The State Of Uttar Pradesh vs Mohammad Nooh on 30 September, 1957

Equivalent citations: 1958 AIR 86, 1958 SCR 595, AIR 1958 SUPREME COURT 86, 1958 SCJ 242, 1958 MADLJ(CRl) 197, ILR 1957 2 ALL 422

Bench: Syed Jaffer Imam, A.K. Sarkar

PETITIONER:
THE STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
MOHAMMAD NOOH

DATE OF JUDGMENT:
30/09/1957

BENCH:
BOSE, VIVIAN
BENCH:
BOSE, VIVIAN
DAS, SUDHI RANJAN (CJ)
AIYYAR, T.L. VENKATARAMA
IMAM, SYED JAFFER
SARKAR, A.K.

CITATION:
1958 AIR 86 1958 SCR 595

ACT:
Certiorari, writ of-Principles governing issue-Availability of alternative remedy by appeal, if a bar-Departmental enquiry Violation of principles of natural justice-Presiding officer himself witness-- order of dismissal made previous to the Constitution Revision disallowed after the Constitution-Such order, if can be quashed-Constitution India, Art. 226.

HEADNOTE:
A departmental enquiry against the respondent, a Head Constable, was held by the District Superintendent of Police. During the enquiry the District Superintendent of Police himself became a witness and gave evidence at two stages against the respondent, his statement being recorded by a Deputy Superintendent of Police. The District Superintend-

ent of Police then found the respondent guilty and on April 20, 1948, passed an order of dismissal against him. The respondent went up in appeal to the Deputy Inspector General of Police but the appeal was dismissed on May 7, 1949. The respondent then filed a revision application to the Inspector General of Police which was also dismissed on April 22, 1950. Thereupon, the respondent filed a writ petition under Art. 226 of the Constitution before the High Court praying for the setting aside of the order of dismissal. The High Court held that the rules of natural justice and fair-play had been disregarded and accordingly, quashed the proceedings and set aside the three several orders. The State obtained a certificate of fitness and appealed.

Held, (percuriam) that the District Superintendent of Police who had acted both as the judge and as a witness had disqualified himself from presiding over the enquiry. The procedure adopted was contrary to the rules of natural justice and fair-play. Decisions and orders based on such procedure are invalid and not binding.

There is no rule with regard to certiorari, as there is with mandamus, that it will lie only where there is no other equally effective remedy. The existence of another adequate remedy may be taken into consideration in the exercise of the discretion. If an inferior Court or tribunal of first instance acts without jurisdiction or in excess of it or contrary to the rules of natural justice, the superior Court may quite properly issue a writ of certiorari to correct the error, even if an appeal to another inferior Court or tribunal was available, whether recourse was or was not had to it. This would be so all the more in the case of departmental tribunals composed of persons without adequate legal training and background.

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Janardan Reddy v. The State of Hyderabad, (1951) S.C.R. 344 referred to. King v. Postmaster-General, Exparte Carmichael (1928) i K.B. 291 ; Rex v. Wandsworths justices, Exparte Read, (1942) I K.B. 281; Khurshed Modi v. Rent Controller, Bombay, A. [.R. (1947) Bom. 46; Assistant Collector of Customs v. Soorajmull Nagarmull, (1952) 56 C.W.N. 453 relied on.

Held, (per S. R. Das, C.J., Venkatarama Ayyar, Jafer Imam and Sarkar, JJ. Bose, J., dissenting) that Art. 226 of the Constitution is not retrospective and the High Court could not exercise its powers under Art. 226 to quash the order of dismissal passed before the commencement of the Constitution. It is wrong to say that the order of dismissal passed on April 20, 1948, merged in the order in the appeal dated May 7, 1949, and the two orders merged in the order in the revision dated April 22, 1950, or that the original order of dismissal became final only on the passing of the order in revision. The original order of dismissal was operative on its own strength.