

(2011) 02 MAD CK 0213
In the Madras High Court
Case No : Writ Petition No. 10069 of 2004

S. Ponmani

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2011) 02 MAD CK 0213

Hon'ble Judges : R. Banumathiw, J

Bench : Single Bench

Advocate : T.P. Prabakaran, for the Appellant; N. Senthilkumar, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

R. Banumathiw, J.—Petitioner seeks Writ of Mandamus forbearing the Respondents from initiating any disciplinary action against the

Petitioner on the basis of the report of 4th Respondent u/s 81 of Tamil Nadu Co-operative Societies Act and also to direct the Respondents to

consider the defence of the Petitioner.

2. Relevant facts in brief are as follows:

During the period 20.01.1996 to 17.06.1997, Petitioner was working as Joint Registrar of Co-operative Societies, Perambalur region. On

complaints received that certain irregularities have been committed in the purchase of burglary alarms by Primary Agricultural Co-operative Banks

and other Co-operative Institutions in Perambalur region, a fact finding enquiry was ordered. In the fact finding enquiry, it was observed that there

is prima facie evidence of irregularities in such purchase, a statutory enquiry u/s 81 of Tamil Nadu Co-operative Societies Act [for short "Act"]

was ordered in to the affairs of Primary Agricultural Co-operative Banks and other Institutions numbering 91 in Perambalur region by the

Proceedings Rc.166533/98 SISI dated 20.5.1999 of 3rd Respondent-Additional Registrar (Marketing Planning and Development).

3. In his report dated 08.11.1999, the 4th Respondent-Enquiry Officer reported that 91 Co-operative institutions in Perambalur region have

installed burglary alarms by putting higher price than the value of the instruments to a company i.e. Co-operative Management Consultancy

Services, Coimbatore. Enquiry Officer reported that burglary alarms were purchased at a higher rate and thereby loss of Rs. 11,74,648.50 was

caused to 91 Societies. In his report, Enquiry Officer suggested for initiating surcharge action u/s 87 of the Act against the Petitioner and other

officers.

4. Upon examination of enquiry report and suggestion of the Enquiry Officer, the Registrar of Co-operative Societies [2nd Respondent] instructed

the Regional Joint Registrar, Perambalur to initiate disciplinary proceedings against the departmental officers and also addressed the Government to

initiate disciplinary action against the Petitioner, the then Joint Registrar of Perambalur region and also one K. Jayabalan, Deputy Registrar,

Ariyalur. As per letter No. 20234/CE2/2000 7 Co-operation, Food and Consumer Protection Department dated 26.3.2002, Government

initiated disciplinary proceedings against the Petitioner.

5. Petitioner asked for Section 81 report. By the Proceedings dated 9.5.2003, Petitioner was informed that the records is voluminous and

therefore, directing the Petitioner to peruse the report and take notes. Petitioner did not submit his explanation. Therefore, Thiru. A. Abdul Salam,

I.A.S. was appointed as Enquiry Officer to conduct oral enquiry by Proceedings Rc.78216/2000 DA.1 dated 31.03.2004. It is alleged that

Petitioner did not participate in the enquiry. Number of witnesses were examined by the department and Enquiry Officer has submitted his exparte

report dated 16.9.2004.

6. After being served with the charge memo dated 05.4.2002 and after Enquiry Officer was appointed, Petitioner has filed the Writ Petition on

15.4.2004 challenging the appointment of Enquiry Officer and to direct the Respondents to forbear from conducting any enquiry.

7. Case of Petitioner is that initiation of disciplinary proceedings u/s 81 of the Act is illegal and as per Section 81 of the Act, Registrar alone is

competent to hold enquiry or to direct the person to hold enquiry. Further grievance of Petitioner is that u/s 81 of the Act Enquiry Officer cannot

order for initiation of disciplinary proceedings against another Officer who is working in the same cadre and as per Section 81(6) of the Act, only

Registrar alone is competent to pass order in writing. Main grievance of Petitioner is that after issuing the charge memo without affording

opportunity to the Petitioner to go through the documents and to defend his case and without giving adequate opportunity to the Petitioner, Enquiry

Officer hastily proceeded with the enquiry and therefore, seeks direction to the Respondents to consider the defence of the Petitioner.

8. By filing elaborating counter, Respondents have contested the Writ Petition contending that 3rd Respondent-Additional Registrar (Marketing

Planning and Development) is competent authority to initiate action u/s 81 of the Act. As per the powers conferred on him in G.O. Ms. No. 269,

Co-operative Department dated 8.6.1988, 3rd Respondent has power to direct a person to hold an enquiry. According to Respondents, inspite of

several opportunities given, Petitioner did not co-operate in the domestic enquiry and only after giving sufficient opportunities, Enquiry Officer was

appointed and since Petitioner failed to appear before the Enquiry Officer to defend his case, Enquiry Officer proceeded and decided the matter

exparte.

9. Mr. T.P. Prabakaran, learned Counsel for Petitioner mainly contended that at the time of filing of Writ Petition, interim stay was granted on

17.4.2004 and inspite of interim stay being communicated to the Respondents, Enquiry Officer proceeded with the enquiry and the report

submitted by the Enquiry Officer is vitiated due to violation of principles of natural justice. It was further contended that even though Petitioner

asked for copy of the report u/s 81 of the Act without giving him sufficient opportunity to peruse the report before ever Petitioner could submit his

defence, Enquiry Officer was appointed who hastily proceeded with the domestic enquiry and therefore, the entire proceeding is vitiated due to

violation of principles of natural justice.

10. Taking me through various dates and events, Mr. N. Senthilkumar, learned

Additional Government Pleader has submitted that inspite of sufficient opportunities, Petitioner did not submit his explanation to the charge memo dated 05.4.2002 and Petitioner also did not co-operate to participate in the domestic enquiry and only after giving due opportunities, Enquiry Officer was appointed. It was further submitted that out of 63 witnesses, 54 witnesses appeared before the Enquiry Officer and since Petitioner failed to appear before the Enquiry Officer to defend his case and failed to avail the opportunities extended to him, Enquiry Officer proceeded with the enquiry and Petitioner having not co-operated in the domestic enquiry cannot complain of violation of principles of natural justice.

11. When the Petitioner worked as Joint Registrar of Co-operative Societies in Perambalur region from 22.1.1996 to 17.6.1997 is alleged to have committed irregularities in purchase of burglary alarms to the extent of Rs. 11,74,648.50 to 91 Societies. Based on Section 81 enquiry report and letter of the Registrar of Co-operative Societies, Government initiated disciplinary proceedings against the Petitioner as per Government letter dated 26.03.2002. Petitioner was served with charge memo on 05.04.2002 and copies of documents were sent to him by 2nd Respondent's office letter dated 27.5.2002. Thereafter, by his letter dated 25.02.2003, Petitioner has made a request to furnish copy of Section 81 enquiry report. By the Proceedings Na. Ka.78216/2001 dated 9.5.2003, Petitioner was informed that the records is voluminous one [850 pages] and therefore, Petitioner was asked to peruse the report and take notes and if necessary, Petitioner himself can take the copies at his cost. But the Petitioner has not submitted his explanation. According to Petitioner, since there was State wide strike by Government servants due to which Petitioner could not get the copy of enquiry report.

12. By the Proceedings dated 31.03.2004, Enquiry Officer Thiru. A. Abdul Salam, I.A.S. was appointed to conduct the oral enquiry. On 15.04.2004, Petitioner has filed this Writ Petition challenging the initiation of disciplinary proceedings. On 17.04.2004 even though interim stay was granted, Respondents have proceeded to conduct the oral enquiry. In the counter-affidavit, it is averred that out of 63 witnesses, 54 witnesses appeared before the Enquiry Officer and their evidences were recorded. Enquiry Officer proceeded the matter exparte and concluded the enquiry

and submitted his report on 16.09.2004. As pointed out earlier, grave charges are levelled against the Petitioner for allegedly causing loss

of Rs.11,74,648.50 to the Co-operative Societies. According to Petitioner, he has substantial defence in the disciplinary proceedings and in spite of

interim stay granted by this Court on 17.4.2004, Enquiry Officer hastily proceeded with the enquiry. Since grave charges are levelled against the

Petitioner, it would have been appropriate if Enquiry Officer afforded reasonable opportunity to the Petitioner.

13. One of the principles of natural justice is audi alteram partem (hear the other side). It is settled law that principles of natural justice have to be

complied with. But it is equally well settled that the concept of "natural justice" is not a fixed one. Rules of natural justice are not embodied rules

and they cannot be imprisoned within a straitjacket of a rigid formula.

14. Observing that doctrine of natural justice cannot be imprisoned within the straitjacket or a rigid formula, in *Union of India (UOI) and*

Another Vs. P.K. Roy and Others, the Supreme Court observed as follows:

11. ... the extent and application of the doctrine of natural justice cannot be imprisoned within the straitjacket of a rigid formula. The application of

the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons

affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case.

15. In *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, the Supreme Court held as follows:

20. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that

case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose.

Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the

observance of that rule was necessary for a just decision on the facts of that case.

16. Elaborating upon the principles of natural justice, in *[P.D. Agrawal v. SBI (2006) 8 SCC 776]*, the Supreme Court indicated that principles of

natural justice are flexible and in the recent times, they had undergone a "sea change". The effect of violation of principles of natural justice had to be

considered in the facts and circumstances of each case. If there is no prejudice to the employee, an action cannot be set aside merely on the ground that no hearing was afforded before taking a decision by the authority.

17. Observing that whether principles of natural justice is complied with or not has to be determined having regard to fact-situation obtaining in

each case, in [Shekhar Ghosh v. Union of India AIR 2006 SCW 6271, the Supreme Court has held thus:

22. Requirements to comply with the principles of natural justice would, therefore, vary from case to case. If upon giving an opportunity of hearing

to an affected employee, it is possible to arrive at a different finding, the principles of natural justice must be complied with. We may notice that

recently in Union of India (UOI) and Others Vs. Bikash Kuanar, a Division Bench of this Court opined:

... It is now trite that if a mistake is committed in passing an administrative order, the same may be rectified. Rectification of a mistake, however,

may in a given situation require compliance of the principles of natural justice. It is only in a case where the mistake is apparent on the face of the

records, a rectification thereof is permissible without giving any hearing to the aggrieved party.

In the above case, the Supreme Court held that the principles of natural justice, having regard to the fact-situation obtaining in each case. A clear

distinction has been laid down between cases where there was no hearing at all and the case where there was mere technical infringement of the

principle. In the instant case, it is not a mere technical infringement of the principle; but it is case of no hearing at all.

18. Learned Additional Government Pleader has submitted that Petitioner was afforded sufficient opportunity and that he failed to submit his

explanation and also did not co-operate in participating with the enquiry and therefore, Petitioner cannot complain of violation of principles of

natural justice. It was further submitted that Petitioner has ordered purchase of burglary alarms immediately within two days of his assuming charge

and that non-supply of Section 81 report and the enquiry proceeded exparte could not have caused any prejudice or miscarriage of justice to the

Petitioner. It was therefore contended notwithstanding that Petitioner did not participate in the disciplinary proceedings, enquiry cannot be said to

be vitiated.

19. As pointed out earlier, grave charges are levelled against the Petitioner. He ought to have been afforded reasonable opportunity to peruse

Section 81 enquiry report. After the Enquiry Officer was appointed, Petitioner has approached this Court and also obtained interim stay of the

disciplinary proceedings on 17.04.2004 which was also communicated to the Respondents. Because of pendency of the Writ Petition perhaps the

Petitioner has not participated in the enquiry. Having regard to the gravity of charges, non-affording of opportunity to the Petitioner has resulted in

prejudice to him and therefore, report of Enquiry Officer cannot be sustained. Respondents are to be directed to afford reasonable opportunity to

the Petitioner. Learned Counsel for Petitioner has submitted that Petitioner is going to be superannuated by the end of March 2011. Having regard

to the submissions, it would be appropriate to direct the Respondents to expedite the enquiry.

20. In the result, report of Enquiry Officer dated 16.9.2004 is set aside and this Writ Petition is allowed. Respondents are directed to proceed

with the matter afresh. Petitioner shall peruse the documents and shall submit his explanation to the charge memo dated 05.4.2002 within a period

of four weeks from the date of receipt of copy of this Order and thereafter, Respondents shall proceed with the matter in accordance with law.

Respondents shall complete the enquiry within a period of three months from the date of appointment of Enquiry Officer. Petitioner is directed to

co-operate with the disciplinary proceedings.