
(1991) 03 GUJ CK 0010
In the Gujarat High Court

Rajkot District Panchayat

APPELLANT

Vs

Mansukhlal Dalichand Mehta

RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Gujarat Panchayat Service (Discipline and Appeal) Rules, 1964 — Rule 7(7)
Gujarat Panchayats Act, 1961 — Section 320, 323

Citation : (1991) 2 GLR 1128

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—By this appeal u/s 100 of the Code of Civil Procedure, 1908, the appellant has questioned the legality and validity of the judgment and the decree passed by the Joint District Judge at Rajkot on 19th August, 1978 in R.C.A. No. 83 of 1977. Thereby the learned Joint District Judge set aside the judgment and the decree passed by the 2nd Joint Civil Judge (J.D.) at Rajkot on 25th February, 1977 dismissing C.S. No. 895 of 1972.

2. The facts giving rise to the present appeal may be summarised thus: The original respondent herein was the plaintiff before the trial Court. He instituted the suit against the appellant herein. It would be desirable to refer to the parties to this appeal as they were arraigned before the trial Court, that is, the original respondent as the plaintiff and the appellant herein as the defendant. The plaintiff was appointed as a Vaidya sometime in 1952. On 1st April, 1963, his services came to be allocated to the Panchayat service and he was designated as a Vaidkiya Adhikari and posted as such at Lakhdhimagar in Taluka Morbi. His employer suspected him to have indulged into certain malpractices. He was therefore served with a chargesheet on 19th November, 1970. It seems that one Enquiry Officer was appointed to conduct the enquiry proceedings with respect to the articles of charge served to the plaintiff. The Disciplinary Authority also appointed the Taluka Development before the Enquiry Officer in the enquiry proceedings. The name of that Taluka Development Officer appears to be R.G.

Mehta. His educational qualifications are stated to be M.A., LL.B. It appears that on 13th August, August, 1971 the plaintiff made an application in the enquiry proceedings for engagement of a legal practitioner to assist him in defending his case therein. By an order passed by the Enquiry Officer on 17th August, 1971 >such request made by the plaintiff for assistance of a legal practioner was turned down. The order of the Enquiry Officer in that regard is at Exh. 57 on the record of the trial Court. It appears that certain witnesses were examined in the enquiry proceedings. On the conclusion of the enquiry proceeding, the Enquiry Officer appears to have found the plaintiff guilty of the charges levelled against him. He appears to have submitted his report to the Disciplinary Authority. Thereupon the Disciplinary Authority issued a show cause notice on 25th February, 1972 to the plaintiff calling upon him to show cause why the punishment of removal from service should not be inflicted on him. The plaintiff appears to have caused his reply thereto on 13th March, 1972. By the order passed on 26th June, 1972 the Disciplinary Authority ordered removal of the plaintiff from service. The plaintiff thereupon served to the defendant the required statutory notice as provided in Section 320 of the Gujarat Panchayats Act, 1961 before instituting R.C.S. No. 895 of 1972 on 16th September, 1972. Thereby he challenged the legality and validity of the enquiry proceedings culminating into the order of his removal from service. The defendant filed its written statement and resisted the suit on various grounds. The matter appears to have been assigned to the 2nd Joint Civil Judg (J.D.) at Rajkot. He, after recording evidence and hearing the parties through their pleaders, by his judgment and the decree passed on 25th February, 1977, dismissed the suit. The aggrieved plaintiff preferred R.C.A. No. 83 of 1977 before the District Court at Rajkot. As aforesaid, his appeal came to be accepted by the judgment and the decree passed by the Joint District Judge of Rajkot on 19th August, 1978 in R.C.A. No. 83 of 1977. The aggrieved defendant has thereupon preferred this second appeal u/s 100 of the Code of Civil Procedure, 1908.

3. As aforesaid, the trial Court dismissed the suit. It found that the enquiry proceedings were legal and valid and the order of punishment based on the enquiry proceedings was also perfectly legal and valid. The lower appellate Court however found that the enquiry proceedings culminating into the order of punishment were vitiated on the ground that the plaintiffs request for engagement of a legal practitioner for defending him in the enquiry proceedings was wrongly turned down. The learned Judge in appeal came to the conclusion that the order passed by the Enquiry Officer turning down the plaintiffs request for engagement of a legal practitioner for defending him in the enquiry proceedings was illegal on two grounds, namely, the Enquiry Officer was not competent to pass that order and that rejection of such request was not justifiable on the facts and in the circumstances of the case. The lower appellate Court thereupon came to the conclusion that the plaintiff was thus denied a reasonable opportunity to defend himself in the disciplinary proceedings with the result that the order of punishment passed on the basis of the enquiry report

would not be sustainable in law.

4. Shri A.J. Shastri for the appellant has submitted that the Enquiry Officer was competent to deal with the request made by the plaintiff for engagement of a legal practitioner to defend him in the enquiry proceedings. Shri Shastri for the appellant has further submitted that the order of the Enquiry Officer turning down such request was perfectly justified in view of the relevant provisions contained in Rule 7(7) of the Gujarat Panchayats Service (Discipline and Appeal) Rules, 1964 (the Rules for brief) framed u/s 323 of the Gujarat Panchayats Act, 1961. As against this, Shri A.D. Padiwal for the respondent has submitted that the lower appellate Court was right in coming to the conclusion that rejection of the application made by the plaintiff for defending in the enquiry proceedings with the help of a legal practitioner was illegal and invalid on the grounds that the Enquiry Officer was not competent to pass such order and that such rejection was not justified on the facts and in the circumstances of the case.

5. It is not in dispute that the department was represented by the Taluka Development Officer for the purpose of presenting its case in the enquiry proceedings against the plaintiff. It is also not in dispute that the presenting officer possessed the degree of LL.B. besides the degree of M.A. A person having obtained graduation in law can be presumed to be conversant with intricacies of law. Besides a bare perusal of the appendix to the Rules would show that the Taluka Development Officer is made the Disciplinary Authority with respect to as many as seven classes of servants in Panchayats service such as Secretary of the Gram Panchayat, Gram Sevak, Gram Sevika, Nurse, Stockman, Assistant Taluka Development Officer, and Aya, Dai and Kotwals and all posts belonging from time to time to the Inferior Panchayat service under the Taluka Panchayat. The Disciplinary Authority can be presumed to be well-versed in the intricacies of the departmental enquiry proceedings. As against this, the plaintiff can be said to be ignorant of niceties of the law relating to the enquiry proceedings as set out in the Rules. It is true that he was a qualified Ayurvedic practitioner but that qualification would make him well-versed in Ayurvedic Medical Science and certainly not in law. However, highly qualified a Medical practitioner may be, he cannot be presumed to be well-versed in intricacies and niceties of law unless it is proved to the contrary.

6. When a Panchayat servant facing the departmental enquiry proceeding is pitted against presenting officer found to be well-versed in intricacies and niceties of the law relating to the departmental enquiry proceedings, it would be but fair and reasonable to allow him to be defended by a legal practitioner in the departmental enquiry proceedings if he so desires and makes a specific request for the purpose, more particularly when the relevant provisions contained in the Rules so permit.

7. It may be noted that Rule 7(7) of the Rules empowers the Disciplinary Authority to permit a delinquent to be assisted by a legal practitioner having regard to the circumstances of the case. As pointed out hereinabove, the plaintiff

was facing a law graduate with certain powers of the Disciplinary Authority as his adversary in the enquiry proceedings. This circumstance on record would certainly justify his request for engagement of a legal practitioner for defending him in the departmental enquiry proceedings. Such request on his part can never be said to be unjustifiable or unreasonable.

8. Shri Shastri for the appellant has submitted that there was no reason for the Enquiry Officer to grant permission to the plaintiff to be assisted by a legal practitioner when the department was not represented by any legal practitioner. In that view of the matter, runs the submission of Shri Shastri for the appellant, the order of turning down such request of the plaintiff would be perfectly legal and valid. I think this submission has no merit in it for the simple reason that it overlooks the latter part of Rule 7(7) of the Rules. It has inter alia been provided therein that the delinquent may not engage a legal practitioner for the purpose of presenting his case in the enquiry proceedings unless the person nominated by the Disciplinary Authority is a legal practitioner or unless the Disciplinary Authority having regard to the circumstances of the case so permits. Non-engagement of a legal practitioner by the department to present its case in the enquiry proceeding would answer the first contingency but the authority dealing with such application or request has also to have regard to the circumstances of the case for deciding the fate of such application or request. As pointed out hereinabove, the important circumstance of the case was that the department was represented by a law graduate possessing powers of the Disciplinary Authority with respect to several classes of servants under the Rules. It appears that, while dealing with the application for request of the plaintiff for engagement of a legal practitioner for defending his case in the departmental enquiry proceedings, the Enquiry Officer did not have any regard to this circumstance of the case. That fact by itself would vitiate his order turning down the plaintiff's such request.

9. I am fortified in my view by the binding rulings of the Supreme Court in the case of C.L. Subramaniam Vs. Collector of Customs, Cochin, and in the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, . In Subramaniam's case (supra) the Supreme Court was required to construe Rule 15(5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, (the Central Rules for brief). Provisions of Rule 15(5) of the Central Rules can be said to be *pari materia* with Rule 7(7) of the Rules. In that case the appellant before the Supreme Court was pitted against the trained prosecutor if not a legal practitioner, in the departmental enquiry proceedings against him. He requested for engagement of a legal practitioner for defending him in the enquiry proceedings. That request was turned down. It was held in para 13 at page 2180 of the reported ruling:

The grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no means irrelevant. The fact that the case against the appellant was being handled by a trained prosecutor was a good

ground for allowing the appellant to engage a legal practitioner to defend him last the scales should be weighed against him. The Disciplinary Authority completely ignored that circumstance. Therefore, that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely that the Disciplinary Authority refused to permit the appellant to engage a legal practitioner in the circumstances mentioned earlier had caused serious prejudice to the appellant and had amounted to a denial of reasonable opportunity to defend himself.

The aforesaid binding ruling of the Supreme Court in Subramaniam's case (supra) cannot be distinguished on the ground that in that case the department was represented by a trained prosecutor and in the present case the department was represented by a mere law graduate and not a legal practitioner or a trained prosecutor. What has been emphasised by the Supreme Court in Subramaniam's case (supra) is that, when the delinquent facing the departmental enquiry proceedings is pitted against a person who can be said to be conversant with or well-versed in intricacies or niceties of the law relating to the enquiry proceedings, request of the delinquent for engagement of a legal practitioner for defending him therein could be granted having regard to the circumstances of the case.

10. Shri Shastri for the appellant has then submitted that the aforesaid binding ruling of the Supreme Court in Subramaniam's case (supra) would be of no assistance to the respondent in this case for the simple reason that the plaintiff did not claim assistance of a legal practitioner in his application for the purpose on the ground that he was pitted against a person well-versed in the law relating to the departmental enquiry proceedings. I think this submission deserves to be stated only to be rejected. The reason therefore is quite simple. In the first place, the plaintiffs application for engagement of a legal practitioner for defending him in the departmental enquiry proceedings is not on record. No attempt was made before the Courts below or either of them to bring it on record. No attempt is made to bring it on record even at the second appellate stage. In that view of the matter, the contents of the said application cannot at all be looked into. Besides, it transpires from the records of the case that the plaintiff had given his deposition at trial though it was not absolutely necessary. The contents of his application for engagement of a lawyer for assisting him in the enquiry proceedings were not brought out in his oral testimony. In that view of the matter, there is nothing on record to show or to suggest that the plaintiff did not claim assistance of a legal practitioner while facing the enquiry proceedings on the ground that he was pitted against a trained law graduate. Even otherwise, Shri Shastri frankly admitted that in his such application the plaintiff clearly stated that he did not possess knowledge of law to defend himself in the enquiry proceedings when he made a request for engagement of a legal practitioner for the purpose of meeting the case of the department in the enquiry proceedings. I think these contents in his such application would be sufficient to indicate that he was facing a law graduate as his adversary in the departmental

enquiry proceedings. In that view of the matter, the aforesaid binding ruling of the Supreme Court in Subramaniam's case (supra) cannot be distinguished on the ground urged before me by Shri Shastri for the appellant.

11. In Dilipkumar's case (supra) an employee of the Bombay Port Trust was denied an assistance of a legal practitioner in the enquiry proceedings presumably on the ground that the department was not represented by a legal practitioner therein. It transpires from the judgment in that case that the relevant rule in that regard was similar to Rule 7(7) of the Rules. The Supreme Court held in that case that such denial was improper, illegal and invalid vitiating the order of punishment passed on the basis of the enquiry proceedings. It has been held therein:

We are faced with the situation where when the enquiry commenced, the rules neither provided for permitting the delinquent employee to be represented by an advocate nor an embargo was placed on such appearance. The rules were silent on this point. But the Chairman of the appellant while rejecting the request of the first respondent seeking permission to appear through a legal practitioner simultaneously appointed M/s. R.K. Shetty and A.B. Chaudhary, Legal Adviser and Junior Assistant Legal Adviser respectively, in the employment of the appellant as Presenting-cum-Prosecuting Officers. What does this signify? The normal inference is that according to the Chairman of the appellant the issues that would arise in the enquiry were such complex issues involving intricate legal propositions that the Enquiry Officer would need the assistance of Presenting-cum-Prosecuting Officers. And look at the array of law officers of the appellant appointed for this purpose. Now examine the approach of the Chairman. While he directed two of his law officers to conduct the enquiry as prosecutors, he simultaneously proceeds to deny such legal representation to the delinquent employee, when he declined the permission to the first respondent to appear through a legal practitioner. Does this disclose a fair attitude or fair play in action? Can one imagine how the scales were weighed and thereby tilted in favour of the prosecuting officer. In this enquiry the employer would be represented by two legally trained minds at the cost of the Port Trust while the first respondent was asked either to fend for himself in person or have the assistance of an other employee such as Nadkarni who is not shown to be a legally trained person but the delinquent employee cannot engage legal practitioner at his cost. Can this ensure a fair enquiry? The answer is not far to seek. Apart from any legal proposition or formulation we would consider this approach as utterly unfair and unjust. More so in absence of rules, the Chairman of the appellant was not precluded from granting a request because the rules did not enact an inhibition. Therefore, apart from general propositions, in the facts of this case, this enquiry would be a one-sided enquiry weighed against the delinquent officer and would result in denial of reasonable opportunity to defend himself. He was pitted against the two legally trained minds and one has to just view the situation where a person not admitted to the benefits of niceties of law is pitted against two legally trained minds and then asked to fend for himself. In such a situation,

it does not require a long argument to convince that the delinquent employee was denied a reasonable opportunity to defend himself and the conclusion arrived at would be in violation of one of the essential principles of natural justice, namely, that a person against whom enquiry is held must be afforded a reasonable opportunity to defend himself.

I think the aforesaid observations of the Supreme Court in Dilipkumar's case (supra) should provide a complete answer to the submission urged before me by Shri Shastri for the appellant in support of the order passed by the Enquiry Officer rejecting the plaintiffs request to be assisted by a legal practitioner in the departmental enquiry proceedings.

12. The ruling of the Supreme Court in the case of Krishna Chandra Tandon Vs. The Union of India (UOI), is of no avail to the appellant in this case. In that case, the Supreme Court found that a trained lawyer could not have assisted the delinquent looking to the nature of the charges he was facing. In that case the delinquent was supposed to explain certain assessment orders passed by him. The Supreme Court held that a legal practitioner's assistance would be of no avail to the delinquent in that case. In that view of the matter, I am of the opinion that the ruling of the Supreme Court in K.C. Tamdon's case (supra) is distinguishable on its own facts.

13. The reliance placed by Shri Shastri for the appellant on the ruling of the Supreme Court in the case of Sarin H.C. v. Union of India reported in 1976 (2) SLR 248 will also not stand him in good stead. In that case refusal to permit the delinquent to engage a legal practitioner to defend himself in the enquiry proceedings was held justifiable on the ground that rules did not entitle engagement of a lawyer. As pointed out hereinabove, Rule 7(7) of the Rule enable the Disciplinary Authority to permit the delinquent to be assisted by a legal practitioner having regard to the circumstances of the case. I am therefore of the opinion that the ruling of the Supreme Court in H.C. Sarin's case (supra) is also distinguishable on its own facts.

14. So far as the ruling of the Supreme Court in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, is concerned, it can be distinguished on the ground that it pertains to the law of detention and not to the law relating to disciplinary proceedings. In that case it was held that the detenu had no right to be represented by a legal practitioner before the Advisory Board challenging the order of his detention. While coming to that conclusion the Supreme Court kept in mind the provisions contained in Article 22(3)(b) of the Constitution of India prohibiting appearance of a legal practitioner by either side before the Advisory Board examining the legality and validity of any order of preventive detention. The Supreme Court however struck a note of caution in para 94 at page 747 in the reported ruling. It has been held therein:

We must, therefore, hold regretfully though, that the detenu has no right to appear through a legal practitioner in the proceedings before the Advisory Board.

It is, however, necessary to add an important caveat. The reason behind the provisions contained in Article 22(3)(b) of the Constitution clearly is that a legal practitioner should not be permitted to appear before the Advisory Board for any party. The Constitution does not contemplate that the detaining authority or the Government should have the facility of appearing before the Advisory Board with the aid of a legal practitioner but that the said facility be denied to the detenu. In any case, that is not what the Constitution says and it would be wholly inappropriate to read any such meaning into the provisions of Article 22. Permitting the detaining authority or the Government to appear before the Advisory Board with the aid of a legal practitioner or a legal adviser would be in breach of Article 14, if a similar facility is denied to the detenu. We must therefore make it clear that if the detaining authority or the Government takes the aid of a legal practitioner or a legal adviser before the Advisory Board, the detenu must be allowed the facility of appearing before the Board through a legal practitioner.

(Emphasis supplied)

15. It thus becomes clear that the right of a detenu to be represented by a legal practitioner was accepted if the Government chose to take the aid of a legal practitioner or a legal adviser before the Advisory Board. It is pertinent to note that this aspect occurring in A.K. Roy's case (*supra*) was highlighted by the Supreme Court in its ruling in Dilipkumar's case (*supra*).

16. Shri Shastri for the appellant has submitted that the nature of the enquiry proceedings was not so complex as would warrant assistance of a legal practitioner on the part of the plaintiff. The report of the Enquiry Officer is at Exh. 59 on the record of the trial Court. It clearly transpires therefrom that as many as sixteen witnesses were examined on behalf of the department in the enquiry proceedings. This by itself would show and suggest that the case was complex enough to warrant examination of as many as sixteen witnesses for substantiation of the charges levelled against the plaintiff in the course of the enquiry proceedings. I therefore find no merit or substance in the submission urged before me by Shri Shastri for the appellant to the effect that the case was not complex enough to deserve assistance of a legal practitioner on the part of the plaintiff. Again, what was required to be seen while dealing with request for engagement of a lawyer was whether or not the delinquent was pitted against a person conversant with or well-versed in the law relating to the enquiry proceedings. In that view of the matter, the submission urged before me by Shri Shastri for the appellant to the effect that the plaintiff was not justified in claiming assistance of a legal practitioner for defending him in the enquiry proceedings has to be rejected.

17. Shri Shastri for the appellant has then invited my attention to a statement made by the Enquiry Officer in his report at Exh. 59 on the trial Court's record to the effect that after rejection on his request for engagement of a legal practitioner in the enquiry proceedings the plaintiff agreed to proceed with the

departmental enquiry proceedings without making any grievance against rejection of his such request in that regard. In fact, according to Shri Shastri for the appellant, the plaintiff gave a written consent for proceeding with the enquiry proceedings against him. I think it would not be open to the appellant to make capital out of such consent given by the plaintiff to proceed with the enquiry proceedings after rejection of his request for engagement of a legal practitioner to assist him therein. For ought one knows, the plaintiff might have been persuaded or even lured to agree to proceed with the departmental proceedings. Again that written consent given by the plaintiff to proceed with the enquiry proceedings is not on record. It is therefore difficult to know what prompted him to agree to proceed with the enquiry proceedings. Besides, perhaps the plaintiff did not want to allow the enquiry proceedings to linger on till his grievance regarding assistance of a lawyer to him was fully redressed. In absence of any cogent material on record. I am disinclined to attach any importance to the consent given by the plaintiff for proceeding with the enquiry proceedings even after rejection of his request for assistance of a lawyer therein.

18. As transpiring from the record the plaintiff's such request was turned down by the Enquiry Officer himself. Rule 7(7) of the Rules requires the Disciplinary Authority to grant permission to a delinquent to be assisted by a legal practitioner of his choice if he so desires having regard to the circumstances of the case. The power to grant permission would necessarily include the power not to grant or to reject such permission. In that view of the matter, it was not open to the Enquiry Officer to have taken upon himself the task of deciding the fate of an application made by the plaintiff in the enquiry proceedings for permission to engage a legal practitioner for defending him in the enquiry proceedings. The Enquiry Officer had no competence to deal with application in view of the relevant provisions contained in the Rules.

19. It is difficult to agree with the submission urged before me by Shri Shastri for the appellant to the effect that, once an Enquiry Officer is appointed to conduct the departmental enquiry proceedings against a delinquent, such Enquiry Officer remains in-charge and control of the entire enquiry proceedings including dealing with an application for engagement of a legal practitioner made by the delinquent facing such enquiry proceedings. If that be so, the rule making authority would not have chosen to use the term "the disciplinary authority" in Rule 7(7) of the Rules for the purpose of permitting the delinquent to be assisted by a legal practitioner having regard to the circumstances of the case. That phraseology by itself provides a complete answer to the aforesaid submission urged before me by Shri Shastri for the appellant.

20. In view of my aforesaid discussions, I am of the opinion that the lower appellate Court was perfectly justified in coming to the conclusion that the enquiry proceedings culminating into the impugned order of punishment stood vitiated on account of rejection by the Enquiry Officer of request made by the plaintiff for assistance of a legal practitioner for defending him therein resulting

into denial to him a reasonable opportunity to defend himself therein. No ground is made out for interfering with that conclusion reached by the lower appellate Court.

21. It is not in dispute that the plaintiff attained his age of superannuation sometime in 1981. It has also come on record that he breathed his last sometime in 1987. In that view of the matter, the order of his reinstatement in service would remain in force till the period he was due to retire from service on attaining the age of superannuation. Whatever benefits including terminal benefits arising from his reinstatement in service should obviously go to his heirs and legal representatives.

I think it would be advisable and desirable on the part of the appellant to settle the claim of the plaintiff in respect of his reinstatement in service till the date of his retirement and terminal benefit till his death and family pension if any thereafter as early as possible preferably within eight weeks from today, in view of the fact that the order of his reinstatement was passed as early as in 1978, that is, about 13 years before final disposal of this appeal by this Court. This direction is subject to any appeal that the appellant may choose to prefer to the Supreme Court against this judgment and order of this Court.

22. In the result this appeal fails and is hereby dismissed with costs.