A detailed counter affidavit has been filed by the second respondent-District Collector, Dharmapuri. The learned Additional Government

Pleader appearing for the respondents 1 to 3, in support of the impugned order passed by the respondents, contended that the petitioner, while

serving as Village Administrative Officer on 28.5.2000, was placed under suspension by the orders of the Revenue Divisional Officer, Dharmapuri

for the alleged irregularities committed by him in issuance of pattas. However, after issuing the charge memo dated 17.1.2005, he was reinstated in

service as Village Administrative Officer without prejudice to the pending disciplinary proceedings and posted as Village Administrative Officer in

Velagalihalli Village. Although the petitioner, after receiving the charge memo, submitted his explanation, dissatisfied with the explanation, the

Deputy Tahsildar, Palacode was appointed as the enquiry officer by the third respondent. After completion of enquiry, he submitted his report on

10.11.2006 holding that the charges levelled against the petitioner stood proved. The disciplinary authority, finding no merit in the explanation,

accepted the finding of the enquiry officer, who held that the petitioner had recommended for the issuance of free house site pattas to ineligible

persons of Elangalapatti village in Pullical village, when the beneficiaries were already having houses and house site pattas in their name. The

learned Additional Government Pleader further submitted that as per the Revenue Standing Order No. 21, free house site pattas should be given

only to houseless persons and as per G.O.Ms. No. 1380, Revenue Department dated 22.8.89, the free house site pattas or free land pattas should

be given in favour of women only. But in the present case, the above guidelines have not been followed by the petitioner while identifying the

beneficiaries and recommending for the issuance of pattas. Moreover, one Mr. Shankar, S/o. Idumban was also recommended for the grant of

patta when he was a bachelor and had no family. Similarly, one another person by name Mr. Pachamuthu, S/o. Chinnapachai, a resident of

Bangalore, Karnataka State, was also recommended for the grant of patta. Ignoring all these aspects, he had recommended for the issuance of

pattas. When he has made a wrong recommendation for conferring natham land, the disciplinary authority rightly accepted the findings of the

enquiry officer and imposed the punishment of dismissal from service and the further appeal made by the petitioner before the first respondent was

also duly considered and rejected by assigning good reasons that the petitioner, having been proceeded with under Rule 17(b) of the Tamil Nadu

Civil Services (Discipline & Appeal) Rules, was found guilty of the charge of recommending for the grant of pattas to ineligible persons who were

all having own houses in the same village. In regard to the further argument that the respondents 1 & 2, while considering the case of the petitioner

for imposing punishment, wrongly imposed the major punishment different from the lighter punishment imposed on the Tahsildar, who was the

ultimate authority to issue patta accepting the recommendation of the petitioner, it was submitted that when an enquiry was held against the

petitioner, the Revenue Inspector and the Tahsildar by appointing different enquiry officers, all the enquiry officers found the charges proved

against the delinquent officers, as a result, all of them were punished rationally by the second respondent under Rule 8 of the Tamil Nadu Civil

Services (Discipline & Appeal) Rules with regard to the gravity of their involvement. Moreover, when the functions of the Village Administrative

Officer, Revenue Inspector and Taluk Tahsildar vary from each other according to the cadre, responsibility and jurisdiction, but for the wrong

recommendation made by the. Village Administrative Officer, the Revenue Inspector and Tahsildar would not have suffered the punishment.

Therefore, it is not open to the petitioner to plead discriminatory treatment in the matter of imposition of punishment, when he is the kingpin in

recommending the names of ineligible persons for issuance of pattas. Although all the delinquents were punished, the petitioner cannot ask for

imposition of better punishment as against the other officers. On this basis, he prayed for no interference with the impugned punishment order

passed by the second respondent, as confirmed by the first respondent.

3. I fully agree with the submissions made by the learned Additional Government Pleader for the respondents 1 to 3 in support of the punishment

imposed against the petitioner. The reason being that the petitioner, while serving as Village Administrative Officer in the village, is expected to

know the status of every resident beneficiary before recommending for the grant of patta. That apart, when the petitioner was appointed, he was

also holding the post of Village Karnam and Munsif. Therefore, he is expected to know as to who are all the eligible persons to get the free house

site patta. While so, the petitioner has wrongly recommended for the issuance of free house site pattas to those who were having own houses in

Elangalapatti village in Pullical village. As per Revenue Standing Order No. 21, no free house site patta should be given to any person when he/she

is having any house or land. Further, G.O.Ms. No. 1380, Revenue Department dated 22.8.89 also says that free house site pattas should be given

only in favour of women, but unfortunately, the petitioner, by giving a go-by to the Revenue Standing Order No. 21 and the G.O.Ms. No. 1380

dated 22.8.89, wrongly recommended all the ineligible persons for getting patta. In fact, one Mr. Shankar, S/o. Idumban, a bachelor with no

family, was recommended for the grant of patta. Similarly, in the case of another beneficiary by name Mr. Pachamuthu, S/o. Chinnapachai, without

properly ascertaining the fact that he is a resident of Bangalore, Karnataka State, he was issued with the patta. Therefore, the enquiry officer,

finding him guilty, submitted his report. Similarly, the other officers viz., the Revenue Inspector and the Taluk Tahsildar, who were also responsible

for accepting the recommendation of the Village Administrative Officer for issuance of pattas to ineligible persons, were proceeded under Rule

17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. But the second respondent-District Collector, after properly considering the

functions of the Village Administrative Officer, the Revenue Inspector and the Taluk Tahsildar vis-à-vis their responsibilities and their jurisdiction,

while imposing lighter punishment to the Revenue Inspector and the Tahsildar, has imposed the major punishment of dismissal from service for the

only reason that the Village Administrative Officer was solely in-charge of the village since he should be aware of the facts relating to his village, but

he has miserably failed to bring to the notice of the Revenue Inspector and the Taluk Tahsildar about the ineligibility suffered by the beneficiaries.

4. Admittedly, three persons, namely, the petitioner-Village Administrative Officer and two other officers viz., the Revenue Inspector and the Taluk

Tahsildar were found guilty for issuance of patta to ineligible beneficiaries. However, after holding different enquiry proceedings, the District

Collector imposed different punishments to all the three officers. While imposing a major punishment of dismissal from service against the

petitioner, who was serving as Village Administrative Officer, for recommending the issuance of patta to the Revenue Inspector and the Taluk

Tahsildar, the same District Collector imposed a lesser punishment to the other two officers looking into their responsibilities. In these

circumstances, the petitioner has come to this Court challenging the impugned punishment of dismissal imposed against him on the ground that there

must be uniformity in imposing the quantum of punishment, since a major punishment of dismissal has been given to him, while a lesser punishment

was given to the other officers.

5. If under Article 14, administrative action is to be struck down as discriminatory, proportionality applies and it is primary review. On the other

hand, if the administrative action imposing punishment is held arbitrary, the Wednesbury rule applies and it is secondary review. The popular

Wednesbury rule expounded by Lord Greene in *Associated Provincial Picture Houses Limited v. Wednesbury Corporation*, (1948) 1 K.B. 223 ,

for the first time, laid down that the Court can interfere with a decision, if it is so absurd that no reasonable decision maker would in law come to it.

Lord Diplock in *GCHQ case* (1984 All ER 935) fashioned the principle of unreasonableness and preferred to use the term irrationality as

follows:--

By irrationality I mean that can now be succinctly referred to as "Wednesbury's unreasonableness".... It applies to a decision which is so

outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided

could have arrived at it.

Again the House of Lords in *R (Daly)*'s case demonstrated how the traditional test of Wednesbury unreasonableness has moved towards the

doctrine of necessity and proportionality. Thus, deciding the element and extent of reasonableness is related to Wednesbury Rule and, on the other

hand, deciding the quantum is related to the doctrine of proportionality. Therefore, now the question is when does the Court apply, under Article

14, the proportionality test as primary reviewing authority, and when does the Court apply the Wednesbury rule as secondary reviewing authority?

While so clearly and vividly dealing with the Wednesbury rule as to how it is different from discriminatory challenge, the Hon''ble Apex Court has

held in *Om Kumar and Others Vs. Union of India*, that when administrative action is attacked as discriminatory under Article 14, the principle of

primary review is for the Courts to decide by applying proportionality. However, where administrative action is questioned as "arbitrary" under

Article 14, the principle of secondary review based on *Wednesbury* principle applies. In this context, it is useful to extract paragraphs 67 & 68 of

the judgment as follows:--

67. But where, an administrative action is challenged as "arbitrary" under Article 14 on the basis of *E.P. Royappa Vs. State of Tamil Nadu* and

Another, (as in cases where punishments in disciplinary cases are challenged), the question will be whether the administrative order is "rational" or

"reasonable" and the test then is the *Wednesbury* test. The Courts would then be confined only to a secondary role and will only have to see

whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has

taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy

these rules, it is to be treated as arbitrary. In *G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others*, . *Venkatachaliah, J.*, (as he

then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the

stand point of *Wednesbury* rules. In *Tata Cellular Vs. Union of India*, ; *Indian Express Newspapers (Bombay) Private Ltd. and Others Vs. Union*

of India and Others, , *Supreme Court Employees' Welfare Association and Others Vs. Union of India (UOI)* and Another, and *U.P. Financial*

Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, , while Judging whether the administrative action is "arbitrary" under Article 14 (i.e.

otherwise then being discriminatory, this Court has confined itself to a *Wednesbury* review always.

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the Courts by applying

proportionality. However, where administrative action is questioned as "arbitrary" under Article 14, the principle of secondary review based on

Wednesbury principles applies.

In view of the above principles, it must be borne in mind that the petitioner,

alleging element of discrimination in awarding punishments against the three officers by the District Collector, alone is said to have been imposed with a major punishment of dismissal, when lesser punishments were imposed against the other officers, therefore, this Court should confine itself to the principle of primary review. But in the case of testing the primary review against the disciplinary authority, it has been well settled that on the question of quantum of punishment in disciplinary matters, the jurisdiction of the High Court under Article 226 of the Constitution or of the Administrative Tribunal is limited and is confined only to see whether the relevant factors had been omitted and the irrelevant factors were taken into account. But, in the present case, the District Collector, the second respondent herein has rightly considered the relevant factors in respect of the responsibility and jurisdiction for issuance of patta to the ineligible beneficiaries and no irrelevant factors were taken into consideration. As highlighted above, the petitioner, who is the ground level officer viz., Village Administrative Officer in-charge of the village, expected to know the status of every resident beneficiary as to whether the person in whose favour patta is going to be recommended is landless or houseless or residing in the same village, has omitted to consider all these relevant factors. On this basis, imposing a major punishment cannot be considered to be disproportionate, discriminatory or illegal. Therefore, when the second respondent-District Collector has imposed the major punishment of dismissal from service on the petitioner more than the one imposed against the other two officers and the same was also confirmed by the first respondent, this Court does not see any merits in the writ petition. Accordingly, finding no substance whatsoever, the writ petition is dismissed. There shall be no order as to costs.