
(1973) 12 AP CK 0001
In the Andhra Pradesh High Court

R. De Sequaira

APPELLANT

Vs

Government of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 31-12-1973

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 162

Citation : (1975) 2 LLJ 148

Hon'ble Judges : Gopal Rao Ekbote, C.J.; Lakshmaiah, J

Bench : Division Bench

Judgement

Lakshmaiah, J.—This is a petition filed under Article 226 of the Constitution of India, seeking the issuance of a writ of certiorari for the purpose of quashing an order, G.O. Ms. No. 730 Health, dated April 15, 1972 passed by the Government of Andhra Pradesh, the, Ist respondent herein whereby the petitioner, Kumari R. De Sequaira, former Assistant Director of Medical and Health Service (Nursing) was directed to be dismissed from service.

2. The petitioner was appointed in the year 1937 in the former Hyderabad State as a staff nurse. She was promoted in the year 1947 to the gazetted post of senior matron, and in the year 1954, to the posit of Assistant Director Nursing in Medical and Health Department, and she continued in that post even subsequent to the formation of the Andhra Pradesh to which State she was allotted.

3. By G.O. Ms. No. 686, Health, dated March, 23, 1965, the petitioner was placed under suspension, pending an inquiry into certain charges of corruption against her. The case was referred to the Tribunal for disciplinary proceedings. The Tribunal framed six charges against her and found her guilty of charges 1, 3, 4, 5 and 6. The matter was then referred to the Andhra Pradesh Vigilance Commission, who recommended for the confirmation of the findings on charges 1, 3, 4, and 6, disagreeing with the finding on charge No. 5.

4. The Government passed orders in G.O. Ms. No. 28, dated 8-1-1968, dismissing the petitioner from service. Seeking the quashing of that order, the

petitioner filed Writ Petition No. 1250 of 1968 and this Court allowed that petition on November, 13, 1970 and quashed the order of dismissal on the ground that a copy of the recommendation of the Tribunal for disciplinary proceedings was not furnished to her. This Court, however, observed that the Government was free to proceed against the petitioner from the show cause notice stage, if they so choose, after furnishing her with a copy of the recommendations of the Tribunal. Thereafter, a copy of the recommendation of the Tribunal for disciplinary proceedings and Vigilance Commission as per memo dated April 17, 1971, was communicated to the petitioner and she was required to show cause as to why the proposed penalty of dismissal from service should not be imposed upon her.

5. The petitioner submitted her explanation dated June 30, 1971. The Vigilance Commission on being consulted thereafter, advised the Government that the petitioner was found guilty of corruption and that the provisional conclusion already reached, holding her guilty of charges 1, 3, 4 and 6, may be confirmed, and the petitioner dismissed from service. The Government, being of the view that the petitioner was guilty of the charges of corruption and agreeing with the views expressed by the Vigilance Commission, directed as per their G.O. Ms. No. 730. Health, dated April 15, 1972, that the petitioner be dismissed from service. It is this order that is sought to be quashed in this writ petition.

6. Shri Babulu Reddy, the learned Counsel appearing for the petitioner, contended that the order of dismissal is liable to be set aside, firstly, on the ground that the Vigilance Commission's recommendation to the State Government, after the petitioner had submitted her explanation dated June 30, 1971, was not communicated to her; secondly, that the explanation submitted by the petitioner to the show cause notice was not considered before the punishment of dismissal was imposed; thirdly, that impugned order was issued by the Government without applying their mind to the facts of the case; fourthly, that the findings at the Tribunal are based upon uncorroborated testimony of witnesses, who are in the position of an accomplice, which no Court of law could have relied upon and believed, and, lastly, that the entire inquiry is vitiated on account of the procedure adopted by the Anti-Corruption Bureau Officials, which is contrary to the provisions contained in Section 162 of the Code of Criminal Procedure.

7. So far as the first ground is concerned, it is submitted, on behalf of the respondents, that it is not necessary for the Government to communicate the opinion of the Vigilance Commission obtained on the explanation submitted by the petitioner to the second show cause notice issued by the Government. There is considerable force in that submission of the Government. No provision of law was brought to our notice in support of the ground urged by the petitioner. There is, we find, no substance in the complaint of the petitioner, as it does not even otherwise involve any violation of the rules of natural justice.

8. The substance of the other grounds raised by the petitioner can be subsumed under the broad category of non-observance of rules of evidence by the Tribunal

for Disciplinary Proceedings. That necessitates an enquiry into the nature, scope and ambit of the powers of the Tribunal.

8-A. The following features are discernible from a reading of the relevant provisions contained in the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 (referred to hereinafter merely as "the Act") and the rules made thereunder known as the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1961 (referred to hereinafter merely as "rules"):

(a) The Tribunal for disciplinary proceedings consisting of one or more members, is constituted by the State Government and every member of the Tribunal shall have to be a judicial Officer of the status of a District Judge--(Section 3 of the Act).

(b) The Government refers to (the Tribunal for enquiry and report, prescribed cases of allegations of misconduct on the part of the Government servants--(Section 4).

(c) For the purpose of conducting an enquiry under the Act, the Tribunal has been given the powers which a Civil Court has, under the CPC while trying a suit in respect of (i) summoning and enforcing the attendance of any person, (ii) requiring the discovery and production of any document and (iii) issuing commissions for the examination of witnesses or documents. It may examine on oath any person supposed to be acquainted with the matter under enquiry or any fact relevant thereto and may record his evidence (Section 5).

(d) On the conclusion of the enquiry, the Tribunal reports its findings to the Government servant and when it finds the Government servant concerned guilty of mis conduct recommends the penal ties, which should be imposed on such Government servant--(Section 7).

The Tribunal sends a report of its findings and recommendations to the Government (Rule 7(2)(i).

(e) The Government after having arrived at a provisional conclusion in regard to the penalty to be imposed, supplies the charged officer with a copy of the report of the Tribunal and calls upon him to show cause against the particular penalty proposed to be imposed. The Government consults the Andhra Pradesh Vigilance Commission before they arrive at a provisional conclusion in regard to the penalty to be imposed and also after the receipt of any representation of the Government servant charged against the particular penalty proposed to be imposed, but before the actual imposition of the penalty. (Rule 7(2)(iii)).

(f) The Government considers the report of the Tribunal in the prescribed manner and passes such orders thereon as they think fit (Section 8). They are the competent authority to impose a penalty in cases of Government servants enquired into by the Tribunal notwithstanding anything contained in Andhra and Hyderabad Civil Services (Classification, Control and Appeal) Rules, 1955--(Rule

8).

(g) So far as the enquiry by the Tribunal is concerned, as soon as the records relating to allegations of misconduct against the Government servants are received, the Tribunal frames appropriate charges and communicates them to the charged officer with a list of witnesses likely to be examined, fixing the date and place of enquiry. It furnishes before the date of enquiry copies of statements of witnesses recorded by the concerned departments to the charged officer for the purposes of cross-examination. At the enquiry, oral and documentary evidence is first adduced by the prosecution with a right to the charged officer to cross-examine the prosecution witnesses. The charged officer files a written statement of his defence together with a list of witnesses whom he wishes to examine and the list of documents proposed to be summoned. He may also offer himself as a witness in his own defence. He adduces evidence oral and documentary. He is entitled to advance arguments either oral or in writing or both, and the prosecution has a right to reply. The proceeding of the Tribunal contains a sufficient record of the evidence (Rule 7).

(h) As per Rule 7(1)(iv), the Tribunal shall have to observe as far as possible the basic rules of evidence relating to the examination of witnesses and the marking of documents and the enquiry shall have to conform to the principles of natural justice.

9. The provisos contained in the Indian Evidence Act, 1872 are applicable as per Section 1 thereof only to judicial proceedings in or before any Court. They are, therefore, not applicable to proceedings before the Tribunal for Disciplinary Proceedings, as it is neither a Court nor the proceedings, before it are judicial in character. Nonetheless the Tribunal, as per the afore said Rule 7(1)(iv), shall have to observe only, as far as possible the basic rules of evidence relating that too to the examination of witnesses and the marking of the documents.

10. "The Indian Evidence Act", according to Garth, C.J., in *Gujju Lal v. Futeh Lal* I.L.R.(1881) Cal. 171, "was intended, and did in fact consolidate the English Law of Evidence". Speaking about the Indian Evidence Act Subba Rao, J., (as be then was) said in *The State of Punjab Vs. Sodhi Sukhdev Singh*, :

The Act itself, to use the language of Sir James Stephen, who framed it, is little more than an attempt to reduce the English Law of evidence to the form of express propositions, arranged in their natural order, with some modifications rendered necessary by the peculiar circumstances of India.

11. Sir Henry Summer Maine, in a critical review of Sir James Stephen's "Indian Evidence Act" observed in "Village Communities in the East and West".

So far as it consisted of express rules it was in its origin a pure system of exclusion, and the great bulks of its present rules were gradually developed as exceptions to rules of the widest application, which prevented large classes of testimony from being submitted to the jury. The chief of these were founded on

general propositions of which the approximation to truth was but remote. Thus, the assumptions were made that the statements of litigants as to the matter in dispute were not to be believed, that witnesses interested in the subject-matter of the suit were not credible; and that no trustworthy inference can be drawn from assertions which a man makes merely on the information of other men. A complete account of it cannot in fact be given, unless the mode of its development be kept in view.

Another important reason, too, for remembering that our law of evidence is historically a system of exclusion is that we cannot in any other way account for its occasional miscarriages. The conditions under which it was originally developed must still be referred to, in explanation of the difficulty of applying it in certain cases, or of the ill success which...attends the attempt to apply it. The system of technical rules, which this procedure carries with it, fails then, in the first place, whenever the arbiter of facts the person who has to draw inferences from or about them has special qualification for deciding on them, supplied to him by experience, study, or the peculiarities of his own character, which are of more value to him than could be any general direction from book or person. For this reason, a policeman guiding himself by the strict rules of evidence would be chargeable with incapacity; and a general would be guilty of a military crime.

12. Professor James Bradlay Thayer, in his "A preliminary Treatise on Evidence at the Common Law" said:

The rejection on one or another practical ground of what is really probative is the characteristic thing in the Law of Evidence stamping it as the child of the jury system....In the shape it has taken, it is not at all a necessary development of the rational method of proof, so that where people did not have the jury, or having once had it did not keep it (as on the continent of Europe, although they, no less than we, worked out a rational system) they developed under the Head of Evidence no separate and systematized branch of the law....

The greatest and most remarkable offshoot of the jury was that body of exclusive rules which chiefly constitute the English "Law of Evidence." Our Law of Evidence is concerned with the operations of Courts of justice, and not with ordinary inquiries "in Pais" ...It is a term of forensic procedure, and imports something put forward in a court of justice?Our Law of Evidence is a...piece of illegal but by no means irrational patch work,--not at all to be admired nor easily to be found intelligible except as a product of the jury system.

13. Professor Wigmore in his "Treatise on Evidence" observed:

Historically, the distinction is fundamental; in the common law rules of evidence grew up exclusively in jury trial, and do not apply "ex strictojure" in any Tribunal but a jury Court....

14. Referring to the practical policy of applying the jury trial system of rules in Administrative Tribunals, the learned author noted, what is called the popular

view in the following terms;

One view--the popular view, it may be called...is that the jury trial rules have had their day in our system of justice, that their obstructive and irrational technicalities have made a system nauseous and futile in its native habitat; and that to transplant it to new fields would be an error amounting to a folly." The learned author further observed:

What has saved the situation, in administrative; hearings, from a welter of inefficiency has been chiefly two circumstances, first, that the officials themselves, have usually been lawyers when professional experience has equipped them with the fundamentals of careful enquiry of fact, and, secondly, that the subjects of enquiry have been so limited in scope for each Tribunal that a special and competent experience in that field has been soon built up.

The functional theory of administration has done great things for the world in all times. The formal theory of administration in contrast, is today too much admired....

And if there is any part of administrative activity to which this independence of formal rules can most readily be conceded, it is the task of weighing evidence and deciding on facts....For, these do not yet exist any known rules for controlling the correctness of that mental process. The jury trial rules merely determine what evidence may be considered; they tell us nothing as to the mental process of weighing it. The great ultimate process of reaching a conviction is not one for which we can offer administrator any sure guide. Why not trust his expert intelligence and good faith.?

15. As early as in the year 1904, the Supreme Court of America had to say in *Inter State Commerce Commission v. Baird* [1904] 194 U.S. 25:

The inquiry of a board of the Character of the Inter-State Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation and it should not be hampered in making enquiry pertaining to Inter-State Commerce by those narrow rules, which prevail in trials at common law, where strict correspondence is required between an allegation and proof.

16. *Pearson, L.J.*, said in *Reg. v. Deputy Industrial Injuries Commissioner, Ex-parte Moore* [1965] 2 W.L.R. 89 : [1965] 1 All E.R. 81 at p. 92:

The Deputy Commissioner could determine the procedure for this particular case. No doubt the procedure has to be reasonable and, when there is hearing, it has to be a well-conducted hearing but the Deputy Commissioner would not render his procedure unreasonable, nor his hearing ill-conducted, merely by admitting as evidence something which, according to him would be inadmissible. The rules of evidence are in some respects artificial and unsatisfactory, and may require the exclusion of evidence which is highly reliable and credible.

17. Diplock, L.J., in the same case observed at page 94 of the report.

Where, as in the present case, a personal bias or mala fides on the part of the Deputy Commissioner is not in question, the rules of natural justice, which he must observe can, in my view be reduced to two. First he must base his decision on evidence, whether a hearing is requested or not. Secondly, if a hearing is requested, he must fairly listen to the contentions of all persons who are entitled to be represented at the, hearing. In the context of the first rule, "evidence" is not restricted to evidence which would be admissible in a Court of law. For historical reasons, based perhaps on the fear that juries who might be illiterate were incapable of differentiating between the probative values of different methods of proof, the practice of the common law Courts has been to admit only what the judges then regarded as the best evidence of any disputed fact, and thereby to exclude much material which as a matter of commonsense, would assist a fact finding Tribunal to reach a correct conclusion of *Myers v. Director of Public Prosecutions* 1964 2 All E.R. 881 but these technical rules of evidence form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than that it must be based on material which tends logically to show the existence or nonexistence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer; but he may take into account any material which as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his.

The position may now be summed up thus:

(1) The system of rules of evidence, characterised as the child of the jury system and found intelligible only as a product of such jury system are applicable only to judicial proceedings in or before a Court. That system is not applicable either by historical precedent or by sound practical policy to enquiries of fact determinable by Administrative Tribunals or officers.

(2) These technical rules of evidence are in some respects artificial and unsatisfactory and require the exclusion of evidence which is highly reliable and credible. They had their day in our system of justice, and their obstructive and irrational technicalities made that system nauseous, and futile even in its native habitat and that to transplant it to new fields occupied by administrative law would be an error amounting to a folly.

(3) The rigour of these technical rules of evidence has been considerably mellowed down in the realm of administrative law. under two circumstances, first that the Administrative Tribunals or officials are lawyers, whose professional

experience has equipped them with the fundamentals of careful enquiry of a fact and, secondly, that the subjects of enquiry have been so limited in scope for each Tribunal that a special and competent experience in that field has been soon built up.

(4) Insistence on the observance of these rules of evidence by the Administrative Tribunals, would rob the administrative law of its utility and the needed flexibility. It hinders or hampers them unduly in their tasks of weighing evidence and deciding on facts, besides resulting in the exclusion of so much of evidence of probative value.

(5) Even otherwise, those technical rules of evidence form no part of the rules of natural justice. The requirement that a Tribunal exercising quasi-judicial functions must base his decision on evidence means no more than that it must be based on material of some probative value which tends to logically show the existence of facts relevant to the issue to be determined. If the material relied upon by the Tribunal is capable of having any probative value, the weight to be attached to it is a matter for the Tribunal entrusted with the responsibility of deciding the issue. The jurisdiction of the High Court under Article 226 of the Constitution, does not entitle us to usurp that responsibility and to substitute our own view for that of the Tribunal.

18. In the right of the aforesaid proposition, we shall now examine the case of the petitioner.

19. Of the six charges framed against the petitioner, the Tribunal found her not guilty with respect to charge No. 2. The Vigilance Commission did not agree with the finding of the Tribunal that charge No. 5 was proved. Of the remaining 4 charges, the learned Counsel for the petitioner submits, that the basis for the finding on charge 1(a), 1(b) and 1(c) is the testimony of P.W. 10 who is alleged to be in the position of an accomplice, and for finding on charge No. 3, the basis is the uncorroborated testimony of P.W. 5 who is also alleged to be in the position of an accomplice. With respect to charge No. 4, the complaint was that P.W. 8 on whose testimony the finding was based cannot be believed by any Court, and the solitary testimony of P.W. 6, on which the finding on charge No. 6 was recorded, ought not to have been believed. As regards the enquiry, it is stated that the procedure adopted by the A.C.B. Officials is contrary to Section 162 of the Code of Criminal Procedure and the entire enquiry is vitiated on that score.

20. The Tribunal for disciplinary proceedings, the second respondent herein, as has already been noticed, was constituted u/s 3 of the Act, by the Government, the first respondent herein. The Chairman of that Tribunal was a senior judicial officer of the status of the District Judge. The case of the allegations of misconduct on the part of the petitioner was enquired into and reported by the Tribunal. The Tribunal found her guilty and recommended the penalty of dismissal. The Government as the ultimate authority, imposed the penalty of dismissal.

21. Technical rules of evidence characterised as the child of jury system contained in their statutorised form in the Indian Evidence Act, 1872 are applicable only to judicial proceedings in or before a Court, but they are not applicable to proceedings before the Chairman of the Tribunal, who is a Judicial Officer. Rules like the exclusion of the uncorroborated testimony of a person who is in the position of an accomplice, are applicable only to judicial proceedings before a Court, but not to proceedings before the Tribunal.

22. Rule 7(1)(iv) requires that the Tribunal should as far as possible observe the basic rules of evidence, relating that too, to the examination of witnesses and the marking of the documents. There is no complaint in that direction as regards that. The obligation no doubt to conform to the principles of natural justice, is imposed upon the Tribunal as per the aforesaid rule. But the technical rules of evidence form no part of the rules of natural justice. The demand, then of the rules of natural justice, is that the decision of the Tribunal should be based on material of some probative value which intends to show the existence of facts relevant to the issue to be determined.

23. The findings of that Tribunal on charges 1 and 3 are based upon testimony of P.W. 10 and P.W. 5. The Chairman of the Tribunal, who is a senior judicial officer of the status of a District Judge, though that material to be of some probative value. But, exclusion of that material is sought for on the ground that P.W. 10 and P.W. 5 are each in the position of an accomplice. That is impermissible in the realm of administrative law.

24. As regards the findings on the other two charges, the complaint was, that, the evidence in support of those findings, ought not to have been believed. That pertains to the realm of appreciation or revaluation of evidence, which, this Court in exercise of its jurisdiction under Article 226 of the Constitution seldom goes into, unless the same is perverted and that is not the complaint here.

25. As regards the weight to be attached by the Tribunal to the material relied in support of the findings recorded by it, and the standard of proof needed, it is a matter, entrusted statutorily to its exclusive jurisdiction and this Court under Article 226 cannot substitute its view to that of the Tribunal.

26. Nor is there any merit in the complaint that the entire enquiry was vitiated by the non-observance of Section 162 of the Code of Criminal Procedure as that provision of law has no application to the proceedings before the Tribunal.

27. We perused the entire record pertaining to the petitioner, placed before us, and we are satisfied that the Government applied their mind to the facts of the case and considered carefully the petitioner's explanation to the show cause notice, before they passed the order of dismissal.

28. There are no merits in this writ petition. No other contention is raised. The writ petition is, therefore, dismissed with costs. Advocate's fee rupees 100.