K. Sundara Rajan Vs. Deputy Inspector-general of Police Central Range and Two ors.

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Court : Chennai

Decided On : Jul-16-1971

Reported in : (1972)2MLJ103

Appellant : K. Sundara Rajan

Respondent : Deputy Inspector-general of Police Central Range and Two ors.

Judgement :

ORDER

K.S. Palaniswamy, J.

1. When the petitioner, Sundara Rajan, was serving as the Officiating Sub-Inspector of Police, Karur, Tiruchirapalli District, the Deputy Superintendent of Police, Karur, framed six charges of receiving illegal gratification from certain persons, conducted an enquiry, submitted his report to the Deputy Inspector-General of Police, Tiruchirapalli, holding that three out of the six charges were proved. After getting the explanation of the petitioner, the punishing authority found that only two charges were proved, and passed an order of dismissal of the petitioner with effect from the date on which he was placed under suspension. The appeal preferred against that order to the Inspector-General of Police was dismissed. The revision filed before the State of Madras was also dismissed. This writ petition is filed to quash the said order of dismissal as confirmed in appeal and revision.

2. The petitioner challenges the validity of the order of dismissal on the following grounds:

(i) The Deputy Superintendent of Police, who conducted the enquiry, was highly prejudiced against the petitioner. Even before the enquiry was started, the petitioner made repeated representations to the Superintendent of Police that the enquiry should not be conducted by that enquiry officer on account of his prejudice. But his request was turned down, with the result the enquiry, which was conducted by such highly prejudiced officer, was vitiated from the beginning ; and

(ii) There was no evidence upon which the finding of guilt could be sustained. The charges were

3. The case of the respondents is that the enquiry was conducted in a proper manner after giving opportunity to the petitioner to cross-examine the witnesses, that the enquiry officer was in no way prejudiced and that there was ample evidence to support the conclusion of the punishing authority.

4. Before adverting to the question whether the enquiry officer was in any way prejudiced against the petitioner, it is necessary to examine the question whether how far such prejudice, even if true, would vitiate the proceedings. It is contended on behalf of the respondents that all that the enquiry officer did was to record the evidence and submit his report with his findings on the charges, that the entire matter was reconsidered by the punishing authority who came to his own independent conclusion with regard to the sustainability of the charges and that, therefore, even if there was any bias on the part of the enquiry officer that would not vitiate the proceedings. The function of the enquiry officer is to conduct the enquiry by recording the evidence that may be let in to prove the charges and also to record the evidence which the charged officer may let in to prove his innocence by way of rebuttal. It is his further duty to record his findings on the charges and submit the papers to the punishing authority. The question is whether, in the performance of his duty, he is expected to keep an open mind about the guilt of the charged' officer and if he had any prejudice against the charged officer, whether such prejudice would affect the ultimate result. The enquiry officer is not a mere evidence recording machine. He has to admit only relevant evidence that may be left in to prove the charges. He is also entitled to and should also decline to record evidence if such evidence is wholly extraneous to the charges. He should give a reasonable opportunity to the charged officer to peruse the records for the purpose of preparing his defence. He should give reasonable opportunity to the charged officer to cross-examine the witnesses. He should also give an opportunity to the charged officer to examine his witnesses. After all these work is over, he is not merely require to forward the entire papers to the punishing authority but he should sift the evidence to find out whether or not the charges have been made out. In substance, his function is that of a Judge dealing with a case. Such an Officer should not be personally interested in the matter. He should be a person having an open mind, a mind which is not biassed against the charged officer R. v. Camborne Justices (1954) 2 All. E.R. 850. He should not have prejudged the issue East India Electric Supply and Traction Co. Ltd. v. S.C. Dutta Gupta 59 C.W.N. 162. He cannot act both as a Judge and as a witness. Bijoy Ch. Chatterjee v. State of West Bengal 58 C.W.N. 955.

5. In Dr. K.S. Rao v. State A.I.R. 1957 A.P. 414, Subba Rao, C.J., as he then was, speaking for the Court and a agreeing with the decision of Sinha, J., in Choudhary v. The Union of India : (1957)ILLJ494Cal , observed at page 417:

Doubtless the Government, i.e., the authority entitled to punish the petitioner in this case can ordinarily delegate the holding of an enquiry to its subordinate officers before taking-final action against him. But it is a fundamental principle of natural justice that the officer selected to make an enquiry should be a person with an open mind and not one who is either biassed against the person against whom action is sought to be taken or on who has prejudged the 'issue'.

Dealing with the question how far bias would vitiate the proceedings, Das, C.J., in The State of Uttar Pradesh v. Mahammed Nooh : [1958]1SCR595 observed:

If it shocks our notions of judicial propriety and fairplay, as indeed it does, it was bound to make a deeper impression on the mind of the respondent as to the unreality and futility of the proceedings conducted in this fashion.

In P. Sreeramulu v. State A.I.R. 1970 A.P. 114, Jaganmohan Reddy, C.J., as he then was, observed at page 116:

It is equally true 8that the entire proceedings beginning from the show cause notice, framing of the charges and the conduct of the enquiry and ending with the report and final show cause notice of punishment must conform to certain well-accepted principles of natural justice, i.e., that the Enquiring Officer must be unbiassed and should not prejudge the case, and that the enquiry also must be fair and impartial by giving full opportunity to the delinquent to plead and establish his defence. It appears that even where it is not alleged that the punishing authority is not biassed or has not in any way violated the principle of natural justice or has not transgressed any of the accepted principles upon which fair and impartial enquiries have to be held, the fact that he acts upon a report of an enquiry conducted by an officer who is biassed or has violated the principles of natural justice or has prejudged the case, would nonetheless vitiate the finding and punishment.

It would follow from the above observations that the fact that the punishing authority considers the report and comes to his own conclusion would not cure the defect attached to the enquiry if the enquiry had been conducted by an officer having bias against the charged officer, for, the punishing authority acts upon the report of the enquiry conducted by such an officer, and the entire proceeding would be vitiated as its foundation is itself vitiated by the bias of the enquiry officer. Therefore, I am unable to accept the contention urged on behalf of the respondents that the bias of the enquiry officer can in no circumstances vitiate the finding of the punishing authority.

6. In this background, it is necessary to examine the contention of the petitioner that the enquiry conducted by the Deputy Superintendent of Police, Karur, was vitiated for the reason that the said officer was prejudiced against him. The entire matter with regard to the enquiry against the petitioner was stated as a result of certain information gathered by the Deputy Superintendent of Police about the petitioner. The enquiry officer made enquiries behind the back of the petitioner and submitted a certain report to his superior officers. He had occasion to inspect the office of the petitioner when he made certain observations about the integrity of the petitioner. All these preceded the departmental enquiry. To find out how the enquiry officer was prejudiced against the petitioner, it is necessary to advert to certain observations made by him either in his inspection minutes or in his reports. The remarks are the following:

I have information that the accused has paid money to the S.I. Probe into the same.

Reputation of the S.I. is very bad. His main work is effecting compromise in cases, and petition enquiry.

Several instances are cropping up against the S.I. for corruption. Full report follows.

Public have no respect for local police on account of the S.I.'s misconduct in the day today work allround.

The Officiating S.I. is unfit to hold charge of a station.

My confidential enquiries about this Officiating S.I. Sundararajan now in Vangal P.S. disclosed that his dealings in cases from petty cases up to the Indian Penal Code offences are shady and highly corrupt.

Further probe is required. There are number of instances for corruption yet to be brought to light.

From the foregoing observations of the enquiry officer, it is abundently clear that he had already come to the conclusion that the petitioner was highly corrupt, and was unfit to be in charge of a police station. It is with this opinion about the petitioner that the enquiry officer started the enquiry. It needs no elaborate argument to hold that any finding given by this officer on the charges framed by him against the petitioner is tainted with bias. Apprehending that he would not have a fair deal, the petitioner made repeated representations to the Superintendent of Police, Tiruchirapalli, praying that the enquiry should not be conducted by the particular Deputy Superintendent of Police on account of his prejudice. He prayed that the enquiry may be conducted by some other officer. Making these representations, the petitioner sent four or five letters to the Superintendent of Police. But all his representations were turned down. The Superintendent of Police directed that the enquiry would be conducted only by the particular Deputy Superintendent of Police, Karur, and that the enquiry would not be transferred to any other officer. Thus, the petitioner had to face the enquiry conducted by the Deputy Superintendent of Police, Karur, who had already formed a very bad opinion about his integrity. No doubt, the enquiry officer found that out of the six charges, three were not proved. But from that it cannot be concluded that he was free from bias while dealing with the other charges which he found having been established. Even with regard to the three charges which he found having been proved, the punishing authority found that only two of those charges were proved.

7. The petitioner's contention from the beginning was that after he took charge at Karur, he refused to yield to the influence of certain local busy-bodies, that these busy-bodies were friends of the Deputy Superintendent of Police and that, therefore, with a view to bring trouble to him, those influential persons influenced the Deputy Superintendent of Police to concoct cases by recording statements from persons as though those persons paid illegal gratification to him. He mentioned the names of same persons as being inimically disposed towards him and having influence with the Deputy Superintendent of Police. It was the same Deputy Superintendent of Police who recorded statements from same persons in the course of investigation before the charges were framed. Therefore, the petitioner wanted an opportunity to cross-examine the Deputy Superintendent of Police with regard to the way in which he collected materials in support of the charges. He specifically adverted to, in one of his communications sent to the punishing authority on 1st September, 1967, that he wanted to cross-examine the Deputy Superintendent of Police with regard to the events that led to the framing of the charges and that the Deputy Superintendent of Police himself had recorded statements from witnesses on the basis of which the charges had been framed. But the petitioner was denied the opportunity of examining the Deputy Superintendent of Police as he happened to be the enquiry officer. No doubt, he did not give the name of the Deputy Superintendent of Police as a witness in the list of defence witnesses. But that does not affect the position, for, in the letters written by him to the higher authorities it was stated that he wanted to cross-examine the enquiry officer with regard to the events preceding the framing of the charges.

8. Having regard to the foregoing circumstances, I am of the view that the enquiry was vitiated in that it was conducted by an officer who was very seriously prejudiced against the petitioner. No doubt, the enquiry officer did not prejudge the particular issues involved in the charges. It is also true that the petitioner did not attribute any

personal animosity as between him and the enquiry officer. But all those facts are not material, for, even before the charges were framed the enquiry officer had come to the definite and unequivocal conclusion that the petitioner Was highly corrupt and was unfit to be in charge of a police station. It is most unlikely that an officer who had already come to such a conclusion would have kept an open mind in analysing the evidence to find out whether the charges were proved or not. It is the report submitted by such an officer that was taken into consideration by the punishing authority. The serious bias of the enquiry officer thus, vitiated the finding of the punishing authority as well as the punishment imposed by him.

9. In view of the foregoing conclusion, it is unnecessary to consider the contention of the petitioner that there was no evidence at all to substantiate the two charges, which were according to the punishing authority, proved. For the sake of completeness, I shall deal with this aspect also. Before dealing with this question, I may refer to the contention urged on behalf of the respondents that this Court, exercising jurisdiction under Article 326 of the Constitution should not weigh the evidence as a Court of Appeal to find out whether the conclusion of the punishing authority is correct or not. The circumstances under which this Court, exercising jurisdiction under Article 226 of the Constitution, can interfere with the finding of Tribunals, have been dealt with by the Supreme Court in Union of India v. R.C. Goel : (1964)ILLJ38SC . The Supreme Court observed:

In dealing with a writ petition filed by public servants who have been dismissed, or otherwise dealt with so as to attract Article 311(2) the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. Although the order of dismissal which may be passed against a Government found guilty of misconduct, can be described as an administrative order, nevertheless, 'he proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is the basis of his dismissal is based on no evidence.

In Stale of Orissa v. Murlidhar Jena A.I.R. 1963 S.C. 404, the Supreme Court has pointed out that this Court in exercise of its Writ jurisdiction can interfere if it is shown that the impugned findings recorded by the. Administrative Tribunal are not supported by any evidence. Guided by these principles, it is necessary to examine whether the findings of the punishing authority that two of the charges were proved against the petitioner are supported by acceptable and legal evidence.

10. Charges Nos. 2 and 6 were held to have been proved by the punishing authority. Charge No. 2 was that the petitioner received an illegal gratification of Rs. 100 from Ramaswami, P.W. 3 in the course of the investigation of a case under Sections 324 and 323, Indian Penal Code, against Thangavehi, P.W. 4 and some others. P.W. 3 is the brother-in-law of P.W. 4. P.W. 3 stated that the petitioner came to his house one day and said that there was a case against P.W. 4 and others and wanted them to come to the police station, and accordingly when he and some others went to the police station, the petitioner called him separately and demanded Rs. 150 and that he paid Rs. 100 immediately and promised to pay the balance later. His further evidence was that subsequently when P.W. 4 and others were produced before the petitioner, the

petitioner arrested only P.W. 4 and another person by name Mariappan and did not arrest the rest and that on the instructions of the petitioner, he moved for bail for P.W. 4 and Mariappan and got P.W. 4 and Mariappan released on bail. He did not say that at the time when he made the alleged payment, anyone else was present. On the other hand, what he wanted to make out was that the petitioner called him separately and demanded Rs. 150 and that at that time he paid Rs. 100. If that version were true, the payments should have been made without anybody else knowing it. After P.W. 3 gave evidence in chief-examination, there was some interval, during which the petitioner went through the deposition recorded by the enquiry officer. At that time, P.W. 3 volunteered to say that the payment was known also to his brother-in-law, P.W. 4. The petitioner objected to such version coming at that stage. But still the enquiry officer recorded What P.W. 3 volunteered. P.W. 4 obviously with a view to fall in line with the after-thought of P.W. 3, said that he was present at the time when the alleged payment was made. That version materially contradicts the version of P.W. 3 that the petitioner called him separately and demanded a sum of Rs. 150 and that at that time the payment was made. If what P.W. 3 said is true, namely, that he was taken separately from the others including P.W. 4 and if P.W. 4 was able to witness the payment, then the five others who were also persent with P.W. 4 should have witnessed the payment. But none of them was called to corroborate P.Ws. 3 and 4. From the Very nature of things, the particular payment appears to be improbable, for, according to P.Ws. 3 and 4, the payment was made even before P.W. 4 was arrested. If the payment of illegal gratification was for the purpose of letting off P.W. 4, one fails to understand why P.Ws. 3 and 4 did not object to the arrest, after making the alleged payment. After arresting, the petitioner handcuffed P.W. 4 and led him to the police station. This circumstance, which is inconsistent with the prosecution case, has been twisted to find the petitioner guilty by the punishing authority by observing:

There was, therefore, no need to resort to handcuffing in a case like this, unless it was done by the delinquent intentionally to put himself in the right with reference to some misconduct of his.

The reasoning is perverse. The case of the petitioner is that because he arrested P.W. 4 and led him to the police station by handcuffing him, P.W. 4, was annoyed and that P.W. 3, his brother-in-law, joined hands with P.W. 4 and that therefore, the case Was foisted on him. The admission that P.W. 4 was handcuffed would go a long way to probablise that contention. Instead of appreciating this aspect from the proper perspective, the punishing authority attributed an uncommon and unnatural intention to the petitioner as if he did that act of hand-cuffing so as to serve as a piece of evidence to protect him with reference to his alleged misconduct. If the evidence of P.W. 4 is liable to be rejected for the reason that the alleged bribe-giver P.W. 3 did not himself come forward with the version at the proper stage that P.W. 4 was present at the time of bribe-giving, then the matter rests only upon the uncorroborated evidence of P.W. 3. On his own showing his evidence is unreliable, with the result there was no evidence upon which any conclusion could be safely based.

11. Charge No. b was that the petitioner demanded and received an illegal gratification of Rs. 500 from Thanappa Gounder, P.W. 7, in connection with the bail of Kalianna Goundan, P.W. 8, brother of P.W. 7. The allegation was that the petitioner refused to release P.W. 8 on bail and suggested that if Rs. 500 was paid to him, he Would recommend for the release of P.W. 8 on bail by the Court and that he also reported no objection when an application for bail was moved on behalf of P.W. 8 through his lawyer. P.W. 7 no doubt spoke about the alleged payment of Rs. 500. But

his evidence is not corroborated by any other witness. He claims to have represented to P.Ws. 8, 9 and 10 that he paid Rs. 500 to the petitioner. Both, the enquiry officer and. the punishing authority failed to give effect to some documents which disprove the charge. When the petitioner Was given notice of the application for bail, he endorsed on the bail application:

I received the notice in this case today. I object releasing the accused on bail and submit that if he is released he may be asked to report before Sub-Magistrate (Judicial), Karur, daily.

Though he made the above endorsement on the notice, he appeared in Court on the day when the petition for bail was taken up. The order of the Sub-Magistrate, Karur, before whom the bail application came up for hearing reads:

The Sub-Inspector of Police, Vengal, who is present today, takes notice. He objected to the release of the accused on bail, submits that the accused is a person of considerable influence and some conditions may be imposed regarding his movement and residence. In order to allay the fear of the police, I feel some conditions may be imposed.

In dealing with this aspect, the punishing authority observed that the petitioner should have merely endorsed that he had taken notice and that he would attend Court or he would have simply recorded that he opposed the bail in case he was unable for some reason to attend Court. The punishing authority further observed:

There was no need to go into further details of the Court being inclined to release the man and if so that he could be released conditionally. These are tell-tale additions.

This is a very unsatisfactory conclusion. The charge was that the petitioner reported no objection for the bail application in Court and that thereupon the accused was released on conditional bail. The documentary evidence referred to above disproves that allegation. Even with regard to the case against P.W. 8, the case of the petitioner is that P.W. 7 got annoyed at the arrest of his brother P.W. 8, by the petitioner and that after arrest P.W. 8 was locked up and that because of these circumstances P.W. 7 deposed falsely against him. P.W. 8 admitted that he was annoyed on account of the arrest and was also annoyed by the fact that he was sent to Court under police escort. The charge against P.W. 8 was one of rape. P.W. 10 is the cousin brother of P.W. 7. P.Ws. 8 and 9 are partners in a business. Thus the evidence of P.W. 7 with regard to the alleged payment, which remained uncorroborated, Was sought to be corroborated and probablised by the evidence of P.Ws. 8, 9 and 10. As already pointed out, the Very basis upon which the charge was framed, namely, that the petitioner reported no objection to the bail application, is destroyed by documentary evidence. This aspect has not been considered by the enquiry officer and the punishing officer in the way in which it should have been properly and reasonably considered. Thus, there was no legal evidence upon which the charge, as framed, can be said to have been established.

12. Though the proof required to sustain a conviction is a criminal case, namely, proof beyond reasonable doubt, should not be insisted upon in a departmental enquiry still the proof should be capable of scrutiny and should stand the test of reasonableness consistent with human conduct and probabilities. Where the finding is totally perverse on an erroneous view of the evidence, ii would be a case for interference by

this Court. Where the evidence relevant for the consideration of the charge is misconstrued and is not given its legal effect then also it would be a case for interference by this Court, for the finding arrived at on such a basis is liable to be characterised as unreasonable and perverse.

13. For the forgeoing reasons, I find that the findings were not only vitiated on account of the fact that the enquiry Was conducted by an officer highly prejudiced against the petitioner but also on account of the fact that the findings are not supported by legal evidence. In the result, the writ petition is allowed and the impugned order is quashed. The petitioner is entitled to his costs.