

P.A. Panneerselvam Vs State Bank of India and A. Raghupathy

Court: Madras High Court

Date of Decision: Nov. 29, 2011

Acts Referred: Constitution of India, 1950 " Article 22(5)

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Advocate: Balan Haridas, for the Appellant; K. Sankaran, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice M.M. Sundresh

1. This writ petition has been filed by the petitioner against whom charges have been framed by the respondents, challenging the proceedings dated

19.08.2011 passed by the first respondent by which the petitioner's request for conducting an enquiry in the Tamil language was rejected.

2. The petitioner seeks to challenge the order dated 19.08.2011 and consequently prays that the respondents will have to conduct the domestic

enquiry, in respect of the charge memo dated 08.12.2010, in the Tamil language by recording the enquiry proceedings in Tamil.

3. Charges have been framed against the petitioner by virtue of the charge memo dated 08.12.2010. The charge against the petitioner is one of the

alleged misappropriation. The petitioner gave his explanation to the charge memo dated 19.01.2011. Not satisfied with the explanation given by

the petitioner, an enquiry officer was appointed on 03.02.2011. The enquiry officer initiated the enquiry proceedings. At that stage, the petitioner

gave a representation on 13.08.2011 contending that in as much as he has no proficiency and is not comfortable with the English language, having

the qualification of SSLC done in the Tamil language, the proceedings will have to be conducted in the Tamil language. The said request of the

petitioner was rejected by the first respondent in the order impugned on the ground that in as much as the petitioner having received the charge

memo in English and the petitioner being a Senior Assistant, the enquiry will have to be conducted in the English language alone. Challenging the

same, the present writ petition has been filed.

4. Mr. Balan Haridas, Learned Counsel for the petitioner submitted that the order impugned will have to be set aside, as the Tripartite Agreement

clearly speaks about the position that any notice, order, charge sheet, communication or intimation meant for an individual employee, shall have to

be in a language understood by him. The petitioner having given the reply in Tamil, the order impugned will have to be set aside. The mere fact that

the petitioner is allowed to be represented by a third party in the enquiry proceedings, by itself cannot be a ground to reject his request. Learned

Counsel has made reliance upon the judgment of this Court in W.P. No.13302 of 1998 dated 09.06.2008 in P. Munirathnam vs Union of India

which has been followed subsequently by another learned Single Judge of this Court in W.P. No.11983 of 2003 dated 04.01.2011 in S.

Dhanasekaran vs Commandant 42 Bn. Accordingly, the Learned Counsel for the petitioner submitted that the writ petition will have to be allowed.

5. Per contra, Mr. K. Sankaran, Learned Counsel for the first respondent submitted that the petitioner was issued with the charge memo in English

and he has not objected to the charge memo. The petitioner has been allowed to have a defence representative, who could explain the proceedings

conducted in English by translating the same to the petitioner. The petitioner has also filed an affidavit before this Court in English. Therefore, it

cannot be said that the petitioner does not understand English. The writ petition filed is premature, as the enquiry proceedings are yet to be

completed. In support of his contention, the Learned Counsel has relied upon the judgment of the Hon'ble Apex Court in Chanan Singh Vs.

Registrar, Co-op. Societies, Punjab and Others, and submitted that the writ petition will have to be dismissed.

6. The only issue to be considered in this writ petition is as to whether the enquiry proceedings will have to be conducted in English or Tamil. It is

the specific case of the petitioner that the language understood by him is Tamil. Merely because he has not objected to the charge sheet issued by

the first respondent and the petitioner filed an affidavit in English, it cannot be construed that he has understood the language of English. It is settled

law that in a departmental enquiry, it is for the department to prove the charges against the delinquent officer. While conducting an enquiry, every

element of fairness will have to be shown in favour of the delinquent officer. The enquiry officer conducts the proceedings which have the character

of a quasi judicial action. While imposing the punishment, the disciplinary authority will have to consider the report of the enquiry officer viz-a-viz

the explanation to be given by the delinquent officer. Therefore, the report of the enquiry officer assumes importance in a departmental

proceedings. It is no doubt true that the Tripartite Agreement mandates that any notice, order, charge sheet, communication or intimation meant for

an individual employee, shall be in a language understood by him. When the clause specifically states that even a communication should be in a

language that has to be understood by the delinquent employee, by natural corollary, the same will have to be applied in all force to the subsequent

enquiry. While it can be said that a delinquent officer can give explanation to the charge sheet given in English and also file the affidavit in English by

taking his own time and by consulting people, the same cannot be said about enquiry proceeding which is conducted by the enquiry officer in

Camera. While initiating the proceedings, witnesses will have to be examined and therefore what is important is the demeanor of the witness

concerned. Therefore until and unless a delinquent is aware of the question put to the witnesses, he may not be in a position to put forth his defence

in a proper manner. A delinquent officer is not a mere spectator in an enquiry proceedings and sufficient opportunity will have to be given to such

an officer. The fact that a delinquent officer is represented by the defence representative or by itself cannot be a ground to hold that not

withstanding the fact that the enquiry is conducted in a language which the said delinquent is not able to understand properly, the same can be

allowed to go on in the presence of the defence representative. After all a defence representative is nothing but an authorised person representing

the delinquent.

..In Raziya Umar Bakshi vs Union of India 1980 Supp Scc 195 the Hon"ble Supreme Court in paragraphs 3 to 5 has observed as follows:

Para 3:... The service of the ground of detention on the detenu is a very precious constitutional right and where the grounds are couched in a

language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to

not serving the grounds of detention to the detenu and would thus vitiate the detention ex facie.

Para 4: In case of Hadibandhu Das vs District Magistrate, Cuttack it was clearly held that merely oral explanation of an order without supplying

him a translation in a script or language which the detenu understood amounted to a denial of right of being communicated the grounds. In the

instant case, it is not even alleged in the affidavit of Mr. Shah that any translation or translated script of the grounds was furnished to the detenu.

Para 5: In this view of the matter the detention becomes invalid on this ground alone. I would however like to observe that in cases where the

detaining authority is satisfied that the grounds are couched in a language which is not known to the detenu, it must see to it that the grounds are

explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been

explained to the detenu in the language which he understands...

Similar in Surjeet Singh Vs. Union of India (UOI) and Others, , the Hon"ble Supreme Court has in the following manner:

Para 8: ""In Nainmal case Fazal Ali, J., who followed Hadibandhu case held that the communication of the grounds of detention in a language

understood by the detenu was as essential requirement for the validity of a detention order which, in the absence of such requirement being fulfilled,

would be repugnant to the provisions of Article 22(5) of the Constitution and would thus stand vitiated. And that is a view which has been

consistently held by this Court.

Para 9: The facts with which we are here concerned, insofar as they are relevant to the decision of the point canvassed before us, are on all fours

with those of the three cases cited above. As already pointed out, the grounds of detention were supplied to the two petitioners in the English

language a language with which they were not conversant. The service of the grounds on them in that manner could not be considered under the

circumstances to be effective communication to them thereof so as to afford to them a real opportunity of making a representation against the order

of detention.

Para 6: ""Where it is stated that the detaining authority explained the grounds of detention to the detenu, court insists on adequate proof in the

absence of any translation being furnished. Thus in Lallubhai Jogibhai Patel v. Union of India the detenu did not know English but the grounds of

detention were drawn up in English and the detaining authority in affidavit stated that the Police Inspector while serving the grounds of detention

fully explained the grounds in Gujarati to the detenu. Admittedly, no translation of the grounds of detention into Gujarati was given to the detenu. It

was held that there was no sufficient compliance with the mandate of Article 22(5) of the Constitution which required that the grounds of detention

must be communicated to the detenu. ""Communicate"" is a strong word. It requires that sufficient knowledge of the basic facts constituting the

grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a

purposeful and effective representation. If the grounds are only verbally explained to the detenu and nothing in writing is left with him in a language

which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed. This follows from the decisions

in Harikisan v. State of Maharashtra and Badibandhu Das v. District Magistrate.

Considering the ratio laid down by the Hon"ble Apex Court, this Court in P. Munirath has held as follows:

23. In this context, it is clear that even though the ground that the petitioner was unfamiliar of Hindi language was raised in the appeal grounds,

neither in the order of the appellate authority nor in the enquiry report, the said assertion was denied by the respondents. Hence, it can be safely

concluded that the petitioner was not familiar with Hindi.

24. In the present case, the punishment meted out to the petitioner was dismissal, which is a death penalty in the industrial jurisprudence.

Therefore, this Court has no hesitation to believe the statement made by the petitioner that he was denied the reasonable opportunity of defending

himself in the enquiry as it was held in Hindi, the language with which the petitioner was not familiar. Any amount of statement made by the

respondents about the notings made by the Enquiry Officer, which also was in Hindi, will not cure the defect crept into the enquiry record.

25. Under the above circumstances, the enquiry conducted by the respondents will have to be necessarily set aside and accordingly, set aside. The

writ petition will stand allowed. The impugned order of dismissal dated 18.12.1997 as confirmed by order dated 27.03.1998 will stand set aside.

The petitioner is entitled to have all the consequential benefits. If the respondents want to conduct an enquiry afresh, that will have to be done only

in the language known to the petitioner and he must be given the assistance of an agent as provided in the Rules to defend himself in the enquiry.

No costs.

In S. Dhanasekaran vs Commandant 42 Bn in W.P. No.11983 of 2003 dated 04.01.2011 it has been held as follows:

11. In the factual matrix, by reference to the files submitted by the respondents, it is clear that there is no explanation forthcoming from the

respondents to show as to whether the proceedings were translated to the petitioner in the language known to him, or not. That apart, even in

respect of the charge relating to the consumption of liquor by the petitioner, there is no record to show that the respondents have taken pertinent

efforts for the purpose of proving that the petitioner was intoxicated. It is also seen that the decision has been predominantly arrived at based on

the preliminary enquiry and not on the basis of the proceedings conducted during the disciplinary proceedings.

12. Even in respect of the enquiry officer's report, which is stated to have been served on the petitioner, there was no occasion for the petitioner to

submit a representation for the reason that in the meantime he came to be transferred and posted at Shivpuri as admitted by the parties. In such

circumstances, I am of the considered view that on the factual matrix of the case, especially relating to the language in which the disciplinary

proceedings was conducted, there is no proper compliance of the principles of natural justice and therefore, the impugned orders are liable to be

set aside, however, with liberty to the first respondent to conduct fresh enquiry in the language known to the petitioner, if so advised, failing which

the petitioner will be entitled for all the benefits under the law. Accordingly, the impugned orders are set aside and the writ petition stands allowed,

however, with liberty to the first respondent to conduct fresh enquiry in conformity with the principles of natural justice in the language known to

the petitioner, if so advised. No costs.

7. Therefore, considering the ratio laid down by the Hon"ble Apex Court which has been followed by this Court on two earlier occasions, this

court is of the view that the petitioner is entitled to have the enquiry conducted in the language known to him. The contention of the Learned

Counsel for the first respondent that the writ petition as filed is premature also cannot be countenanced. When it is a specific case of the petitioner

that the Tripartite Agreement governing the same has been violated which in effect leads to the infringement of the principles of natural justice,

affecting the rights of the petitioner, it is very well open to him to file a writ petition. In other words when there is a violation of the principles of

natural justice which would have the effect of setting aside the proceedings, the same will have to be rectified at the earliest point of time. The

judgment relied upon by the Learned Counsel for the first respondent is not applicable to the facts of the case. The issue involved therein is totally

different as the challenge is made to the show cause notice on merits. In as much as this Court has not decided its merits of the case and decides

the issue only on the ground of principles of natural justice, the ratio laid down by the Hon"ble Apex Court is not applicable to the case on hand.

8. Further this Court is not quashing the charge memo, as the request of the petitioner itself is to quash the order the first respondent in declining to

consider the request of the petitioner to conduct the enquiry proceedings in Tamil. It is seen that all the witnesses are having proficiency in Tamil.

Therefore, it is just and proper that the enquiry should be conducted in Tamil. It is also not clear as to whether the second respondent is well-

versed in Tamil. Since the second respondent is nothing but an Umpire or an Arbitrator, this Court is of the considered view that until and unless

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M.M. Sundresh, J.

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said respondent is having proficiency in Tamil, he shall not be allowed to conduct the enquiry. Accordingly, the order impugned is hereby set aside

and the first respondent is directed to conduct the enquiry in the Tamil language. If the second respondent is not having the proficiency in Tamil,

then the said respondent shall not be allowed to proceed with the enquiry.

9. Learned Counsel for the first respondent submitted that the petitioner is going to retire in the month of December 2011, in such view of the

matter, the enquiry is directed to be completed within a period of four weeks from the date of receipt of a copy of this order and the petitioner

shall not take the plea of his retirement in the event of disciplinary authority holding against him. It is also made clear that the petitioner shall co-

operate with the enquiry. The writ petition is ordered accordingly. No costs. Consequently, connected M.Ps are closed.