Karuppu Udayar Vs. State of Madras and ors.

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Court : Chennai

Decided On : Apr-15-1964

Reported in : AIR1965Mad310; [1965(11)FLR318]; (1966)IILLJ905Mad

Judge : S. Ramachandra Iyer, C.J. and ;Venkatadri, J.

Acts : Bar Councils Act; Magistrates' Courts Act, 1952 - Sections 98(6); Code of Civil Procedure (CPC), 1908

Appeal No. : Writ Appeal No. 28 of 1963

Appellant : Karuppu Udayar

Respondent : State of Madras and ors.

Judgement :

S. Ramachandra Iyer, C.J.

(1) This is an appeal against the judgment of Veeraswami J. rejecting the application filed by the appellant for the issue of a writ of certiorari to quash the order of the Revenue Divisional Officer, Salem, dismissing him from service. The appellant was a permanent karnam of Kamakkapalayam village in Athur Taluk in Salem District. On receipt of complaints against him, certain charges were framed by the Revenue divisional Officer, Namakkal, and after an enquiry he was dismissed from service. That order formed the subject matter of W. P. 8 of 1954 in this court. It was found that inasmuch as a second opportunity was not given to the appellant, the order of dismissal was illegal. There upon, the Revenue Divisional Officer reinstated the appellant and recommenced the inquiry in regard to the original charges. Four witnesses were examined in support of the charges. Shortly thereafter, Athur Taluk came under the jurisdiction of the Revenue Divisional Officer Salem. He after having come to a tentative conclusion that the appellant was guilty of the charges, issued on 17-12-1956 a notice calling upon him to show cause why he should not be dismissed from service. The appellant submitted his explanation. Not being satisfied with it, the Revenue Divisional Officer, Salem, passed an order dismissing him from service. This was on 13-1-1957. The appellant took the matter by way of appeal to the Collector and then to the Board of Revenue but without success. A revision petition to the Government was equally futile. He then applied to this Court under art. 226 of the Constitution for quashing the order of dismissal. Veeraswami J. dismissed that application. Hence this appeal.

(2) The only point taken by Mr. V. P. Raman in support of the appeal is that as the Revenue Divisional Officer, Salem who passed the order of dismissal, did not conduct the entire enquiry, he had not the advantage of personally watching the demeanour of

the witnesses whose evidence had been recorded by the Revenue Divisional Officer, Namakkal, and, therefore, the conclusion reached on the basis of such recorded evidence must be held to be vitiated by non-observance of rules of natural justice. This contention proceeds on an assumption which can hardly be accepted as correct. For one thing, it might not always be to the advantage of the person charged that the officer conducting the enquiry should be swayed by the impressions created by the demeanour of witnesses. For example, if the witnesses who gave evidence in support of the charge had created a good impression on the enquiring officer, it would be a matter of disadvantage rather than advantage to the person charged, that his case should be decided on the impressions so gathered. Therefore, if there be a change of the enquiring officer during the trial, it can not be said that it would be in the interests of the person charged that the officer hearing the evidence should deal with the case finally. The question whether the impression gathered from the demeanour of witnesses, will be from the point of view of the person charged, an advantage or disadvantage, depending on the circumstances of each case is one for whom to put forward the appropriate time and ask for a recall of those witnesses.

When, as in the present case, the person charged did not require that the new officer conducting the enquiry should recall the witnesses examined by his predecessor, one can reasonably infer that he thought it would be to his disadvantage if they wee recalled. Allowing the succeeding officer to continue the enquiry from the stage it was left by his predecessor, would mean that the person against whom the enquiry was conducted deliberately took the chance of the enquiry being continued from where it was left culminating in his favour. It should not be open to such a person, after the enquiry is over, to complain that the witnesses must have been examined de novo by the officer. In Manaklal v. Dr. Prem Chand, (S) : [1957]1SCR575 there was an allegation that there was bias in a member of the Tribunal conducting the enquiry against an advocate under the Bar Councils Act. No objection was taken by the advocate to the presence of that member in the Tribunal, even though he was aware of the circumstances giving rise to the allegations about the bias and of his right to challenge the presence of the member in the tribunal. later, however, the constitution of the tribunal was sought to be challenged on the ground of his bias in one of its members. The supreme Court held that, in the circumstances, there was deliberate waiver on the part of the advocate of the objection to the constitution of the tribunal and he could not be later allowed to raise it. That principle will apply with equal force to the present case, where the appellant did not require the Revenue Divisional Officer, Salem, not to continue the enquiry at the stage left by his predecessor but to recall the prosecution witnesses.

(3) Even apart from that, we are of opinion that there can be no infringement of the rules of natural justice for the mere reason that the officer who ultimately decided the case did so on the evidence recorded by his predecessor. Conduct of trial by a succeeding Judge from the stage at which it was left by his predecessor, is recognised by the Code of Civil Procedure. It is not unknown in the trial of criminal cases also. It cannot be other wise in departmental enquiries. In matters like the present, where the administrative enquiry is of a quasi judicial nature, what the person in the position of the appellant would be entitled to is that the enquiry should be conducted with due regard to the rules of natural justice. In Union of India v. T.R. Varma, (S) : (1958)IILLJ259SC the Supreme Court indicated the scope of such rules in their application to departmental enquiries. The following passage in that judgment will be useful (page 885):

'Stating it broadly and without intending it to be exhaustive, it maybe observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that he 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'. There are no rules in the present case which require that the officer ultimately passing the final order, as a result of the departmental enquiry, should have himself examined all the witnesses. The rule of natural justice, to which we have just now made reference does not require that he evidence recorded in one part of the enquiry by one officer cannot be used by his successor who completes the enquiry, so long as such evidence was taken in the presence of the person charged after giving him a fair opportunity to cross-examine those witnesses. It is accepted in the instant case that reasonable opportunity had been given to the appellant at all stages of the enquiry.

(4) Mr. V. P. Raman, however, invited our attention to a passage in H. H. Marshall's book on 'Natural Justice' 1959 Edn. at page 57, wherein it is stated:

'Where an enquiry is commenced by one magistrate and completed by another, the second magistrate cannot commit upon evidence given before the first. The judicial discretion which a magistrate has to exercise in cases brought before him must be based upon the evidence taken before him and it is not competent for him to act upon evidence taken before another magistrate.

The case of Munday v. Munday, 1954 1 WLR 1078 is also of interest. The hearing of an application by a husband to vary an order for the maintenance of his wife which had previously been made against him was spread, owing to adjournments, over three separate days. Three justices were present on the first day, the same three with two additional justices on the second day, and on the third day the first three justices were absent, and the matter was heard by the second two justices and another justice who had not been present previously. It was held that here must be a rehearing before an entirely fresh panel of justices and different clerk, for there had been a failure to comply with the mandatory provisions of S. 98(6) of the Magistrates' Courts Act of 1952'. But it will be plain form the passage extracted above, that here was a statutory requirement in those cases which made it obligatory on the magistrate recording the evidence to give judgment. Rex v. Huntingdon Confirming Authority, 1929 1 KB 698 related to the validity of an order of the Confirming Authority which was made without notice to the parties. The order was held to be a nullity. In Whittle v. Whittle 11939 1 ALL ER 374 there was a maintenance order against the husband in favour of his wife. Summons were taken out by the former to revoke it. One of the members of the Bench did not attend the enquiry for a day when a number of witnesses upon the wife's misconduct were cross-examined and some other witnesses were also examined. Although that evidence was read over the next day, it was held that the procedure adopted was irregular; the finding of the Justices was therefore set aside. But that case related to an appeal form the order revoking the previous maintenance order. The finding of the appellate court was rested on the familiar principle that the value of a finding of fact by the trial judge depended on the peculiar opportunity available to him of watching the demeanour of the witnesses in the box and seeing the way in which the evidence was given. The appellate court said that he conclusion which was reached on a mere reading of the recorded evidence by the trial court would not be such so as would enable the appellate court to place that amount of reliance on the trial court's judgment which it would otherwise have done.

(5) Learned counsel for the appellant placed considerable reliance upon the observations of the Supreme Court in Nageswara Rao v. Andhra Pradesh State Road Transport Corporation, : AIR1959SC308 where it was observed:

'While the Act and the rules framed thereunder impose a duty on the State Government to give a personal hearing, the procedure prescribed by the rules impose a duty on the Secretary to hear and the Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. Therefore, the said proceeding followed in this ease also offends another basic principle of judicial procedure'.

As Veeraswami J. has pointed out, those observations relate to a case, where the Statute and the Rules made thereunder prescribed a particular procedure and that such procedure was contravened in that case. There the law imposed a duty on the authority to give a personal hearing; it was held that it would not be open to that authority to delegate the enquiry to some other authority. This principle is different from the one with which we are now concerned. Here is an administrative enquiry on certain charges made against a subordinate Part of the evidence was recorded in his presence by one officer and the rest of it was recorded by another officer. Both sets of evidence were recorded in the presence of the person charged. Every opportunity was given to him to cross examine the witnesses. Nothing more was required to be done under the rules or under any principle of natural justice. The mere fact that the previous officer might have gathered certain impressions would not be available to the second officer, can not by themselves amount to an abrogation of any principle of natural justice. As we pointed out at he beginning, we are by no means sure that the appellant suffered any disadvantage by reason of the change in the personnel of the enquiring officer. If there had been such a disadvantage, he would have certainly apprised the succeeding officer of the same and insisted upon recalling the witnesses already examined. This he never did.

(6) Therefore, there is no substance in this appeal which will be dismissed with costs.

(7) Appeal dismissed.