
(2016) 07 MAD CK 0120

In the Madras High Court

Case No : Writ Appeal (MD) No. 873 of 2016 and C.M.P (MD)No. 5213 of 2016

The Secretary to Government

APPELLANT

Vs

G. Nagendran

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2016) 2 CWC 445 : (2016) 4 LLN 203 : (2016) 6 MLJ 420

Hon'ble Judges : Mr. Nooty Ramamohana Rao and Mr. S.S. Sundar, JJ.

Bench : Division Bench

Advocate : Mr. B. Pugalenth, Special Government Pleader, for the Appellants;
Mr. K.N. Thambi, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sundar, J.—The present appeal been preferred by the Secretary to Government, Cooperation, Food and Consumer Protection Department, and three others, who are respondents in the Writ Petition in W.P.(MD)No.1151 of 2009, challenging the order passed by the learned Single Judge, allowing the writ petition by order dated 17.11.2009.

2. The brief facts that are necessary for the purpose of disposal of this appeal are narrated as under:

2.1. The respondent in this appeal is the writ petitioner and he filed the writ petition in W.P.(MD)No.1151 of 2009 to quash the order in G.O.(D) No.215, Cooperation, Food and Consumer Protection Department, dated 19.06.2008 which is an order passed by the Government, enhancing the punishment given to the writ petitioner, by the original authority, in exercise of the power of suo motu revision, as provided under Rule 36 of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

2.2. The petitioner was appointed as Junior Inspector of Cooperative Societies on 13.04.1987 and became Senior Inspector in the year 1991. At the time of filing

the writ petition, the petitioner was working as Cooperative Sub Registrar/Field Officer at Thauckalay.

2.3. While the petitioner was working as Special Officer at Kandamvilai Primary Agriculture Cooperative Bank at Kanyakumari District, a charge memo dated 28.02.2002 was issued to the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules.

2.4. Pursuant to the charge memo, an enquiry was conducted and the Joint Registrar of Cooperative Societies vide his proceedings dated 26.12.2003, after holding that the writ petitioner was guilty of some of the charges, imposed a punishment of stoppage of increment for the next period of six months with cumulative effect.

2.5. Though the writ petitioner preferred an appeal before the Registrar of Cooperative Societies, Chennai, under Rule 19 of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, the appeal was also rejected by the Registrar of Cooperative Societies, confirming the order of the Joint Registrar of Cooperative Societies. Though the writ petitioner did not file any revision or writ petition at that stage, nearly after a period of three years from the date of the order of the Joint Registrar of Cooperative Societies and after two years from the date of the order of the appellate authority, the Government initiated proceedings under Rule 36 of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, on the petition given by a third party by name S.Mohan. The State Government, originally appears to have requested the Registrar of Cooperative Societies viz., the appellate authority to hold an enquiry and submit a report on the petition filed by the third party viz., S.Mohan.

2.6. The second respondent, thereafter, appears to have conducted an enquiry and submit a report to the Government recommending for the enhancement of punishment. It was thereafter the Government sent a communication to the second respondent, the Registrar of Cooperative Societies, to initiate action for enhancement of the punishment. The second respondent, promptly responded to the Government by stating that he no power to reopen the case and enhance the punishment, as he had already disposed of the appeal against the order of original authority imposing the punishment of stoppage of increment for a period of six months with cumulative effect.

2.7. The Government thereafter on the basis of the report submit by the second respondent issued a notice to the writ petitioner calling upon him to show cause why the punishment imposed on the writ petitioner should not be enhanced. The writ petitioner gave further explanations by way of a statement. However, the first respondent, after getting an opinion from the Tamil Nadu Public Services Commission, enhanced punishment. It is this order of the Government that was impugned in the writ petition.

3. The learned Single Judge of this Court allowed the writ petition by accepting the submission of the writ petitioner on the following lines:

(a) Since the suo motu action was initiated and punishment was enhanced, after a lapse of three years from the date of order of the original authority and after lapse of two years from the date of order of the appellate authority, the exercise of power under Rule 36, without an explanation for the delay, vitiate the impugned order of the first respondent.

(b) The disciplinary proceedings was initiated against the writ petitioner only on the basis of the complaint given by one S.Mohan. After, the order of the appellate authority, the first respondent once again initiated proceedings in exercise of suo motu power under Rules 36 on the petition submit by the same person Mr. S.Mohan. The power of suo motu revision ought not to have been exercised at the instance of a third party, after the original proceedings which was initiated at the instance of the same person had come to an end by the order of the original authority, dated 26.12.2003 and appellate authority dated 06.04.2004.

(c) The proceedings initiated under Rule 36 is barred by limitation, since it not been passed within six months from the date of the order.

(d) The Writ Petitioner was not given personal opportunity to put forth his case, in the sense that, the writ petitioner was not heard before the impugned order was passed.

(e) Absolutely, there is no discussion in respect of the findings given by the disciplinary authority. In other words, there was no reason assigned to differ from the original authority.

4. Mr. B.Pugalenth, learned Special Government Pleader vehemently contended that there is no limitation prescribed for exercise of power under Rule 36 of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules and hence, the reason given by the learned Single Judge that there was a delay in passing the impugned order and that the proceedings was barred by limitation. The further contention of the Writ Petitioner with regard to the involvement of a third party namely Mr. S.Mohan does not stand to reason. According to the learned Special Government Pleader, the petitioner was given sufficient opportunity to put forth his case and that the Government had passed the impugned order only after considering the facts admitted and the relevant materials.

5. On the other hand, Mr. K.N.Thambi, learned counsel for the respondent/writ petitioner relied upon some of the documents and the judgments of this Court and the Hon"ble Supreme Court to substantiate his case that the impugned order is illegal and liable to be quashed.

6. Heard Mr. B.Pugalenth, learned Special Government Pleader for the appellant and Mr. K.N.Thambi, learned counsel for the respondent/writ petitioner.

7. It is true that Rule 36 of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules provides no limitation for exercising the power of suo motu revision. The learned Special Government Pleader is right in his submission that the learned Single Judge is wrong in relying upon the rules viz., Rule 36(1)(iii) instead of

Rule 36(1)(i) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules. How that does not help him as we find that there are other points to sustain the orders of learned Single Judge.

8. In the notice, dated 21.01.2006, which is purported to be a show cause notice, it been clearly spelt that the Government decided to modify the punishment awarded to the writ petitioner by stoppage of increment for two years with cumulative effect by accepting the request of Registrar of Cooperative Societies. The Writ Petitioner was called upon to inform the Government if the writ petitioner had anything to say about the decision of Government to modify the punishment. The Government appears to have initiated proceedings with a predetermination to enhance the punishment and hence, it is an irregularity.

9. The impugned order refers to a petition filed by one Mr. S.Mohan, to the Government and the report of the Registrar of Cooperative Societies, after holding an enquiry on the petition submit by Mr. S.Mohan. The Government thereafter requested the Registrar of Cooperative Societies to impose appropriate punishment. However, the Registrar of Cooperative Societies expressed his inability to revise the punishment, on the ground that he had no revisional power, after the disposal of the appeal. It was thereafter the Government initiated action by invoking the power of suo motu revision to revise the order of original authority. The enquiry report submit by Registrar of Cooperative Society been relied upon by Government as a material to enhance the punishment. However, this was not furnished to the Writ Petitioner so as to enable the writ petitioner to submit his views/objections on the report. Since the report of Registrar is an adverse material against the writ petitioner and the same been relied upon by the Government while passing the impugned order, we find that there is lack of procedural fairness.

10. When it is not disputed that the suo motu revision was initiated on the basis of a petition filed by a stranger, and that the proceedings were initiated to enhance the punishment by resorting to Rule 36 and it is submit that the report of the Registrar of Cooperative Societies and the views of Tamil Nadu Public Service Commission were relied upon by the Government while passing the impugned order, the Government ought not to have revised the punishment without further giving an opportunity to the writ petitioner to state his case against the adverse materials relied upon by the Government.

11. One of the main contentions of the respondent/writ petitioner before us is that the impugned order does not disclose any independent reasons or an application of mind as to the objections/statement submit by the writ petitioner in response to the show cause notice.

12. Referring to the factual scenario in the present case, the learned counsel for the writ petitioner relied upon the following precedents in support of his case.

13. The Hon''ble Supreme Court in the case of Divisional Forest Officer v. Madhusudhan Rao reported in (2008) 3 SCC 469, it been held in paragraph 20 as

under:

"20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum."

14. The learned counsel for the respondent/writ petitioner further relied upon another judgment of the Hon"ble Supreme Court in the case of R.P.Bhatt v. Union of India and others reported in (1986) 2 SCC 651 to stress the legal point that when the State Government does not accept the findings of the original authority and the appellate authority with regard to the quantum of punishment, the Government ought to have considered the points raised by the writ petitioner by applying its mind independently and give proper reasons for taking a different view.

15. It been held by the Hon"ble Supreme Court in the case of Union of India v. M.L.Capoor and others reported in AIR 1974 Supreme Court 87, in paragraph 27 as follows:

"28. Reasons are the links "between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."

16. In the case of S.N.Mukherjee v. Union of India reported in AIR 1990 Supreme Court 1984, the Hon"ble Apex Court, in paragraph 35, held as follows:

"35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision, are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of

law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority given due consideration to the points in controversy."

17. In the case of The Tamil Nadu Civil Supplies Corporation Limited and another v. S.Sampath, the Hon''ble Apex Court, in paragraphs 5, 6 and 8, held as follows:

"5. A perusal of the order dated 30.03.1990 shows that no reasons have been given therein, but only conclusions. There is a difference between reasons and conclusions, vide Union of India v. M.L.Capoor (AIR 1974 SC 87). In paragraph 28 of the aforesaid decision, the Supreme Court observed:-

"Reasons are the links "between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."

6. Thus, what been recorded in the impugned order, as can be seen from its perusal, is only conclusions and not reasons.

8. In the present case the respondent (writ petitioner) had furnished explanations to the show cause notices. It was, therefore, incumbent on the Corporation to have considered that explanation and given its reasons why it is not accepting the same. That however not been done in the impugned orders of the Corporation. Hence the said orders cannot be sustained in law."

18. In the case of M.V.Bijlani v. Union of India and others reported in (2006) 5 SCC 88, the Hon''ble Apex Court, held that disciplinary authority, upon analysing the documents must arrive at conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record and that he cannot refuse to consider the relevant facts.

19. In the case of Director, Horticulture, Punjab v. Jagjivan Parshad reported in (2008) 5 SCC 539, the Hon''ble Apex Court, in paragraphs 6 and 7, held as follows:

"6. As the quoted portion of the High Court''s order goes to show that no reason was indicated except making reference to paragraph 8 of the Award. The conclusions in the said paragraph were assailed in the writ petition. The manner of disposal of the writ petition by the High Court leaves much to be desired. Various contentious questions were raised included one relating to whether the appellant could be treated as an industry. These aspects were not considered by the High Court.

7. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order

indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons rendered the High Court's judgment not sustainable."

20. In the case of Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney reported in (2009) 4 SCC 240, the Hon"ble Apex Court, in paragraphs 5 to 8, held as follows:

"5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case [(1995) 6 SCC 279 : 1995 SCC (L&S) 1376 : (1995) 31 ATC 492] itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority applied its mind while affirming the order of the disciplinary authority.

6. The view we are taking was also taken by this Court in Divl. Forest Officer v. Madhusudhan Rao [(2008) 3 SCC 469 : (2008) 1 SCC (L&S) 788 : JT (2008) 2 SC 253] (vide SCC para 20: JT para 19), and in M.P. Industries Ltd. v. Union of India [AIR 1966 SC 671], Siemens Engg. & Mfg. Co. of India Ltd. v. Union of India [(1976) 2 SCC 981 : AIR 1976 SC 1785] (vide SCC para 6 : AIR para 6), etc.

7. In the present case, since the appellate authority"s order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in S.N.Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669], is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at lest in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

21. In the case of East Coast Railway and another v. Mahadev Appa Rao and others reported in (2010) 8 MLJ 194 (SC), the Hon"ble Apex Court, in paragraphs 20 and 21, held as follows:

"20. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained.

Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.

21. In the instant case the order passed by the competent authority does not state any reasons whatsoever for the cancellation of the typing test. It is nobody's case that any such reasons were set out even in any contemporaneous record or file. In the absence of reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing the order cancelling the test."

22. It been held by the Hon''ble Supreme Court in the case of Bhagat Raja v. Union of India reported in AIR 1967 SC 1606 that even whether the statute does not expressly lay down the requirement of giving reasons the quasi-judicial Tribunal is bound to give reasons in short. The Hon''ble Supreme Court held in the case of Brij Nandan Kansal v. State of U.P. and another reported in AIR 1988 SC 908 that while proposing to take an adverse decision given must record reasons and communicate the same to the affected persons for rejecting the opinion of competent enquiring authority and disclose the opinion of any other authority preferred by it. It been repeatedly held by the Hon''ble Supreme Court in a catena of decisions stressing the importance of recording the reasons and that the failure to give reasons would render the decision arbitrary, unfair and violative of Articles 14 and 21 of the Constitution of India.

23. Coming to the facts of the present case, we could see that the impugned order of the first respondent does not disclose any reason nor an application of mind as to the contentions/points raised on behalf of the writ petitioner. Except narrating the orders of various authorities and recommendations of second respondent and the Tamil Nadu Public Service Commission, there is no independent discussion or independent consideration of the case, at least with regard to the quantum of punishment. Hence, we are of the view that the impugned order suffers from material irregularities in the sense that it does not indicate any independent application of mind nor disclose any independent reason by referring to the facts admitted and the facts established.

24. It is also brought to our notice that the petitioner was retired on 31.01.2014. Considering the facts of this case and issues considered above, we are not inclined to interfere with the order of the learned Single Judge. Hence, the Writ Appeal is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.