

Sawai Singh

Vs

State of Rajasthan

Civil Appeal No. 2179(N) of 1972

(E. S. Venkataramiah, Sabyasachi Mukharji JJ)

02.05.1986

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is an appeal by special leave granted by this Court against the order dated April 7, 1972 of the High Court of Judicature for Rajasthan, at Jodhpur, in Special Appeal 74 of 1972. The High Court of Rajasthan Jodhpur in the said appeal refused to interfere with the order of the learned Single Judge of that High Court. The learned Single Judge had dismissed the writ petition of the appellant challenging the order of termination of his services.

2. The appellant was an employee of the Rajasthan Government and was appointed as returning officer to conduct panchayat elections at Sardi in Panchayat Samiti Ladnun in the district of Nagpur held in the month of December, 1960. At that time, the appellant was working as Superintendent, Sheep and Wool, Nagpur. The election was to take place on December 26, 1960 and the date for submission of nomination forms was December 25, 1960. Four persons, namely, Shri Chaturbhuj, Shri Purna Ram, Shri Jiwan Ram and Shri Jiwan Dass filed their nomination forms. The nomination paper filed by Shri Chaturbhuj was alleged to have been found incomplete and it was, therefore, rejected. The nomination paper was said to be defective for the following reasons -

(i) In the opening line the ward number was not filled in and the space provided therefor was left blank;

(ii) In the second line out of the words Panch/Sarpanch one of the two was not struck out; so that there was no indication where the nomination was for the office of Panch or that of Sarpanch.

(iii) In the third line in the blank space again intended to specify the office, the said Chaturbhuj had filled in his own name thus instead of stating that he was proposing himself as candidate for the office of Panch or Sarpanch, it was found that he was proposing himself as Chaturbhuj.

(iv) At the end of sub-paragraph (1) containing a declaration by the candidate as to his qualifications the said Chaturbhuj did not strike off one of the two words Panch/Sarpanch.

3. In view of the above, the nomination paper was rejected. Shri Jiwan Dass and Shri Jiwan Ram withdrew their candidature and Shri Purna Ram was left alone in the field and was, therefore,

elected to the office of Sarpanch.

4. On July 2, 1965, the Government of Rajasthan informed the appellant that an enquiry was proposed to be held against him on charge which was as follows :

That the said Shri Sawai Singh, while functioning as District Sheep and Wool Officer, Nagaur, during the year 1960 was appointed as Returning Officer to conduct Panchayat Election at Sardi in Panchayat Samiti Ladnun in the month of December, 1960. That the said Shri Sawai Singh showed undue favour to one of the contesting candidates Shri Purna Ram. He manipulated the withdrawal of Shri Jeevan Dass a dummy candidate of Shri Chaturbhuj who was contesting candidate against Shri Purna Ram. The said Shri Sawai Singh committed forgery by effecting erasion in the word "panch" on the nomination paper of Shri Chaturbhuj and mala fidely and improperly rejected his nomination form.

5. The statement of allegations was also sent alongwith the forwarding letter and it was mentioned in the said statement as follows :

4. Shri Sawai Singh manipulated the withdrawal of Shri Jeevan Dass a dummy candidate of Chaturbhuj by cheating.

5. He further committed forgery by effecting erasion in the word 'panch' on the nomination paper of Shri Chaturbhuj and mala fidely and improperly rejected the nomination form of Chaturbhuj and thereby acted in furtherance of the prospects of the election of Shri Purna Ram as Sarpanch Sardi.

6. A reply to the said charge-sheet was submitted by the appellant. He denied the charges levelled against him. By an order dated November 4, 1965, the government appointed the Additional Commissioner for departmental enquiry, Rajasthan, Jaipur as an enquiry officer to hold the enquiry against the appellant. The enquiry officer submitted his report on March 27, 1967. Perusal of the enquiry report makes perfunctory reading - comparing the evidence of Chaturbhuj and the appellant it is difficult to accept on what basis the enquiry officer accepted the Chaturbhuj version. The enquiry officer did not discuss the inherent improbabilities of the statements of Chaturbhuj which will be noted later.

7. On October 3, 1968, the government issued a show-cause notice to the appellant which was as follows :

According to the report of the Enquiry Officer the charge has been proved to this extent that Shri Sawai Singh with dishonest intention to declare candidate Purna Ram uncontested successful Sarpanch made charges in the nomination form of Shri Chaturbhuj which was complete at the time when was presented and thus made it incomplete and thereafter illegally rejected it. The State Government has provisionally accepted the decision. The State Government has provisionally taken further decision that Shri Sawai Singh be removed from State service for the said mistake. Hence Shri Sawai Singh is hereby given an opportunity that if he wants to file a representation against the provisional decision he may present it within 15 days from the date of receipt of this letter to the undersigned.

8. It may be mentioned that what was the dishonest motive - except the inference from the rejection

- of the nomination paper on alleged improper grounds nothing was indicated in the report of the enquiry officer.

9. This notice, however, was later on cancelled and a fresh show-cause notice was issued. The appellant gave an elaborate reply to the said notice. To complete the narration of events, the government by an order dated April 5, 1971 accepted the findings of the enquiry officer and directed his removal from service. The appellant filed a writ petition before the High Court. The writ petition was heard by P. N. Singhal, J. as the learned Judge then was of the High Court and he by his order dated August 31, 1971 dismissed the same summarily.

10. The appellant filed a special appeal before the Division Bench. The said appeal was also summarily dismissed on April 7, 1972. Thereafter on refusal of the High Court to grant a certificate, by special leave, this appeal has come up before us nearly 15 years after the termination of employment.

11. Shri Tapash Chandra Roy, learned advocate for the appellant, urged before us three main submissions, namely, (i) the charges were not clear; (ii) there was no evidence to support the charges and on the contrary (iii) the evidence on record was contrary to the charges made. The charges framed have been noted namely, (i) the appellant showed undue favour to one of the candidates Shri Purna Ram. (ii) He manipulated the withdrawal of Jiwan Dass, the dummy candidate of Shri Chaturbhuj was the contesting candidate against Shri Purna Ram and (iii) Shri Sawai Singh committed forgery by effecting erasion of the word 'panch' on the nomination paper of Shri Chaturbhuj and mala fidely rejected his nomination paper. The second charge i.e. the withdrawal of Jiwan Dass can only be understood in the light of the statement of Shri Jiwan Dass. Shri Jiwan Dass stated thus in his evidence which was on the record of the enquiry :

I withdrew my nomination paper a 3 p.m. I only heard in the evening that the nomination paper of Chaturbhuj had been rejected. I do not know whether symbol was issued to Chaturbhuj or not. My statement was recorded by Collector Ex. P-11 and also by CI which is Ex. P-12. I had withdrawn my nomination paper voluntarily. Noone told me that nomination paper of Chaturbhuj had been accepted, and on that basis, I should withdraw my nomination paper. I do not remember whether I had stated in portion A to B of the statement marked Ex. P-12 that I was told regarding the acceptance of the nomination form of Chaturbhuj. For that reason I had withdrawn my nomination form. I was not present when Chaturbhuj had asked the reason for rejection of his nomination paper. I do not remember whether I had given the statement marked C to D in Ex. P-12 PA to (sic). The statement of Ex. P-11 was taken by the steno of the Collector in the absence of Collector. The steno was drunk at that time. I cannot say what the recorded in my statement. I had not stated as marked A to B and C to D in Ex. P-11. On cross-examination the Departmental Officer stated that my nomination form was filled by Sohan Singh. I was not dummy candidate.

12. A fair reading of the said statement would give a complete lie to the charge that the appellant manipulated the withdrawal of Jiwan Dass. It is clear that the first charge was not clear, in the sense, how the appellant had alleged to have manipulated the withdrawal of Jiwan Dass. It is difficult for any office to meet a charge of this nature. The second charge was about committing forgery effecting erasion of the word 'panch' on the nomination paper of Shri Chaturbhuj. This allegation was sought to be proved by the evidence of handwriting expert. The handwriting expert was not

available for cross-examination on the ground that at that time he was dead. But if evidence of handwriting expert was necessary to prove the guilt of the appellant then it was necessary on the part of the department to adduce evidence to call another handwriting expert to corroborate their charge.

13. In order to prove the charge against him it was necessary to establish that Shri Chaturbhuj had filed nomination being Ex. P-13, complete in all respects. Shri Chaturbhuj is the complainant and his evidence on filing of the nomination paper is not only contradictory but also leads one to believe that he had filed an incomplete nomination form. Shri Chaturbhuj in Ex. EH P-1 (DE) stated that his nomination paper was duly filled in by him. This was taken by the enquiry officer to mean that the nomination paper was complete in all respects and wrongly rejected. Shri Chaturbhuj on July 8, 1966 was shown the nomination form. Ex. P-13 and he admitted that Ex. P-13 bears his signatures and that he had submitted it for Sarpanch but he did not say that whether he had struck off the word 'panch' in the nomination paper so as to convey his proposal for Sarpanch. He also could not say on seeing the nomination paper that the word 'panch' in the nomination paper marked A and B by the Additional Commissioner Departmental Enquiry had been struck off or not. He could not say whether any rubbing or erasion of the word 'panch' had taken place or not. Shri Chaturbhuj had stated that he did not remember who had written his nomination paper. There were two persons present at that time. One was his brother Shri Dhar who was not produced in the departmental enquiry and the other was Puran Chand Sharma of Ladnun. This was an ambiguous and misleading statement. On the other hand, in the evidence of Shri Puran Chand, he said that he had filled up one form for Shri Chaturbhuj for Sarpanchship and identified the same to be Ex. P-13. He stated after a look at Ex. P-13 that the form was filled up by him in his own hand except the signatures which were done by Shri Chaturbhuj himself in his presence. When the form was shown to him, he stated in his examination-in-chief that the name of Shri Chaturbhuj in Ex. P-13 marked G to H and I to J was in the handwriting of Shri Chaturbhuj himself and also the signatures K to L were in the handwriting of Shri Chaturbhuj. There were several other contradictions in the said statement of Puran Chand which were mentioned in paragraphs 11 to 13 of the writ petition before the High Court. These were not considered by the High Court.

14. Quite apart from that fact, it appears to us that the charges were vague and it was difficult to meet the charges fairly by any accused. Evidence adduced was perfunctory and did not at all bring home the guilt of the accused.

15. Shri B. D. Sharma, learned advocate for the respondent, contended that no allegations had been made before the enquiry officer or before the High Court, that the charges were vague. In fact the appellant had participated in the enquiry. That does not by itself exonerate the department to bring home the charges.

16. It has been observed by this Court in *Surath Chandra Chakrabarty v. State of W.B.* ((1971) 3 SCR 1 : (1970) 3 SCC 548 : AIR 1971 SC 752) that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of *State of A.P. v. S. Sree Rama Rao* ((1964) 3 SCR 25 : AIR 1963 SC 1723 : (1964) 2 Lab LJ 150) and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But in a departmental enquiry entailing consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action; in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation.

17. The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject-matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties. (See *K. L. Tripathi v. State Bank in India* ((1984) 1 SCC 43 : 1984 SCC (L&S) 62).). Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the sine qua non.

18. Having regard to the consequences of the offences with which the delinquent officer was charged and having regard to the nature of charge and the evidence of handwriting expert and the absence of opportunity for cross-examination and the conflicting nature of evidence of Chaturbhuj and nature of evidence given by Jiwan Dass, we are of the opinion that the report of the enquiry officer finding the appellant guilty should not have been sustained and the government should not have acted upon it. The High Court in our opinion, with great respect, was in error in not bearing in mind these aspects which have been indicated hereinbefore.

19. In that view of the matter, the order of the High Court cannot be sustained. In the premises, the order and judgment of the High Court are set aside. The appeal is allowed. The appellant is entitled to the costs of this appeal. The appellant would also be entitled to his remuneration and salary for all this period. We do not know if during the pendency of this appeal the appellant has superannuated and retired. If that is so, he should be in service up to the date of superannuation with the entitlement of pensionary relief. If not, he should be reinstated.

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