State of Mysore

Vs

S. S. Makapur

Civil Appeal No. 400 of 1960

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, P. B. Gajendragadkar, K. N. Wanchoo, N. Rajgopala Ayyangar JJ)

03.05.1962

JUDGMENT

VENKATARAMA AIYAR, J. –

This is an appeal by special leave against the judgment of the High Court of Mysore in a Writ Petition filed by respondent challenging the validity of an order of dismissal dated July 5, 1956 made by the Deputy Inspector General of Police, Belgaum. The respondent entered service in the Police Department as a constable in the District of Bharwar in 1940 and was at the material dates a sub-inspector of Police. On a complaint preferred by one Machwe of Kurdiwadi against him, Mr. Majumdar, Inspector, C.I.D. made a preliminary investigation, examined a number of witnesses and recorded their statements, and submitted his report recommending further action. On that the Deputy Superintendent of Police, Belgaum, started proceedings against the respondent, framed six charges against him, and called for his explanation. The respondent denied the charges and then a regular inquiry was held on November 4, 1954. Clause (8) of s. 545 of the Bombay Police Manual which lays down the procedure to be followed in such inquiries is as follows :-

> "The officer conducting the inquiry should then recall all necessary witnesses in support of the charge and, in the defaulter's presence, read out any statements they may have made in the preliminary inquiry and record, if necessary, any further statements they may have to make. He should then give the defaulter an opportunity of cross-examining each witness after his statement in support of the charge is completed, any such cross-examination being recorded below the statement of the witness concerned.

In accordance with this provision the Deputy Superintendent recalled the witnesses who had been examined by Mr. Majumdar during the preliminary investigation, brought on record the previous statements given by them, and after putting a few questions to them tendered them for cross-examination by the respondent. As a fact all the witnesses were cross-examined by the respondent in great detail. The Deputy Superintendent held that all the charges framed against the respondent had been proved and he accordingly issued on December 14, 1954, a notice to him to show cause why he should not be punished by his pay being reduced from Rs. 125/- to Rs. 120/- per month for two years. To this again the respondent submitted his explanation and thereafter the Deputy Superintendent passed on January 5, 1955, an order reducing his pay as aforesaid.

The respondent would have been well advised to have left the matter there. But he chose to prefer an appeal against the order. The Deputy Inspector General of Police, Belgaum, before whom it

came, not only dismissed it but issued, in exercise of his powers in revision, a notice to the respondent to show cause why he should not be removed from service and after taking his explanation ordered his dismissal on July 5, 1956. The respondent filed a revision against this order to the Government of Bombay and under the States Reorganisation Act, 1956, that come before the Government of Mysore and was dismissed on August 31, 1957. The respondent thereupon filed in the High Court of Mysore, the Writ Petition, out of which the present appeal arises questioning the validity of the order of dismissal dated July 5, 1956, on a number of grounds of which we are concerned in this appeal with only one, namely, that the inquiry by the Deputy Superintendent of Police was conducted in disregard of the rules of natural justice and in consequence the order made was bad. The learned judges of the High Court agreed with this contention. They held, on the authority of certain observations made by this Court in the Union of India v. T.R. Verma [(1958) S.C.R. 499] and by the Bombay High Court in the State of Bombay v. Gajanan Mahadev [(1954) I.L.R. Bom. 915] that principles of natural justice required that the evidence of witnesses in support of the charges should be recorded in the presence of the enquiring officer and of the person against whom it is sought to be used. In this view they held further that s. 545(8) of the Bombay Police Manual was bad as it contravened principles of natural justice. They accordingly held that the enquiry was vitiated by the admission in evidence of the statements made by the witnesses before Mr. Majumdar without an independent examination of them before the Deputy Superintendent of Police. In the result the order of dismissal was set aside. It is the correctness of this judgment that is now under challenge before us.

The sole point for determination in this appeal therefore is whether the procedure adopted by the Deputy Superintendent of Police in admitting the statements of witnesses examined before Mr. Majumdar in evidence is opposed to the rules of natural justice. The question is one of importance, because as appears from the cases which have come before us the procedure followed by the Deputy Superintendent of Police in this case is the one followed by many tribunals exercising quasi-judicial powers. For a correct appreciation of the position, it is necessary to repeat what has often said that tribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts not are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts.

The question as to the content of the rules natural justice has been subject of numerous decisions in England and in this country. Dealing with this question Lord Loreburn, L.C., observed, in Board of Education v. Rice [(1911) A.C. 179, 182] as follows :-

> "In such cases the Board of Education will have to ascertain the law as also to ascertain the facts. I need not add that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon every one who decides anything. But I do not think they are bound to treat such a question as though it were a trial. They have no power to administer an oath, and need not examine witnesses. They can obtain information in any was they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting

any relevant statement prejudicial to their view.

This statement of the law was adopted again by the House of Lords in Local Government Board v. Arlidge [(1915) 1 A.C. 120].

This question has also been considered by this Court in several decisions. One of the earliest of them is the decision in New Prakash Transport Company. Ltd. v. New Suwarna Transport Company Ltd. [(1957) S.C.R. 98]. There the facts were that a Tribunal constituted under the Motor Vehicles Act had refused to grant a permit to a company to run a bus on a certain route. Then the company filed a writ application in the High Court of Nagpur, attacking the order refusing the permit on the ground, inter alia, that the Tribunal had acted on a police report which was produced at the time of the hearing without giving the petitioner sufficient opportunity to meet it, and had thereby violated the rules of natural justice. Agreeing with this contention the learned Judges of the High Court had set aside the order. In reversing this order, this Court held that the police report was information on which the Tribunal was entitled to act, and as it was read at the enquiry, in the presence of the parties, and they had been heard on it, there had been sufficient compliance with the rules of natural justice.

We may next refer to the decision of this Court in the Union of India v. T.R. Verma [(1958) S.C.R. 499]. That arose out of a Writ Petition filed by a Government servant in the High Court of Punjab, calling in question an order of dismissal passed against him, on the ground that the enquiry which resulted in the order had not been conducted in accordance with the rules of natural justice. The facts were that when the petitioner, and his witnesses appeared for giving evidence, the enquiring officer took their examination on hand himself, put them questions, and after he had finished, asked them to make their statements. The complaint of the petitioner was that he and his witnesses should have been allowed to give their own evidence, and than cross-examined, and that the departure from the normal procedure in taking evidence, was a violation of the rules of natural justice. In rejecting this contention this Court observed as follows :

> "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. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in New Prakash Transport Co. v. New Suwarna Transport Co., where this question is discussed."

It is on the observation that "the evidence of the opponent should be taken in his presence" that the decision of the learned Judges that the evidence of witnesses should be recorded in the presence of the person against whom it is to be used is based. Read literally the passage quoted above is susceptible of the construction which the learned Judges have put on it, but when read in the context of the facts stated above, it will be clear that is not its true import. No question arose there as to the propriety admitting in evidence the statement of a witness recorded behind the back of a party. The entire oral evidence in that case was recorded before the enquiring officer, and in the presence of the petitioner. So there was no question of a contract between evidence recorded behind a party and admitted in evidence against him, and evidence recorded in his presence. What was actually under

consideration was the procedure to be followed by quasi-judicial bodies in holding enquiries, and the decision was that they were not bound to adopt the procedure followed in Courts, and that it was only necessary that rules of natural justice should be observed. Discussing next what those rules required, it was observed that the person against whom a charge a made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of from but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them.

This question came up for consideration by this Court more recently in Phulbari Tea Estate v. Its Workmen [(1960) 1 S.C.R. 32]. There the facts were that one of the workmen, B.N. Das was dismissed by the management as the result of an enquiry into a charge of theft. The Industrial Tribunal set aside this order on the ground that there had been no proper enquiry. What had happened was that the management had first made an investigation, and taken statements of witnesses, and at the regular enquiry these statements were brought on record but they were not put to the witnesses, who were present, nor had copies thereof been given to the workmen. The question was whether the enquiry was in accordance with rules of natural justice. In answering it in the negative, Wanchoo, J, speaking for the Court, observed that the admission in evidence of the prior statements under the circumstances stated above, was not in consonance with the principles of natural justice laid down in the Union of India v. T.R. Verma [(1958) S.C.R. 499]. This decision is clearly of no assistance to the respondent.

Reliance was also placed on the following observations by Chagla, C.J., in the State of Bombay v. Gajanan Mahadev [(1954) I.L.R. Bom. 915].

> "Even assuming that a statement of such a witness is furnished to the Government servant, it is a sound rule that courts of law follow and which even domestic tribunals should follow that all evidence must be given in the presence of an accused person and in the presence of a person against whom action is proposed to be taken. It is one thing to make a statement behind the back of person; it is entirely a different thing to make a statement in front of the Court or a domestic tribunal and in the presence of a person against whom you are going to make serious charges."

But in our opinion, the purpose of an examination in the presence of a party against whom an enquiry is made, is sufficiently achieved, when a witness who has given a prior statement is recalled, that statement is put to him, and made known to the opposite party, and the witness is tendered for cross-examination by that party. In this view we must hold that the order dated July 5, 1956, is not liable to be set aside on the ground that the procedure followed at the inquiry by the Deputy Superintendent of police was in violation of the rules of natural justice. It is hardly necessary to add that cl. 8 of s. 545 of the Bombay Police Manual can not be held to be bad as contravening the rules of natural justice.

This finding however does not dispose of the entire matter. It is the contention of the respondent that the Deputy Inspector General of police was not entitled in revision to enhance the punishment and this question has not been decided by the learned Judges. It is therefore necessary to remand this case for hearing on this and all other issues which might arise for decision. We accordingly set aside the order in appeal and remand the case for hearing on the other points in this case. Costs of this appeal will abide the result of the hearing in the Court below.

Case remanded.

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