

(1957) 08 BOM CK 0015
In the Bombay High Court

Ramachandran (V.)

APPELLANT

Vs

Air-India International Corporation

RESPONDENT

Date of Decision : 20-08-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) 2 LLJ 496

Hon'ble Judges : Coyajee, J

Bench : Single Bench

Judgement

Coyajee, J.—This is a petition for an appropriate writ under Article 226 of the Constitution. The petitioner was at all material times a navigator in grade 1 employed by the respondent Corporation, namely, Air-India International Corporation. The respondent, it is alleged, is a body corporate and works under the supervision of Central Government in accordance with the provisions of the Air Corporation Act of 1953.

2. The incident from which the complaint arises took place on 6 January 1957. On January 1957 at noon on that day the petitioner got a ticket to be standby for the trip Bombay-Bangkok and Bombay-Beirut and the aeroplane was to leave that evening at 6-30 p.m.. The petitioner having received this ticket and accepted it, he had to be on duty at a reasonable time before the plane left on that day. On his own showing he went to drop a friend at the Race Course that very afternoon and he says he also went in-Side the Race Course and watched a few races. At the Race Course, according to him, at about 3-00 or 3-30 p.m. he felt some pain in his stomach and he went back in his car to his residence at Juhu. He says that he thereafter consulted his landlady's doctor named Dr. Soonawalla and the doctor on being informed that he has to undertake a flight, advised him against it. He telephoned to the movement control at 5-45 p.m. that he could not attend duty. It appears that in the circumstances the movement control sent for and obtained another pilot officer for the plane, but the plane was delayed, which is not disputed, by 95 minutes. The petitioner was thereafter

called upon by the officer, in-charge, namely, the divisional operations manager, to give his explanation which was according to the petitioner first given orally and thereafter in writing by his letter of 9 January 1957. The petitioner states that thereafter on 9 January 1957 he was served with a charge-sheet and was called upon to explain why he could not undertake the flight on 6 January 1957. Thereafter he was suspended and a committee of enquiry was held and he was informed on 15 January 1957 that the committee had held him responsible for causing delay of their Bombay-Tokyo flight of 6 January 1957 and a certain punishment was prescribed, namely, suspension from work for thirty days and thereafter on his return he would be required to be present at the airport during the period of his standby and that his next increment would depend on his future conduct. This was objected to by the petitioner who made a representation through the Indian Air Navigators Guild and who challenged the findings of that enquiry committee. Thereupon the whole of that enquiry was quashed and a fresh enquiry was ordered by a committee of three very senior officers. That enquiry committee framed two charges against the petitioner. They recorded evidence of certain witnesses. The statements of these witnesses were read out to the petitioner and the petitioner appeared by counsel and cross-examined two of those witnesses. The petitioner was asked to lead evidence and he did lead certain evidence of one medical officer connected with the Corporation. After all this hearing¹ the committee came to the conclusion that the petitioner was guilty of wilful neglect in not attending on 6 January 1957 and the explanation given by him that he was ill on that day was held to be untrue and as a sequel to that finding the Corporation terminated the petitioner's services and in lieu of one month's notice offered him a month's salary. The petitioner appealed to the Chairman of the Corporation and the Chairman rejected the appeal. In these circumstances the petitioner comes before this Court asking for a writ *af certiorari* or a writ in the nature of *mandamus* to quash the order and to reinstate him.

3. The respondent in their affidavit say that the petitioner was employed under an agreement which is constituted by two letters, one of 26 April 1955 and the letter of acceptance from the petitioner dated 28 April 1956 in which he stated that he accepted the terms and conditions of the offer. The respondent Corporation sets out in detail what happened on 6 January 1957. Then they set out that a committee of highly placed officers of the Corporation was appointed and the petitioner was defended by counsel. They held, as set out in Para. 3(e), that after hearing all the evidence the enquiry committee came to the conclusion that the petitioner had put forward contradictory versions and that his explanation could not be believed in view of the evidence led before the committee and found him guilty of the charge that his statement relating to his illness was no true and could not possibly have prevented him from undertaking the flight. They further stated that they had come to the conclusion that the petitioner had tried to influence a certain witness Miss Burby who was a hostess in the service of the Corporation and who was present on the Race Course on the

relevant date. The evidence is very exhaustive and a copy of it has been annexed to the petition itself and I have been taken through a considerable part of the evidence. The petitioner, after the finding was published, namely, by his services being terminated, although according to the respondent Corporation they would have been Justified in dismissing the petitioner, but he was leniently dealt with (sic). As regards the evidence, the committee came to the conclusion, as set out in Para. 5 of the affidavit, that on the evidence, the petitioner had laid a bet on the treble pool and held a winning ticket on the first leg of the treble pool and was interested in the changes of the horses running in the sixth race that the sixth race was run at 4-15 p.m. and they therefore came to the conclusion that his statement that he left the Race Course at 3 p.m. or 3-30 p.m. could not be true. They further state that the certificate produced as far as the medical certificate was concerned, was a certificate of Dr. D'Souza who had not examined him on the first day and that this certificate of Dr. D'Souza was endorsed by the Corporation's doctor Dr. Kalokhe for the purposes of casual leave. But it is most important to note that the only doctor who had examined him at the relevant time, namely. Dr. Soonawalla was, not called by the petitioner at all.

4. The only two points that need discussion in detail are first, whether the petitioner was given reasonable opportunity to show cause during this enquiry. On this point, there is no doubt in my mind that not only reasonable but full opportunity was afforded to the petitioner in every way. He was given the opportunity to cross-examine witnesses and his counsel did so. He was given the opportunity to produce his evidence and he did so and after weighing the evidence the committee came to the conclusion that the petitioner was guilty. I may say at once that it is not the function of this Court to sit in judgment on the findings and the reasons for the findings whether they are correct or not, nor is it the function of this Court to find out whether in fact a correct legal procedure was applied or not, But I may say as I was taken through the evidence by Mr. Singhvi. MR Singhvi was unable to point out anything that was contrary to the principles of natural justice. Therefore, whether the finding is right or wrong, as long as an opportunity is given to the party and that opportunity has been a reasonable one, to unfold his defence, that is sufficient.

5. Apart from lack of opportunity, the only other point taken by Mr. Singhvi is that no show-cause notice was given after the findings and before the punishment was meted out. This question necessarily is closely connected with the preliminary objection raised by Mr. Mehta on behalf of the respondent Corporation and I shall therefore deal with this point raised by Mr. Singhvi at the end of my consideration of the preliminary objection as regards maintainability of this petition.

6. Mr. Mehta has contended that the whole petition is misconceived inasmuch as no writ can lie against a body like the respondent which is a corporation. The very basis of his argument was that there is nothing under any Act which

imposes any obligation on the respondent Corporation which the respondent Corporation has failed to discharge. The petitioner strives to maintain that he is entitled, as a civil servant of the Government to the benefit of the provisions of Article 311 of the Constitution. For that in the petition itself he depends on the Air Corporation Act of 1953. Now the scheme of the Air Corporation Act is very simple, it divides the Corporation into two Corporations, one managing the international flights of the Corporation and the second managing the internal flights of the Corporation. u/s 7 which prescribes the functions of the Corporations, it is quite clear that certain activities of the Corporation are to be undertaken with the previous approval of the Central Government and the others without. These activities which are subject to the previous approval of the Central Government are to be found in Sections 7(c), 7(h) and 7(i), Section 7(c) refers to promotion of any organization outside India for the purposes of engaging in any activity of a kind which the Corporation has power to carry on. Sub-section (h) refers to agreements, with any person engaged in air transportation to enable such person to provide air transport services and Sub-section (i) refers to levy of fares. Section 35 also refers to prior approval of the Central Government and it refers to capital expenditure exceeding Rs. 15 lakhs, lease of any immovable property for a period exceeding five years and disposal of the property belonging to the Corporation. u/s 44 the Corporation is empowered to make rules and u/s 45 the Corporation is given powers to make regulations in connexion with the terms and conditions of service of officers and other employees of the Corporation. It appears and it is not contested that no rules or regulations under these sections have been made. But the employees' service rules of the Air-India, Ltd., have been adopted by the Corporation. Now, we turn to two very important sections. Section 9 says that in carrying out any of the duties vested in it by this Act, each of the Corporations shall act so far as may be on business principles, and u/s 8 which refers to appointment of officers and other employees of the Corporations, under Sub-section (2), every person employed by such of the Corporations shall be subject to such conditions of service and shall be entitled to such remuneration and privileges as may be determined by regulations made by the Corporation by which he is employed. In other words the Corporation is to work on business principles and the Corporation is given the right to absorb and discharge employees on such terms and conditions as the Corporation deems fit. Therefore, it is contended that one now refer to Ex. 1, Employees' Rules of Service. Under Rule 32(4), the employment of any daily or monthly rated regular employee drawing a salary of Rs. 100 or over may be terminated by a calendar month's notice or by payment of one month's salary in lieu of notice. Under Rule 33, it is prescribed that in the event of any employee being accused of misconduct, the management will depute an officer to hold an enquiry and to afford the employee a reasonable opportunity of explaining and defending his actions, and in awarding punishment the management will take into consideration the extent or gravity of the misconduct, previous record and any other extenuating or aggravating circumstances that may exist, so that the Corporation may either dismiss an

employee from service or terminate his services under Rule 32. The action taken here, as contended for on behalf of the respondent, is that lesser punishment was meted out and the petitioner's services were terminated. It is clear from a reading of the Act that the limitations put on the Corporation's activities are very few and expressly specified. Apart from that it is a self-contained entity carrying on its trade International and internal as the case may be. In these circumstances, it is contended and quite rightly contended that there is no question of holding the petitioner as a member of the civil service entitling him to the advantage of Art 311 of the Constitution. Mr. Porus Mehta arguing this point rightly pointed out that even employees of statutory bodies like the municipalities and other similar bodies like the housing board are not and cannot be classed as civil servants for the purposes of the benefit of Article 311 of the Constitution, and Mr. Mehta pointed out two judgments which are very apt in the circumstances of the present case and the judgment in *Bibhuti Bhusan Ghosh Vs. Damodar Valley Corporation and Others*, is really to the point. It is pointed out that if a writ of certiorari is asked for, it must be shown that an obligation or duty has been imposed by statute upon the employer to act judicially or quasi-judicially in relation to such enquiry. There is nothing, it was held, in the Damodar Valley Corporation Act which makes it incumbent upon the Corporation to make regulations imposing a duty on the Corporation to hold a Judicial or quasi-Judicial enquiry into the charges of misconduct and that there is therefore no duty either express or implied in the Corporation to act judicially or quasi-judicially in matters of dismissal of its employees and hence a writ of certiorari cannot issue. It is true that in the case before me no rules have been made under the Act. That however, cannot help the petitioner at all because, if rules had been made they might have provided that on enquiry a summary procedure may be employed and the man may be dismissed without being heard at all. In these circumstances the fact that no rules exist cannot help the petitioner. The learned Judge negatived the contention on behalf of the petitioner in that case that the petitioner must be treated as an officer holding a civil post under the Union and/or the State Government and therefore there is such a duty imposed under Article 311(2). Then the learned Judge observed as follows:

It appears to me that the petitioner cannot be regarded as an officer holding a civil post under the Union or the State Government. The agreement of service by which he was employed shows that the appointment was made by and under an order of the respondent Corporation. The different provisions of the Damodar Valley Corporation Act, 1948, indicate that the Corporation has a separate and independent existence and is a different entity from the Union or the State Government. This Corporation has properties vested in it under the Act, it has its own fund and its functions and duties are denned in the Act.

The learned Judge pointed out that there cannot be any doubt that the respondent Corporation is a statutory and public body entrusted with the discharge of public duties, but that the question was whether in holding a departmental enquiry into the conduct of one of its officers it is under any duty

to act Judicially or quasi-judicially. The same principle is to be found in the case of *Nagendra Kumar Roy v. Commissioners for the Port of Calcutta* AIR (1955) 42 Cal. 56 where it was held that Article 311 of the Constitution does not apply to a person who is not a civil servant of the Government and that mere adopting by a corporate body of the fundamental rules applicable to Government civil servants cannot make such person who is a servant of that body a civil servant or attract the provisions of Article 311. The learned Judge observed:

The reasonable opportunity of defending himself allowed to a servant before his dismissal from service when not based on statutory rules framed under any Act must be guided by the ordinary rules of natural justice. There is not any violation of it when the preliminary enquiry is made ex-parte, the only question being whether the employee in such a case had every reasonable opportunity of meeting the charges which were framed. The rules of natural justice, however, do not require that the proceedings must be conducted in the same way as a judicial trial.

7. Now, it is quite clear that on a reading of these sections of the Air Corporation Act it is a distinct and separate entity and although a certain amount of control is retained by the Central Government, the Corporation appoints its own officers, has the right to dismiss its own officers and has the right to impose such conditions of service as they deem proper for the efficient rendering of air service as prescribed by Section 9 in a businesslike manner, in these circumstances, it is quite apparent that the petition cannot be founded on a right as a civil servant of the Union entitling him to the benefit of Article 311.

8. This brings me to the other point taken by Mr. Singhvi and that is that if this is not a statutory body having statutory obligations, there is no question of a show-cause notice being issued prior to the prescribing or dealing out of punishment, because a private employer in a large way may make rules for making an enquiry. That enquiry or enquiries of such a nature are entirely one for the purpose of satisfying its own mind and nothing else and if that mind is satisfied and an order is made terminating the service of an employee or dismissing an employee from service, there is no question at all of serving him with a show-cause notice before the final order is made.

9. I may say at once that on a perusal of the two letters, one of offer and the other of acceptance annexed to the petition itself, the petitioner entered into this employment on the basis of the contract disclosed in those two letters. The respondent, as an independent entity like any other employer, is entitled as of right, on being dissatisfied with the service of an employee, to terminate the services of such an employee.

10. In these circumstances there is no question of Article 311 coming into operation at all and if there is no statutory obligation, there is no question of a quasi-judicial enquiry, nor is there any question of jurisdiction or excessive Jurisdiction and no question also arises of natural justice.

11. In the light of these observations of mine, no case whatever has been made out for the issue of a high prerogative writ. But I may say as a personal opinion of mine that if my conclusion that this is a private entity and a private employer is correct, and a wrong has been suffered by the petitioner, the only proper remedy that is open to him is a suit against the Corporation for wrongful dismissal claiming appropriate damages in the suit. There is no question of coming to this Court to rectify the wrong if he has suffered one by issue of a writ.

12. In these circumstances, the rule is discharged and the petition must stand dismissed with costs.