H.V. Nirmala vs Karnataka State Financial Corporation ... on 8 May, 2008

Equivalent citations: AIR 2008 SUPREME COURT 2440, 2008 (7) SCC 639, 2008 AIR SCW 3732, 2008 LAB. I. C. 2651, 2008 (4) AIR KANT HCR 301, 2008 (8) SCALE 315, (2010) 2 KANT LJ 33, (2009) 3 ALLMR 465 (SC), (2008) 3 LAB LN 709, (2008) 4 SCT 459, (2009) 120 FACLR 1140, (2009) 2 SERVLR 204, (2008) 8 SCALE 315, (2008) 3 BANKCLR 63

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Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:
Appeal (civil) 3404 of 2008

PETITIONER:
H.V. Nirmala

RESPONDENT:
Karnataka State Financial Corporation & Ors

DATE OF JUDGMENT: 08/05/2008

BENCH:
S.B. SINHA & P.P. NAOLEKAR

JUDGMENT:

JUDGMENT REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.__3404_____ OF 2008 (Arising out of SLP (C) No. 14803 of 2006) H.V. Nirmala .... Appellant Versus Karnataka State Financial Corporation & Ors. .... Respondents JUDGMENT S.B. SINHA, J.

1. Leave granted.

2. Respondent-Corporation was constituted under the State Financial Corporations Act, 1951 (1951 Act). Appellant was appointed as Trainee Assistant Manager in the Corporation in June 1983. She was promoted and posted as Branch Manager at Chikkaballapur Branch. A disciplinary proceeding was initiated against her in April, 1996. The imputation of charges against her pertained to sanction and disbursal of amount of loan in four cases. As many as four charges were framed against her. The disciplinary proceeding was initiated by the Managing Director of Corporation, wherein one Sri B. Rudregowda, a legal advisor of the company, was appointed as an Enquiry Officer on 4th July, 1996.

A finding of guilt was arrived at by the said Enquiry Officer, a copy whereof was made available to the appellant. The records of the disciplinary proceeding were placed before the Board of Directors of the Corporation. By an order dated 9th June, 1998 a penalty of dismissal from services was imposed upon her. Appellant preferred an appeal thereagainst before the Board itself on or about 4th December, 1998. The said appeal was treated to be a petition for review which by reason of an order dated 2nd March, 1999 was dismissed. Aggrieved by and dissatisfied therewith, the appellant filed a writ petition before the High Court of Karnataka at Bangalore. By reason of a judgment and order dated 23rd June, 2005 a learned Single Judge of the said Court dismissed the writ petition. An intra court appeal was preferred thereagainst which has been dismissed by a Division Bench of the said High Court by reason of the impugned judgment and order dated 22nd February, 2006.

3. Mr. Basava Prabhu S. Patil, learned counsel appearing on behalf of the appellant, principally raised two contentions before us :-

> i) Having regard to clause (3) of Regulation 41 of Karnataka State Financial Corporation (Staff) Regulations, 1965 a Legal Advisor could not have been appointed as an Enquiry Officer;

and

ii) In the absence of any provision in the Regulations unlike Rule 13 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, the Managing Director of the Corporation could not have transferred the proceeding to the Board of Directors.

4. Ms. Kiran Suri, learned counsel appearing on behalf of the respondents, on the other hand, urged :-

> i) Appointment of a Legal Advisor is permissible under clause (3) of Regulation 41 of the Regulations; and
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> ii) As a major penalty was proposed to be imposed, the Board of Directors only was the competent authority therefore in terms of the Regulations.

5. Before adverting to the rival contentions of the parties as noticed hereinbefore, we may notice that the terms and conditions of appointment and service of the staff of the Corporation are governed by the 1951 Act and the Regulations framed thereunder known as Karnataka State Financial Corporation (Staff) Regulations, 1965 (for short the Regulations).

6. Officers of the Corporation are classified in three groups, namely Class A; Class B and Class C. Appellant was a Category `A' officer. Chapter IV of the Regulations deals with conduct, discipline and appeals. Regulation 26 deals with the liability of an employee to abide by the Regulations and the orders. Regulation 28 enjoins a duty upon the employee to promote the interest of the Corporation. Regulation 41 deals with penalties which reads as under :-

"Without prejudice to the provisions of other Regulations, an employee who commits a breach of the rules or Regulations of the Corporation or who display negligence, inefficiency or indolence, or who knowingly does anything detrimental to the interests of the Corporation or in conflict with its instructions, or commits a breach of discipline or is guilty of any other act of misconduct, shall be liable to the following penalties :

(a) censure;

(b) delay or stoppage of increments or promotion including stoppage at an efficiency bar, if any;

(c) reduction to a lower post or grade or to a lower stage in the time scale;

(d) recovery from pay of the whole or part of any pecuniary loss

caused to the Corporation by negligence or breach of orders;

(e) dismissal.

(2) No employee shall be subjected to the penalties

(a), (b), (c), (d) or (e) of sub-regulation (1) except by an order in writing signed by an appropriate disciplinary authority and no such order of the disciplinary authority shall be passed without the charge or charges being formulated in writing and given to the said employees so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers, and in the latter case his defence shall be taken down in writing and read to him. For this purpose the disciplinary authorities will be as indicated at Appendix III of the (Staff) Regulations, 1965 of KSFC.

Provided that the requirements of this sub-

regulation may be waived if the facts on the basis of which action is to be taken have been established in a Court of Law or Court Martial or where the employee has absconded or where it is for any other reason impracticable to communicate with him or where there is difficulty in observing them and the requirements can be waived without causing injustice to the employee in every case, where all or any of the requirements of this sub-regulation are waived, the reasons therefor shall be recorded in writing.

(3) The enquiry under this sub-regulation and the procedure with the exception of the final order may be delegated to an officer of the Corporation of a rank above that of the employee against whom the charges have been framed.

We may, however, note that according to the respondents, clause (3) of Regulation 41 in fact reads as under :-

"41(3). For the purpose of holding an enquiry into Articles of charges, Disciplinary Authority may itself hold an enquiry or appoint an Inquiring Authority for the purpose from amongst the offices of the Corporation of rank above that of the employee against whom the charges have been framed or any authority as listed in the panel approved for the purpose."

7. Before proceeding further we may also notice the relevant portions of Appendix III enumerating the functions of the appointing authority and the disciplinary authority etc., which read :-

Name of Appointing Authority	Disciplinary Authority	Penalty that can be imposed	Appellate Authority	Office Authority that can be I.	II.
III					
IV					
Group `A'	Board	Managing Director	a.b.	Board	
		Board	c.d.e.	Board	

8. Appellant did not raise any objection in regard to the appointment of the Enquiry Officer. He participated in the enquiry proceeding without any demur whatsoever. A large number of witnesses were examined before the Enquiry Officer. They were cross-examined. Appellant examined witnesses on her own behalf.

Learned Single Judge as also the Division Bench of the High Court opined that the appellant has failed to establish that any prejudice has been caused to her by reason of appointment of a Legal Advisor as an Enquiry Officer and as the appellant has participated in the enquiry proceeding, she could not be permitted to raise the said contention.

9. Mr. Patil, however, would submit that such a contention which goes to the root of jurisdiction can be urged at any stage.

We do not agree. Appointment of an incompetent enquiry officer may not vitiate the entire proceeding. Such a right can be waived. In relation thereto even the principle of Estoppel and Acquiescence would apply.

10. In State Bank of India vs. Ram Das : (2003) 12 SCC 474 this Court held :

"It is an established view of law that where a party despite knowledge of the defect in the jurisdiction or bias or malice of an arbitrator participated in the proceedings without any kind of objection, by his conduct it disentitles itself from raising such a question in the subsequent proceedings. What we find is that the appellant despite numerous opportunities made available to it, although it was aware of the defect in the award of the umpire, at no stage made out any case of bias against the umpire.

> We, therefore, find that the appellant cannot be permitted to raise the question of bias for the first time before this Court."

11. There are questions and questions in regard to the jurisdictional issues. An authority may lack inherent jurisdiction in which case the order passed would be a nullity but he may commit a jurisdictional error while exercising jurisdiction. The legal rights conferred upon the employees in this behalf may be different under different statutes. A legal admission under the common law is not debarred for acting as an enquiry officer. Even in relation to applicability of the principles of natural justice, breaches whereof would ordinarily render the decision nullity, the courts have been applying the prejudice doctrine to uphold the validity thereof.

We are, however, not unmindful of the legal principle laid down in Vitarelli vs. Seaton : (1959) 359 US 535 which has been noticed in Ramana Dayaram Shetty vs. International Airport Authority : (1979) 3 SCC 489 stating :-

> "10. Now, there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by Respondent 1 and since the Respondents 4 did not satisfy this standard or norm, it was not competent to Respondent 1 to entertain the tender of Respondents 4. It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in Viteralli v. Saton1 where the learned Judge said:
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> "An executive agency must be rigorously held to the standards by which it professes its action to be judged .... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed .... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

But in the said decisions, applicability of the prejudice doctrine was not considered being not necessary to do so. Jurisdictional issue should be raised at the earliest possible opportunity. A disciplinary proceeding is not a judicial proceeding. It is a domestic tribunal. There exists a distinction between a domestic tribunal and a court. Appellant does not contend that any procedure in holding the enquiry has been violated or that there was no compliance of principles of natural justice.

12. This Court in Union of India vs. S. Vinodh Kumar : (2007) 8 SCC 100 has held :-

> "18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

13. Reliance has been placed by Mr. Patil on Central Bank of India vs. C. Bernard : (1991) 1 SCC 319 wherein this Court in a case of disciplinary enquiry allowed the plea of incompetence on the part of the disciplinary authority to be raised for the first time before the High Court, stating :-

> "9. Lastly, Shri Shetye submitted that in any event the respondent succeeded in getting the order of punishment quashed on a mere technicality and that too on the contention belatedly raised before the High Court for the first time and, therefore, the High Court was in error in directing payment of all consequential benefits. We think there is merit in this contention. If the objection was raised at the earliest possible opportunity before the Enquiry Officer the appellant could have taken steps to remedy the situation by appointing a competent officer to enquire into the charges before the respondent's retirement from service. It is equally true that the penalty has not been quashed on merits. On the contrary, if one were to go by the charge levelled against the respondent and the reply thereto one may carry the impression that the respondent had made the claim on the basis of the fake receipt; whether the respondent himself was duped or not would be a different matter. The fact, however, remains that the impugned order of punishment has to be quashed not because the merits of the case so demand but because the technical plea of incompetence succeeds."

(Emphasis supplied) However, therein also all consequential benefits were not given. In that case the Enquiry Officer had no jurisdiction at all. Even the defecto doctrine could not be applied as he was not the holder of the office but merely an ex-employee, who could not have been appointed as an Enquiry Officer.

14. We may at this stage also notice two other decisions of this Court whereupon reliance has been placed by Mr. Patil.

In Union of India vs. Tulsiram Patel : (1985) 3 SCC 398 this Court held :

> "57. The question came to be reconsidered by a larger Bench of seven Judges in Moti Ram Deka case. While referring to the judgment of the majority in Babu Ram Upadhya case the Court observed as follows (at pp. 731-2):
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> "What the said judgment has held is that while Article 310 provides for a tenure at pleasure of the President or the Governor, Article 309 enables the Legislature or the executive, as the case may be, to make any law or rule in regard, inter alia, to conditions of service without impinging upon the overriding power recognised under Article 310. In other words, in exercising the power conferred by Article 309, the extent of the pleasure recognised by Article 310 cannot be affected, or impaired. In

> fact, while stating the conclusions in the form of propositions, the said judgment has observed that the Parliament or the Legislature can make a law regulating the conditions of service without affecting the powers of the President or the Governor under Article 310 read with Article 311. It has also been stated at the same place that the power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate officer and can be exercised by him only in the manner prescribed by the Constitution. In the context, it would be clear that this latter observation is not intended to lay down that a law cannot be made under Article 309 or a rule cannot be framed under the proviso to the said article prescribing the procedure by which, and the authority by whom, the said pleasure can be exercised. This observation which is mentioned as proposition number (2) must be read along with the subsequent propositions specified as (3), (4), (5) and (6). The only point made is that whatever is done under Article 309 must be subject to the pleasure prescribed by Article 310."

In Rattan Lal Sharma vs. Managing Committee, Dr. Hari Ram (Co- education) Higher Secondary School : (1993) 4 SCC 10 it was held :

> "But if the plea though not specifically raised before the subordinate tribunals or the administrative and quasi- judicial bodies, is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the court, it is only desirable that a litigant should not be shut out from raising such plea which goes to the root of the lis involved."

The said decisions, to our mind, are not applicable to the fact of the present case.

15. Appellant himself has quoted the said Regulation which was corrected merely upto 31st October, 1991. On the other hand, Ms. Suri has produced the Regulation which is said to be applicable at the relevant point of time, in terms whereof not only an officer of the Corporation but also any authority as listed in the panel approved for the purpose could have been appointed as an Enquiry Officer.

However, the Regulation, which was produced by Ms. Suri is corrected upto 1st April, 2002, but it is not clear as to whether the necessary amendment has been carried out prior to 14th July, 1996 or not. We hope that the said assertion of the learned counsel is correct. We are, however, in this case proceed on the basis that Regulation 41(3) remained unchanged and according to learned counsel in terms of the Regulation which was prevalent at the relevant point of time, an outsider could have been appointed as the Enquiry Officer.

16. In Central Bank of India (supra) also this Court held that an Enquiry Officer need not be an officer of the Bank as even a third party can be appointed an Enquiry Officer to enquire into the conduct of an employee. What was, however, emphasised was that a non-official cannot act as a

disciplinary authority and pass an order of punishment against the delinquent employee. It is in that view of the matter it was held that a retired employee could not act as a disciplinary authority.

17. We may, however, notice that in a case of this nature where appointment of the Enquiry Officer may have something to do only for carrying out the procedural aspect of the mater, strict adherence to the Rules may not be insisted upon. Superior courts in a case of this nature may not permit such a question to be raised for the first time. (See - Sohan Singh and others vs. The General Manager, Ordnance Factory, Khamaraia, Jabalpur and others : AIR 1981 SC 1862).

18. Prejudice doctrine, in our opinion, may also be applied in such a contingency. We, therefore, are of the opinion that the first contention of Mr. Patil has no merit.

19. Submission of Mr. Patil that the Managing Director could not have directed the proceeding to be placed before the Board, in our opinion, has equally no merit. Appointing authority of Class `A' Officers is the Board. Managing Director is the disciplinary authority only in respect of minor punishments. When a major punishment is proposed to be imposed, the Board of Directors alone will have the jurisdiction to consider the gravity of the alleged misconduct so as to enable it to pass an appropriate order. It is idle to contend that had Managing Director passed an order, an appeal could have been preferred thereagainst. If the entire Board is the appropriate authority for taking a decision, it is only that authority which was required to take decision and not any other. (See Indian Airlines Ltd. vs. Prabha D, Kanan : (2006) 11 SC 67).

20. For the said purpose an express provision in the Regulation was not imperative. Managing Director of the Corporation initiated a proceeding but he could not impose a major penalty and in that view of the matter he will have the incidental power to place the findings of the Enquiry Officer before the Board. Such an incidental power must be held to be existing with all the statutory authorities. Absence of any Rule as is obtaining in Rule 13 of the CCS (CCA) Rules would not, in our opinion, vitiate the proceeding.

21. For the reasons aforementioned the impugned judgment does not warrant any interference. The appeal fails and is dismissed accordingly. There shall, however, be no order as to costs.

.....J. (S.B. SINHA) .....J. (P.P. NAOLEKAR) New Delhi May 8, 2008