SUPREME COURT OF INDIA

State of M.P.

Vs.

Chintaman Sadashiva Waishampayan

C.A.No.630 of 1957

(P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.)

01.11.1960

JUDGEMENT

GAJENDRAGADKAR, J. :

This appeal by special leave is directed against the order passed by the High Court of Judicature at Nagpur quashing the order of dismissal passed by the appellant, the State of Madhya Pradesh, against the respondent Waishampayan on June 14, 1952. The respondent was appointed as a Sub-Inspector of Police, by the Inspector-General of Police, Central Provinces and Berar on January 1, 1943. Subsequently in January 1945, he was confirmed in that post. In September 1948, he was sent on deputation to Hyderabad St ate where he served as a Sub-Inspector of Police at Adilabad, Nirmal, Bhainsa and Nanded. He was working at Adilabad from September, 1948 till June, 1950. On May 13, 1951, he was served with an order of suspension issued on May 3, 1951, by the Deputy Inspector-General of Police, Eastern Range, Hyderabad Division. This order of suspension was issued because complaints had been received against him and a departmental enquiry was proposed to be held in that behalf. Accordingly on May 21, 1951, a chargesheet was framed against him and the same was delivered to him on June 13, 1951. This chargesheet included eight charges. In the enquiry which followed six witnesses were examined before Mr. Shamaldas, Sub-Divisional Officer (Police). On November 7, 1951, the District Superintendent of Police himself took up the enquiry under the orders of the Inspector-General of Police. He framed fresh charges because he thought that the charges previously framed were not clear. On this occasion five charges were framed against the respondent; however, charges four and five out of these were dropped, and the enquiry was confined to only three. Witnesses were examined during the course of this enquiry and were cross-examined by the respondent. On November 9, 1951, the respondent requested by an application that certain documents may be supplied to him to enable him to make his defence. His request was granted in respect of some documents but not with regard to all. After evidence had been led against the respondent he was directed to produce his witnesses on November 13, 1951, and he was warned that if he did not lead evidence on that date the enquiry would be closed. Meanwhile, on November 11, 1951, the respondent submitted an application to the Deputy Inspector-General of Police, through the District Superintendent, repeating his request for the documents which he wanted to inspect before leading evidence in defence and giving his own statement: that application was however rejected. On November 28, 1951, the District Superintendent of Police made his report in which he found that the respondent was guilty of all the three charges mentioned in the chargesheet, and he recommended that he should be dismissed from service. On receipt of this report, the Deputy Inspector-General of Police made his own endorsement on it and supported the recommendation for the dismissal of the respondent. The Inspector-General of Police, Hyderabad, then forwarded the

papers to the Inspector-General of Police, Madhya Pradesh. On January 8, 1952, a notice was issued to the respondent by the Inspector-General of Police, Madhya Pradesh, to show cause why he should not be dismissed. The respondent duly submitted his reply on February 10, 1952. Thereafter on June 14, 1952, the Inspector-General of Police passed an order dismissing the respondent from service which the respondent received on June 17, 1952. The respondent then preferred an appeal against the said order but his appeal failed and was dismissed. It is under these circumstances that the respondent filed his petition in the High Court under Art. 226 of the Constitution and challenged the validity of the order of dismissal on several grounds. This petition was resisted by the appellant; but by the majority decision of the Special Bench of the High Court which heard this petition the pleas raised by the respondent were upheld and the impugned order of dismissal has been set aside. The appellant applied for a certificate but its application was rejected by the High Court; and so it moved this Court and obtained special leave; that is how this appeal has come to this Court at the instance of the appellant.

2. Broadly stated the respondent challenged the validity of the impugned order on three grounds. He urged that the said order was invalid as it was passed on the basis of an enquiry made by the police officers of the Hyderabad State, who were not subordinate to the Inspector-General of Police, Madhya Pradesh; according to him it was essential that an enquiry should have been held against him under the Police Act and Regulations of Madhya Pradesh after the show-cause notice was served on him; and since no such enquiry was held the whole proceedings are void and the impugned order is ultra vires. He also urged that the said order was not in accordance with Regulation No. 273 of Police Regulations of Madhya Pradesh, and the contravention of the said Regulation made the order invalid. Lastly it was argued that the enquiry held by the Hyderabad authorities was contrary to all principles of natural justice, and at the said enquiry the respondent had not been given a reasonable opportunity to meet the charges framed against him.

3. It appears that a previous decision of the Division Bench of the High Court in Jageram Malik v. State of Madhya Pradesh, ILR (1955) Nag 93: (AIR 1955 Nag 160), has held that a police officer deputed on duty at Hyderabad was governed by the Police Act, the Police Regulations and the General Book Circulars prevailing in Nagpur, and that an enquiry must be held by an officer exercising jurisdiction under the said Police Act and the Police Regulations. According to the said decision the proper thing to do in holding an enquiry against a police officer deputed to Hyderabad was to retransfer him to Madhya Pradesh and then hold enquiry as required by the Madhya Pradesh Police Act and Regulations. In the case of Jageram Malik, ILR (1955) Nag 93: (AIR 1955 Nag 160), the Court ultimately held that the enquiry made by an officer exercising jurisdiction in Hyderabad State could not form the basis of any action on the part of the Inspector-General of Police, Madhya Pradesh, and so the order of dismissal based on such an enquiry was set aside. It was on strength of this decision that the respondent challenged the validity of the impugned order passed against him. On this question there was a difference of opinion among the judges who constituted the Special Bench which heard the respondent's petition. Mr. Justice Sen, who was a party to the decision in Jageram Malik's case, ILR (1955) Nag 93: (AIR 1955 Nag 160), was inclined to uphold the respondent's contention, whereas Rao, J. rejected the said contention and Bhutt, J. was presumably inclined to agree with Rao, J. Similarly there was a difference of opinion among the judges on the question as to whether a breach of Police Rules and Regulations was justiciable. Sen and Bhutt, JJ. were inclined to uphold the respondent's plea, whereas Rao, J. rejected it. On the question as to whether the enquiry actually held by the appellant in Hyderabad suffered from the infirmities alleged by the respondent the learned judges were similarly divided. Sen and Bhutt, JJ. held that the enquiry in question was contrary to the principles of natural justice while Rao, J. took a contrary view.

4. On the first point the appellant contended that the previous decision of the High Court in Jageram Malik's case, ILR (1955) Nag 93: (AIR 1955 Nag 160) should be reconsidered, and it was pointed out that on the earlier occasion the attention of the learned judges was not drawn to the Union Police Force Regulation 1358F (No. 25 of 1358F) which had been promulgated by the Military Governor. The argument was that the Firman issued by the Nizam on August 7, 1949, conferred appropriate powers on the Military Governor, and by virtue of these powers the Military Governor had issued the said Police Force Regulation. The relevant provisions of the said Regulations are as follows:-

"2. With effect from the date he assumed duty or assumes duty in the Hyderabad State every member of the Indian Union Police Force shall be deemed to have been enrolled under the provisions of the Hyderabad District Police Act and shall have the powers and duties appertaining to his rank under the Hyderabad District Police Act.

3. If a member of the Indian Union Police Force was also subject to any other Act before he assumed or assumes duty in the Hyderabad State, he shall continue to be subject to that Act as if that Act had been extended 'mutatis mutandis' to the Hyderabad State.

4. If any question of law arises out of this Regulation, it shall be referred to the Military Governor whose opinion shall be conclusive."

The previous judgment in Jageram Malik's case, ILR (1955) Nag 93: (AIR 1955 Nag 160) shows that no provision had been brought to the notice of the Court

"whereunder the services of a Madhya Pradesh Police Officer could be loaned to a Part B State, nor any which permit an enquiry to be made against such officer by an authority exercising jurisdiction in a Part B State";

that is why the learned judges held that the public officer in question, despite the temporary transfer of his services to the Hyderabad State, must be deemed to be still on the Madhya Pradesh Police establishment. For the appellant, Mr. Khaskalam contends that if the relevant provisions of the Police Regulation had been cited before the Court on that occasion the Court might have come to a different conclusion. In this connection it is urged by him that the authority of the Nizam to issue the Firman cannot be disputed, and if the Firman conferred on the Military Governor appropriate powers, he would be competent to issue the Police Force Regulation on which the appellant relied; and having regard to the provisions of the said Regulation there would be no infirmity in the enquiry held against the respondent. We do not think it necessary to decide this point in the present appeal because as we shall presently point out, we are satisfied that Sen and Bhutt, JJ. were right in holding that the enquiry held against the respondent did not satisfy the requirements of natural justice. In view of this conclusion it is also unnecessary to consider the other point of law on which the learned judges differed, namely, whether the contravention of the Police Rules and Regulations was justiciable, and if such contravention is proved whether it would make the order of dismissal invalid.

5. Let us, therefore, consider whether the appellant is justified in contending that the High Court was in error in holding that the enquiry in question suffered from a serious infirmity, since in substance it denied the respondent reasonable opportunity of meeting the charge framed against him under Art. 311(2) of the Constitution. In order to decide this point it is necessary to refer to the material facts in regard to the said enquiry. We have already pointed out that though originally eight charges were framed against the respondent and some witnesses were examined at the initial stage

of the enquiry, later on the said enquiry was dropped and the chargesheet was amended. The second chargesheet included five charges three of which were held to be substantiated at the second enquiry. These charges were (1) that in October 1948 the respondent took a bribe of Rs. 5,000/- from Nooruddin for releasing Gulam Ali from arrest; (2) about the same time he took Rs. 5,000/- from Noor Mohd. for releasing his brother Ali Bhai; (3) at the same time he took Rs. 5,000/- from Noor Bhai for the release of his father Kasim Bhai. Thus all the three charges showed that for releasing certain persons arrested as Razakars the respondent extorted a bribe of Rs. 5,000/- in three cases from the relatives of the arrested persons. When the second enquiry began the respondent requested the enquiry officer on November 9, 1951, to supply him with certain documents. These documents were specified in five different paragraphs; amongst them were

"the file of Razakars in which there were recommendations of the District Superintendent of Police to the Civil Administrator, Adilabad, for the release of some Razakar detenus and for the orders of the Civil Administrator for the release of those detenus; copy of the application on the strength of which a preliminary enquiry was started; statements of Rajab Ali and Noor Bhai recorded by Mr. Ghatwal in his preliminary enquiry.

He had also asked for two other documents which were supplied to him, and so it is unnecessary to refer to them. Now, in regard to the file of the Razakars, the officer made an endorsement that the file was searched in his office sometime back and was not found. He, however, directed that another search would be made and the report when received should be showed to the respondent. If the report was not forthcoming, the enquiry officer promised to write to the Collector and request him to show the papers to the respondent if they were in his office. In regard to the copy of the application on which the enquiry commenced as well as the statements of Rajab Ali and Noor Bhai the order was that the said documents were secret papers and were not admissible for the purpose of the enquiry. On November 11, 1951, the respondent repeated his request for the supply of the said documents but this request was rejected. The enquiry then proceeded, witnesses were examined and the enquiry officer made the report that all the three charges had been proved against the respondent. He recommended that the charges were serious and that the respondent should be dismissed forthwith. Thereafter, a notice to show cause was served on the respondent. The respondent gave his explanation but the explanation was rejected and the impugned order of dismissal was passed against him.

6. It has been urged before us by Mr. Khaskalam that in dealing with the respondent's contention that the enquiry was defective Mr. Justice Sen has scrutinised the merits of the findings made against the respondent in the enquiry as though he was hearing an appeal against the said order, and that, it is urged, is outside the jurisdiction of the High Court in entertaining a writ petition under Art. 226 of the Constitution. It may be conceded that some of the observations made by the learned judge justified this argument. The learned judge has, for instance commented on the fact that the charge supplied to the respondent did not give sufficient particulars; and has also expressed his disapproval of the conclusion recorded in the report that there was overwhelming evidence on the record against the respondent; and that may seem like examining the correctness of the findings of fact recorded in the enquiry; but even if these observations made by the learned judge are left out of consideration on the ground that the learned judge was not entitled to consider the merits of the findings made against the respondent, there are two points on which the learned judge has substantially based his conclusion, and it is on those two points that it is necessary to concentrate in dealing with the present appeal. The first point is that the respondent should have been given a copy of the application on the strength of which the preliminary enquiry was started against him; and the second that the statements of Rajab Ali and Noor Bhai recorded by Mr. Ghatwal should have been

supplied to him. In appreciating the significance of these points, it is necessary to recall the broad features of the evidence adduced against the respondent. In respect of each charge evidence was given by the person who paid the money to Rajab Ali and Noor Bhai or one of them in order that it should be paid in turn to the respondent. Nooruddin, s/o Saoji Veerani, Noor Mohd., s/o Hasham, and Kasim Bhai are the three witnesses who gave evidence in support of the three charges respectively. The first witness said that he had given in all Rs. 12,000/- to Rajab Ali and Noor Bhai in three instalments of Rs. 3,000/-, Rs. 3,000/-, and Rs. 6,000/-. Similarly the second witness said that he had paid Rs. 11,000/- to Rajab Ali and Noor Bhai by two instalments of Rs. 6,000/- and Rs. 5,000/- respectively, and the third witness stated that he was arrested after the police action, and he was told that if he paid the respondent Rs.5,000/- he would be released, and so the money was paid. It is obvious that Rajab Ali and Noor Bhai are the principal witnesses against the respondent. It is equally clear from the findings recorded in the report itself that they collected far more than they are alleged to have paid to the respondent in two cases. In fact the report says that the excess amount collected by these two witnesses had been quietly pocketed by them. Thus it was of very great importance for the defence to cross-examine these two witnesses, and for that purpose the respondent wanted copies of their prior statements recorded by Mr. Ghatwal in his preliminary enquiry. It is difficult to understand how these statements could be regarded as secret papers, for that alone is the reason given for not supplying their copies to the respondent. Failure to supply the said copies to the respondent made it almost impossible for the respondent to submit the said two witnesses to an effective cross-examination; and that in substance deprived the respondent of a reasonable opportunity to meet the charge. That is the view taken by Sen and Bhutt, JJ. and we see no reason to interfere with it.

7. Similarly, in regard to Kasim, it appears that when his statement was recorded by the Sub-Divisional Officer he had denied having paid any amount to the respondent. It is rather surprising that though this witness made this categorical statement in the first enquiry he was examined again in the second enquiry and he came forward with the story that he had paid the amount of Rs. 5,000/-. It is because of his prior statement to the contrary that the respondent insisted that the witness should not be examined over again just because a new chargesheet was framed against him and that a fresh enquiry had commenced against him. This request was rejected and Kasim Bhai was examined again. This fact incidentally brings out very clearly the nature of the evidence which was adduced against the respondent in the enquiry.

8. Then as to the application on the strength of which the preliminary enquiry was commenced against the respondent, we agree with the High Court in holding that there was no justification for keeping back this document. Like the prior statements of Rajab Ali and Noor Bhai this document also has been improperly characterised as secret and withheld from the respondent. If he had been given the documents which he had called for, the respondent would have been able to cross-examine the witnesses adequately, and in their absence he suffered from a handicap which in the result denied him a reasonable opportunity which is guaranteed to him under Art. 311 (2).

9. Then as to the file of the Razakars it is really surprising that this file should be reported to have been lost. The respondent's case was that the Razakars in question for whose release he is alleged to have accepted the bribe were released on the recommendation of the District Superintendent of Police and under the orders of the Civil Administrator of Adilabad. The file was therefore relevant and, according to the respondent, the suggestion that the file had been lost was untrue and it was not produced because it was apprehended that, if produced, it would support his defence. It is true that the enquiry officer stated that he had made a search in his office but it could not be traced and that he was enquiring from the Collector and trying to find out whether the file could be found in the

Collector's office. Apparently the respondent was given a letter addressed to the Collector wherein he was requested to show the file to the respondent if available. He was, however, told that the file was not traceable. It is in connection with the alleged loss of this file that the criticism made by Mr. Justice Sen about the indecent haste made in the enquiry becomes relevant. If only more diligent efforts had been made to discover the file the enquiry officer would have been able to see whether the plea made by the respondent on the strength of the said file was genuine or not. It is in the light of these facts that the High Court has held that the enquiry was not satisfactory, and that in substance the respondent had been denied a reasonable opportunity to meet the charges framed against him. There is no dispute that under Art. 311(2) the respondent is entitled to have such a reasonable opportunity. A proper opportunity must be afforded to him at the stage of the enquiry after the charge is supplied to him as well as at the second stage when punishment is about to be imposed on him. If the first enquiry was materially defective and denied the respondent an opportunity to prove his case it is impossible to hold that a reasonable opportunity guaranteed to a public servant by Art. 311(2) had been afforded to the respondent in the present case.

10. Mr. Khaskalam has strenuously contended before us that in not supplying the copies of the documents asked for by the respondent the enquiry officer was merely exercising his discretion, and as such it was not open to the High Court to consider the propriety or the validity of his decision. In support of this argument he has referred us to the decision of the Patna High Court in Dr. Tribhuwan Nath v. State of Bihar, AIR 1960 Pat 116. In that case public officer wanted to have a copy of the report made by the anti-corruption department as a result of a confidential enquiry made by it against the said officer; and the enquiry officer had rejected his prayer. When it was urged before the High Court that the failure to supply the copy of the said report constituted a serious infirmity in the enquiry and amounted thereby to a denial of a reasonable opportunity to the public officer, the High Court repelled the argument, and held that the officer was not entitled to a copy of the report unless that report formed part of the evidence before the Enquiry Commissioner and was relied upon by him. "When, however, the report was not at all exhibited in the case, nor was it referred to nor relied upon by the Commissioner", said the High Court, "there was no meaning in contesting it, and consequently absence of opportunity to meet its contents involved no violation of constitutional provisions". In our opinion, this decision cannot assist the appellant's case because, as we have already pointed out, the documents which the respondent wanted in the present case were relevant and would have been of invaluable assistance to him in making his defence and cross-examining the witnesses who gave evidence against him. It cannot be denied that when an order of dismissal passed against a public servant is challenged by him by a petition filed in the High Court under Art. 226 it is for the High Court to consider whether the constitutional requirements of Art. 311(2) have been satisfied or not. In such a case it would be idle to contend that the infirmities on which the public officer relies flow from the exercise of discretion vested in the enquiry officer. The enquiry officer may have acted bona fide but that does not mean that the discretionary order passed by him are final and conclusive. Whenever it is urged before the High Court that as a result of such orders the public officer has been deprived of a reasonable opportunity it would be open to the High Court to examine the matter and decide whether the requirements of Art. 311(2) have been satisfied or not. In such matters it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had a reasonable opportunity must always depend on the facts in each case. The only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of Law. As Venkatarama Aiyar, J. has observed in Union of India v. T. R. Varma, 1958 SCR

499 at p. 507 : ((S) AIR 1957 SC 882 at p. 885) "stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them". It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. That is the view taken by the High Court, and in the present appeal which has been brought to this Court under Art. 136 we see no justification for interfering with it. In this connection it would be relevant to refer to the decision of this Court in Khem Chand v. Union of India, 1953 SCR 1080 at p. 1096 : (AIR 1958 SC 300 at p. 307) where this Court has emphaised the importance of giving an opportunity to the public officer to defend himself by cross-examining the witnesses produced against him.

11. The result is the appeal fails and is dismissed with costs.

Appeal dismissed.

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