(2007) 4 CHN 1004

Calcutta High Court

Case No: MAT No. 2643 of 1998

Special Officer [District Inspector of Schools (SE)]		APPELLANT
	Vs	
Durgadas Mukhopadhyay and Others		RESPONDENT

Date of Decision: Aug. 12, 2005

Acts Referred:

- West Bengal Board of Secondary Education Act, 1963 - Section 24

Citation: (2007) 4 CHN 1004

Hon'ble Judges: Soumitra Pal, J; Dilip Kumar Seth, J

Bench: Division Bench

Advocate: Samaraditya Pal and Alak Kumar Ghosh, for the Appellant; Jayanta Kumar Mitra and Dipankar Dutta, for the Respondent

Final Decision: Dismissed

Judgement

Soumitra Pal, J.
This appeal arises out of the judgment and order dated 6th July, 1998 passed by the learned Single Judge in Writ Petition No. 46(W) of 1995 allowing the writ petition and setting aside the order dated 12th April, 1994.

2. The relevant facts, in short, are that a complaint pointing out financial and other irregularities was lodged against the authorities of the school. Thereafter, an enquiry was held. It was alleged that as the writ petitioner who is the respondent in this appeal was not inclined to place the documents including the books of accounts. The District Inspector of Schools was directed by the Director of School Education either to visit the school with adequate police force or direct the Headmaster and Secretary of the school to attend the office with all records. Thereafter, pursuant to requisitions some documents were

produced. One Gaur Chandra Baidya was appointed as the Administrator of the school. It was alleged that at the time of taking over charge though requested neither the Headmaster nor the Secretary was present. A special audit was conducted. Allegations were made that there were misappropriation or defalcation of money. Thereafter, the Director of School Education requested the District Inspector of Schools (Secondary Education) to direct the Administrator of the school to lodge FIR with the police station against the President, the Secretary and the Headmaster of the school. The Administrator was also directed to take administrative step against the person involved in the irregularities. On 13th November, 1992 the FIR was lodged by the Administrator. On 14th November, 1992 the respondent was suspended by the Administrator. A writ petition challenging the said order of suspension was filed. The said writ petition was disposed of on 22nd December, 1992 in which the following order was passed:

I extend the time for a further period of fortnight from this date of order to enable the Board either to grant approval to the order of suspension or disapprove the same. (Page 486 of the Paper Book)

3. On 23rd February, 1993 the Administrator of the school issued the chargesheet. It was served on the wife of the respondent who by letter dated 19th February, 1993 sought extension of time to file reply on the ground that her husband was ailing. The same was allowed. Later the wife of the respondent repeatedly requested the Administrator to furnish documents to give a reply to the charges. The Administrator insisted on inspection of the documents and allowed preparation of notes on the basis of inspection for the purpose of reply. By letter dated 30"1 July, 1993 the Administrator fixed the dated for inspection. It was also intimated that the respondents would be required to submit the reply to the chargesheet within a period of seven days from the date of inspection failing which he shall have no other alternative but to proceed. Since the petitioner did not appear the Administrator fixed a fresh date and it was intimated that if the respondent failed to turn up the matter would be decided exparte. The respondent did not turn up. The respondent preferred an appeal before the Board praying to supply documents upon which the chargesheet was drawn. The Administrator was intimated and a prayer was made for stay of the proceedings till the matter was decided by the Appeal Committee of the Board of Secondary Education. In the meantime on 27th August, 1993 during the pendency of the appeal, the Administrator passed an order holding that the respondent committed irregularities and sought approval of the Board on the first stage of the proceedings. By memo dated 16th September, 1993 the Administrator forwarded all documents to the Secretary of the Board. However, the Secretary by a Memo dated 14th October, 1993 intimated the Secretary of the institution the decision of the Appeal Committee that the authorities should supply copies of all relevant documents to the respondent at a very early date. Later, however upon a perusal of the letter dated 17th November, 1993 the Board reversed its decision and only inspection of the documents was allowed. The committee constituted u/s 24 of the West Bengal Board of Secondary Education Act, 1963, in its meeting held on 7th April, 1994 accorded approval of the first

stage of the disciplinary proceedings and by letter dated 12th April, 1994 the same was intimated. The school authority was also directed to issue show-cause notice why the punishment proposed shall not be initiated.

4. Thereafter, the second stage under the Rule began. On 7th June, 1994 a show-cause notice was issued. The petitioner was called upon as to why the punishment as proposed should not be imposed. The respondent, on 15th July, 1994 filed his ad hoc reply. A writ petition was filed by the respondent challenging the notice dated 7th June, 1994. On 2nd September, 1994 it was dismissed. On 27th September, 1994 an order was passed by the Administrator recommending the removal of the respondent and, thereafter, by a letter dated 7th October, 1994 sought approval of the Board for removal. It appears from the records that the petitioner had preferred an appeal against the order passed by the learned Single Judge but on 6th December, 1994, the application was rejected with observations. The appeal was also disposed of. On 23rd March, 1995 the Board communicated the decision of the committee approving the proposal for punishment of the respondent. Thereafter, the petitioner was dismissed from service. The same was challenged by filing a writ petition. The question raised before the learned Single Judge was whether the provisions contained in Rule 28 of the Management of Recognised Non-Government Institutions (Aided and Unaided) Rules, 1969 ("the Rules" for short) were followed while passing the order under challenge. It is to be noted that the learned Single Judge in His Judgment had noted certain infirmities in the disciplinary proceedings.

5. Mr. Samaraditya Pal, learned Senior Advocate, ably assisted by Mr. Alok Kumar Ghosh appearing for the appellant submitted that the respondent was given ample opportunity to defend. The respondent was requested to come to the school for inspection of the documents but he insisted for the copies of the documents. He neither availed himself of the opportunity nor wrote any letter expressing his difficulties to attend the school for the purpose of inspection of the documents and taking notes therefrom. The conduct of the appellant reveals the respondent was given access to the documents. There was no explanation why he failed to turn up during personal hearing. The respondent had preferred an appeal before the Appeal Committee for alleged non-supply of the documents, which was dismissed. Liberty was granted to the petitioner to inspect the said documents. That opportunity too was not availed of. Instead a writ petition was filed alleging violation of natural justice which was dismissed. Being aggrieved the respondent preferred an appeal. An application was also filed. The appeal was disposed of. The application too was dismissed with the observation that the concerned committee of the Board should consider the matter relating to the disciplinary proceeding in terms of Rule 28(8) of the Management Rules. The respondent had filed a detailed reply to the show-cause which indicated that all the documents relied upon in support of the charges were in his possession. The Administrator after considering the reply with reference to the relevant papers had arrived at a finding in support of his conclusion proposing punishment for removal of the respondent from service. The Administrator sought for the approval. The concerned committee of the Board duly approved the proposed

punishment for dismissing the respondent from service after considering the relevant papers documents and materials on record. According to him, the proceedings were initiated, conducted and completed and the order of dismissal was passed in accordance with Rule 28(8) of the rules. Reliance was placed on the judgments of the Apex Court in Major U.R. Bhatt Vs. Union of India (UOI), ; Nagar Palika, Nataur v. U.P. Public Services Tribunal, Lucknow and Ors. reported in 1988(2) SCC 400; State Bank of Patiala and others Vs. S.K. Sharma, ; Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others, ; Union of India and others Vs. Mohd. Ramzan Khan, ; Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., ; State of U.P. Vs. Harendra Arora and Another, ; Board of Management of S.V.T. Educational Institution and another Vs. A. Raghupathy Bhat and others, ; State of Orissa and others Vs. Kalicharan Mohapatra and another, ; D.V. Kapoor Vs. Union of India and others, ; State of U.P. Vs. Shatrughan Lal and Another, ; Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others, ; and the judgment of this Court in State of West Bengal and Ors. v. Gobinda Chandra Mukherjee reported in 2001(3) CHN 740 in support of his submissions.

6. Mr. Jayanta Kumar Mitra learned Senior Advocate ably assisted by Mr. Dipankar Dutta submitted that the documents which appear at page 116 of the Paper Book which was sought to be relied on during enquiry were not furnished to the respondent which prevented him from raising an effective and proper defence. No reason was assigned by the Administrator as to why he insisted upon taking inspection of the documents instead of furnishing the copies of the same although the respondent who was indisposed had agreed to bear the expenses. Submission was made that in the order dated 27th August, 1993 the Administrator had observed that as the documents were institutional one the same could not be furnished. Taking into consideration the physical condition of the respondent, the action of the Administrator in affording opportunity to inspect the documents did not meet the procedural safeguards of affording reasonable opportunity for defending oneself as envisaged under Rule 28(8) and as such the entire proceeding stood vitiated. Although number of witnesses were listed in Annexure IV of the chargesheet by whom the charges were proposed to be established, none of them were examined. The contents of none of the documents listed in Annexure III to the chargesheet were proved. As the respondent never admitted the contents of the listed documents, none of the charges could be said to have been proved since the respondent had described the charges as frivolous and malicious and never admitted the same. The Administrator ought to have provided the charges through evidence led by the witnesses orally and through documents. Absence of reply to the charges ipso facto could not lead to the conclusion that the charges stood proved. The initiator is duty bound to prove the case before an order is passed in his favour. However, in the instant case nothing was done as required under the law. Thus the order of the Administrator holding that the charges hold good and, thus proved to be true is a clear manifestation of the highest degree of perversity. The order dated 27th August, 1993 passed by the Administrator holding the respondent guilty of the charges framed against him which in effect, is the enquiry report was never served on the respondent and his comments were not sought

for. Had opportunity been afforded, the infirmities in the report could have been demonstrated. Submission was made that the approval granted by the Board during the first stage of the proceedings was totally mechanical. The blank portion of the printed pro-forma had been filled up after striking out certain entries. There was no application of mind. The Board cannot consider any document while granting approval either at the first or in the second stage which has not been supplied to the chargesheeted employee. The Enquiry report holding the charges to be proved could not be looked into since the same was not supplied to the respondent. Therefore, the approval of the first stage of proceeding stood vitiated and further action could not have been taken in pursuance thereof. Moreover, the Board had failed to live up to the expectation of the Court since it was directed that the Board shall consider and pass appropriate order in case no enquiry had taken place but the Board passed an order which manifestly suffers from gross jurisdictional errors. While seeking approval of the second stage of proceedings, the Administrator on 27th September, 1994 proposed to remove the respondent from service but the Board by its order dated 18th January, 1995 dismissed the respondent from service. Thus, it was argued that the entire exercise of initiating proceedings against the respondent and punishing him reflects closed and prejudged mind. It was mala fide gross misuse of power and an order passed in total non-application of mind. It appears from the records that a higher punishment was imposed though the proposal was for a lesser one. These infirmities were overlooked by the Administrator as well as by the Board since they were bent upon to ensure termination of the service of the respondent by attaching stigma.

7. Regarding the submission raised by the Special Officer in support of the appeal it was submitted that the principles of natural justice have been violated and procedural safeguards disregarded. For ailing health the respondent could not take inspection of the documents and request was made to supply copies. This same was declined without any reason. Since an appeal was filed before the Appeal Committee of the Board a request was made to postpone the hearing but it was not acceded to. It was never brought to the notice of the Appeal Committee by the Administrator that by an order dated 27th August, 1993 he had already held that the charges to be proved. The order of the Appeal Committee for inspection was, thus, rendered futile because the finding of guilt had already been reached and inspection at that stage would not have served any fruitful purpose. It was submitted as the findings of the Administrator are not final but are subject to the approval of the Board at the first stage and then again at a subsequent stage it should have been furnished to the delinquent for enabling him to exercise his right to represent and controvert the findings of the charges. After such representation the quantum of punishment is to be considered. In the present case the documents were not furnished to the respondents. Thus, it was against the principles of natural justice as the Board cannot look into the documents which were not furnished to the delinquent employee. Reliance was placed on the judgments of the Apex Court in Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others, ; Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and the judgment of this Court in Swapan Ray v. Indian Airlines

Limited and Ors. reported in 1996(1) CHN 147; Sujit Das v. West Bengal Board of Secondary Education and Ors. reported in 1997(2) CLJ 497 and the judgment of the Special Bench of this Court in Arun Kumar Hait v. State of West Bengal and Ors. reported in 1999(1) CHN 521 in support of his contentions.

The learned Advocates have also submitted their respective written notes of arguments and the same are on record.

8. The issue which arises for consideration is whether in the facts and circumstances and in view of the procedure laid down under Rule 28(8) of the rules, the learned Single Judge was justified in setting the order of dismissal.

9. The Rule while conferring power upon the committee subject to the prior approval of the Board to remove or dismiss permanent and temporary teachers and other employees, empowers to draw formal proceedings and issue chargesheet to the delinquent and offer him "reasonable facilities for defending himself". The question is what are those "reasonable facilities". The rules, we find, are far from specific. So far as reasonableness is concerned there is no strait-jacket formula. In our view, it should be in conformity with the facts and circumstances. Now the question is whether the absence of these reasonable facilities lead to the non-compliance of the principles of natural justice to the delinquent. Therefore, what is natural justice,. It means justice which is normal. It is neither far-fetched nor acquired. It is a happening which is spontaneous. Hence, natural justice itself encompasses reasonableness. Thus, the terms "natural justice" and "reasonable facilities" are synonymous. They are inseparable - one cannot exist without the other. Hence in a case of departmental enquiry the authorities should ensure that the delinquent employee should be given the opportunity to deal with or rebut with the documents or evidence particularly relied on by the authorities. Non-compliance of such opportunity shall lead to the failure of natural justice. Thus, in a case where one is faced with a departmental or administrative enquiry or proceedings while defending himself, he should have (a) the right to inspect or have extracts or copies of the documents upon which the authority relies on; (b) the right to cross-examine the witnesses examined by the committee or the Administrator and the right to examine witnesses in his favour and (c) the right to examine himself and the right of audience. These are the reasonable facilities and denial shall automatically lead to the non-compliance of the principles of natural justice.

Therefore, let us scan the facts as it appears from the records and find out whether while conducting the proceedings these principles were adhered to by the Administrator or the Board.

10. In the present case, the chargesheet was handed over to the writ petitioner/respondent. Along with the chargesheet a list of documents and a list of witnesses were also furnished. To give reply, the respondent who was ill and recuperating, repeatedly sought for the documents and that too at his own cost. The

same was denied. However, inspection of the documents was allowed. Being aggrieved, the respondent preferred an appeal before the Appeal Committee of the Board and during its pendency, prayed before the Administrator to stay all proceedings. What followed requires close scrutiny. By a letter dated 14th October, 1993 issued on behalf of the Secretary of the Board addressed to the Secretary of the Institute the decision of the Appeal Committee was intimated. It was as under:

I am directed to forward herewith the entire decision of the Appeal Committee of the Board taken in its meeting held on 13.9.93:

Perused the petition.

The grievance of the appellant is that copies of the relevant documents , upon which a chargesheet was framed against him, have not been supplied to him.

The respondent may be directed to supply copies of all the relevant documents, on which the chargesheet is based, to the appellant at a very early date. (Page 129 of the Paper Book).

However, at a later stage the Appeal Committee upon perusal of a letter dated 17th November, 1993 addressed by the Administrator reversed its earlier order and dismissed the appeal. However, inspection of the documents was allowed. The Administrator in the said letter had stated that the copies could not be supplied as these were institutional documents.

11. As already noted, though during the pendency of the appeal a stay of proceedings before the Administrator was sought for, the Administrator by an order dated 27th August, 1993 (page 514 of the Paper Book) came to a finding that the respondent had committed financial malapractices and activities which were fraudulent in nature. It was also held since there was "no order of restraint from the Court of Law or the learned Appeal Committee of the Board", there was "no bar or prohibition for proceeding further in this regard". The reasons for passing the order appear from the order itself, which is extracted hereunder:

Now the fact stands as follows:

(i) Sri Mukhopadhyay failed to reply to the charges framed against him.

(ii) Sri Mukhopadhyay failed to avail of the opportunity extended to him for inspection of documents and other connected matters.

(iii) Sri Mukhopadhyay failed to inspect and take notes of the documents relied upon, though opportunities were offered to him.

(iv) Sri Mukhopadhyay failed to avail of the opportunity of being heard for his defence.

(v) Sri Mukhopadhyay, thus failed to defend himself though sufficient opportunities were given to him.

Hence the undersigned has to affirm that:

(i) Sri Mukhopadhyay is guilty of the charges framed against him, by the ways he moved to avoid the replies to the charges levelled against him.

(ii) There are reasons to believe that Sri Mukhopadhyay had nothing to defend himself as all the documents and records relied upon were prepared and maintained by him.

(iii) The charges hold good and thus proved to be true.

(Emphasis supplied)

12. It is apparent that the Administrator while rejecting the prayer of the respondent abruptly came to a finding though the decision of the Appeal Committee was awaited. How the charges held were good and thus proved to be true is beyond all logic since it was not in accordance with the basic principles of the law of evidence and was certainly not on evidence which can be acted upon in view of the proposition of law as laid down by the Supreme Court in Bareilly Electric Supply Ltd. (supra). It is to be noted that most of the documents by which the articles of charges were framed were not prepared by the respondent. This amply demonstrates and as correctly held by the learned Single Judge that the Administrator had made up his mind. Therefore, in our view the permission to inspect documents was an empty formality. It was at this juncture the first stage under the Rule ended.

13. On 7th June, 1994 the second stage as envisaged under the Rule began. The respondent by a notice was called upon to show cause why the punishment as proposed in the letter should not be imposed. The respondent replied alleging that the Administrator was proceeding with a closed mind. There was denial of natural justice. Challenging the said notice the respondent moved a writ petition. On 2nd September, 1994, the writ petition was dismissed. Appeal was preferred.

The Appeal Court on 6th December, 1994 while disposing of the appeal observed as under:

We are confident that the Board finds that no enquiry has been taken certainly, the Board will consider the same and will pass appropriate order. In any event, when the Board is in sessin of the matter and when the learned Trial Judge has recorded the statements of the learned Counsel appearing on behalf of the Board that the Board shall consider the grievances of the petitioner strictly in terms of Sub-rule (8) of Rule 28 of the Management Rules, we are of the view that all the grievances of the petitioner including the grievances that were being ventilated before us at this stage will also be considered by the Board. It is desirable that the Board will pass a speaking order so as to indicate that the Board has

applied its minds with regard to the validity of the procedure that has been followed by the Managing Committee.

We make it clear that the petitioner will not be without any remedy in case any adverse decision is taken against the petitioner by the School Authorities on the basis of the approval given by the Board. We also observe that we have not adjudicated any of the points on its merit, but we direct the petitioner to agitate all points which are being taken in the writ application. In the appeal and also the points that may be available before the Board.

(Emphasis supplied)

14. Pursuant to the order, the respondent submitted his reply to the letter dated 7th June, 1994. The allegations were denied. The grievances were in spite of repeated requests copies of the documents were not supplied and no formal inquiry was at all held. The action of the Administrator spoke of malice, vindictive attitude and conspiracy. Thereafter, the Administrator by an order dated 27th September, 1994 came to a finding that the respondent should be removed from service subject to the approval of the Board (Pages 526 to 532 of the Paper Book) and by letter dated 7th October, 1994 prayed for approval of the Board for dismissing the petitioner. On 23rd March, 1995, the Secretary of the Board intimated that the committee had unanimously resolved that the proposal of the Administrator of the school for dismissing the respondent from service under the provision of Rule 28(8) was approved. It appears from the said letter (Pages 200-202 of the Paper Book) that the sole document which fell for consideration prior to the recommendation for dismissal was the special audit report which was one of the documents not supplied though it was repeatedly sought for by the petitioner. In our view as already noted in the judgment enquiry should have been conducted in the manner established. The Administrator ought to have provided the respondent the copies of the documents which were relied upon in coming to a finding and an opportunity should have been given to cross-examine the witnesses. Thereafter, the respondent should have been heard. These are the infirmities which are writ large on the order itself.

15. On behalf of the Administrator, a contention has been raised that the respondent is not entitled to seek documents when the law does not provide. In the context, reference can be made to paragraph 25 of the affidavit-in-opposition filed on behalf of the Administrator, the respondent No. 6. The relevant portion of the said affidavit is extracted hereunder:

25...it is stated that the petitioner is not entitled to ask for any thing in connection with the disciplinary proceedings when the law in this regard does not provide for the same. There is prescribed procedures following which a disciplinary proceeding is conducted against a teaching or non-teaching staff. I strictly adhere to such procedures in conducting the disciplinary proceedings. The petitioner is purportedly attempting to raise certain allegations to save himself but such purported allegations are totally unsupported by lay

and afterthought. I further deny that it was incumbent upon the Administrator to supply the petitioner with a copy of the report of enquiry and offer an opportunity to record his objections and/or to make a representation against the findings on the cheques or that show-cause notice adversely affect the petitioner as alleged.

(Emphasis supplied)

This particular stand had all along been taken by the Administrator if one peruses the letter dated 2.3.2003 (page 119 of the paper book) in which it was stated "that there is no scope for furnishing copies of the documents in Annexure III. But the chargesheeted Headmaster may inspect the documents if he so desires, after however, submitting his reply to the charges."

16. In our view, therefore, nothing can be more brazen and more palpable revealing the attitude of the respondent No. 6. It only shows that the Administrator had a pre-determined mind while recommending dismissal. The Board also in its turn failed to discharge the confidence the Division Bench had placed to enquire whether any enquiry was held or not. In our view, the Board had woefully failed to discharge its duties by not looking into the gross violation of the rudimentary principles-violation of natural justice. We cannot also be oblivious to the findings of the learned ^Single Judge who upon perusal of the records found that "From the said record it does not appear that any enquiry was held and any witnesses was examined to prove the charges". Moreover the entire action is contrary to the principles of law laid down by the Special Bench of this Court in the judgment in MAT No. 765 of 1998, Arun Kumar Hait v. State of West Bengal and Ors. (supra), where the issue for consideration was what was the procedure to be followed by the Managing Committee under Rule 28 of the 1969 Management Rules. The Special Bench in its judgment had the occasion to consider the judgment of the Supreme Court in Managing Director, ECIL v. B. Karunakar (supra) and the judgment of this Court in Sujit Kumar Das (supra). It was held as under:

36. Briefly speaking these would include as far as the first stage is concerned. the giving of a clear chargesheet; provisions of facilities for inspection and/or taking copies of the documents upon which the Managing Committee relies; granted an opportunity to the delinquent to cross-examine the witnesses examined by the Managing Committee and the right to examine witnesses in his favour.

37. The implicit procedure also includes the right of the Managing Committee to delegate the function to hold the enquiry after the charges have been framed and served on the delinquent to an independent person.

38. However, when the matter is so delegated, the delinquent is entitled to a copy of the enquiry report of the Enquiry Officer before the disciplinary authority takes any decision on the question of guilt of the delinquent.

(Emphasis supplied)

17. In the present case neither the respondent who was indisposed and convalescing, was allowed to have copies of the documents upon which the Administrator relied nor any opportunity was granted to cross-examine the witnesses. The respondent was denied the right to examine the witnesses in his favour. Even the copy of the enquiry report was not furnished which was in contravention of the principles of law laid down in Managing Director, ECIL, Hyderabad v. B. Karunakar (supra). In view of the peculiar facts and circumstances and in view of the judgment of the Special Bench in Arun Kumar Hait (supra), the judgments cited on behalf of the appellant are not applicable in the facts and circumstances of the case.

18. Thus, the entire action of the respondents from the stage of enquiry up to the order of dismissal is contrary to the established principles of law - the law of evidence, the principles of natural justice, the judgment of the Special Bench in Arun Kumar Hait (supra) and the observations of the Division Bench as already noted. Thus, the appeal is dismissed. No order as to costs. Urgent xerox certified copy of this judgement and order be given to the appearing parties, if applied for, on priority basis.

Dilip Kumar Seth, J.

19. I agree.