
(1985) 06 GUJ CK 0010
In the Gujarat High Court
Case No : Special Civil Application No. 5955/83

R.M. Bajpae

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 28-06-1985

Acts Referred:

Bombay Police Act, 1951 — Section 27A

Citation : (1985) 2 GLR 1261 : (1986) 1 LLJ 309

Hon'ble Judges : A.M. Ahmadi, J

Bench : Single Bench

Judgement

Ahmadi, J.—(His Lordship after stating the facts, further observed) :

6. It was next submitted by the learned advocate for the petitioner that before the revision application was disposed of by the State Government, the petitioner ought to have been given a personal hearing. By not giving him a personal hearing, submitted counsel, the State Government had committed a breach of rule of natural justice which vitiated the impugned order of dismissal. Section 27A of the Bombay Police Act provides that the State Government may, suo motu, or on an application made to it, call for and examine the record of any inquiry or proceeding of any subordinate police officer for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by, and as to the regularity of the proceedings of such officer, and may, at any time, confirm, modify or reverse and such order, impose any penalty or set aside, reduce, confirm or enhanced the penalty imposed by such order, as may be deemed fit. The proviso to that section lays down that an order in revision imposing or enhancing penalty shall not be passed unless the police officer affected thereby has been given a reasonable opportunity of being heard. On the basis of the language of the proviso to S. 27A, learned counsel for the petitioner submitted that it was incumbent on the State Government to give a personal hearing to the petitioner before imposing the order of punishment. Now in the first place it must be remembered that the word "imposing" used in the proviso

to S. 27A contemplates imposition of punishment or penalty for the first time in revision and not mere confirmation thereof. This becomes clear if we read the section as a whole. The State Government is empowered to confirm any order passed by the authority below. For such confirmation the proviso does not contemplate any hearing to be given, much less personal hearing. The proviso contemplates giving of a reasonable opportunity of being heard only in cases where an orders imposing or enhancing penalty is propose to be passed in revision. Confirmation of penalty by which the petitioner has already been visited is covered by Clause (a) whereas imposition of penalty is covered by Clause (b). This makes it clear that these are two distinct orders and it is only in the case of the latter that the proviso contemplates the giving of a reasonable opportunity of being heard. Therefore, the submission that penalty was imposed in revision because the orders passed by the authority below was confirmed is clearly misconceived. Secondly, the granting of a reasonable opportunity of being heard does not necessarily envisage a right to audience. The Supreme Court in *Madhya Pradesh Industries v. Union of India* (A.I.R. 1966 S.C. 67) observed that it is no doubt a principle of natural justice that a quasi judicial tribunal cannot make any decision adverse to party without giving him an effective opportunity of meeting any relevant allegation against him. The said opportunity need not necessarily be by personal hearing. It can be by written representation in the form of memo of revision. Again in *Union of India (UOI) Vs. Jyoti Prakash Mitter*, , the Supreme Court observed that in proceedings of a judicial nature, the basic rule of natural justice must be followed but it is not necessarily an incident of the rule of natural justices that personal hearing must be given to the party likely to be affected by the order. Except in proceedings in Courts, a mere denial of opportunity of making oral representation will not, without more, vitiate the proceedings. A party likely to be affected by a decision is entitled to know the evidence against him and to have an opportunity of making a representation. However, the party cannot claim that an orders made without affording a personal hearing cannot be sustained. It would appear from the aforesaid provisions that even assuming that proviso to S. 27A applied, the nature of opportunity of being herd contemplated thereby need not be a personal hearing, any representation received from the delinquent on the basis of which the revisional jurisdiction is exercised, should suffice. I am, therefore, of the opinion that the contention founded on the language of the proviso to S. 27A that the impugned order is vitiated as the delinquent was not given a personal hearing before the revision application came to be disposed of is unsustainable.

2. (Rest of the judgment is not material for the reports).