

(2002) 04 JH CK 0094

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4536 of 2001

Parmanand Sharma

APPELLANT

Vs

B.S.R.T.C. and Others

RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 04 JH CK 0094

Hon'ble Judges : Tapan Sen, J

Bench : Single Bench

Advocate : Jaya Roy and Tapas Roy, for the Appellant; P.P.N. Roy and Praveen Kumar, for the Respondent

Final Decision : Allowed

Judgement

Tapan Sen, J.—Heard Mrs. Jaya Roy, learned counsel appearing on behalf of the petitioner and Mr. P.P.N. Roy, learned counsel appearing for the respondents and with their consent, this writ petition is being disposed off at this stage.

2. In the instant writ application, the petitioner has made a prayer for quashing the order dated 8.6.2001 (Annexure 6) passed by the Administrator. Bihar State Road Transport Corporation. Patna (Respondent No. 2) whereby and whereunder the petitioner was sought to be dismissed from service. The petitioner has also made a prayer for quashing the order dated 14.6.2001 (Annexure-7) passed by the Divisional Manager. BSRTC. Jamshedpur Division (Respondent No. 5) communicating the order of dismissal to the petitioner.

3. According to the petitioner he was appointed as a driver of the Bihar State Road Transport Corporation (hereinafter referred to for the sake of brevity and precision as BSRTC). On 17.2.1993 he received a charge-sheet dated 15.2.1993 (Annexure-1) wherein it was biter alia, stated that while returning from Patna as a driver of a Deluxe bus of the BSRTC bearing Registration No. BR 16A 0980. he caused an accident of the said vehicle near Mandu on 13.8.1992. The petitioner

did not give any information to the Police, nor did he file any cause in reply to the Notice to show-cause issued by the Divisional Manager on 3.9.1992. On enquiry, it was learnt that the accident had been caused on account of the negligence of the petitioner causing loss to the extent of Rs. 1,200/- to the Corporation.

4. The aforesaid is the background/ narration of statement of allegations which is contained in the charge-sheet. Thereafter, this charge-sheet levelled charges of negligence, dereliction of duties and indiscipline. After having levelled the aforementioned charges, the petitioner was directed to show-cause as to why he should not be removed from service for enforcing unnecessary expenditure upon the corporation.

5. What has been stated above is the translated version of the charge-sheet. This charge-sheet basically and principally shows three things:--

(A) that there was an accident:

(B) that the petitioner was charged for having caused an accident and, therefore, was said to have been negligent in his duties; and

(C) it was said that on account of the aforementioned accident, a sum of Rs. 1,200/- had to be spent by the corporation towards repair of the vehicle.

6. According to the learned counsel for the petitioner, the charge-sheet straight away proceeds to record that an enquiry had also been conducted in which it had been found that because of the negligence of the petitioner, a sum of Rs. 1,200/- had been enforced upon the corporation towards expenditure which was incurred towards repair of the vehicle in question.

According to the respondents, the accident took place due to sheer negligence of the petitioner. "Negligence" by itself does not amount to a misconduct unless the factors leading to such negligence establishes beyond doubt that it was because of such negligence that was responsible for causing the happening of an event/ situation causing grave loss or danger. The learned counsel for the respondents has produced the Certified Standing Orders of the Corporation and misconduct has been listed under Standing Order No. 21. Sub Clause 12 of the said Standing Order says that "neglect of duty resulting in loss to the Corporation is a misconduct. "But in the instant case, what was the nature of neglect has not been established. By merely saying that the petitioner's negligence caused the accident is not enough. Mere mechanical repetition of the allegation of negligence and/ or sheer negligence seems to have become the watch-word of the BSRTC in the instant case.

8. In the instant case a relevant document which needs to be taken note of is the enquiry report and which is contained at An-nexure-3 to the writ petition. From a perusal of the said enquiry report it would be apparent that the petitioner had also given an explanation to the effect that on that very day there had been a shower and that no passenger of the vehicle had been injured in any, manner

and that there was no deliberate negligence on his part.

9. The inquiry officer, however, in the concluding portion of the Enquiry Report came to a conclusion that the driver was fully negligent and it was because of him that the accident had occurred, without, giving any reasons as to why he came to such a conclusion. Therefore, save and except the fact of the accident having occurred, there is nothing on the record to prove or establish as to what was the extent of the negligence of the petitioner and how such negligence was responsible for causing the accident. However, two allegations which may be against the petitioner are that after the accident had occurred, he did not give any report to the local Police Station nor did he respond to the show-cause notice which was issued to him vide memo No. 3252 dated 7.9.1992 by the Divisional Manager. This perhaps could come within the definition of "breach of discipline" but, for such a minor breach of discipline, the petitioner should not be dismissed from service and only a lesser punishment could have served the purpose.

10. In the case of *Ranjit Thakur Vs. Union of India (UOI) and Others*, it has inter alia been held that the scope of judicial review would be opened if it is found that the punishment is excessively harsh or that it is not commensurate with the nature of the offence. Judicial review is not really invoked against a decision but it becomes necessary to look into the decision making process. The jurisdiction to punish certainly lies with the respondents. But such jurisdiction should not be unduly harsh and it has to be exercised in the facts and circumstances of different cases coming up from time to time. Here is a case where without proving the nature and extent of negligence, a person and his entire family have been thrown out on the streets by an order of dismissal from service merely because of an accident which caused a "paltry" loss of Rupees Twelve Hundred which was incurred towards repair of the vehicle. This, in the opinion of this Court is excessively harsh and it certainly needs reconsideration.

11. On the other hand. Mr. P.P.N. Roy. learned counsel for the respondents, has argued that the action of the petitioner to have opted to file the instant Writ Petition under Article 226 was not proper. According to Mr. P.P.N. Roy. the petitioner is a workman and is covered under the Industrial Disputes Act, and. he should therefore, have raised an Industrial Dispute.

12. I have no hesitation in rejecting this argument of Mr. P.P.N. Roy. In the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, paragraph 14 and 15 become absolutely relevant to be taken note of while repelling the aforesaid argument of Mr. P.P.N. Roy.

13. Their Lordships of the "Hon"ble Supreme Court have observed that it has been settled that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, quo-warranto and certiorari for the enforcement of any fundamental right contained in para-3 of the

Constitution but also for any other purposes. Under Article 226, the High Court, having regard to the facts of the case, has been held to have the discretion to entertain or not to entertain a writ petition. The Hon'ble Supreme Court has held that the High Court has imposed upon itself certain restrictions one of which is that if effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held not to operate as a bar in at least three contingencies, i.e. (1) where the writ petition has been filed for the enforcement of any fundamental right; (2) where there has been violation of the principle of natural justice; and (3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The instant case comes under the second category stated above together with the power to issue a writ "for any other purpose" to prevent the miscarriage of justice.

14. What has happened in this case is really unfortunate. An accident occurred for which a sum of Rs. 12,00/- is said to have been spent towards repair. The very fact that only a sum of Rs. 1200/- was spent proves that the accident was not a major accident. The petitioner is said to have been negligent but whether his negligence was of such a nature that it was responsible for causing the accident, has not been proved. In a nutshell, he was told that he was negligent and finally in an enquiry, without proving the nature and extent of negligence, he has been dismissed from service and that too for causing loss of only Rs. 1200/-. This therefore is one of those cases where this Court feels that it must reach out to prevent miscarriage of justice. To be told that he was negligent without proving the manner of negligence and then dismissing him amounts to violation of the principles of natural justice.

The law relating to natural justice i.e. the principles of *jus naturale* and the law relating to opportunity of hearing i.e. rule of *audi alteram partem*. i.e. hearing the other side should not be confused when I am using the word "natural justice" in this case. The principle of natural justice is not a creation of Article 14. The principles of natural justice, historically relates back to ancient civilizations and centuries which have faded into the pages of history- Only about two centuries ago, the two terms i.e. "natural justice" was often used interchangeably with "natural law" and at times, it is still so used but the words "natural justice" has been variously defined by different Judges. Reference in this context may be made to the case of *Union of India and Another Vs. Tulsiram Patel and Others*, Para 81 of the said judgment deals with the references of various judgments and the sum and substance is that there should be universal justice, the natural sense of what is right and wrong and fair play in action.

15. In the case of *H.K. (Infant)* reported in 1967 (2) QE 617 Lord Parker, CJ, has described natural justice as duty to act fairly. In the famous case of *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, it has inter alia been held that the soul of natural justice is "fair play in action" and that is why it has received the widest recognition throughout the democratic world. At para 59 of the said

judgment it has been stated that the aim of both administrative enquiry as well as quasi-judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice, or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi judicial enquiry and not to administrative enquiry. It must logically apply to both.

16. In the instant case by only asserting or alleging that the petitioner was negligent and because of that negligence, the accident took place can not be said to be a Just decision arrived at. at the conclusion of the enquiry because there is no finding as to in what manner the petitioner was negligent and to what extent his negligence was responsible that directly led to the happening of the accident.

17. Coming to a conclusion that the accident occurred on account of negligence of the petitioner without proving the manner of his negligence is an opinion formed without any basis and therefore, it amounts to violation of the principles of natural justice leading this Court to exercise power under Article 226 not only to prevent the miscarriage of Justice but also because this Court is firmly of the opinion that this is one of those cases where gross injustice has resulted on account of the extreme punishment of dismissal from service having been imposed upon the petitioner. In that view of the matter the judgment of "Whirlpool Corporation v. Registrar of Trade Marks referred to above, is squarely applicable in the facts and circumstances of this case. Therefore, the full Bench judgment cited by Mr, Roy. reported in 1985 BBCJ 79 cannot help the respondents.

18. Mr. P.P.N. Roy. learned counsel appearing on behalf of the respondents, has argued this case with much eloquence and has attempted to convince this Court, that the BSRTC is a passenger carrying service and a negligent driver cannot be tolerated. This argument, no doubt, has significance, but in the instant case the negligence of the petitioner has not been proved save and except mere repetition of the allegation to the effect that the accident occurred because of his negligence. What was the nature of his negligence? Was he drunk? Had he fallen asleep while driving? Was he not concentrating on the road? Was he engaged in gossip with others while driving? These are factors which could only have established that the petitioner was negligent. But no such findings are there on the record. Merely because an accident took place it cannot be said that the person driving the vehicle was so negligent that because of him and him alone, the accident occurred. Just like the word "negligence" has many shades of meaning, similarly the word "accident" also has different shades and colours of interpretation. Sometimes, an accident can occur purely by chance and sometimes an accident is made to occur. This is a case where there was an accident of the vehicle causing loss to the Corporation to the extent of Rs. 1200/~ only but there was not a single loss to life nor injury to a single passenger who was travelling on the vehicle, How then was this a case of an accident deliberately caused by negligence? Why cannot it be a case of a simple break

down of the vehicle on the way which caused the accident? These are questions that have not been answered either in the enquiry report nor have these aspects been taken note of during the course of the enquiry of at the time of framing of the charge.

19. In view of what has been stated above, the impugned order is hereby set aside and the petitioner is directed to be reinstated with all consequential benefits.

20. The writ petition is accordingly allowed. There shall however, be no order as to costs.