Supreme Court of India
Ex. Armymen'S Protection ... vs Union Of India And Ors on 26 February, 1947
Author: Kurian
Bench: Sudhansu Jyoti Mukhopadhaya, Kurian Joseph

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2876 /2014
[Arising out of S.L.P. (Civil) No. 15000 of 2010]

Ex. Armymen's Protection Services P. Ltd. … APPELLANT (S)

VERSUS

Union of India and others … RESPONDENT (S)

J U D G M E N T

KURIAN, J.:

Leave granted.

2. Natural justice is a principle of universal application. It requires that persons whose interests are to be affected by decisions, adjudicative and administrative, receive a fair and unbiased hearing before the decisions are made. The principle is traceable to the Fundamental Rights under Part III of the Constitution of India. Whether any reasonable restriction or limitation or exception to this principle is permissible in the interest of national security, is the issue we are called upon to consider in this case.

3. The appellant was granted business of ground handling services on behalf of various airlines at different airports in the country. The ground handling service is subject to security clearance from the Central Government. Section 5 of the Aircraft Act, 1934 empowers the Government to make rules providing for licensing, inspection and regulation of aerodromes and, thus, Aircraft Rules, 1937 have been framed. Rule 92 proves for ground handling services. The Rule reads as follows:

"92. Ground Handling Services- The licensee shall, while providing ground handling service by itself, ensure a competitive environment by allowing the airline operator at the airport to engage, without any restriction, any of the ground handling service provider who is permitted by the Central Government to provide such service:

Provided that such ground handling service provider shall be subject to the security clearance of the Central Government." (Emphasis supplied)

4. For processing the security clearance, the Central Government created a Bureau of Civil Aviation Security (hereinafter referred to as 'BCAS'). As per circular No. 4 of 2007 dated 19.02.2007 issued by BCAS, no ground handling agency shall be allowed to work in any airport without prior security clearance obtained from BCAS. The appellant company was granted security clearance for a period of five years w.e.f. 17.04.2007. On the strength of such clearance, the appellant company entered into a contract with Jet Airways for the ground handling services in various aerodromes including Patna. On 27.11.2008, the appellant company was informed that the security clearance had been withdrawn in national interest. That was challenged by the appellant company before the High Court of Judicature at Patna in CWJC No. 758 of 2009. The said writ petition was disposed of by judgment dated 25.03.2009 directing the BCAS to afford a post decisional hearing. There was also a direction that the appellant should be furnished materials relied on by the respondents for withdrawal of the security clearance, without disclosing the source of information. The BCAS accordingly passed order dated 20.04.2009, holding the view that documents available in the file were classified as 'secret' and the same could not be shared with the appellant and, thus, order dated 27.11.2008 withdrawing the security clearance was affirmed. That was challenged by the appellant in the High Court leading to judgment dated 27.10.2009.

5. The learned Single Judge called for the files and they were produced in a sealed cover. According to the Single Judge "the information that is available is an apology in support of the action. There was nothing at all to justify any such emergent action so as to avoid pre- decisional hearing". The court was also of the view that the principles of natural justice would have to be read into wherever any administrative action visits a person with civil consequences, unless such procedure is excluded by any Statute. However, the court also held that if there are justifiable facts and there is threat to national security, then, nobody, let alone the court, can insist on the compliance of principles of natural justice as a pre condition for taking any action resulting even in adverse civil consequences.

6. Learned Single Judge was also of the view that at least gist of allegations should be disclosed so that the affected party gets an opportunity to meet the same at the time of hearing. In the absence of any such justifiable reason, the impugned order was set aside and the writ petition was allowed.

7. In the intra court appeal, the Division Bench of the High Court also called for the files and after minute perusal of the same, took the view that there were many more materials available in the files which could not be disclosed in national interest to the appellant and hence, the impugned action was justified. It was held that: "... The learned single judge, after perusal of the allegations in the sealed cover, we are disposed to think, has not taken it seriously on the ground that the allegations were to please the politicians, etc. the same is not actually correct. We have already, after perusal of the report, stated earlier that it contains many more things and the basic ingredients of security are embedded in it. The report is adverse in nature. It cannot be said to be founded on irrelevant factors. We are disposed to think that any reasonable authority concerned with security measures and public interest could have taken such a view. The emphasis laid in the report pertains to various realms and the cumulative effect of the same is the irresistible conclusion that it is adverse to security as has

been understood by the authority. This court cannot disregard the same and unsettle or dislodge it as if it is adjudicating an appeal." (Emphasis supplied) and thus, the appeal was allowed setting aside the order passed by the learned Single Judge.

8. Thus aggrieved, the appellant is before us.

9. By order dated 17.05.2010, while issuing notice, this Court stayed the operation of the impugned judgment of the Division Bench.

10. Heard the counsels on both sides. The learned Single Judge, after going through the files, has taken one view and the Division Bench, after going through the entire files, some of which had not been noticed by the learned Single Judge, has taken another view. We do not find it necessary for this Court to go into the disputed contentions or on the different views taken by the High Court. We find that on principle of law, the High Court, be it through the learned Single Judge or the Division Bench, is of the same view. According to the learned Single Judge, if there are justifiable facts and national security is threatened, then, a party cannot insist nor any court can insist on compliance of principle of natural justice as a condition precedent to take adverse action. Though in different words, after having gone through the entire files, it is the same principle that has been restated and reiterated by the Division Bench in the impugned judgment.

11. It is now settled law that there are some special exceptions to the principles of natural justice though according to Sir William Wade[1], any restriction, limitation or exception on principles of natural justice is "only an arbitrary boundary". To quote further:

"The right to a fair hearing may have to yield to overriding considerations of national security. The House of Lords recognized this necessity where civil servants at the government communications headquarters, who had to handle secret information vital to national security, were abruptly put under new conditions of service which prohibited membership of national trade unions. Neither they nor their unions were consulted, in disregard of an established practice, and their complaint to the courts would have been upheld on ground of natural justice, had there not been a threat to national security. The factor which ultimately prevailed was the danger that the process of consultation itself would have precipitated further strikes, walkouts, overtime bans and disruption generally of a kind which had plagued the communications headquarters shortly beforehand and which were a threat of national security. Since national security must be paramount, natural justice must then give way.

The Crown must, however, satisfy the court that national security is at risk. Despite the constantly repeated dictum that 'those who are responsible for the national security must be the sole judges of what the national security requires', the court will insist upon evidence that an issue of national security arises, and only then will it accept the opinion of the Crown that it should prevail over some legal right. ..." (Emphasis supplied)

12. In Council of Civil Service Union and others v. Minister for the Civil Service[2], the House of Lords had an occasion to consider the question. At page-402, it has been held as follows:

"... The decision on whether the requirements of national security outweigh the duty of fairness in any particular case is for the Government and not for the courts; the Government alone has access to the necessary information, and in any even the judicial process is unsuitable for reaching decisions on national security. But if the decision is successfully challenged, on the ground that it has been reached by a process which is unfair, then the Government is under an obligation to produce evidence that the decision was in fact based on ground of national security. ..." (Emphasis supplied)

13. The Privy Council in The Zamora[3], held as follows at page-107:

> "... Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a Court of law or otherwise discussed in public."

14. According to Lord Cross in Alfred Crompton Amusement Machines v. Customs and Excise Commissioners (No.2)[4]:

"... In a case where the considerations for and against disclosure appear to be fairly evenly balanced the courts should I think uphold a claim to privilege on the grounds of public interest and trust to the head of the department concerned to do whatever he can to mitigate the effects of non-disclosure. ..."

15. It is difficult to define in exact terms as to what is national security. However, the same would generally include socio-political stability, territorial integrity, economic solidarity and strength, ecological balance, cultural cohesiveness, external peace, etc.

16. What is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of State or not. It should be left to the Executive. To quote Lord Hoffman in Secretary of State for the Home Department v. Rehman[5]:

"... in the matter of national security is not a question of law. It is a matter of judgment and policy. Under the Constitution of the United Kingdom and most other countries, decisions as to whether something is or is not in the interest of national security are not a matter for judicial decision. They are entrusted to the executive."

17. Thus, in a situation of national security, a party cannot insist for the strict observance of the principles of natural justice. In such cases it is the duty of the Court to read into and provide for statutory exclusion, if not expressly provided in the rules governing the field. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the State is of the stand that the issue involves national security, the court shall not disclose the reasons to the affected party.

18. Be that as it may, on facts we find that the security clearance granted to the appellant by order dated 17.04.2007 for a period of five years has already expired. To quote:

"I am directed to inform you that background check or the company has been conducted and nothing adverse has been found Companies security clearance shall be valid for a period of five years from the date of this letter at the end of which a fresh approval of this Bureau is mandatory." (Emphasis supplied)

19. In that view of the matter, it has become unnecessary for this Court to go into more factual details and consideration of the appeal on merits. The same is accordingly disposed of.

20. There is no order as to costs.

.....J.

(SUDHANSU JYOTI MUKHOPADHAYA) .....J.

(KURIAN JOSEPH) New Delhi;

February 26, 2014.

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[1] Administrative Law, 10th Edition, H.W.R. Wade & C.F. Forsyth, Pages- 468-470.

[2] (1985) AC 374
[3] (1916) II AC 77
[4] (1974) AC 405, Page- 434
[5] (2003) 1 AC 153
