
(1973) 01 BOM CK 0008

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 288 of 1972

Shri Mithailal Dalsinghar Singh

APPELLANT

Vs

S.V. Joag

RESPONDENT

Date of Decision : 24-01-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1974) 76 BOMLR 1 : (1974) MhLj 220

Hon'ble Judges : Nain, J

Bench : Single Bench

Judgement

Nain, J.—The petitioners are the President and the Secretary respectively of Arya Samaj, Matunga, Bombay 19. The said Arya Samaj inter alia conducts a secondary school known as "Shri Dayanand Balak Vidyalaya" at Matunga. Respondent No. 2 was the Principal of the said school and was found to be guilty of certain charges by an Inquiry Committee, Respondent No. 2 appealed under Rule 77 of the Secondary Schools Code of the Government of Maharashtra to respondent No. 1 the Deputy Director of Education, Greater Bombay, who by his order dated March 28, 1972 ordered respondent No. 2 to be reinstated. The petition has been filed for a writ of certiorari or other appropriate writ, order or direction quashing- the said order. The facts leading to this petition are briefly as follows:

2. On April 24, 1971 the Management of the School (hereinafter for the sake of brevity referred to as "the Management") issued to respondent No. 2 a show cause notice containing three charges against him viz. (a) that he had promoted a student by name Jaiprakash Singh from Standard X to Standard XI by manipulation of mark sheets of the examination held in April 1970 (b) that he had issued two false certificates (i) School Leaving Certificate issued to the said Jaiprakash Singh and (ii) Certificate regarding residence to Ramnihore Jagdish Narayan Shukla, and (c) that he had drawn house rent allowance illegally and improperly. Respondent No. 2 submitted an explanation dated April 29, 1971.

Thereafter an Inquiry Committee consisting of three persons was constituted, two nominated by the Management and the third by respondent No. 2. The inquiry was under Rule 77 of the Secondary Schools Code. On July 2, 1971 the Inquiry Committee charge-sheeted respondent No. 2. On July 14, 1971 respondent No. 2 submitted his explanation to the charge-sheet. After the inquiry was completed respondent No. 2 was found guilty of all the charges and the Inquiry Committee held on January 29, 1972 that respondent No. 2 be dismissed from service.

3. On February 15, 1972 respondent No. 2 preferred an appeal under Rule 77 of the Secondary Schools Code to respondent No. 1. On March 3, 1972 respondent No. 2 wrote to the Management his letter exh. F to the petition enclosing a copy of the appeal and requiring the Management to send to respondent No. 1 the remarks of the Management thereon if any, summary of the date wise proceedings of the Inquiry Committee's meetings, copy of the resolution deciding to suspend respondent No. 2 and result sheet of the Annual Examination of the Standard X held in April 1970. It must be pointed out that this letter does not call for the proceedings of the Inquiry Committee. On March 13, 1972 the Management replied by the letter exh. G to the petition sending the summary of the proceedings and other documents required in the letter of March 3, 1972, except the remarks of the Management on the appeal. It was stated that the remarks would be sent after the Management studied the said appeal. It must also be mentioned that the summary of the proceedings was merely the diary of the proceedings and did not contain the evidence or the substance of the evidence recorded by the Inquiry Committee. On March 14, 1972 respondent No. 1 wrote to the Management fixing March 20, 1972 at 4.00 p.m. for the hearing of the matter.

4. The petitioners have stated in paras. 11 and 12 of the petition that they attended the office of respondent No. 1 on March 20, 1972 at 4.00 p.m. They state that respondent No. 2 was not then). Respondent No. 1 inquired of the petitioners whether they desired to be heard in the appeal. Petitioner No. 2 answered in the affirmative. On this respondent No. 1 gave to the petitioners a questionnaire containing about twenty questions to be answered in writing. Petitioner No. 2 objected to this procedure but respondent No. 1 informed him that this was the usual procedure adopted by him. Thereafter petitioner No. 2 was made to sit in a separate cabin for answering the questions. By 5.00 p.m. he had answered half the questions when respondent No. 1 came to the cabin and informed petitioner No. 2 that the office time was over and that petitioner No. 2 should come the next day for answering the remaining questions. The petitioners state that they went again on March 22, 1972. On this occasion petitioner No. 2 completed the replies and at the end of the replies stated "In the end the Management reserves its right to make its submission at the time of the hearing of the appeal". Respondent No. 1 inquired about the remarks of the Management on the appeal. Petitioner No. 2 stated that he would positively submit the remarks by March 29, 1972. The petitioners state that respondent No. 1 stated

to petitioner No. 2 that he would fix up the date of hearing after he had received the Management's remarks on or about March 29, 1972. The petitioners thereafter submitted the remarks of the Management on the appeal on March 28, 1972. The petitioners state that on March 29, 1972 they were surprised to receive the letter of respondent No. 1 dated March 28, 1972 forwarding the decision of respondent No. 1 asking the Management to reinstate respondent No. 2. The letter and the impugned order are exh. J to the petition.

5. The grievance of the petitioners is that respondent No. 1 arrived at his decision without giving to the petitioners a hearing at any time and without having before him either the record of the proceedings of the Inquiry Committee or the comments of the Management on the appeal and without putting to the parties the respective answers of the other party to the questionnaires issued by respondent No. 1.

6. On behalf of the respondents a preliminary objection has been taken to the effect that this petition is not maintainable. They contend that the Secondary Schools Code under which the appeal was preferred has no statutory force. The said Code contains administrative instructions of the Government of Maharashtra. As a condition of recognition of the petitioners' school by the State and as a condition of receiving aid from the State of Maharashtra the Management had accepted and agreed to be bound by the provisions of the said Code including the provision for appeal to the Deputy Director of Education and has agreed to accept his decision as final and binding. It is contended that the petitioners have no locus stander under Article 226 of the Constitution as the said provision is not applicable to the facts and circumstances of the case. Respondent No. 1 contends that he has not acted as a public or statutory authority under any law and no writ petition is, therefore, maintainable. He contends that his decision was given under contractual provisions.

7. It must be mentioned that the Secondary Schools Code has been introduced by the Government of Maharashtra as a part of the grant-in-aid. system. Educational institutions are required to accept the said Code as a condition of their recognition by the State as also as a condition of the aid given to them. They can refuse to abide by the Code at the peril of non-recognition and refusal of the aid out of the State funds. Rule 77 of the said Code prescribes the procedure of inquiry against employees of schools who have accepted the said Code and Rule 77(3)(3)(viii) of the said Code provides that if an appeal is preferred, the Deputy Director shall take a decision on the appeal within two months of the receipt of the appeal.

8. The respondents have cited the case of Kumari Regina Vs. St. Aloysius Higher Elementary School and Another, . This was a case from Mysore. In this case the appellant was working as the Head Mistress in the respondents' school. She was found guilty of certain charges and was reduced to the position of an Assistant Teacher. She filed an appeal before the District Educational Officer who rejected it. She filed a second appeal before the Divisional Inspector of Schools who

allowed the appeal and directed the Management to restore her to her original position. The Management declined to do so and she filed the suit from which the appeal before the Supreme Court arose. The Supreme Court observed that the rules for recognition and aid to private schools is a matter between the Government and the Management and a third party such as a teacher aggrieved by some order of the Management cannot derive from the rules any enforceable right against the Management on the ground of breach or non-compliance of any of the rules. The Supreme Court observed that the rules cannot be regarded as having the status of statutory rules and cannot be said to have the effect of controlling the relations between the Management of a school and its teachers or the terms and conditions of employment of such teachers or abrogating the law of master and servant which ordinarily would govern those relations. The Supreme Court further observed that a breach or non-compliance of the condition of such rules would entail either the denial or withdrawal of recognition and aid. The Management of a school would commit a breach or non-compliance of the conditions laid down in the rules on pain of deprivation of recognition and aid. But the enforcement of such rules is a matter between the Government and the Management and a third party such as a teacher aggrieved by the order of the Management cannot derive from, the rules any enforceable right against the Management on the ground of a breach or non-compliance of any of the rules. What the Supreme Court laid down in this case is firstly that such rules have no statutory force and secondly that the two parties to the rules being the Management of the School and the Government, a third party like a teacher derives no benefit from the rules which could replace the contract of service. No question of maintainability of a writ petition against the Government authorities impugning an order made in violation of rules of natural justice arose in that matter. In my opinion, this judgment does not come in the way of the maintainability of the present petition.

9. My attention was next invited by the respondents to the case of *The State of Maharashtra and Another Vs. Lok Shikshan Sansatha and Others*. This was an appeal from the Bombay High Court and Grants-in-aid Code of the Government of Maharashtra was under consideration. The respondents had applied to the State of Maharashtra for permission to start schools in the areas concerned as desired by them. This application had been rejected. The respondents had filed writ petitions in this Court which had been allowed. The Government of Maharashtra went in appeal to the Supreme Court. The Supreme Court observed that so long as there was no violation of fundamental rights and if the principles of natural justice were not offended, it was not for the High Court to lay down the policy that should be adopted by the educational authorities in the matter of granting permission for starting schools. The question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of a particular locality and other Categories of persons for whom it is essential to provide facilities for education. The Supreme Court held that the provisions of the Grants-in-aid Code were executive

instructions without any constitutional force and they were for the purpose of grant of permission and recognition of schools and for the purpose of receiving grant from the Government. The appeal was, therefore, allowed. In this case also it was held that the Grants-in-aid Code constituted executive instructions of the Government of Maharashtra and was without any constitutional force. As the matter was between the State and those proposing to start a school, the Supreme Court entertained the appeal, but on merits set aside the order of the High Court. The question of maintainability of a petition under Article 226 of the Constitution was not decided in this appeal.

10. The respondents also cited a judgment of the Andhra Pradesh High Court in the case of *Order A. Moss v. The Management of St. Patricks High School, Secundrahad*. [1970] 2 A.W.R. 157. The respondents in that case filed a petition under Article 226 of the Constitution for issue of a writ of certiorari to quash the order of the Director of Public Instruction whereby he had set aside an order of the Principal dismissing respondent-appellant No. 2 from service for an alleged misbehaviour. The writ petition was allowed by a single Judge of the said High Court who issued a writ of certiorari quashing the order of Director of Public Instruction. The appellant filed an appeal against the said decision. In the said case there was a contract between the Management and the appellant. Clause 10 of the said contract provided for an appeal to the Director of Public Instruction similar to the provision contained in the Grants-in-aid Code. The Division Bench came to the conclusion that the appeal could not be deemed to have been under the rules contained in the Code but was under Clause 10 of the contract and the Director of Public Instruction was in the nature of a private arbitrator. The Division Bench, therefore, held that the High Court had no jurisdiction to interfere with the decision of a private arbitrator even if the private arbitrator was a Government servant. The Court further held that the Grants-in-aid rules in which a provision exists providing for appeal against the order of the management to the Director of Public Instruction are not rules made under any statute. They are mere executive instructions given by the Government and cannot be legally enforceable in a Court of law. The maintainability of the writ petition was however not decided on the basis of Grants-in-aid Code, but on the basis that the reference to the Director of Public Instruction was a reference to a private arbitrator under a contract between the parties. This case, therefore, does not help us much in the matter.

11. The respondents also cited the case of *State of Assam and Another Vs. Ajit Kumar Sharma and Others*, . In that case the respondent was a teacher in a private college affiliated to the Gauhati University. The college was receiving grants-in-aid from the State on certain conditions set out in the rules. One of the rules provided that if a teacher stood for election to the Legislature, he should be on compulsory leave without pay from the date of filing nomination till the end of the next academic session or till the termination of the term of the office to which he may be elected. The respondent applied for leave for three months and contested for a seat in the Parliament but was defeated. He applied for

permission to rejoin which was granted by the Governing Body. The Director of Public Instruction pointed out that this was contrary to the rules whereupon the Governing Body granted compulsory leave to the respondent till the end of the academic session. The respondent thereupon filed a petition in the High Court for the issue of a mandamus. The High Court issued a writ of mandamus. In appeal the Supreme Court set aside the decision of the High Court on the ground that the rules being mere administrative instructions have not the force of law as statutory rules and therefore the rules do not confer any right on the teachers of private colleges which would entitle them to maintain a Writ petition under Article 226 for the enforcement or non-enforcement of any provisions of the rules. It was further held that the rules were between the college and the Government and no teacher of any college has any right under the rules to ask for the enforcement of the rules. It was open to the Governing Body not to carry out any such instruction and it will then be open to the State to consider what grant to make. The matter was disposed of on the point that no teacher of any college had any right under the rules to ask for the enforcement or non-enforcement of the rules. The petitioners before me are not teachers and the question of enforcement or non-enforcement is between the Government and the Management. This judgment of the Supreme Court also has no application to the facts of this case.

12. On behalf of the petitioners reliance was placed on a Division Bench judgment of the Mysore High Court in the case of Uma Shenoy v. The State. AIR [1967] Mys. 93. In that case the petitioner was employed as a teacher on terms contained in an agreement. It was alleged by the Headmaster that she was guilty of disobedience. The charge was held to be proved against her and she was dismissed from the school. She appealed to the Director of Public Instruction under the Grants-in-aid Code who ordered her to be reinstated. The Management preferred an appeal which was allowed. The two appellate orders were challenged by the petitioner in the writ petition before the High Court. It was held that the Director of Public Instruction disposed of the appeal only as a public authority and any order passed by him was amenable to the High Court's writ jurisdiction. It will be noticed that in this case a writ petition by the teacher was held to be maintainable.

13. The petitioners also cited the case of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , on the question of rules of natural justice. The Supreme Court observed that the dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. What was considered as an administrative power some years back is now being considered as a quasi-judicial power. With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of power. To prevent the abuse of that power and to see that it does not become a new despotism, Courts are gradually evolving the principles to be

observed while exercising such powers. In matters like these public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. If the purpose of the rules of natural justice is to prevent miscarriage of justice, there is no reason why those rules should be made inapplicable to administrative inquiries. The above case was followed by the Supreme Court in the case of *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another*, wherein also the Supreme Court observed that the dividing line between an administrative power and quasi-judicial power is quite thin and is being gradually obliterated. The principles of natural justice apply to the exercise of the administrative powers as well. But those principles are not embodied rules.

14. Lastly the petitioners relied on a judgment of a single Judge of the Gujarat High Court in the case of *Amratlal Ramanlal and Others Vs. The State of Gujarat and Others*, . In that case the Management of a school were challenging the orders passed by educational authorities withholding the grant under the Gujarat Grant-in-Aid Code. The learned Judge observed that the discretion under Gujarat Grant-in-Aid Code to withhold or reduce the grant can be exercised by the Director of Public Education only if the Code rules were not complied with and it must be exercised reasonably and not arbitrarily and if the Director withholds or reduces the grant by misconstruing the rules or by misunderstanding the rules of natural justice, his action would be arbitrary, discriminatory and void as contravening Article 14 of the Constitution. In this case the petition was entertained under Article 226 of the Constitution. The learned Judge observes in his judgment (p. 262) :

Rules regulating payments of grants by Government are to be found in Grant-in-Aid Code. These rules are executive in nature and there is no dispute on this point. The question is whether the petitioners can claim any right under these executive rules. The general principle is that the executive rules confer no enforceable right.

In another para of the judgment, the learned Judge observes (p. 267) ;

Therefore, in the present case the petitioners on the proof of substantial compliance with the rules of the Code, are entitled to obtain grant although under the Code the grant has to be paid at the discretion of the sanctioning authority. The discretion has to be exercised by the authority in a reasonable and bona fide manner and not arbitrarily and capriciously. Even if the rules relating to the grants are mere executive instructions one cannot forget that the Government is dealing with the public funds. We are not in ancient days when the grant made by the Government in aid to educational institutions was

regarded as bounty. For disbursing grant the Government has framed rules and if the rules are not complied with, the claim of the petitioners to grant cannot be rejected.

The learned Judge held the orders of the educational authorities to be illegal and void.

15. In the present case respondent No. 2 who was the Principal of the school was charged with serious offences. The Inquiry Committee came to the conclusion that the charges were proved and that he ought to be removed. Under Rule 77 of the Secondary Schools Code an appeal lies from the decision of the Inquiry Committee to the Deputy Director of Education, Government of Maharashtra. The acceptance of the Secondary Schools Code is a condition precedent imposed by the State Government to the recognition of a school or of a grant of aid to it. It cannot be said that the school can refuse to carry out the decision of the Deputy Director and the consequence would at the most be that it would be deprived of the aid. In the field of education, it is extremely difficult for an educational institution to survive without the State aid and to extend educational facilities at reasonable fees to people of average means. It is the duty of the State to aid educational institutions in the State from public funds. Even if the rules contained in the Secondary Schools Code are mere executive instructions, the Government issues those executive instructions as a condition precedent to the disbursement of public funds. I agree with the learned Judge of the Gujarat High Court when he observes that we are not living in ancient times or in an autocratic regime where an educational institution must carry out the unjust behests of the authority in order to get aid. The executive instructions are contained in rules framed by the Government which provide for an appeal against an order in an inquiry against a member of the staff of a school and I have no doubt in my mind that in hearing the appeal the appellate authority must observe rules of natural justice and if it does not do so its decision will be liable to be corrected by the High Court in exercise of its powers under Article 226 of the Constitution of India. This is the only safeguard that the educational institutions have against the arbitrary actions of officers of the Government hearing appeals under Rule 77 of the Secondary Schools Code. The concept of rule of law would undoubtedly lose its vitality if the authorities are not charged with the duty of discharging their functions in a fair and just manner and are allowed to foist an unwanted employee or a corrupt teacher on the Management arbitrarily or in a despotic manner. This would do harm to the cause of education itself. I, therefore, hold that the present petition is maintainable.

16. Coming to the merits of the matter, the petitioners complain that the appeal was decided by respondent No. 1 without a hearing. In his affidavit dated September 18, 1972 in reply respondent No. 1 has stated that he had heard the parties on March 20, 1972. This has been denied by the petitioners. With regard to the issuing of the written questionnaire respondent No. 1 has stated that it was his usual practice to issue written questionnaires to the parties in hearing

appeals under Rule 77. There cannot be any objection to issue of Written questionnaires but it is imperative that answers should be shown to both the parties and they should be afforded an opportunity of being heard in supporting or opposing the appeal. In answering a questionnaire a party is limited to answering questions put to him only. He may have something to say in addition. The entire proceedings were admittedly not before respondent No. 1. There can be no justice done to an appeal without the entire proceedings being before the appellate authority. Apart from the entire proceedings even the comments of the Management invited by respondent No. 1 were received by respondent No. 1 late on the evening of March 28, 1972. The proper stage for a hearing would have been not March 20, 1972 as respondent No. 1 alleges but after the questionnaire had been answered, the proceedings were before him, the comments of the Management were before him, the comments were shown to respondent No. 2 and answers to the two questionnaires were placed before both the parties. In the questionnaire completed on March 22, 1972 the petitioners had asked for a hearing. This request suggests that there had been no hearing before that date. But even if the allegation of respondent No. 1 be correct that he had given a hearing to the parties on March 20, 1972, in my opinion, it was no effective hearing at all.

17. It is also strange that the impugned order bears the date March 28, 1972. The comments of the Management were received by respondent No. 1 late in the afternoon of March 28, 1972. His decision was received by the Management on the morning of March 29, 1972. Respondent No. 1 states in his affidavit that he had gone through the comments of the Management on the appeal. I am informed that the comments themselves extend into twenty-five foolscap pages. It is most unlikely that there has been proper application of the mind of respondent No. 1 before arriving at his decision. I am, therefore, of the view that there has neither been adequate hearing, nor proper application of mind of the appellate authority and rules of natural justice have not been followed.

18. In the result, I grant the petition in terms of prayer (a) and set aside the order of respondent No. 1 exh. J to the petition. I also direct that the appeal be heard either by the Director of Education himself or by any other Deputy Director of Education senior in rank to respondent No. 1. There will be no order as to costs.

19. I direct that the appeal be decided within two months from the date of the receipt of the writ by the authorities. Writ to go immediately. The amounts deposited by the petitioners in Court shall be refunded to them.