Supreme Court of India
Tilak Chand Magatram Obhan vs Kamala Prasad Shukla on 10 May, 1994
Equivalent citations: 1995 SCC, Supl. (1) 21
Author: Ahmadi
Bench: Ahmadi, A.M. (J)

PETITIONER:
TILAK CHAND MAGATRAM OBHAN

Vs.

RESPONDENT:
KAMALA PRASAD SHUKLA

DATE OF JUDGMENT10/05/1994

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
RAY, G.N. (J)

CITATION:
1995 SCC Supl. (1) 21

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.The facts leading to this appeal lie in a narrow compass. The respondent K.P. Shukla was appointed as a teacher on 14- 6-1968 and was confirmed in the year 1970. He was suspended from service on 20-12-1975 and was charge-

sheeted on 23-12-1975 on as many as 16 counts. An Enquiry Committee was appointed as per the provisions of the Secondary School Code which found him guilty by majority on all counts and removed him from service. The delinquent filed an appeal which was allowed by the Deputy Director of Education, Greater Bombay, by his order dated 31-5-1977. The Deputy Director came to the conclusion that the rules of natural justice had been violated inasmuch as Shri S.K. Vig who was co-opted as nominee of the school was not a member of the Managing Committee; the record and proceedings of the Enquiry Committee were not properly maintained; the Secretary was not always present at the meetings of the Enquiry Committee and Shri Inder Raj Sudan, the Principal of the

School had a strong bias against the delinquent and, therefore, he could not and ought not to have acted as a member of the Enquiry Committee. On these grounds the Deputy Director of Education set aside the order of removal against which the Management preferred an appeal which was allowed by the Joint Director of Education by his order dated 14-2-1979. Against the said decision of the Joint Director a writ petition came to be filed in the High Court at Bombay which was heard and decided by Pendse, J. on 25-3- 1981. The learned Judge after hearing counsel dismissed the petition against which the matter was carried in appeal under the Letters Patent. The Division Bench of the High Court by its judgment and order dated 25-10-1982 reversed the decision of the learned Single Judge thereby reversing the decision of the Joint Director also and hence affirmed the view of the Deputy Director. It is against the said order of the Division Bench that the present appeal is preferred by the Management.

2.Mr Bobde, the learned counsel for the appellant, submitted that it was open to the Joint Director to independently evaluate the evidence tendered in the course of the enquiry for the purpose of deciding whether or not the order of removal could be sustained notwithstanding the allegation of bias. According to Mr Bobde where the order is passed by the school authorities and it is found to be biased on account of the presence of a biased member on the Committee, it is open to the higher authorities to evaluate the order independently of the decision taken by that Committee and come to its own independent findings on the basis of the record whether or not all or any of the charges are proved against the delinquent. He submitted that in the instant case the Joint Director on an independent appreciation came to the conclusion that four of the 16 charges were established and on that finding sustained the order of removal. He, therefore, submitted that the Division Bench of the High Court was not right in treating the order as void ab initio on the ground that one of the members of the Committee enquiring into the matter was strongly biased against the delinquent. At any rate, submitted counsel, the defect could be cured and that was cured by the Joint Director independently assessing the material on record in support of each charge. We are afraid, in the facts and circumstances of this case, we are not in a position to endorse this line of reasoning.

3.It must be realised that Shri Inder Raj Sudan the Principal of the school was deeply biased against the delinquent. He had given notice to the delinquent on 2-3- 1976 for initiating defamation proceedings against him. Who was responsible for the bias is not relevant to us. It was alleged that his presence on the Committee had vitiated the atmosphere for a free and fair trial and his mere presence operated as an inhibition to the delinquent throughout the proceedings.

Mr Garg contended that once it is shown that the one of the members of the Committee had a deep-rooted bias against the delinquent and was not likely to act in an objective manner he ought to have excused himself for otherwise the delinquent would have to enter the enquiry with a grave inhibition in his mind that he is not likely to get a fair deal from the Enquiry Committee. He, therefore, submitted that such a situation would not be congenial to a fair hearing to be given to the delinquent and the bias would affect the quality of the enquiry and any decision taken on the basis of record so prepared in such an environment cannot cure the ab initio voidness attached to the enquiry. We see merit in this contention.

4.Mr Bobde first invited our attention to the observation made by Lord Reid in Ridge v. Balawinl at p. 81 to the following effect :

> "I need not consider what the result would have been if the Secretary of State had heard the case for the appellant and then had given his own independent decision that the appellant should be dismissed."

Mr Bobde submitted that inherent in this observation is the view that the defect could have been cured if the Secretary of State had made the final decision on the basis of the record without being influenced by the decision impugned before him. We do not think that it would be permissible to draw such an inference. That cannot be said to be the ratio of the decision. The learned Judge himself says in so many words that he does not consider what would have been the result if the Secretary had given his independent decision. The decision could have gone one way or the other. Therefore, the above observation does not help Mr Bobde. If the defect is one which goes to the root of the matter and which is incurable it cannot be remedied by the higher authority taking a decision independent of the authority that rendered the initial decision. In Leary v. National Union of Vehicle BuilderS2 it was conceded that the disciplinary authority had not followed the requirements of natural justice. The question which was posed for consideration was : Can a deficiency of natural justice before a trial tribunal be cured by a sufficiency of natural justice before an Appellate Tribunal? Megarry, J., after stating that the sheet should be made as clean as possible; I think it should be the same sheet and not a different one, proceeded to add at p. 720 as under :

> "If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him.

I cannot think that natural justice is satisfied by a process whereby an unfair trial, although not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would b e a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice 1 (1963) 2 All ER 66 2 (1970) 2 All ER 713: 1971 CH 34 in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

But the learned counsel pointed out that in Calvin v. Carr3 the aforesaid observations from Leary were described as too generally stated. Their Lordships pointed out that it affirms a principle which may be found correct in a category of cases but to seek to apply it generally would tantamount to overlook, what in the end is a fair decision, notwithstanding some initial defect. There is, however, a distinction between a defect in the enquiry and a lapse which almost destroys the enquiry. Where the lapse is of the enquiry being conducted by an officer deeply biased against the delinquent or one of them being so biased that the entire enquiry proceedings are rendered void, the appellate authority cannot repair the damage done to the enquiry. Where one of the members of the Enquiry

Committee has a strong hatred or bias against the delinquent of which the other members know not or the said member is in a position to influence the decision-making, the entire record of the enquiry will be slanted and any independent decision taken by the appellate authority on such tainted record cannot undo the damage done. Besides where a delinquent is asked to appear before a committee of which one member is deeply hostile towards him, the delinquent would be greatly handicapped in conducting his defence as he would be inhibited by the atmosphere prevailing in the enquiry room. Justice must not only be done but must also appear to be done. Would it so appear to the delinquent if one of the members of the Enquiry Committee has a strong bias against him? And we repeat the bias must be strong and hostile and not a mere allegation of bias of a superior having rebuked him in the past or the like. Such is the view taken in a recent decision of this Court in Rattan Lal Sharma v. Managing Committee, Dr Hari Ram (Co-educational) Higher Secondary School4. That was a case where the enquiry was alleged to be vitiated on account of violation of the rules of natural justice due to the presence of a person who was strongly biased against the delinquent. While dealing with this contention this Court observed : (SCC p. 22, para 12) "The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry committee, had percolated throughout the enquiry proceedings thereby vitiating the principles of natural justice and the findings made by the enquiry committee was a product of a bias and prejudiced mind. The illegality committed in conducting the departmental proceedings has left an indelible stamp of infirmity on decision of the Managing Committee since affirmed by the Deputy Commissioner and the Commissioner."

In this view of the matter this Court concluded that the decision of the appellate authorities could not cure the initial defect in the constitution of the Enquiry Committee and the consequences flowing from one of the members of the Enquiry Committee being biased. In this view of the matter this Court had allowed the appeal.

3 (1979) 2 All ER 440, 448 4 (1993) 4 SCC 10: 1993 SCC (L&S) 11 06: JT (1993) 3 SC 487

5. This being the only point urged in this appeal and we finding no merit therein must dismiss this appeal. The appeal, therefore, fail and is dismissed. There will be no order as to costs.