

C. L. Subramaniam

Vs

Collector of Customs, Cochin

Civil Appeal No. 11 Of 1971

(K. S. Hegde, K. K. Mathew JJ)

15.02.1972

JUDGMENT

HEGDE, J. -

1. This is an appeal by Special Leave. The appellant was a Preventive Officer, Grade II, Customs Office, Cochin from June 16, 1962 to January 31, 1963. In April 1962, he applied to the Assistant Collector of Customs, seeking permission to allow his wife to run a taxi service. He was informed no permission was necessary for his wife to operate a taxi service but he should not canvass any business for his wife. Thereafter, it is said that the appellant acting on behalf of his wife purchased some cars which were used as taxis. It appears that there were several complaints against the appellant to the effect that he was canvassing business for his wife. Those complaints were enquired into. Thereafter on March 25, 1963 the appellant was served with a memorandum stating that while functioning as Preventive Officer, Grade II, Cochin Customs House, during the period June, 1962 to January 31, 1963, he had contravened the provisions of Rule 12(1) of the Central Civil Services (Conduct) Rules, 1955. The factual allegation made against the appellant was that he canvassed business for his wife. He was told that an enquiry will be held against him on the basis of that charge.

2. Shri H. T. Soares, Assistant Collector, Customs House, Cochin was appointed as the Enquiry Officer. During the pendency of the enquiry an additional ground in support of the charge was served on the appellant to the effect that he himself was running the taxi service. After enquiry, the Enquiry Officer came to the conclusion that the allegations made against the appellant were established and consequently he was guilty of contravening Rule 12(1) of the Central Civil Service (Conduct) Rules, 1955. The Enquiry Officer recommended appellant's removal from service. On the basis of that recommendation the Disciplinary Authority served on the appellant a notice to show cause why he should not be removed from service. The appellant submitted his explanation. But the same was not accepted by the Disciplinary Authority. In the result the appellant was ordered to be removed from service.

3. The appellant challenged that order by means of a petition under Article 226 of the Constitution before the High Court of Kerala. His writ petition was first heard by a single judge who dismissed the same and the order of the single judge was affirmed by a Division Bench of that High Court. Hence this appeal.

4. The appellant personally argued his appeal. He challenged the validity of the order removing him from service on various grounds. As we are of the opinion that the appellant had not been afforded reasonable opportunity to present his case and consequently the impugned order has to be struck

down, we do not think it necessary to examine other contentions advanced by the appellant.

5. The appellant who was a member of the civil service of the Union of India was holding his office during the pleasure of the President, but in view of Article 311 of the Constitution, he could not have been removed from service except after enquiry in which he had been given a reasonable opportunity of being heard in respect of the charge levelled against him. This procedural guarantee is undoubtedly a valuable one. Breach of that guarantee vitiates the enquiry.

6. Removal from service is a major penalty. Procedure for imposing major penalties is prescribed in Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, a rule framed under Article 309 of the Constitution. Sub-rule (5) of that rule provides :

"The Disciplinary Authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the Inquiring Authority). The Government servant may present his case with the assistance of any Government servant approved by the Disciplinary Authority, but may not engage a legal practitioner for the purpose unless the person nominated by the Discipline Authority as aforesaid is legal practitioner or unless the Disciplinary Authority, having regard to the circumstances of the case, so permits."

7. This rule bears upon the reasonable opportunity contemplated by Article 311. The validity of this rule was not challenged. Hence all that we have to see is whether the rule had been complied with. For deciding this question it is necessary to refer to the relevant facts.

8. In September, 1963, one A. M. Sivaraman was appointed as the officer to present the case before the Enquiry Officer in support of the allegations made against the appellant. The said Sivaraman was a trained police prosecutor. After he was appointed to present the case in support of the allegations made against the appellant, the appellant wrote to the Collector of Customs, Cochin, the Disciplinary Authority on October 4, 1963 as follows :

"From : C. L. Subramaniam, Preventive Officer, Customs House, Cochin-3. To The Collector of Customs, Customs House, Cochin-3. Sir, Sub-section 1/63 Estt-Cus, dated September 30, 1963.##"

In the above memorandum it is stated in Paragraph 4, that Shri A. M. Sivaraman as the officer to present the case in support of the allegations against me before the Enquiry Officer,

I understand that Shri A. M. Sivaraman is legally trained to conduct such prosecutions. Under such circumstances, I will be prejudiced in my defence unless I am permitted to engage a counsel to appear and defend me during the enquiry. Hence I request that permission be accorded to engage a lawyer of my choice to represent and defend the charges before the Enquiry Officer.

"Cochin 3 Yours faithfully, 4-10-1963. (Sd.) C. L. Subramaniam.##"

9. He again reiterated his request for permission to engage a Counsel to defend him in his letter to the Assistant Collector on October 9, 1963. Thereafter he again wrote to the Collector of Customs on October 14, 1963 as follows :

"... It may help me very much too, if you can grant the permission I have sought for engaging a counsel of my choice at an early date so that I could get the counsel's

assistance for the inspection of documents too."

10. On October 17, 1963, Sri Soares, Assistant Collector of Customs wrote to the appellant thus :

"Secret 1/1/63 Est. Cus. Custom House, Cochin-3 September 17, 1963. From : The Assistant Collector of Customs, Appraising Department, Customs House, Cochin-3 To Shri C. L. Subramaniam, Preventive Officer, Customs House, Cochin-3.##

Sub : Establishment - Inquiry into the work and conduct of Shri C. L. Subramaniam, Preventive Officer, Customs House, Cochin.

With reference to your letter Sec. 1/63/Estt. Cus., dated October 14, 1963, requesting permission for engaging a counsel to appear and defend you, during the enquiry, I am directed by the Collector to inform you that although Shri A. M. Sivaraman is legally trained, he is not a legal practitioner and hence is no necessary for engaging a lawyer to defend you at the enquiry.

##(Sd.) H. T. Soares, Assistant Collector of Customs.###

11. It is clear from that letter that the Disciplinary Authority had overlooked the fact that the appellant sought permission to engage a counsel not because Sivaraman was a legal practitioner but because he was trained prosecutor.

12. On January 6, 1964, the appellant again wrote to the Collector of Customs explaining his difficulties in defending himself. In Paragraph 4 of that letter, the appellant stated :

"In the nature of accusations made against me and the nature of their widespread source the importance of the informants and their intentions, the varying types of witnesses supporting the charge, the complicated nature of the evidence, the inexperience I have in assessing the impact of such evidence and in shifting the evidence for preparing an effective cross-examination and above all the lurking conspiracy of a series of persons whom I have to deal with firmly in discharging my duties as a Preventive Officer, all these when considered can lead you to the only conclusion that if I am denied the assistance of an experienced counsel at the enquiry it would be tantamount to denial of an opportunity to defend myself and prove my innocence. This would be particularly so in the context of the present enquiry where evidence have sought to be brought in by different stages and alleged incidents subsequent to the charges are sought to be proved in support of the allegations made before such incidents."

13. Despite these communications, the appellant was not given permission to engage a legal practitioner to defend himself. Therefore the question arises whether the appellant was given reasonable opportunity to defend himself in accordance with sub-rule (5) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. The portion of that rule that is relevant for our present purpose is the last clause which says that the Government servant may not engage a legal practitioner for the purpose mentioned in that clause "unless the Disciplinary Authority having regard to the circumstances of the case so permits."

14. The grievance of the appellant was that he was pitted against a trained prosecutor and not that Sivaraman was a legal practitioner. The Disciplinary Authority did not consider that grievance. It brushed aside the request of the appellant on the ground that Sivaraman was not a legal practitioner,

a consideration which was not relied on by appellant. The grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no means irrelevant. The fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighed against him. The Disciplinary Authority completely ignored that circumstance. Therefore, that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely that the Disciplinary Authority's refusal to permit the appellant to engage a legal practitioner in the circumstances mentioned earlier had caused serious prejudice to the appellant and had amounted to a denial of reasonable opportunity to defend himself.

15. The appellant contended that he had a right to engage a legal practitioner to defend him. He sought to spell out that right on the basis that what he could himself do, he could get it done by an agent of his and a legal practitioner acting for him would only have been his agent. In support of his contention he placed reliance on the decision on *Pat v. Greyhound Racing Association Ltd.* ((1968) 2 All ER 545). The facts of that case were as follows :

16. Track stewards of a greyhound racing stadium owned by the defendants proposed to hold an inquiry into the withdrawal of a trainer's dog from a race at a stadium licensed by the National Greyhound Racing Club. The inquiry involved the question whether drugs had been administered to the dog. The trainer held a licence from the National Greyhound Racing Club entitling him to race dogs on tracks licensed by the club, and thus the result of the inquiry might involve the trainer's reputation and livelihood. The rules of the club, to which the trainer had agreed when he obtained his licence, did not prescribe the procedure to be followed by track stewards at their inquiries, and did not exclude legal representation. The procedure in fact followed at such an inquiry allowed the trainer to be present, to hear the evidence and to have an opportunity to question witnesses. The trainer sought to be represented by counsel and solicitor at the enquiry but the track stewards decided ultimately not to allow legal representation. On appeal from the grant of an interlocutory injunction restraining the inquiry from being held unless the trainer was (sic) allowed to be represented, the Court of Appeal held that prima facie the trainer was entitled to an oral hearing and, the inquiry being one of serious importance to him, to be represented as it by counsel and solicitor, for he was entitled not only to appear himself but also to appoint an agent on his behalf, and so was entitled to appoint lawyers to represent him. Lord Denning, M. R. who delivered the main judgment of the court in the course of his judgment dealing with the decision of stewards that they will not hear lawyers observed :

"I cannot accept this contention. The plaintiff is here facing a serious charge. He is charged either with giving the dog drugs or with not exercising proper control over the dog so that someone else drugged it. If he is found guilty, he may be suspended or his licence may not be renewed. The charge concerns his reputation and his livelihood. On such an inquiry I think that he is entitled not only to appear by himself but also to appoint an agent to act for him. Even a prisoner can have his friend."

Proceeding further the Master of Rolls observed :

"I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor."

17. This decision, in our opinion, does not bear on the point under consideration. Herein we are

dealing with a statutory rule, which prohibits the appointment of a legal practitioner excepting under certain circumstances. Hence the agency theory has no relevance nor are we required to consider the principles of natural justice as those principles are only relevant when the concerned procedure is not regulated by any statute or statutory rule. The rule laid down in Pat's case (supra) has not commended itself to this Court. In *Kalindi and Others v. Tata Locomotive and Engineering Co. Ltd.*, ((1960) 3 SCR 407 : AIR 1960 SC 914 : (1962) 2 ELJ 228) a question arose whether in an enquiry by management into misconduct of a workman, the workman was entitled to be represented by a representative of the Union. Answering this question this Court observed that a workman against whom an enquiry is being held by the management has no right to be represented at such an enquiry by a representative of the Union though the employer in his discretion can and may allow him to be so represented. In such enquiries fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not fall to be considered and the workman is best suited to conduct the case. Ordinarily, in enquiries before domestic tribunals a person accused of any misconduct conducts his own case and so it cannot be said that in any enquiry against a workman natural justice demands that he should be represented by a representative of his Union. The same view was taken by this Court in *Brooke Bond India (Private) Ltd. v. Subba Raman (S) and Another.* ((1961) 2 LLJ 417 : (1961) 13 FLR 526 : (1961-62) 20 FJR 424). That view was reiterated again in *Dunlop Rubber Co. v. Workmen.* ((1965) 2 SCR 139 : AIR 1965 SC 1392 : (1965) 1 LLJ 426).

18. The learned counsel for the State relied on the decisions mentioned above in support of his contention that the appellant was not entitled to have the assistance of a legal practitioner. This contention is without force. In those cases this Court considered whether a person proceeded against in an enquiry before a domestic tribunal had a right to be represented by someone else on the basis of the principles of natural justice. Therein this Court was not called upon to consider either the limits of the reasonable opportunity to defend oneself, guaranteed under Article 311 or the scope of a statutory rule. The question that falls for decision in this case did not arise for decision in those cases.

19. The appellant supported his complaint of breach of Rule 15(5) on yet another ground. After the appellant's request for engaging a counsel was rejected, he requested the Disciplinary Authority to let him have the assistance of Abraham Kurian, clerk, Cochin Head Post Office, Cochin-1. This request he appears to have made long before the date of enquiry, i.e. December 5, 1963. He had also requested the Disciplinary Authority to move the superiors of Abraham Kurian to grant permission to Abraham Kurian to assist him. But it appears the Disciplinary Authority wrote to the Superintendent of Post Offices who is stationed at Tricur only on the November 28, 1963, requesting him to permit Abraham Kurian to assist the appellant. That communication was not received by the Superintendent of Post Offices in time. Hence Abraham Kurian did not get the permission sought before the date of enquiry. After learning that fact from Abraham Kurian, the appellant wrote the following letter to the Collector of Customs on December 4, 1963.

#"Sec. 1/1/63/Estt.-Cus. No. 16 Customs Quarters Willingdon Island, P. O. Cochin-3. December 4, 1963.From C. L. Subramaniam, Preventive Officer Gr. II, Customs House, Cochin-3.To The Collector of Customs and Central Excise, Customs House, Cochin-3.Sir, Sub. : Enquiry into the work and conduct of Shri C. L. Subramaniam, Preventive Officer, Customs House, Cochin-3.##

With reference to your letter, dated December 3, 1963, I wish to submit as follows :

Shri Abraham Kurian, clerk, Cochin Head Post Office who is to assist me in the enquiry from December 5, 1963 in connection with certain allegations pending against me has urgently applied to his superior yesterday itself and is awaiting permission.

As I cannot appear for the enquiry without assistance I request you Sir, to adjourn the hearing by 10 days.

#Thanking you,I remain Sir,Yours faithfully,(Sd.) C. L. Subramaniam."##

20. On the date of the enquiry, the Enquiry Officer adjourned the case sine die after obtaining an undertaking from the appellant that on the next date of the enquiry he would go with the case even if he was unable to get the assistance of Abraham Kurian on that date. On December 9, 1963, the appellant wrote to the Enquiry Officer as follows :

#"Sec. No. 1/1/63 Estt. Cus. December 9, 1963From C. L. Subramaniam, Preventive Officer, Customs House, Cochin-3.To The Asstt. Collector of Customs (Apprg.), Enquiry Officer, Customs House, Cochin-3.Sir,Sub. : Enquiry into the work and conduct of Shri C. L. Subramaniam, Preventive Officer, Customs House, Cochin.##

I understand from a communication from the Senior Superintendent of Post Offices, Trichur addressed to the Assistant Collector of Customs (Apprg.), Customs House, Cochin with copy endorsed to Shri Abraham Kurian, that your communication informing that the enquiry was to have been held from December 5, 1963 was received by the Senior Superintendent of Post Offices only on December 5, 1963, and therefore the relief arrangement could not be made by him.

Now that the enquiry is adjourned it is requested that you may be good enough to inform the Senior Superintendent of Post Offices. Trichur (Superior Officer of the Government who assists me) sufficiently early as to the date of the enquiry, so that he may relieve the Government Servant in time.

It is humbly pointed out that unless your goodself take necessary action in time in this regard it may not be possible to get me the assistance I have requested for.

#Yours faithfully,(Sd.) (C. L. Subramaniam)December 9, 1963."##

21. Even after getting this letter, the Enquiry Officer did not fix the date of the enquiry. It appears that on December 30, 1963 the Enquiry Officer fixed January 8, 1964 as the date of enquiry. It is only thereafter he wrote to the Superintendent of Post Offices requesting him to permit Abraham Kurian to assist the appellant. It is not known when that letter was received by the Superintendent of Post Offices but Abraham Kurian did not get the permission sought, before the date of enquiry. Therefore he was unable to assist the appellant in the enquiry. Hence the enquiry went on without the appellant having anybody's assistance.

22. From the facts set out above, it is clear that the Enquiry Officer did not afford the appellant necessary facility to have the assistance of another Government servant in defending him which assistance he was entitled to under the rule. He was deprived of that assistance solely because of the indifferent attitude adopted by the Enquiry Officer. Therefore we have no hesitation in coming to the conclusion that the Enquiry Officer had clearly breached Rule 15(5).

23. It is needless to say that Rule 15 is mandatory rule. That rule regulates the guarantee given to

Government servants under Article 311. Government servants by and large have no legal training. At any rate, it is nobody's case that the appellant had legal training. Moreover, when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. The accusation against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be. In such a situation he cannot be expected to act calmly and with deliberation. That is why Rule 15(5) has provided for representation of a Government servant charged with dereliction of duty or with contravention of the rule by another Government servant or in appropriate cases by a legal practitioner.

24. For the reasons mentioned above, we think that there had been a contravention of Rule 15(5). We are also of the opinion that the appellant had not been afforded a reasonable opportunity to defend himself. Hence the impugned order is liable to be struck down and it is hereby struck down. The facts of this case are not such as to justify any fresh enquiry against the appellant. Hence we direct that no fresh enquiry shall be held against the appellant and he be restored to the position to which he would have been entitled to but for the impugned order. The appeal is accordingly allowed. The appellant is entitled to his costs from the respondents both in this Court as well as in the High Court.

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