Bombay High Court
D.A. Kelshikar vs State Of Bombay on 19 September, 1958
Equivalent citations: (1959) 61 BOMLR 1625, (1960) ILLJ 66 Bom
Bench: K Desai

JUDGMENT (1) The Plaintiff who was a Sub-Inspector of Police filed this suit inter alia for declaration that the order dated 5-4-1952 removing him from the police force of the State of Bombay is void and inoperative and that he continues to be a member of police force and for arrears of salry on that footing.

(2) The main contention on which plaintiff prays for the aforesaid declation are contained in paragraphs 14(A) and 14(b) of the Plaint. The Plaintiff relies upon the provisions of Article 311(2) of the Constitution of India. The Plaintiff case is that he has not been given a reasonable opportunity of showing cause against the action proposed to be taken against him s required under the Article and that the show cause notice tendered to him was not in conformity with the provisions of the Articles (3) The plaintiff contends that the Defendent did not give to the Plaintiff any opportunity of showing cause against the accuracy of the facts founds by the District Superintendent of Police in a departmental inquiry against the plaintiff. The second ground on which he plaintiff relies is that in January, 1952 when the show cause notice was tendered to the laintiff, in fact the plaintiff had already suffered the punishment inflicted upon him by the District Superintendent of Police and it was therfore not competent for the Defendant to revise the punishment already inflicted after lapse of two years. The Plaintiff contends that the order of dismissal amounted to double punishment right of the Plaintiff under Article 20(2) of the Constitution of India.

(4) There are several other gounds mentioned in para 14 of the Plaint for challenging the validity of the order of dismissal. These other grounds are however not pressed before me and it is unncessary therefore to summarise them here.

(5) The facts leading to this suit are shortly as follows: The Plaintiff joined the police force in the State of Baroda with the State of Bombay, the Plaintiff was absorbed in the police force of the State of Bombay and on 1-8-1949 was confirmed as Sub-Inspector of Police and was at material time attached to Karjan police station in Baroda District. On 31-1-1950 the Plaintiff was found in the garden house of one Haribai Ramdas at village Atali.. At that house, what is prescribed as vet party (drinking party) was then in progress. On 2-2-1950, the District Superintendent of Police, Baroda district placed the plaintiff under suspension from 1-2-1950 on the ground that the plaintiff was involved in an offence under the prohibtion act and th3e matter was still under investigation and that the continuance of the plaintiff in office was likely to result in suppression of evidence. Thereafter, the departmental enquiries proceeding were proceeded in connction with the said incident. Statements of several persons were taken and ultimately on 21-3-1950, the District Superintendent of Police, Baroda, framed a charge against the plaintiff. A copy of the charge framed was served on the plaintiff. The charge framed as follows:-

"Serious misconduct in that you .. .. attended a drinking party in the garden house of Mr.Haribhai Ramdas at village Atali on 31-1-1950 in flagrant violation of the policy laid down by Government for rigid observance by all public servants vide Government Circular, Political and

Serviced Department No.1581/34 dated 13-7-1948. Copies of the following documents are sent herewith in suport of the charge."

(6) The documents referred to are copies of a panchanama inquiry report, statements made by several persons, a letter addressed to the Collector by the Mamlatdar Baroda and the aforesaid circular dated 13-7-1948.

(7) It is admitted that the plaintiff received this charge sheet and the documents referred to in the charge-sheet. All these documents were also forwarded to the Dy.Superintendent of Police, Dhaboi for completing the departmental inquiry proceedings and submitting a report to the District Superintendent of Police for final orders.

(8) The Sub-Divisional Police Officer one Shri N.C.Mistri thereafter appears to have proceeded with the departmental inquiry. It is relevant to point out that as regards the procedure in departmental inquiry, Rules have been framed. These Rules appear in Bombay Police Manual. It is admitted by the parties that the Rules provide for an elaborate procedure for departmental inquiry and inter alia provide for (1) giving a defaulter all opportunities to be present at the hearing and to hear the evidence led in proof of the charge and cross examine the witness produced for the purpose, (2) for submitting the case for defence and for producing the evidence in defence and for giving complete hearing to the defaulter.

(9) It appears that the Sub-divisional Police Officer Shri.N.C.Mistri proceeded with the departmental enquiry in accordance with the aforesaid rules and provisions and in pursuance of those Rules made his report dated 25-4-1950. In his report he summarised the evidence led before him and also gave his opinion as he was entitled to do. In his opinion the explanations given by the Plaintiff are acceptable and according to him the charge against the Plaintiff was not proved. The Sub-Divisional Police Officer appears to have forwarded his report in accordance with the Rules to the District Superintendent of Police who was a competent Officer to deal with the matter. By his deceision and order dated 6-5-1950, the District Superintendent of Police one Shri.B.D.Shah after giving reasons therefor held that the charge against the Plaintiff was proved on evidence on reord beyond a shadow of any reasonable doubt. He therefore passed orders reducing the plaintiff from grade Rs.135/- to Rs.130/- for a period of one year from 01-05-1950. This decision and order served on the Plaintiff and he was also informed that he had a right to appeal against the order within two months from the date of receipt of order. The Plaintiff was given opportunity to appear before and was heard by Shri.B.C.Shah.

(10) The Plaintiff went in appeal against the aforesaid order on 25-7-1950. The Dy.Inspector General of Police, Northern Range, dismissed the Plaintiff`s appeal on 13-9-1950.

(11) The Plaintiff thereafter accepted the order of punishment dated 06-05-1950 passed by District Superintendent of Police as binding and sufferred the punishment awarded to him. The punishment which was for one year was completed on 01-05-1951.

(12) By a show cause notice dated 11-01-1952 the defendant (the State of Bombay) referred to the Departmental Proceedings held against the Plaintiff by the District Superintendent of Police, Baroda and the punishment inflicted upon the Plaintiff on 6-5-1950 as also to the appeal filed by the Plaintiff and the confirmation of the punishment in the appeal and further stated as follows :

' And whereas the Government of Bombay consider that the punishment inflicted upon you is inadequate you are hereby required to show cause within one month from the date of receipt of this notice why you should not be dismissed from the Police Force; if you fail to show cause within the aforesaid period, Government will inflict such punishment or pass such order as it deems fit."

This is the show cause notice on which the main contentions of the plaintiff are based. It is at this stage necssary to note that in reply to the show cause notice, the plaintiff addressed a letter dated 19-2-1952 to the defendant through the Secretary, Home Department. By his letter the plaintiff dealt in detail with the charge levelled against him and the departmental proceedings which had taken place. The plaintiff referred to his long past services and also that he had been the recipent of diverse awards from the Government of Baroda and of Bombay. The plantiff prayed that the Government should take a lenient and human view of the whole situation and use its authority with mercy. By its resolution datd 5-4-1952, the defendant after considering the representations made by the plaintiff by his letter dated 19-2-1952 passed orders dismissing the plaintiff from the police force.

(13) In May 1952 the plaintiff appears to have made a representation to the Government of Bombay in connection with his dismissal. As the plaintiff did not succeed in his representation the plain tiff ultimately filed this suit on 16-7-1953.

(14) The plaintiff's counsel mainly relied on the provisions of Art. 311(2)of the Constitution of India in support of the plaintiff's contention that the order of dismissal was not valid. Provision in Art 311(2) runs as under:

"311(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Provided....."

(15) The provision in Art. 311(2) is a repetition of a similar provision in S. 240(3) of the Government of India Act, 1935. Both of these provision s have been construed in several dicisions of this court as well as the Supreme Court of Inida. The provisions of S. 240(3) were the subject matter of decision of the Privy Council in what is popularly mentiuoned as Lal's case. High Commr. for India and Pakjstan v. I. M. Lall . Mr. mody places reliance on these decisions and submits that "It was obligatory on the State to mention and include the grounds why they wanted to impose the punishment of dismissal in the notice dated 11-01-1952."

Mr. Mody elaborated his contention by stating that the notice should have specified the charge against the plaintiff and should have referred to the evidence in support of the charge and should have given all the gorunds with particulars as to why the Government (defendant) had tentatively decided upon inflicting the punishment of dismissal on the plantiff. Mr. Mody contended that as all the aforesaiud matters had not been in detail specified in the notice dated 11-1-1952, the noitice wasw not real but illusory. The notice did not give any reasonable or other opportunity to the plaintiff to make any contentions regardig the charge levelled against him. Nor did it give any information about the evidence available in support of such a charge/ Mr. Mody contended that the word "inadequate" in the notice was insufficient to convey to the plantiff any information regarding the gournds of enhancement of punishment.

(16) In connection with his aforesaid contentions, Mr. Mody relied upon the judgment of Chagla C. J. in the case of State V. Gajanan Mahadev, . Mr. Mody substantially relied upon the passage at page 178 of Bom. LR: (at p. 354 of AIR) where it is stated as follows:

"It is well settled law that it is not sufficient under this sub-section for the Government merely to inform the servant that it proposes to pass a particular punishment anmd to ask him to show causeagainst that punishment. The opportunity which the State has to furnish has to be a reasonable opportunity, and the Courts have held that a resonable opportunity is only afforded to the servant when he can show cause not only against the punisment but also against the ground on which the State proposes to punish him. Therefore, it is not sufficient that the State should call upon the servant to show ccuase against the quantum of punishment intended to be inflicted upon him; the State must also call upon the servant to show cause against the decision arrived at by a departmental inquiry if that decision constitutes the ground on which the Government proposes to take action against the servant".

Mr. Mody therefore says that he was entitled to a show cause notice callng upon him to show cause against the decision arrived at in the deprtmental inquiry and also that the decision in the departmental enquiry was a gound on which the dfendant has relied for the purpose of an enhancemnt of punishment.

(17) In furtherance of his contention Mr. Mody relied also upon the decision of the Privy Council in the case of 50 Bom. L. R. 649: (AIR 1948 PC 121). He referred to the passage in the decision whereby their Lordships agreed with the view taken bythe majority of the Federal Court in that particular case. Mr. Mody pointed out , from p. 655 of that report(Bom. LR): (at p. 126 of AIR) that the majority of the Federal Court held " ..... It seems to us that the sectin requires not only notification of the action proposed but of the grounds on which the authority is proposing that the ation should be taken and that the person concerned must then be given a reasonable time to make his representations against the proposed action and the grounds on which it is proposed to be taken".

Mr. Mody says that no grounds are mentioned in he notice dated 11-1-1952 and the notice is accordingly not in conformity with the Art. 311(2) and the dismissal of the plantiff is invalid.

(18) It appears to me that the contention of Mr. Mody is ill founded. As is pointed out in each of the aforesaid decisions it is for theCourt to find out from facts of each case as to whether reasonable opportunity has been afforded to the defaulter or the plaintiff within the meaning of the provisions of Art. 311(2). In the case of , it is pointed out by the learned Chief Justice as follows:

" It may also be said that it may not be necessary in every case to issue a notice in terms calling upon the servant to show cause not only against the quantum of punishment but also aginst the grounds on which the proposed acton is based. Even though, as in this case, the notice may be defective, if in fact the servant has been given the opportunity and has availed himself of the opportunity of showing cause against the grounds, then the mere fact that there is an irregularity about the notice may not lead to the Court holding that the Government Servant did not have the opportunity required under section 240(3). But we think that there can be no doubt that the Court must be satisfied o a revirew of all the facts of a particular case that the statutory obligation cast upon the State has been porperly discharged by the Styate and the statutory obligation is to afford reasonable opportunity to the dismissed servant".

(19) In Lall"s case (AIR 1948 PC 121) their Lordships of the Privy Council in approving the judgment of the Federal Court accepted the following.

"In our judgment each case will have to turn on its own facts, but the real point of the subsection is in our judgment that the person who is to be dismissed or reduced must know that that punishment is proposed as the punisbhment for certain acts or omission on his part and must be told the grounds on which it is porposed to take such action and must be given a reaponable opportun ity of showing cuase why such punishment should not be imposed."

Their Lordships further added, " If the civil servant has been through an nquiry under R. 55, it would not be reasonable thathe should ask for a repetition of that stage, if duly carried out, but that would not exhaust his staturoty right, and he would still be entitled to represent against the punishment porposed as the result of the findings of the enquiry".

(20) In the case of Khem Chand v. Union of India , , Lall's case was considered in detail. The learnd Chief Justice of India at p. 505 (of SCJ): (at p. 306 of AIR) observed that:

" It is true that the provision (311(2) does not in terms, refer to different stages at which opportunituy is to be given to the officer concerned. All that it says is that the Government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. He must not only be given an opportunity but such opportunity must be a reasonable one..... If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence..... He should be allowed to show that the evidence against him is not worthy of credence or consideration . All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been gulity of any misconduct so as to ment any pun ishment, it is reasonable that he should also have an opportunity to contend that the charge proved against

him do not necessarily require the particular punishment proposed to be meted out to him....."

At p. 507 (of SCJ): (at p.307 of AIR) the kearnbed Chief Justice after quoting the passage from Lall's case AIR 1948 PC 11) as quoted above held as follows:

"The above passage quite clearly explains that the point on which their Lordships of the Judgment Committee agreed with the majority of the Federal Court is that a further opporutnity I to be given to the Government servant after the charge have been established against him and a particular punishment is proposed ot be meted out to him .., but a close reading of the rest of that passage will indicate that in heir Lordship view the substance of the protection of R. 55 is alos included in S. 240(3) and to that is superadded, by way of futher protection, the necessity of givbing yet another opporutnity to the govenrment servant at the stage whbere the vcharges are proved against him and a particular punishment is tentatively proposed to be inflicted on hi. Their Lordships referred to "statutory opportunity being reasonble afforbed at more than one stage", that is to say that the opportunity at more stages than one are comprised within the opportunity contemplated by the statute itself. Of course if the government servant has been through the enquiry under R. 55, it was not be reasonable that he should ask for a repetition of that stage if duly carred out which implies that if no enquiry hasbeen held under R. 55 or any analogous rule applicable to the particular servant then it will bequite reasonable for him to ask for an enquiry."

(21) It appears to me that what is laid down by the decisions in and is that in the event of a departmental enquiry having taken place according to the rules of proreasonable for any government servant to ask for a repetition of theat enquiry at the stage of enquiry as to nature and quantum of punishment. At that stage it is necessary by reason of Art. 311(2) to give him an opprotunity of showing cause against the punishment proposed to be taken in regard to him.

(22) I read the aforesaid decisions to mean that the departmental enquiry duly carried out satisfies the provisions of Article 311(2) so far as opportunity is to be afforded to a government servant in connection with the investigation of charge levelled against him. After such an enquiry is duly carried out, it is necessarly under the provisions of Art. 311(2) to give a second opportunity rto the Govt. servant (defaulter) to one again reagitate the matter as regards the conclusions already reached in the departmental enquiry. In my view it is for that very reason that the learned Cheif Justice observed in the case of that even though the notice may be defective, if the government servant has been given an opportunity and has availed himself of the opporutnity of showing cause against the grounds then the mere fact that there is an irregularity about the notice may not lead to the Court holding that the government servant did not have the opportunity required under S. 240(3).

(23) In this connection I must refer to the recent decision in Appeal No. 69 of 1957 (Bom.). While dealing with the defective show cause notice in that case Chagla C. J. observed as follows:

"The last contention urged by Mr. Thakore is that the show cause notice which was issued by the commissioner of Police called upon him merely the show cause aginst the quantum of the sentence and not against the merits of the decision given. It is perfectly true that it is now well settled law that

a civil servant has a right to show cause both against the merits of the decision given. It is perfectly true that it is now well settled law that a civil servent has a right to show cause both against the sentence and the merits of the decision when the final show cause notice is issued against him and we would have taken a very serious view of the matter if the appealant had been deprived of the opportunity of showing cause against the findings arrived at both by the inquiry pofficer and the Commissioner of Police. But unfortunately for Mr. Thakore, the appellant was not deprived of this opportunity because whatever might have een the form of the showe cause notice issued by the Commissioner of Police on 12-12-1955, in fact the appellant showed cause and showed cause very vigorously against the findings both of the inquiry officer and the commisioner of Police. In face of this, we cannot possibly accept the contention of Mr. Thakore that there as a contravention of Art. 311 of the Constitution."

It is relevant to point out that the contentions raised by the plaintiff in connection with the show cause notice dated 11-1-1052 appear to be merely technical. In fact in spite of the alleged defective character of the notice the plaintiff by his letter dated 19-2-1952 raised all contentions as regards the merits of the charge levelled against him as also the qudxgion ov punishment. The plaintiff not only had reasonable opportunity in the said connectionbut took opportunity and dealt with the matter on the footing that it was open tothe plaintiff to make contentions regarding all details of the charge and the evidece against him as also the quantum of punishment. The plaintiff has not suffer by the alleged defect in the notice. The plaintiff has not made any contentions in the plaint regarding t he departmental enquiry and the same must be deemded to have been duly carried out.

(24) Having regard to my reading as aforesaid of the decisions of this Court, I have come to the conclusion that the plaintiff had reasonable opportunity of showing cause in respect opf the charge levelledagainst him as also the quantum of punishment that was intended to be inflicted upon the plaintiff. I am unable to accept the contention of the plaintiff that further grounds regarding the intended punishment of dismissal ought to have been mentiioned or included in the notice given by the defendant. I do not accept the contentions as made in para 14 (a) of the plaint that the plaintiff has not been given any reasonable opportunity of showing cause against the action proposed to be taken in regard to him as required by Art. 311(2) of the Constitution of India or that the notice is defective and not in conformity with Art. 311(2) . The plaintiff had complete opportunity to meet the charge levelled against him. The plaintiff in fact led evidence in his possession before the proper authority in the said connection and failed to establish that he was not guity. The plaintiff made all possible contentions regarding the quantum of punishment but failed to succeed.

(25) As regards the cobntents of the show cause notice dated 11-1-1952 I donot think that the same should have been more elaborate. It is wothy of note that the plaintiff understood the meaning of this notice completely and took opporutnity to deal with the whole of the matter. The quantum of punishment which was intended to be inflicted is mentioned in the notice. Prior punishment already inflicted is referred to as inadequate. The deaprtmental enquiry proceddings in which the plaintiff was punished are also mentioned in the notice. The plaintiff was thereby made aware that having regard to its Prohibition Policy the Government took a serious view of defaults of itts employees in connection with Prohibition Policy. I am unabe to agree with the contention of Mr. Mody that the notice required to mention furthergrounds for intended en hanced punishment of dismissal.

(26) Mr. Mody contended that he was, having regard to delay in evision of punishment, entitled to a new tria and investigation of the charge against him. He also contended that I should consider the true meaning and effect of the Government Circular regarding Prohibition Policy mentioned in the charge and hold that the finding in the departmental inquiry was incorrect. I am of the view that the Court is not to reconsider on facts thje decision in the departmental enquiry. The Court is not entilted to go into the facts to find out as to whether the finding isd correct or not. I therefore do not think that it is necessary for me to go into these matters. I cannot accept these contentions of Mr. Mody.

(27) The second contention of the plaintiff is that he having suffered the punishment the State was not entitled to revise or enhance the punishment inflicted upon him. He contends that this was a case of "double punishment". It is not denied that the State had a right to reconsider the whole of the charge levelled against the plaintiff, and to inflict punishment in revision as it deemed necessary. The plaintiff has not raised any contention that the State had nob jurisdiction to deal with the matter. Mr. Mody did not make any argument in support of such contention. The plaintiff has based all his argument in support of this contention on Art. 20(2) of the Constitution of India. That Article runs as follows:

"No person shall be prosecuted and punished for the same offence more than once".

This Artlcle has been construed on several occations. In the case of S. A . Venkataraman v. Union of India, , following Magbool Hussain v. State of Bombay, it has been held that:

" The language of Art. 20 and the words actually used in Art. 20(2) afford a clear indication that the proceedings in connection with the prosectuion and punishment of a person must be in the nature of a criminal proceeding, before a cxurt of Law or Judicial Tribunal, and not before a Tribunal which entertains a departmental or an administrative inquiry even though set up by a Statute, butn which is not required by law to try the matter judicially and on legal evidencve."

In fact Mr. Mody is unable to carry his arguments further having regard to this judgmnt of the supreme Court which was pointed out by Mr . Dubash . There was no question of a criminal prosectuion in this case and/or double punishment and I cannot therefore accept the contention raisedd on behalf of the plaintiff.

(28) In this connection Mr. Dubash also relied upon the judgment of Gajendragadkar J. in this Court in Spl. C. A. No. 180 of 1954 where it was held as follows:

" It is then contended that this amounts to a double punishment. In our opinion this argument is wholly fallacious. There are not two punishments with which the petitioner is conerced. The petitioner received a minor punishment at the hadns of the District superintendent of Poli ce and in the exercise of his revisional jurisdiction the Inspector Gnmeral of Police has enhanced that punishment. It is impossible to accede to the argument that enhancemernt of punishment made in exercise of revisional jurisdiction amounts to a second punishment and that in such a case the party is exposed to the risk of double punishment. Therefore we must reject the argument that in the

present case the petitioner has been subject to the risk of double punishment."

There is no substance in the contention of the plaintiff that he has suffered double punishment.

(29) Issues Nos. 4 to 9 were not pressed seriously on behalf of the plaintiff.

(30) My answers to the issues accordingly are:

1. Negative.

2. Negative.

3. Negative.

4. Negative.

5. Negative.

6. Negative.

7. Negative.

8. Negative.

9. Negative.

10. Negative.

11.Negative.

(31) After I had delivered iun cout this judgment, in another matter I have been referred to the deicision in Atindra Nath v. G. F. Gilot, . I have only to record that in that case also it has been held (as I have done in this case) that it is unnecessarly to give a second hearing to a defaulter in case where departmental enquiries have been duly completed.

(32) In the result the suit is dismissed with costs.

(33) Suit dismissed.