
(1965) 10 AHC CK 0015
In the Allahabad High Court

Taj Pal Singh

APPELLANT

Vs

Desai (M.C.) and Others

RESPONDENT

Date of Decision : 13-10-1965

Acts Referred:

Advocates Act, 1961 — Section 14, 30
Bar Councils Act, 1926 — Section 14
Constitution of India, 1950 — Article 19, 22, 226, 311

Citation : (1965) 35 AWR 690 : (1968) 1 LLJ 292

Hon'ble Judges : V.G. Oak, J;D.D. Seth, J

Bench : Division Bench

Judgement

V.G. Oak, J.—The question for consideration in this writ petition is whether a Government Servant is entitled to have the assistance of a lawyer during a departmental enquiry. Te] Pal Singh is the petitioner. Ha worked as District Judge at Etah from August 1661 to July 1963. Sri R.S. Misra was posted as Civil Judge at Etah. In June 1964 the District Judge made a confidential report to the Registrar of the High Court against Sri R.S. Misra. Against that report Sri R.S. Miara made a representation to the High Court in November 1963. It was stated in the representation that the District Judge was annoyed with one clerk, Mathur. The petitioner suggested to the Superintendent of Police that some clothes should be planted in Mathur's house. Subsequently Mathur's house should be searched. In this way Mathur should be falsely implicated. In view of those allegations contained in the representation of Sri R.S. Misra, the High Court started a departmental enquiry against the petitioner. The petitioner requested that he should be permitted to have assistance of a counsel before the enquiring officer. The request was turned down by the High Court. Tej Pal Singh has, therefore, filed this petition for the issue of a writ of mandamus directing the respondents to permit the petitioner to be defended by an advocate of his choice. There is also a prayer for a writ of certiorari quashing the order, dated 8 October 1964. The Chief Justice is respondent 1 in the writ petition. The Registrar of the High Court is respondent 4. Members of the Administrative Committee were

subsequently added as respondents. The enquiry is now being held by Justice Sri Manchanda. He is respondent 11 in the writ petition.

2. The learned Senior Standing Counsel appearing for some respondents raised a preliminary objection that we have no jurisdiction to issue any writ under Article 226 of the Constitution against the Judges of the High Court. Since the writ petition fails on merits, I consider it unnecessary to deal with the preliminary objection.

3. Annexure A to the writ petition is a copy of the petitioner's application dated 30 September 1964 for assistance of a lawyer. Annexure B to the petition is a copy of the Joint Registrar's reply dated 8 October 1964 to the effect that the petitioner cannot be permitted the assistance of a counsel. One counter-affidavit has been filed by Justice Sri V. Bhargava, respondent 2, who was formerly the Administrative Judge. Another counter-affidavit has been filed by Sri P.N. Goel, Joint Registrar of the High Court. The petitioner filed rejoinder-affidavits.

4. The first contention of Sri S.N. Misra appearing for the petitioner is that the counter-affidavits are not admissible in evidence. The counter-affidavits were not filed within the time initially allowed to the respondents. On 7 January 1965, the Senior Standing Counsel, Sri Shanti Bhushan, filed an application for time. The Joint Registrar passed an order allowing the respondents one month's time for filing counter-affidavits. The first counter-affidavit was filed on 29 January 1965. The second counter-affidavit was filed on 5 February 1965. Sri S.N. Misra contended that Sri Shanti Bhushan had no power to file the application dated 7 January 1965 on behalf of the respondents. So the Joint Registrar's order allowing further time should not be recognized by the Court. Sri S.N. Misra pointed out that Sri Shanti Bhushan never filed any vakalatnama on behalf of the respondents. Sri S. Bhushan filed a slip of appearance. Sri Misra contended that that is not enough. A vakalatnama was necessary.

5. Sri Misra relied upon order 3, Rule 4, Civil Procedure Code. Order 3, Rule 4, states:

(1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment...

Order 27 of the CPC deals with suits against public officers. Order 27, Rule 8, Civil Procedure Code, lays down the procedure in suits against public officers. Sri Misra pointed out that Sri Shanti Bhushan did not file a vakalatnama prescribed by order 3, Rule 4, Civil Procedure Code; and the procedure laid down in order 27, Rule 8, Civil Procedure Code, was not followed. It is the contention of Sri Misra that the CPC is not applicable to writ petitions. If that is the true legal position, it is difficult to see how the petitioner can invoke the aid of order 3, Rule 4, Civil Procedure Code, and of order 27, Rule 8 Civil Procedure Code. Uttar Pradesh Government has issued a notification empowering certain State Counsel

to represent public officers in Judicial proceedings. The Government notification dated 19 September 1955 is printed in General Rules (Civil), Vol 1. II. on p. 265, as appendix XIII. According to that notification the Senior Standing Counsel at Allahabad is empowered to represent public officers in the services of the State before the High Court,

6. The counter-affidavits were filed several months before the case (sic) up for hearing. The petitioner got an opportunity to file rejoinder-affidavits. So, assuming, that there was some irregularity in filing the counter-affidavits, the alleged irregularity was trivial. Sri Misra conceded that in a proper case the Joint Registrar can permit a respondent farther time to file a counter-affidavit. In the present case the Joint Registrar passed on 7 January 1965, an order allowing the respondents further time of one month. The two counter-affidavits were filed within the time allowed by the Joint Registrar on 7 January 1965. The two counter-affidavits are admissible in evidence.

7. According to the petitioner, the enquiry against him is under Rule 55 of the civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as Classification Rules). Rule 55 provides for an enquiry in cases where an order of dismissal, removal or reduction is proposed. The question for consideration is whether a Government servant is entitled to have the assistance of a lawyer during a departmental enquiry under Rule 55.

8. Sri S.N. Misra strongly relied upon Section 30 of the Advocates Act, 1961. Section 30 of the Advocates Act state:

30. Subject to the provisions of this Act, every advocate whose name is entered In the common roll shall be entitled as of right to practise throughout the territories to which this Act extends,:

(i) In all Courts including the Supreme Court;

(ii) before any tribunal or person legally authorized to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.

9. Sri S.N. Misra relied upon Clause (ii) of Section 30 of the Advocates Act. Under Clause (10 of Section 30, Advocates Act, every advocate is entitled to practise before any tribunal or person legally authorized to take evidence. Sri Misra contended that an officer holding an enquiry under Rule 55 of the Classification Rules is a parson legally authorized to take evidence. This position was disputed by the learned Standing Counsel. He contended that in a departmental enquiry the officer is not entitled to take evidence in the strict sense.

10. u/s 4 of the Uttar Pradesh Disciplinary Proceedings (Summoning of Witnesses and Production of Documents) Act, 1953 (Uttar Pradesh Act 21 of 1953), enquiring officers have been empowered to summon witnesses and compel production of documents. It is thus obvious that enquiring officers have the

power to take evidence. Rule 65 of the Classification Rules has the force of law. An officer holding an enquiry under Rule 55 is a person in legally authorized to take evidence, The case is covered by Clause (11) of Section 30 of the Advocates Act. I, therefore, agree with Sri S.N. Misra that an advocate is entitled as of right to practise before an officer holding an enquiry under Rule 55 of the Classification Rules.

11. However, in the present case we are not directly concerned with the question whether a certain advocate is entitled to practise before a tribunal. The question is whether the present petitioner is entitled to have the assistance of a lawyer during the departmental enquiry against him. Sri Misra referred to Article 19 of the Constitution. Under Article 19 of the Constitution all citizens have the right to practise any profession. But in the present case we are not much conversed with the rights of an advocate to practise the legal profession. The question of an advocates right to practise and the Question of a Government servant's right to have legal aid are closely connected, and are yet distinct.

13. In *Ravula Subba Rao and Another Vs. The Commissioner of Income Tax, Madras*, it was observed on p. 608:

According to the law of England ...and that is also the law under the Indian contract Act, 1872 every person who is a *suit juris* has a right to appoint an agent for any purpose whatsoever, and that he can do when he is exercising a statutory right no less than he is exercising any such right...

This rule is subject to certain well-known exceptions as when the act to be performed is personal in character, or is annexed to a public office, or to an office involving fiduciary obligation. But apart from such exceptions, the law is well-settled that whatever a person can do himself, he can do through an agent....

In *Subba Rao* case AIR 1956 S.C. 604 (*vide supra*), the question was whether an application which had to be signed by a partner could be signed by his authorized agent that case did not raise the Question whether a Government servant can have the assistance of a lawyer in a departmental enquiry.

In *Bachhittar Singh Vs. The State of Punjab*, , It was held that both the stages of a departmental enquiry under Article 311(2) of the Constitution are judicial.

In *Dr. K. Subba Rao v. State of Andhra Pradesh* 1968 1 L.L.J. 206 It was held that when a public servant is under a reasonable apprehension that the enquiry is the result of a preconceived and consented action on the part of his department, his request for professional help is justified, and the enquiring officer should give him that opportunity. His refusal to accede to that simple request certainly deprives the public servant of an opportunity to defend himself.

14. In *Muniswami (T.) Vs. State of Mysore*, , it was observed at p. 717:

... In the circumstances of this case introduction of counsel formed part of the reasonable opportunity claimable by him under Article 311(2) of the Constitution.

The refusal of that opportunity resulting in disobedience to the constitutional mandate vitiates the punishment imposed on the petitioner.

The Court further observed at p. 708:

I would, therefore, not express any opinion on the question whether in the exercise of the reasonable opportunity ensured by Article 311(2) counsel can as of right be appointed in every such proceeding....

In *Nripendra Nath Bagchi Vs. Chief Secretary, Govt. of West Bengal*, , the Court referred to a certain Government circular stating that the Government did not approve the idea of permitting a pleader to represent a public servant; under Rule 55 in this connection the learned Judges observed on p. 332:

... This circular in any event cannot override Rule 55 and Its Interpretation of adequate opportunity nor the constitutional provision in the present Constitution for reasonable opportunity under Article 311(2) of the Constitution.

The Court, however, made it clear on p. 331:

... The assistance of a lawyer cannot always be regarded as a part of reasonable opportunity to show cause....

15. In these three cases the Court had to decide the validity of certain orders of dismissal or removal from service. The Court considered whether the Government servant had reasonable opportunity to defend himself, as required by Article 311(2) of the Constitution. It was in that connection that the various High Courts came to the conclusion that the Government servant should have been allowed the assistance of a lawyer. The question whether a Government servant is entitled to have counsel's aid in every departmental enquiry was left open by Mysore High Court. Calcutta High Court made it clear that the assistance of a lawyer cannot always be regarded as a part of reasonable opportunity to show cause.

16. In *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, , It was held that in an enquiry into a charge of misconduct against a workman he cannot insist on representation by a member of his union.

17. In *T. Rajagopala Aiyangar Vs. The Collector of Salt Revenue*, , *Cornish, J.*, observed at p. 741 thus:

There is in British India no common law right in a party to be represented by counsel ...the advocate's right of audience since the Bar Councils Act depends on Section 14 of the Act.... But the advocate's right of audience is necessarily inseparable from his client's right to appear by advocate before a particular tribunal. If the client is expressly denied the privilege of being heard by counsel, it is obvious that the Bar Councils Act will not save him from the disability. Rule 55 limits the Government servant's right to be heard in person ...a right given by statute to a person to be heard by himself meant that he had no right to be heard by anybody but himself ...the right given by Rule 55 to be heard in person

is similarly restricted to the parson of the Government servant.

18. Sri S.N. Misra contended that that might have been the position in the year 1937 under the Bar Councils Act. But the present legal position is materially different. Section 14 of the Bar Councils Act, 1926, dealt with the right of advocates to practise. Clause (b) of Sub-section (1) of Section 14 of the Bar Councils Act, 1926, dealt with the right of an advocate a to practise before a person legally authorized to take evidence. That provision is similar to the provision of Clause (2) of Section 30 of the Advocates Act which is a little more liberal than Section 14 of the Bar Councils Act, 1923. Bat the subject-matter or both these provisions was the right of advocates to practise. These provisions do not directly touch the question of the right of a Government servant to have legal aid during a departmental enquiry,

19. In *Karuppa Udayar v. State of Madras* , it was held that there is no principle of natural Justice in support of a claim that in every charge leading to a departmental enquiry assistance of counsel must be given.

20. In *James Bushi Vs. Collector of Ganjam and Another* , It was held that public servants are not entitled as of right to be represented by lawyer in departmental proceedings.

21. In *Hargovinda Sharma v. S.C. Kagi* AIR 1960 Gau 141, it was held that a civil servant cannot claim representation through counsel as a matter of right in a departmental enquiry.

22. In *Lakshmi Narain Gupta Vs. A.N. Puri and Another* , it was observed at p. 337:

No special facts or circumstances have been established to show that the petitioner's demand for a lawyer had been unreasonably refused nor is it shown that the petitioner's case was of such an extraordinary nature that the services of a lawyer should have been allowed to him as a special case.

23. In *Punjab State v. Bhagat Singh* AIR 1955 P&H. 118, it was held that in a departmental enquiry a Government servant has not a right to be represented by counsel.

24. In *Manuru Veeraswami v. Provincial Government of Madras* AI.R. 1948 Mad. 379, It was observed at p. 380:

It has always been the practice that a public servant does not appear by pleader without permission of the enquiring officer; and it has always been presumed that ha had no such right.

25. There is thus overwhelming authority in support of the view that in a departmental enquiry a Government servant cannot claim assistance of a lawyer as a matter of right. Order 3, Rule 1, Civil Procedure Code, states:

Any appearance, application or act In or to any Court, required or authorized by

law to be made or done by a party in such Court, may ...be made or done by the party in person, or by his recognized agent, or by a pleader....

According to Article 22 of the Constitution, no person under arrest, shall be denied the right to consult, and to be defended by a legal practitioner of his choice, u/s 340, Criminal Procedure Code, any person accused of an offence before a criminal court, may of right be defended by a pleader. Neither order 3, Rule 1, Civil Procedure Code, nor Section 340, Criminal Procedure Code, applies to a departmental enquiry under Rule 55 of Classification Rules read with Article 311(2) of the constitution. The respondents are, therefore, right in their contention that in a departmental enquiry under Rule 65 of Classification Rules, a Government servant cannot claim assistance of a lawyer as a matter of right.

26. However, it is open to the enquiring officer to permit lawyers in a particular case. The petitioner is a law graduate. He has worked as a District Judge for a number of years. His contention is that he is the victim of a conspiracy. These are some of the considerations for deciding whether lawyer should be permitted in the present enquiry or not. The matter may well be left to the discretion of the enquiring officer, who is a High Court Judge.

27. Lastly, we have to consider whether the departmental enquiry in the present case is at all an enquiry under Rule 55. In Para. 17 of the counter-affidavit of Sri P.N. Goel, it is stated that Justice Sri Manchanda has been nominated for conducting the preliminary enquiry against the petitioner, in Para. 18 of this counter-affidavit it is stated that the petitioner has no legal right to be represented by an advocate in the preliminary enquiry which is being held against him. Thus, according to this counter-affidavit the enquiry is just a preliminary enquiry, and not an enquiry under Rule 55.

28. In annexure B to the writ position the Joint Registrar referred to the enquiry as a departmental enquiry. Sri S.N. Misra contended that the respondents cannot now be permitted to depart from that position. Reliance was placed on Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . It was held in that case that public orders, to be made in exercise of a statutory authority, cannot be invalidated in the light of explanation subsequently given by the officer making the order of what he meant or of what was in his mind or what he intended to do. Public order made by public authorities are meant to have public effect and are intended to affect the of those to whom they are addressed and must be considered with reference to the language used in the Order itself.

29. It is true that in annexure B the enquiry was referred to as a departmental enquiry but it does not follow that the enquiry must be under Rule 55. Departmental enquires can be of various kinds.

30. The nature of a preliminary enquiry was discussed in Champaklal Chimanlal Shah Vs. The Union of India (UOI), . It was observed at pp. 761-762:

... But even where it is intended to take action by way of punishment what

usually happens is that something in the nature of what may be called a preliminary enquiry in first hold in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry the explanation of the Government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the servant concerned that charge a are then framed against him and he is asked to show cause... This is what is known as a formal departmental enquiry ...a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where Government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct, a preliminary enquiry is usually held to satisfy Government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post.... Therefore, when a preliminary enquiry of this nature is held in the case of a temporary employee or a Government servant... it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the Government decides to frame charges ...a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated as that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311.... Such a preliminary enquiry may even be held ex parte for it is merely for the satisfaction of Government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard....

31. In annexure B the Joint Registrar explained the procedure to be adopted in this enquiry. The procedure likely to be adopted is that statements of certain officers will be taken in the presence of the petitioner. They will be followed by the petitioner's statement. Evidence will be recorded in writing. The petitioner will be allowed to cross-examine the witnesses. The petitioner will be at liberty to produce witnesses in defence. It is true that the petitioner is being allowed to cross-examine witnesses appearing against him and will be allowed to produce defence evidence. But it does not follow this must be enquiry under Rule 55 or under Article 311(2). There is no prescribed procedure for a preliminary enquiry.

32. It must be remembered that the petitioner holds the rank of a District Judge, There should be no objection to the holding of a preliminary enquiry in order to ascertain whether it is expedient to hold a formal enquiry later under Rule 55 of the Classification Rules. According to the Joint Registrar's counter-affidavit, this is merely a preliminary enquiry. Neither the petition not the rejoinder-affidavit makes any reference to Rule 65. In an enquiry under Rule 55 a charge has to be framed. In the present case there is no indication that any charge has been framed against the petitioner. I, therefore, accept Sri Goel's counter-affidavit to the effect that this is merely a preliminary enquiry.

33. Firstly, the enquiry against the petitioner is merely a preliminary enquiry. It is not an enquiry under Rule 55 of Classification Rules.

34. Secondly, even during a formal enquiry under Rule 55 of Classification Rules read with Article 311(2) of the Constitution the charged officer cannot claim appearance of a counsel before the enquiring officer as a matter of right.

35. In my opinion, the petition should be dismissed with costs.

D.D. Seth, J.—I have had the advantage of care-fully going through the order proposed to be passed by my learned brother Oak, J., and I agree with him that, for the reasons mentioned in his order, the two counter-affidavits filed in this petition are admissible In evidence.

2. I was inclined to allow the petition, but after going through the two counter-affidavits filed by Justice Sri V. Bhargava and Sri P.N. Goel and the rejoinder and the supplementary affidavits filed by the petitioner, I find that in Para. 4 of Justice Sri V. Bhargava's counter-affidavit it is stated that at present only a preliminary enquiry is being made against the petitioner. In Paras. 6, 18 and 19 of Sri P.N. Goel's counter-affidavit also it is stated that the present enquiry against the petitioner is only a preliminary enquiry. In Para. 20 of Sri P.N. Goel's counter-affidavit it is stated that:

The preliminary enquiry which is being made is only in the nature of investigation of facts by the High Court for the purpose of satisfying itself as to whether it is a suitable case for being reported to the Government.

3. These statements in the two counter-affidavits have not been controverted by the petitioner either in his rejoinder-affidavit or in his supplementary affidavit. It must, therefore, be held that the present enquiry against the petitioner is only a preliminary enquiry to find out whether a prima facie case has been made out against him. In such an enquiry, I agree with, "my learned brother that the petitioner is not entitled, as a matter of right, to be represented by a counsel.

4. I, therefore, dismiss the petition with costs.

5. The petition is dismissed with costs.