GUJARAT HIGH COURT

Ramjibhai Ukabhai Parmar

Vs.

Manilal Purushottam Solanki

Special Civil Appln. No. 150 of 1960

(Desai, C.J. and Miabhoy, J.)

20.07.1960

JUDGMENT

Miabhoy J.

1. The petitioner, Ramjibhai Ukabhai Parmar, has obtained a rule calling upon the respondent No. 2 to show cause why a writ of certiorari should not issue to remove into this court an order made by it allowing an appeal preferred by respondent No. 1 on the ground that it had violated a fundamental principle of natural justice. Respondent no. 1, Manilal Purshottam Solanki, is a Councillor of the Baroda Borough Municipality, (hereafter called the Municipality). Petitioner is a resident of Baroda and claims to be a voter in the ward from which respondent no. 1 has been elected as a councillor. Petitioner's case was that respondent no. 1 had incurred a disqualification to be a member of the Municipality under Section 12, sub-section (2), clause (b) of the Bombay Municipal Boroughs Act, 1925, (hereafter called the 'Act') and had thus become disabled from continuing as a councillor of the Municipality. Section 12, sub-section (2) clause (b) enacts inter alia, that no person who has directly or indirectly, by himself or his partner, any share or any interest in any employment with a Municipality shall be a councillor of such Municipality. Section 28, sub-section (2) of the Act mentions the authority who is competent to decide whether disqualification has been incurred by a Municipal councillor or not and also prescribed the procedure which is to be followed in an enquiry instituted for the purpose. The Collector has been given the power to decide such a question and sub-section (2) states that the Collector may give his decision either on an application made to him by any person or on his own motion. The case of the petitioner was that though respondent no. 1 had given an ostensible divorce to one Bai Harkor, in fact, Bai Harkor was still his wife. It is an admitted fact that Bai Harkor was employed by the Municipality as a 'Safai Sevika' in Babajipur Ward of the Municipality. Petitioner alleged that Bai Harkor and respondent no. 1 resided and messed together and that the income which Bai Harkor derived by way of salary from the Municipality was the sole source of maintenance of

respondent no. 1 and his family. Petitioner also alleged that Bai Harkor had borrowed certain loans from an institution which was run by the Municipality and that one of the loans was taken by respondent no.1 for reconstructing and repairing a certain house belonging to him. Petitioner also alleged that respondent no. 1 had taken part in procuring the loans for Bai Harkor and that some of the loans were granted in contravention of the relevant rules of the institution run by the Municipality. Acting on these allegations, the Collector of Baroda decided to issue a notice against respondent no.1 to show cause why he should not be disqualified from acting as a Municipal councillor and why a declaration should not be made that a vacancy had arisen. Respondent no. 1 appeared before the Collector and contested the petition. He denied all the important allegations made by petitioner in his application to the Collector. The Collector held an enquiry and though he found some of the important allegations not proved, he came to the conclusion on basis of some facts which he held to have been proved, that respondent no.l was interested in the employment of Bai Harkor by the Municipality. The Collector held that the petitioner had incurred the disqualification mentioned in Section 12, sub-section (2), clause (b), and, therefore, was disabled from acting as a Municipal councilor under Section 28, sub-section (2) of the Act. On these findings, he declared that the seat of respondent no. 1 had become vacant and that respondent No.1 was disabled from sitting as a member of the Municipality. Aggrieved by this order, respondent no. 1 preferred an appeal to the then State of Bombay, which figures as respondent no. 2 in this petition. A copy of the memo of appeal was not on the record of the present proceedings. Such a copy was produced by respondent no. 1 at the time of the hearing and that copy shows that the petitioner was joined in the memo of appeal as one of the respondents along with the Collector of Baroda District. The respondent no. 2, however, did not issue any notice to petitioner, nor did it take any step to hear petitioner or anyone else before deciding the appeal. By its order, dated 5-11-1959, respondent No. 2 allowed the appeal and set aside the order of the Collector of Baroda. The present writ petition is directed against this order of respondent No. 2.

2. The main attack of petitioner against the impugned order is that respondent No. 2 had violated a fundamental principle of natural justice in making the order. The grounds on which the order is challenged are two. The second ground is a corollary to the first. It is urged that it was the duty of respondent No. 2 to issue a notice of appeal to the petitioner before deciding the appeal and that by its failure to do so, the petitioner had been deprived of an opportunity of meeting the case which respondent No. 1 had made out in his memo of appeal. It was urged that therefore respondent No. 2 had decided the appeal without hearing the petitioner on the merits.

3. It is not disputed that an appeal lay to the respondent No. 2 from the decision arrived at by the Collector under sub-section (2) of Section 28, already referred to above. In order to understand the contentions of the parties urged in this petition, it is necessary to reproduce sub-section (2) of Section 28 :

> "In every case, the authority competent to decide whether a vacancy has arisen shall be

the Collector. The Collector may give his decision either on an application made to him by any person or on his own motion. Until the Collector decides that the vacancy has arisen, the councilor shall not be disabled under sub-section (1) from continuing to be a councilor. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government and the orders passed by the State Government in such appeal shall be final :
Provided that no order shall be passed under this sub-section by the Collector against any councilor without giving him a reasonable opportunity of being heard".

It is conceded by the learned Assistant Government Pleader and by Mr. Barot, the learned Advocate for respondent no. 1, that the functions which the State Government has to perform in an appeal under sub-section (2) of Section 28 are quasi-judicial functions. The contention of Mr. Patel, the learned Advocate for the petitioner, is that this being so, the State Government was bound to give a notice of appeal to petitioner and give him a hearing before upsetting the order of the Collector. On the other hand, the learned assistant Government pleader contended that though a quasi-judicial officer is bound to give an opportunity to a person who is likely to be aggrieved by his decision to be heard, that rule does not apply at every stage of a quasi-judicial proceeding. The contention was that this rule applies only at the first stage of any quasi-judicial proceeding and that it did not apply at the further stages of either an appeal or a revision. Secondly, he contended that even if the rule applied to an appeal, the rule was applicable only to an appellant and the advantage of that rule cannot be taken by a respondent. It was contended that as petitioner was in the position of respondent in the appeal, the Government was not bound to give an opportunity to the petitioner of being heard. Mr. Barot raised a further contention. He urged that though petitioner was named as a respondent in the memo of appeal, in fact, he was not in the position of respondent and that he was not necessary party at all. He urged that the matter was between respondent no.1 and respondent no. 2; that the proceedings under sub-section (2) of Section 28 are not proceedings inter partes; that those proceedings are initiated before the Collector not to vindicate any private or individual right, but to ensure the purity of Municipal administration and that if any order happens to be passed in such proceedings, the ordinary citizen, even though he may be a voter is not entitled to be heard.

4. It is well settled that it is the duty of a quasi-judicial officer to act without any bias in the discharge of his duties and that he must act in a fair and proper manner when dealing with any matter which he is called upon by law to decide in a quasi-judicial manner. In other words, it is the duty of the quasi-judicial officer to act judicially. This duty has been interpreted to be one which requires the quasi-judicial officer to give each of the parties to a dispute an opportunity of adequately presenting his case. Viscount Haldane has described this duty in *Local Govt. Board v. Arlidge*[1], at p. 132, as a duty which requires the officer concerned to decide the case "in a proper spirit and with the sense of responsibility of a Tribunal whose duty it is to mete out justice". This well settled rule of English law is based upon a well-known maxim audi alterem partem which, in some text books, has been loosely translated as meaning that no person shall be condemned

unheard. Broom in his well known work on 'Legal Maxims' has described this rule as one which requires "that no one shall be condemned, punished or deprived of his property in any judicial proceeding unless he has had an opportunity of being heard". As already stated, these well-known principles are not challenged either by the learned Assistant Government Pleader or by Mr. Barot. It is equally well settled that though the courts act on this fundamental principle of natural justice when scrutinizing the decisions of quasi-judicial officers, that rule is subject to a provision to the contrary being enacted by the Legislature. It is open to the Legislature in any particular case to prescribe that the

[1]1915 AC 120

aforesaid rule of natural justice may not be followed in a particular case or kinds of cases and if the Legislature so enacts, the Court, whatever may be its own personal view in the matter, has got to respect a direction of the Legislature. This is also a well-known rule and is not challenged by Mr. Patel on behalf of petitioner. However, before it can be held that the Legislature has prescribed a rule to the contrary, it is necessary that the rule must be explicit or must follow by a necessary implication. In the absence of any such explicit or implied rule the presumption shall always be that the Legislature intended the quasi-judicial Tribunals to follow the rule of natural justice. Therefore, if any person alleges that the rule of natural justice was not intended to be followed by the Legislature, the burden is on that person to prove that the Legislature so intended. The contention of learned Assistant Government pleader and Mr. Barot was that, though this rule had not been abrogated by the Legislature in express terms, the same was abrogated by necessary implication by the Legislature enacting the proviso reproduced above so far as the appeal stage of proceedings under sub-section (2) of Section 28 was concerned. The argument of the learned Advocates ran as follows. It was contended that the Legislature had expressly enacted in the proviso that an order shall not be passed by the Collector against any councilor without giving the councilor a reasonable opportunity of being heard. It was contended that the express enactment of the proviso by the Legislature in respect of the proceedings before the Collector and the absence of any similar provision in respect of any appeal before the State Government indicated that the Legislature did not intend that the State Government should give an opportunity of hearing to either the appellant or the respondent before it. We cannot accept this argument. The fact that the Legislature has enacted the proviso as aforesaid does not necessarily indicate that the Legislature wanted to abrogate the rule of natural justice. As we have already mentioned, the presumption is that the Legislature intended to respect the rule of natural justice and if the contention is that the rule was intended to be abrogated, then the provision must be either express or necessarily implied. If the Legislature wanted to make such a radical change as is contended for, it is hardly probable that the Legislature would have done this by enacting a proviso and not by using appropriate language that no person except the councilor was to be given an opportunity of being heard. It is not improbable that the Legislature enacted the proviso for a purpose different from the one for which it is contended by the learned Assistant Government pleader and Mr. Barot. The sub-section (2) confers jurisdiction upon the Collector to start these proceedings not only on a motion by any person but also on his own motion. The proviso may well have been introduced to warn the Collectors that even though they have powers

to institute proceedings suo motu, they shall not pass orders therein without giving a reasonable opportunity of being heard to the councilor concerned. It is not improbable that the Legislature might have done this out of caution and may not have thought it necessary to give a similar direction to the State Government presuming that the State Government is not likely to commit a breach of this fundamental principle of natural justice. Moreover, as we shall presently point out, there is a clear distinction between an opportunity of stating one's own case and an opportunity of personal hearing. Though it is not necessary for us to decide that point in the present proceeding, it is not improbable that the Legislature introduced the proviso with a view to make it clear that the Municipal councilor was to have a right of personal hearing before any adverse order could be passed against him under sub-section (2). There is one important consideration which should lead us to negative this contention of the respondents. It the respondents were right in their contention, it would mean that if an appeal is preferred to the State Government by the opponent of a Municipal councilor, then, the State Government can pass an order adverse to the councilor merely on the basis of the memo of appeal preferred by the opponent of the Municipal councilor even if no opportunity were granted to the councilor to meet the case made out by the opponent of the councilor in appeal proceedings. Before any such radical conclusion can be drawn from the proviso, we would like to have strong and cogent reason for reaching such a conclusion and except that the Legislature had thought it fit to introduce a proviso which, as we have already pointed out, may have been done for a variety of reasons, no convincing reason has been adduced by the learned Advocates for the respondents for holding that the rule of natural justice was intended to be abrogated.

5. Therefore, in our judgment, there is nothing in sub-section (2) of section 28 which justifies the submission that the Legislature intended that the rule of natural justice should be abrogated except in the case of a councilor in proceedings before the Collector.
6. The next contention which requires to be examined is that the rule of natural justice does not apply at the stage of appeal proceedings. This question arose for decision in *Board of Education v. Rice*[2], Lord Loreburn in delivering the judgment laid down that,

> "in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything".

These observations of Lord Loreburn were approved of by Viscount Haldane L. C. in 1915 AC 120, already cited above, in another connection. In the latter case, the main point for determination was, whether an appellant was or was not entitled as of right as a condition precedent to the dismissal of his appeal to be heard before the deciding officer. Whilst negativing this contention, the House of Lords definitely decided that, though this was so, it was the duty of the deciding officer to listen fairly to both sides. It was stated that whilst there was no duty on the deciding officer to give a personal hearing to the party concerned, the deciding officer was under an obligation to give a fair opportunity those who were parties in a controversy to correct and

contradict any statement prejudicial to their view. Thus, the English authorities have made a clear distinction between an opportunity to state one's case so as to be able to correct or contradict any relevant statement prejudicial to one's view and an opportunity of being given a personal hearing whilst the House of Lords negatived the latter right it definitely laid down that the duty of the deciding officer to give a fair opportunity to both the parties to state its case, remained. The same question was considered by the Supreme Court in *Shivji Nathubhai v. Union of India*[3], The principal question which arose for determination of the Supreme Court was whether the Central Government to which a review application was preferred under rule 52 of the Mineral Concession Rules, 1949, was a quasi judicial body or an administrative body. After examining the statutory rules, the Supreme Court came to the conclusion that the Central Government was a judicial Tribunal. In that case, a review application has been granted by the Central Government without giving notice to the appellant. The State Government had passed an order for grant of a mining lease. After holding that the Central Government was a quasi judicial tribunal, the Supreme Court posed the question which it had to decide and then discussed as to how such cases are to be approached when a quasi judicial body is called upon to decide a proceedings even at a

[2]1911 AC 179

[3] AIR 1960 SC 606

later stage.

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> "The next question is whether there is anything in the Rules which negatives the duty to act judicially by the reviewing authority. Mr. Pathak urges that R. 54 gives full power to the Central Government to act as it may deem 'just and proper' and that it is not bound even to call for the relevant records and other information from the State Government before deciding an application for review. That is undoubtedly so. But that in our opinion does not show that the statutory Rules negative the duty to act judicially. What the Rules require is that the Central Government should act justly and properly; and that is what an authority which is required to act judicially must do."

7. The learned Assistant Government Pleader, however, strongly relied upon the case reported in *F. N. Roy v. Collector of Customs, Calcutta*[3], In that case, the petitioner had preferred an appeal to the Central Board of Revenue from an order of the Collector of Customs confiscating certain goods and imposing a penalty on the petitioner, and the Central Board of Revenue dismissed the appeal without giving a personal hearing to the petitioner. The contention which was raised on behalf of the petitioner was that, thereby, the Central Board of Revenue had violated the principle of natural justice. This was negatived by their Lordships of the Supreme Court and the passage which is relied upon by the learned Assistant Government pleader is at page 652. Their Lordships observed :

> "It was then stated that the petitioner had not been given personal hearing of the appeal that he preferred to the Central Board of Revenue and the application in revision to the

> Government. But there is no rule of natural justice that at every stage a person is entitled to a personal hearing."

The learned Assistant Government Pleader very strenuously contended that this case was an authority for the proposition that an appellant was not entitled to an opportunity of being heard in the same manner as an original petitioner was entitled to. We cannot agree. The contention which their Lordships of the Supreme Court were examining in this case was whether an appellant had or had not a fight of personal hearing. In this case, it is quite clear that the appellant had presented an appeal and the Central Board of Revenue had considered the memo of appeal before disposing of the appeal. Therefore, in this case, clearly an opportunity was granted to the petitioner to state his case and the only question which their Lordships had to consider was whether the petitioner had a further right of insisting upon a personal hearing being granted to him before the disposal of the appeal. In our view, therefore, this decision is not an authority for the proposition that a quasi judicial appellate officer is not bound to give an opportunity to the parties to state their case and that he can dispose of the matter without even issuing a notice to the person who was to be affected by the order of the appellate tribunal. In our judgment, though a quasi judicial officer acting in his appellate jurisdiction is not bound to give a personal hearing to the appellant, he is bound to give an opportunity to the appellant to state his case. This duty arises because, as a quasi judicial officer, the appellate authority is bound to act fairly and to give an opportunity to each of the parties to correct any prejudicial statement which may have been made by the lower authority against it.

[3] AIR 1957 SC 648

8. The second contention which requires to be examined is whether this rule applies to the case of respondent. We do not see any distinction in principle between the case of an appellant and a respondent in this matter. The learned Assistant Government Pleader relied upon the case of *New Prakash Transport Co. Ltd. v. New Suwarna Transport Co. Ltd*[4]*.,* In this case, the right of a respondent to be heard was sustained on the ground that the relevant rule which required notice to be given 'to any other person interested in the appeal' conferred a right upon the respondent to receive notice of appeal. It was contended that therefore, whilst an appellant may have a right of stating his case, a respondent had no such inherent right unless the statute or the relevant rule conferred such a right upon the respondent. We do not find anything in the judgment of their Lordships which supports this broad contention. In that case, the relevant rule conferred a right to receive notice. Therefore their Lordships naturally rested their judgment upon that fact, but their Lordships were not called upon to decide, nor did they decide that the respondent had no such right. On principle, it appears to be difficult to agree with the submission that the case of a respondent stands on a different footing from that of an appellant. In our judgment, a respondent has at least as much right to be heard and to state his own case and to meet the case made out in the memo of appeal as the appellant has a right of stating his case against the impugned order of the lower authority. In fact, in our judgment, if the appellate authority were to decide the appeal without giving a notice to the respondent then the appellate authority would be violating another and equally important limit of the said principle which states that no adverse order shall be

passed against any person without that person being given an opportunity of being heard. To permit the appellate authority to do so would be to deny a fair opportunity in the words of Viscount Haldane L.C. in Arlidge's case, 1915 AC 120, "for correcting or contradicting any relevant statement prejudicial to his view". In the present case, the petitioner had obtained an order against respondent No. 1. If the State Government were to decide the appeal only on the basis of the memo of appeal filed by the respondent No. 1 without issuing a notice to the petitioner, it is quite clear that the latter would be deprived of an opportunity of correcting any error or contradicting any statement which may have been made in the memo of appeal by respondent no.1, and before this court could be asked to subscribe to a view so unjust as this, this Court would like to have some convincing reason or to know the principle or some binding authority on which the submission is supported. The learned Advocates for the respondents were unable to give any cogent or convincing reason or state any principle or cite any authority in support of this view.

9. The next question for consideration which is urged by Mr. Barot is, whether the petitioner was or was not entitled to notice of the appeal proceedings. As already mentioned, petitioner was cited as a respondent by respondent no.l in the memo of appeal. But if, in fact, petitioner was not entitled to any notice, that would not make any difference and the question has still to be considered on its merits whether petitioner was in such a position vis-a-vis the present proceedings held by the Collector that he was entitled to receive a notice of the appeal proceedings. It may be conceded that if the petitioner was a total stranger, he would not be entitled to receive any notice. The contention of Mr. Barot was that the true position of the petitioner was such. We are unable to accept this broad contention. It was urged that, under sub-section (2) of Section 28, any person was entitled to move the Collector and that that expression does not exclude from its purview a non-voter or a resident in the Municipality. Assuming that this is so, in our judgment, that does not make any difference. If once a person makes a

[4] AIR 1957 SC 232

petition under sub-section (2) and notice is issued to the Municipal councillor and an issue is joined between that person and the Municipal councillor as a result of which proceedings are started by the Collector, then, it is quite clear that a lis or a dispute arises between the parties, and if, in that dispute, any order happens to be passed, prima facie, it appears that the person who had taken the trouble of making the allegations and of adducing evidence and spent his time and energy in proving these allegations, cannot be regarded as a stranger to the proceedings. But the matter does not rest here only. It is conceded by Mr. Barot that sub-section (2) of Section 28 itself gives a right of appeal to a person aggrieved by the decision of the Collector and he concedes that that expression will include the petitioner. He concedes that if an order favourable to the Municipal councillor had been made in the present proceedings by the Collector, the petitioner would have a right of preferring an appeal to the State Government In our judgment, this position makes all the difference in the position of the present petitioner. That provision shows that the petitioner is not a stranger, but that he is a person who is entitled to carry the matter to the State Government and to state his case to that Government for its decision on the merits. Under the

circumstances, in our opinion, though no right of petitioner or petitioner's liberty is involved in the present proceedings, petitioner, who is a voter, having made certain allegations and having been conferred by the statute a right of appeal, is a person, between whom and respondent no. 1, a lis had been created, and as held by the Supreme Court in AIR 1960 Supreme Court 606, when a lis is created between one party and another, prima facie the petitioner has acquired a right of representing his own case and meeting the case made out by the respondent no. 1 in the appeal and inasmuch as this was not done, the proceedings which resulted in the passing of the impugned appellate order were vitiated on account of the fact that notice was not given to the petitioner of the appeal proceedings.

10. For the aforesaid reasons, the present petition deserves to be granted. However, the petitioner has prayed not only for quashing the impugned appellate order, but also for restoring the order of the Collector. It is quite obvious that this cannot be done. The correctness or otherwise of the Collector's order must be determined by the State Government and it is not the function of this Court to do this. Consequently, the order that will be passed will be that the State Government's impugned order will be quashed and the State Government will be directed to proceed further with the appeal of respondent no. 1 from the stage at which it was left after the presentation of the memo of appeal by issuing a notice of the appeal to the petitioner. Rule made absolute with costs to the extent mentioned in this judgment.
Application allowed.