Kailash Kumar Dangi Vs State of M.P. and Others

Court: Madhya Pradesh High Court

Date of Decision: Aug. 3, 1999

Acts Referred: Constitution of India, 1950 â€" Article 14, 226, 311
Madhya Pradesh Panchayat Raj Adhiniyam, 1993 â€" Section 40, 40(1)

Citation: (2002) ILR (MP) 9 : (2000) 1 MPHT 143

Hon'ble Judges: S.P. Khare, J

Bench: Single Bench

Advocate: C.L. Kotecha, for the Appellant; Ajay Mishra, Dy. A.G., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.P. Khare, J.
This is a petition under Article 226 of the Constitution of India challenging the order dated 26-4-1996 (Annexure P-5) of

the Sub-Divisional Officer, Betul (the Prescribed Authority) by which the petitioner has been removed from the office of Surpanch of Shahpur

Gram Panchayat u/s 40 of the M.P. Panchayat Raj Adhiniyam, 1993 (hereinafter to be referred to as the Act). He has also assailed the appellate

order dated 18-3-1997 passed by the Additional Collector and the revisional order dated 24-11-1997 passed by the Commissioner by which the

impugned order of the S.D.O. has been upheld.

2. The petitioner was Surpanch of Gram Panchayat, Shahpur. He was directly elected to this office in the year 1994. A show cause notice was

issued to him by respondent No. 4 the Sub-Divisional Officer, Betul on 30-10-1995 in which fifteen charges were levelled against him. That is

Annexure P-1. He submitted his reply to the show-cause notice on 10-11-1995 giving his explanation on each charge. He also requested for time

to produce some more documents and adduce oral evidence. That reply is Annexure P-2. He submitted another application on the same date for

permitting him to examine witnesses in support of his defence. On 13-11-1995 he submitted another application to give him hearing on his

application for production of witnesses. No witness was examined by the S.D.O. in support of the charges nor the petitioner was permitted to

examine any witness. By the impugned order dated 26-4-1996 (Annexure P-5) the petitioner was removed from the office of the Surpanch. This

order shows that the reply to the show-cause notice was considered in light of the report of the preliminary inquiry submitted by the B.D.O. A

copy of this report or any document was not supplied to the petitioner. No witness was examined in his presence by the S.D.O.. No document

was produced or exhibited. There was no question of any cross-examination of these witnesses by the petitioner as none was produced. The

petitioner was also not given any opportunity to produce his witnesses.

3. The substance of the accusations against the petitioner was that he gave pattas of several pieces of land for construction of houses to persons

who were not eligible. That was the subject of charges No. 8 to 15. The other charges were that the petitioner was negligent in not taking proper

interest in the watering of plants in a garden, he got the road constructed by entrusting the work to the Tribal Welfare Department and not to Rural

Engineering Department, he did not arrange proper supply of water from the tube-well, he did not get the drains cleaned and he did not give

proper notice to the villagers for the meeting of the Gram Sabha which was held on 20-8-1995. It is clear from the nature of the charges against

the petitioner that these could be established by documentary and oral evidence. None of the seven persons who were given pattas was examined

by the S.D.O. during the enquiry. It was the case of the petitioner that many of these persons were shown as landless in the list supplied by the

Tehsildar. The impugned order of the S.D.O. does not show that he considered this aspect. Similarly the question of proper maintenance of the

garden and water supply could be examined if the witnesses had come forward either to prove or disprove those charges.

4. The petitioner''s case is that the inquiry envisaged u/s 40 of the Act should have been held in his presence. It was necessary to examine

witnesses in his presence so that he could cross-examine them to test their veracity. A report of the preliminary inquiry should also have been

supplied to the petitioner and the documents on which reliance was placed should have been shown to him. Further, the petitioner should have

been given an opportunity to adduce his own evidence. No reliance could be placed on the inquiry which was held behind the back of the

petitioner. Show-cause notice given to the petitioner was an idle formality when he was not given any opportunity to rebut material collected in the

preliminary inquiry or to adduce his own evidence to disprove the charges levelled against him. These grievances were ventilated by the petitioner

before appellate and the revisional authorities but they did not consider them. They also relied upon the report of the preliminary inquiry and treated

it as evidence. The petitioner has also challenged the election of the respondent No. 5 as Surpanch.

5. The respondents No. 1 to 4 in their return have stated that it was not necessary to hold the enquiry in the presence of the petitioner nor it was

necessary to give an opportunity to the petitioner for cross-examining the witnesses. Similarly, it was further unnecessary to provide him a copy of

the report of the preliminary enquiry. It is also stated that the petitioner has no right to adduce any oral evidence. The requirement of law is to give

a show-cause notice to the petitioner and that was done. After considering the reply to the show-cause notice, it was found that the charges against

the petitioner are proved and he was removed from the office of the Surpanch. The concurrent findings of the three authorities cannot be assailed

by this petition. Notice was served on respondent No. 5 but he did not appear. He did not file any return.

6. The learned counsel for both the sides were heard. Section 40 (1) of the Act is as under :--

40. Removal of office bearers of Panchayat :--(1) The State Government or the prescribed authority may after such enquiry as it may deem fit to

make at any time, remove an office bearer--

(a) if he has been guilty of misconduct in the discharge of his duties; or

(b) if his continuance in office is undesirable in the interest of the public:

Provided that no person shall be removed unless he has been given an opportunity to show-cause why he should not be removed from his office.

The words ""after such enquiry as it may deem fit to make"" in main part of Section 40 (1) and the words ""unless he has been given an opportunity to

show cause why he should not be removed from his office"" in the proviso to Section 40 (1) are of crucial importance. The contention of the

respondents No. 1 to 4 is that the petitioner was given a show-cause notice and reply submitted by him was considered by the prescribed

authority and that is the end of the matter. In this connection it has to be borne in mind that the removal of a Surpanch who is directly elected is a

serious matter and a person who is removed is further disqualified for a period of six years to be elected under the Act. It is not sufficient to give a

mere lip-service to the requirement of law. It is true that it is not specifically provided in Section 40 that principles of natural justice should be

followed while holding an enquiry but it is implicit in this provision that the office-bearer who is sought to be removed will be given a fair hearing.

7. Removal and disqualification of an office-bearer of a Panchayat u/s 40 of the Act on the ground of misconduct is not less injurious and stigmatic

as the removal of a civil servant under Article 311 of the Constitution of India or a workman under the industrial law. Article 311 also envisages an

''inquiry'' in which the delinquent employee is informed of the charges against him and given a reasonable opportunity of being heard in respect of

those charges. The celebrated rule of audi alteram partem has been incorporated therein. What principles of natural justice should be applied

depends upon the facts and circumstances of each case. Broadly stated a party should have the opportunity of adducing all relevant evidence on

which he relies, that the 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. Union of India (UOI) Vs. T.R. Varma, and Khem Chand Vs. The Union of India (UOI)and Others, .

8. The words ""after such inquiry as it may deem fit to make"" in the main part of Section 40 (1) of the Act would mean an inquiry which is held in

the presence of the office-bearer and not behind his back. He should be allowed to inspect the documents which are to be relied upon against him

and he should have the right to adduce his own evidence. These are the important facets of an inquiry to be held in conformity with the principles of

natural justice. It is not the subjective choice of the prescribed authority to get an inquiry held of any kind. It does not envisage a secret inquiry or a

preliminary inquiry alone. That is made only for collection of evidence and at that stage there is no participation of the person against whom the

action is sought to be taken. The words ""as it may deem fit"" have to be construed objectively and would mean an inquiry depending upon the facts

and circumstances of each case. Some of the facets of the inquiry may be excluded if the facts are not very much in dispute or there are other

circumstances to dispense with them. But the office-bearer has a right of fair hearing. ""You must hear the person who is going to suffer"". That is a

duty which lies upon every one who decides anything. There is, however, some flexibility depending upon the subject-matter.

9. H.W.R. Wade in his book on Administrative Law, 7th Edition at page 521 has quoted a passage in the speech of Lord Bridge in the House of

Lords in Lloyd v. McMahon (1987) AC. 625 :

My Lords, the socalled rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying

concept, what the requirements of fairness demand when anybody, domestic, administrative or judicial, has to make a decision which will affect the

rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other frame-

work in which it operates. In particular, it is well-established that when a statute has conferred on anybody the power to make decisions affecting

individuals, the Courts will not only require the procedure prescribed by the statute to be followed, but will readily imply so much and no more to

be introduced by way of additional procedural safeguards as will ensure the attainment of fairness.

10. The principles of natural justice are used to supplement statutory procedures which themselves provide for a hearing or inquiry, with or without

detailed regulation of the procedure. It is not proper to start with a pre-conceived notion that the person against whom the action is proposed is

guilty. Conclusion of guilt can be drawn only after fair hearing.

11. Lord Denning has said in Kanda v. Government of Malaya (1962) A.C. 322 that if the right to be heard is to be a real right which is worth

anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given

and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

12. In this case, as already, stated, the inquiry was not held in the presence of the petitioner, he was not supplied a copy of the report of the

preliminary inquiry, he was not shown any document, he was not given any opportunity to adduce his evidence though he asked for it. He was

given only a show-cause notice containing the charges and after his reply he was summarily removed by the impugned order. That was confirmed

in a routine and ritualistic manner by the appellate and revisional authorities by adverting to some report of the preliminary inquiry. It cannot be said

that there was fair hearing. There was prejudice to the petitioner. He was handicapped and prejudiced in defending himself properly and

effectively.

13. In State Bank of Patiala and others Vs. S.K. Sharma, the Supreme Court after exhaustive survey of the earlier precedents has formulated the

test of prejudice, that is, whether the person has received a fair hearing considering all things. Rule (5) formulated in this decision aptly applies to

the present case though it is not a case of a disciplinary action against an employee but against an office bearer of a Panchayat on the ground of his

misconduct involving serious consequences. That rule is as under :--

(5). Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principle of natural

justice-- or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action-- the Court or the

Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule.

In other words, a distinction must be made between ""no opportunity"" and no adequate opportunity, i.e., between ""no notice""/""no hearing"" and ""no

fair hearing"". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it ""void"" or a nullity if one chooses to). In such

cases, normally liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi

alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the stand-

point of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent

officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query.

14. In the present case there was not total violation of the principles of natural justice as a show-cause notice was given and the reply of the

petitioner obtained. But keeping in view the facts of the case certain facets of natural justice as stated above were not complied with resulting in

prejudice to the petitioner. He was not permitted to adduce his own evidence to rebut the material collected against him. The charges were such

which could be proved or disproved by evidence in the inquiry. One of the main charges was the distribution of pattas to those who were not

landless and a conclusion on this point could be reached after recording evidence and after seeing the list supplied by the Tehsildar or the B.D.O..

The prescribed authority in the impugned order has not dealt with this aspect. Similarly the charges regarding negligence in the maintenance of

garden, supply of water, drainage and information regarding the meeting of the Gram Sabha could be decided on the basis of evidence and not

merely relying upon a preliminary inquiry report. The basic fault in the impugned order is that an inquiry held by the B.D.O. behind the back of the

petitioner has been held to be a valid "inquiry" u/s 40 of the Act and he has been packed-up on the basis of that inquiry without even supplying a

copy of the same to the petitioner, and without affording him an opportunity to lead his own evidence even when he repeatedly asked for the same.

This was denial of fair hearing resulting in serious prejudice to the petitioner. The action of removal and disqualification has to be struck down as

there has been a failure of justice. The guilty must be punished but the finding of guilt has to be arrived after fair hearing which was denied in this

case. In Ballabhdas v. State of M.P. 1998 (2) JLJ 303 it has been observed by this Court that a full fledged enquiry is provided u/s 40 of the Act.

It contemplates "due enquiry". As observed in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, right to fair treatment is

an essential inbuilt of natural justice which is an integral part of the guarantee of equality assured by Article 14 of the Constitution of India. The

concept of reasonableness and non- arbitrariness pervades the entire Constitutional spectrum and is a golden thread which runs through the whole

fabric of the Constitution.

15. This petition is allowed. The impugned order dated 26-4-1996 (Annexure P-5) of the Sub-Divisional Officer, Betul (the prescribed authority)

and the appellate and revisional orders confirming that order are set aside. The office of Surpanch of Gram Panchayat, Shahpur will be restored to

the petitioner in place of respondent No. 5 and there will be no disqualification on account of the impugned order. However, the respondent No. 4

will be free to recommence the inquiry in light of the principles of law discussed above.