Vasudeo Vishwanath Saraf

Vs

New Education Institute and Others

Civil Appeal No. 1442 of 1986

(A. P. Sen, B. C. Ray JJ)

05.08.1986

JUDGMENT

RAY J. –

1. This application for special leave involves a very short but very important and substantial question of law namely whether a court while hearing writ petitions is under an obligation to pass a speaking order - an order recording in brief at least the reasons which weighed with the court in determining the salient questions raised by the parties to the action while dismissing or rejecting the writ petition in order to enable the parties to know the reasons for such order, more particularly when there is provision for appeal including appeal on special leave to this Court under Article 136 of the Constitution of India to apprise the appellate court of the reasons of the order in order to conform to the basic principles of justice and fair play and as well as the rule of law which pervades our constitutional system and also in consonance with the principles of natural justice. On this vital ground we deem it just and proper to grant special leave and accordingly special leave is granted.

2. The facts of the case in brief are inter alia that the petitioner a B.Sc. with 2nd Class honours, was appointed as an Assistant Teacher in 1951 in the New English Institute Girls High School conducted and managed by a registered society named New Education Institute, respondent 1. The petitioner was transferred to New High School in June 1953. The petitioner passed the Secondary Teachers' Certificate Examination and he also passed the Diploma of Education Examination conducted by Basic Training Centre, Dhule. This diploma is considered as equivalent to Bachelor of Education Degree for the purpose of considering suitability for additional benefits. The petitioner was promoted as superviser in the same school in 1961 and thereafter from June 1968 he was working as Principal till his reversion by a resolution of the managing committee of the Institute dated October 28, 1973.

3. The petitioner challenged the said resolution of reversion in a suit being regular Civil Suit No. 755 of 1973. The said suit was dismissed. The petitioner challenged the said decree of dismissal in Civil Appeal No. 107 of 1979. The appellate court allowed the appeal on reversing the decree of the trial court holding inter alia that the order of reversion was illegal and bad and the petitioner was entitled to have all the benefits and emoluments as principal of the said institution. The opposite party 1 preferred a Second Appeal No. 162 of 1981 in the High Court of Judicature at Bombay which is pending for hearing.

4. During the pendency of the said appeal the opposite party 1 commenced a departmental enquiry against the petitioner under the provisions of clause 77.3 of the Secondary School Code. A notice to show cause was issued to the petitioner wherefrom it would appear that the said proceeding mainly

related to mistakes in accounting in matters pertaining to the society and not relating to the school. The Enquiry Committee on April 7, 1975 recommended the termination of the petitioner's services. Against that recommendation the petitioner filed an appeal to the Deputy Director of Education, Nasik, the respondent 4. Respondent 4 by his order dated December 27, 1975 was of the opinion that the order terminating service of the petitioner was disproportionate to the findings recorded by the Enquiry Committee and directed that the petitioner's service should not be terminated till the civil court would decide the suit. This order of respondent 4 was challenged by the management in an appeal filed to the Director of Education. Though it was submitted that the said appeal was not maintainable under the said Secondary School Code, the Joint Director of Education however after hearing allowed the said appeal by his order dated September 6, 1979 holding that all the charges levelled against the petitioner were of account matters. He further held that the management was equally responsible inasmuch as it left financial matters pertaining to the management of the society to the Headmaster and his clerks. Since it was not the duty of the Headmaster he could not be held responsible for the management of accounts in the capacity of Headmaster. Some of the charges pertaining to the duties as Headmaster had been fully proved and some partly against the petitioner. To be guilty under a single charge pertaining to financial matters is very serious. The Joint Director, therefore, held that the recommendations made by the Enquiry Committee regarding the termination of the service of the petitioner had to be upheld.

5. The petitioner, thereafter, challenged the impugned order in Writ Petition No. 1837 of 1980 before the High Court of Judicature at Bombay. On August 12, 1980 the writ petition was rejected by merely recording the order, "rejected". No reasons whatsoever were recorded which impelled the court to reject the petition.

6. The petitioner, thereafter, brought an action being Civil Suit No. 199 of 1981 in the Court of Civil Judge, Senior Division, Nasik, which is pending for hearing.

7. During the pendency of these proceedings the management again commenced an enquiry under the provisions of clause 77.3 of the Secondary Schools Code. This enquiry was completed without any compliance of the principles of natural justice inasmuch as the petitioner was not served with the charge-sheet by the Enquiry Committee nor was his nominee one Mr R.G. Kunte, a teacher, was allowed to participate in the proceedings of the Enquiry Committee. It was also alleged that out of 75 documents which the petitioner demanded for inspection of only 25 documents were given inspection and the Enquiry Committee merely supplied him its findings without giving copy of summary of the proceedings of the Enquiry Committee. The findings recorded by the Enquiry Committee were received by the petitioner on April 26, 1979 recommending termination of his service from the post of Assistant Teacher. The management also, sent its order terminating the petitioner's service and this was received by him on April 26, 1979. It was submitted that the entire procedure adopted by the Enquiry Committee was in violation of clause 77.3 of Secondary Schools Code and in fact the enquiry was ex parte. Petitioner prayed for setting aside the order of the Enquiry committee and for allowing the appeal.

8. The Deputy Director of Education, Nasik without giving any hearing to the petitioner sent a letter dated February 12, 1980 informing the petitioner that under instruction from the Director of Education the decision of termination of service on the basis of the first enquiry held by the management of the Institute against him being upheld by the Director of Education it was not necessary to entertain his appeal against the decision of the enquiry subsequently held. The appeal was, therefore, filed. Respondent 4, the Deputy Director of Education, thus did not at all consider and decide the appeal after hearing the parties including the petitioner.

9. The petitioner then made a representation to the government by letter dated April 8, 1981 to decide the appeal in accordance with law. The Government by letter dated April 24, 1981 informed the petitioner that his appeal and his letter with the enclosures had been forwarded to the School Tribunal for hearing of the appeal and deciding it. The School Tribunal dismissed the said appeal without giving any decisions on merits.

10. Against the order of the School Tribunal the petitioner filed a Writ Petition No. 4063 of 1984 before the High Court, Bombay. This writ petition was rejected by recording the following order :

> Heard. In view of the earlier rejection of writ petition as well as the application to file appeal to Supreme Court, this writ petition is also rejected.

11. Aggrieved by the said judgment the petitioner filed the instant petition for special leave to appeal in this Court.

12. It was pleaded in the special leave petition that the third enquiry proceeding was commenced by the management under the provisions of clause 77.3 of the Secondary School Code. During the pendency of the aforesaid proceedings it was further pleaded that the Enquiry Committee while proceeding with the enquiry arbitrarily violated the principles of natural justice as well as the provisions of clause 77.3 of the said Code. The Headmaster who was biased against the petitioner was appointed as one of the members of the Enquiry Committee and he did not permit the petitioner's nominee to be present in the enquiry which was held ex parte. The petitioner was asked by the opposite party 1, the New Education Institute, by its letter dated January 15, 1979 to nominate his representative. The petitioner by his letter dated January 29, 1979 enquired of the management whether his nominee should be a Headmaster or an Assistant Teacher or a member of the Governing Council as the charges related to his actions as Headmaster as well as Assistant Teacher. No reply was received by the petitioner to this letter; on the other hand an intimation was received by him on February 28, 1979 about the formation of the Enquiry Committee. Immediately, he nominated Mr R.G. Kunte as his nominee in the Enquiry Committee. The Enquiry Committee did not permit Mr R.G. Kunte to be associated with the enquiry and it did neither send any charge-sheet to the petitioner nor did it supply him the proceedings of the Enquiry Committee. It merely communicated to the petitioner its findings recorded on April 25, 1979 and the same was received by the petitioner on April 26, 1979 whereby the service of the petitioner as Assistant Teacher was terminated. The appeal filed by the petitioner against the said order to the respondent 4 Deputy Director of Education, Nasik was also not heard and decided after giving hearing to the petitioner. But respondent 4 merely communicated by his letter dated February 12, 1980 to the petitioner that as the decision of termination by the management on the basis of the first enquiry had been upheld, so the appeal was filed.

13. It was urged on behalf of the petitioner that the representation made by him to the government was sent to the School's Tribunal with a direction to hear the appeal of the petitioner. The School's Tribunal dismissed the appeal without at all considering and determining the relevant questions involved in the appeal by simply holding that since the writ petition against the earlier order of termination of service of the petitioner was rejected by the High Court, the petitioner had no right to prefer any appeal to this Tribunal for agitating the same question though the appeal was filed against the subsequent order of termination made by the managing committee of the institution. It was also urged on behalf of the petitioner that the Enquiry Committee was biased against the petitioner and one of the nominees in the Enquiry Committee was the Headmaster of the Institute who was the original complainant against the petitioner and therefore he was nominated by management to act as

a judge of his own cause. It was also submitted that the High Court of Bombay did not at all consider and decide both the writ petitions i.e. the Writ Petition No. 1837 of 1980 and Writ Petition No. 4063 of 1984 on merits which were dismissed by recording the laconic order "rejected". No speaking order was made assigning any reason whatsoever for rejecting the aforesaid two writ petitions which involved substantial questions of law and facts.

14. It is cardinal principle of rule of law which governs our policy that the court including Writ Court is required to record reasons while disposing of a writ petition in order to enable the litigants more particularly the aggrieved party to know the reasons which weighed with the minds of the Court in determining the questions of facts and law raised in the writ petition or in the action brought. This is imperative for the fair and equitable administration of justice. More so when there is a statutory provision for appeal to the higher court in the hierarchy of courts in order to enable the superior court or the appellate court to know or to be apprised of the reasons which impelled the court to pass the order in question. This recording of reasons in deciding cases or applications affecting rights of parties is also a mandatory requirement to be fulfilled in consonance with the principles of natural justice. It is no answer at all to this legal position that for the purpose of expeditious disposal of cases a laconic order like 'dismissed' or 'rejected' will be made without passing a reasoned order or a speaking order. It is not, however, necessary that the order disposing of a writ petition or of a cause must be a lengthy one recording in detail all the reasons that played in the mind of the court in coming to the decision. What is imperative is that the order must in a nutshell record the relevant reasons which were taken into consideration by the court in coming to its final conclusions and in disposing of the petition or the cause by making the order, thereby enabling both the parties seeking justice as well as the superior court where an appeal lies to know the mind of the court as well as the reasons for its finding on questions of law and facts in deciding the said petition or cause. In other words fair play and justice demands that justice must not only be done but must seem to have been done.

15. It is pertinent to refer in this connection to some of the decisions rendered by this Court. In M/s Mahabir Prasad Santosh Kumar v. State of U.P. [AIR 1970 SC 1302, 1304 : (1970) 1 SCC 764, 768 : (1971) 1 SCR 201], it has been observed as follows : (SCC p. 768, para 7)

Opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him, it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by most cogent reasons that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons, the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.

16. This decision was rendered in connection with the cancellation of the licence of a wholesale

distributor in sugar under U.P. Sugar Dealer's Licensing Order, 1962, by the District Magistrate and the rejection of the appeal by the State Government without recording any reasons.

17. The above decision has been relied upon in the case of Madhya Pradesh Industries Ltd. v. Union of India [(1966) 1 SCR 466 : AIR 1966 SC 671] where it has been observed that the practice of the executive authority dismissing statutory appeals against order which seriously prejudice the rights of the aggrieved party without giving reasons is a negation of rule of law. Similar observations have been made in the case of Mahabir Jute Mills v. Shibban Lal Saxena [AIR 1975 SC 2057, 2060 : (1975) 2 SCC 818 : 1975 SCC (L&S) 460 : (1976) 1 SCR 168] and also reiterated in Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India [AIR 1976 SC 1785 : (1976) 2 SCC 981] and Bachan Singh v. State of Punjab [AIR 1980 SC 1355, 1358 : (1980) 2 SCC 397, 400 (paras 18 and & 19)], and it was observed that where an authority made an order in exercise of a quasi-judicial function it must record its reasons in support of the order it made. Similar view was expressed by this Court in the case of Rangnath v. Daulatrao [(1975) 1 SCC 686, 690 (para 7)]. Every quasi-judicial order must be supported by reasons. This well settled principle will undoubtedly apply to orders made by a court in disposing of writ applications.

18. In the premises aforesaid the appeal is allowed and the judgment and order passed on October 8, 1984 in Writ Petition No. 4063 of 1984 is hereby set aside. The court below is directed to dispose of the said writ petition in accordance with law after giving hearing to the parties and by passing a speaking order as expeditiously as possible preferably within a period of four months from the date of receipt of the records by the court below. Let the records be sent to the court below forthwith. There will, however, be no order as to costs.

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