CASE COMMENT ON S.N. MUKHERJEE V. UNION OF INDIA

Kritika Lohia, Symbiosis Law School, Nagpur, Symbiosis International University

Case Title: S.N. Mukherjee V. Union of India

Date of Judgement: August 28, 1990

Court: Supreme Court of India

Quorum: Sabyasachi Mukharji, CJ., S.C. Agrawal, J., M.H. Kania, J., K.J. Shetty, J. and K.N. Saikia, J.

Citation: (1990) 4 SCC 594

I. INTRODUCTION

In the jurisprudence of administrative law, procedural fairness is not merely a structural formality but is an essential safeguard against arbitrariness. The landmark decision in the case of ***S.N. Mukerjee v. Union of India***[1] undertook a comprehensive examination of the requirement for administrative and quasi-judicial authorities to record reasons for their decisions. This case comment examines the balance created by the Court between the demands of natural justice and statutory requirements, and the scope and limits of the orders.

II. FACTS

The appellant is an officer in regular army who had title of captain and held a permanent commission. The appellant stepped in as Officer Commanding attached to Military Hospital of Jhansi on 27th Dec, 1974. The appellant had gone for training in August and came back in November, during this period Officer G.C. Chhabra was there on appellant's behalf. During, this training period of the appellant, Officer Chhabra had moved a contingent bill for 16,280 Rs. for winter uniforms of the watchman and cleaners, on 25th September, 1975, but it was sent back Controller Defence Account due to certain objections. A new bill of amount

[1] *S.N. Mukerjee v. Union of India*, (1990) 4 SCC 594 (India).

7029.57 Rs. was submitted by plaintiff on 25th December, 1975, considering the variation of amount in both bills CDA reported matter for enquiry and court held appellant to be liable for lapses. On 7th January, 1977 the General Commanding Officer passed that displeasures to be recorded, General officer commanding in chief of central Command should be given to appellant, but it was disagreed by General Officer Commanding in chief and passed an order on 26th August, 1977, that said that action is to be taken against the appellant. Chargesheet came to filed on 20th July, 1978 and three charges were levelled against the appellant in front of General Court Martial. The three charges levelled against the appellant were under Section 52-f of The Army Act, 1950[2] which talks about doing something with an intention of fraud, and the other two charges were under Section 63[3] of Army Act which talks about acts causing prejudice to discipline and military order. After examination of 22 witnesses, it was proved that appellant was guilty for the first and third charge but not the second charge, the General Court Martial passed an order dismissing the appellant from his service, on 29th November, 1978. Appellant filed a petition to chief of Army staff to not confirm the findings but it was confirmed by him. So, the appellant filed a petition to Central Government under Section 164(2)[4] of the Army Act, 1950, this was also rejected. This section says that if a person is not satisfied with the findings or decision of the court martial, then he has authority to file a petition to Central Government and the Central Government may pass any order as it may think fit. The appellant further filed a petition in High Court, which also came to be rejected so he filed a petition in Supreme Court by special leave of court challenging the Hon'ble High Court's decision.

III. BACKGROUND

The appellant filed an appeal by the special leave of the court, challenging the decision given by the Hon'ble Delhi High Court, on 12th August, 1981. Delhi High Court dismissed the petition filed by appellant by this order. The appellant had filed a writ petition against the sentence and findings given by the Court Martial on 29th November, 1978, the decision given by the Chief of Army Staff on 11th May, 1979 that confirmed the findings and sentence and the order passed by the Central Government on 6th May, 1980, that dismissed the writ petition filed by appellant under Section 164(2)[5] of the 1950, Army Act. The Hon'ble Supreme Court of India dismissed the appeal filed by the appellant and stated that there are no

[2] The Army Act, 1950, No. 46, Acts of Parliament, 1950 § 52(f).
[3] *Id.* § 63.
[4] *Id.* § 164 (2).
[5] *Id.*

merits in the case and it is incorrect to say that the findings and sentence levelled against the appellant improper. It was held that recording of reasons by administrative authority exercising judicial or quasi-judicial powers is necessary for justice except in some cases like in the current case.

IV. ANALYSIS

In this case the Hon'ble Supreme Court reaffirmed and held that reasons are to be mandatorily recorded by the administrative authority with its decision. The court held that any administrative authority working in its judicial or quasi-judicial authority must mention the reasons. The court also held that it is not compulsory for the confirming authority to record reasons for its decision. Whereas there are some exceptions to this rule of recording of reasons that is in case of dismissal of appeal or revision. In case where the original court has given reasons for its decision and the appellate court wants to dismiss the appeal, they may not record reasons for its decision. The two main issues in this case were whether it is mandatory for the administrative authority to record reasons for the decision given by them or not and second that does this rule applies to confirming authorities while passing order.

For the first issue, the appellant argued that there is general principle or rule of natural justice that statutory tribunal should provide reasons in every case for their decisions and findings. They referred to the case of ***Som Datta Datta vs. Union of India***[6] to support their contention. The respondents argued that there is no such requirement given under any statute that court martial or central government should give reasons while giving reasons in a post confirming petition under Section 164[7] of the Act and argued that the case is irrelevant. The courts in US asserted that decision should be recorded, it held that this recording of reasons is still subject to judicial review and it can be exercised only when advised upon consideration which was held in the case of ***Securities and Exchange Commission vs. Chenery Corporation.***[8] The position in England is that, there is no need for recording of reasons but there are also judgements like the case of ***Regina vs. immigration Appeal Tribunal Ex Partee Khan***[9] , where it was held that not recording of reasons is denial of justice. The Donoughmore Committee in their 1932 report, observed that, "any party affected by decision should be

[6] *Som Datta Datta vs. Union of India*, IR 1969 SC 414 (India).
[7] The Army Act, 1950, No. 46, Acts of Parliament, 1950 § 164.
[8] *Securities and Exchange Commission vs. Chenery Corporation*, (1942) 87 L ed 626 636 (India).
[9] *Regina vs. immigration Appeal Tribunal Ex Partee Khan*, (1970) 2 QB 417 (India).

informed of the reasons" and the Franks committee observed that "decision of tribunal should be reasoned as full as possible". Based on the recommendation of these committees, Section 12[10] of the Tribunal and Enquiries Act, 1958 came into force in U.K. which says that the tribunals must provide with statements of reason either in written or oral format if asked upon. Similarly in Australia also the reasons are required to be recorded while passing order or giving decisions. The Law Commission its 14th report observed that reasons should be recorded in administrative cases and held that these reasons help in removing the arbitrariness in the decision but still there is no express law on it. In the case of ***Harinagar Sugar Mills Ltd. vs. Shyam Sundar Jhunjhunwala[11],*** the court held that if reasons are not given with the decision the court fails to see how the powers to the court are utilised. Through various others cases it was observed that recording of reasons is necessary to remove arbitrariness and also gives aggrieved party an opportunity to contest his case in higher court based on the reasons, it is also helpful and necessary for the appellate court to analyse the case based on the reasons given by the original court. And thus, the Hon'ble Supreme Court in this case ultimately held that the administrative authority should record reasons for the decision given by them unless in cases where it is expressly allowed.

For the second issue it was argued that the Article 227[12] bars High Court's authority over tribunals or courts in matters related to Armed Forces. The appellant in this regard argued that the Section 164[13] of the Act gives appellant an authority to represent in front of the confirming authority before it gives it confirms it's decision, but the appellant was not given an opportunity to represent in front of the confirming authority before finalising its decision and the section was not considered when they passed their decision and thus is not valid. The respondent argued that this section does not give any opportunity to the appellant for representation before confirmation but this authority is available after the decision is confirmed by the confirming authority on their demand. In this context the court held that there is no remedy available to appellant before confirmation of the decision. Rule 147[14] was also referred in support which says that person tried in court of martial shall have authority to such confirmation is available on demand any time after the authority has given its decision and before the proceedings are destroyed. This rule also clarifies that the aggrieved party has right

[10] The Tribunals Enquiries Act, 195, 6 & 7 Eliz. 2c. 66, § 12(1).
[11] *Harinagar Sugar Mills Ltd. vs. Shyam Sundar Jhunjhunwala*, AIR 1961 SC 1669 (India).
[12] Indian Constitution, Art. 227.
[13] The Army Act, 1950, No. 46, Acts of Parliament, 1950 § 164.
[14] The Army Rules, 1954, Rule 147.

to copy of the proceedings after the sentence has been confirmed. The court held that because of some miscommunication the appellant's representation was not received but the confirming authority before it confirmed its decision and has held the appellant did not have any such right so order is valid.

The appellant also argued that among three charges levelled against him, the first and second charges were similar, and the appellant was acquitted from second charged and thus argued that he should also be acquitted for the first charge. The court held that it is important to consider that the appellant was not held guilty of second charge in alternative of the first one and thus he is found guilty of the first charge and it is correct.

Lastly the appellant argued that the decision of court martial on first and third charge is unreasonable and without any evidence. The court rejected these contentions of the appellant and held that the decision was taken upon by calling and examining different witnesses in court and evidence was placed so it is valid. The court ultimately dismissed the petition filed by the appellant.

I agree with the decision given by Hon'ble court as the main allegation that was indiscipline against the appellant was proved against him and there was no ambiguity regarding it. Only the confirmation of the sentence by the confirming authority was due. The recording of reasons even if assumed would have been done would have not made any difference. And rejection of the sentence or order of the court of martial only based on the reasons of not recording of reasons would have been unjust. The charges against the appellant were clear and decision taken by the authority is valid.

V. CONCLUSION

The Hon'ble Supreme Court dismissed the appeal filed by the appellant on 28th August 1990. The appellant argued that the decision given should be held to be invalid as no reasons were recorded in order to the decision given by the court and the respondent argued that there is no specific law that obligates the administrative authority to record reasons. The court held that recording of reasons is necessary in respect of justice and fairness but the confirming authority may not record reasons for dismissal. The court also laid down a few exceptions to this rule. This exception allows reasons to not be recorded in cases where it is expressly allowed. Exceptions are important, but this exception if cause prejudice to one of the

parties is unjust. These exceptions were given long ago and law is still developing and these exceptions are to be revised accordingly. The reasons help in understanding the decision ain detail and solves problems in better way. These exceptions are often misused and biasness while deciding is a big threat to such decisions, as no reasons are to be recorded for the decision it can be often misused and is injustice for the aggrieved party. Exceptions are for points where law is silent and there is no application but if an exception leads to chances of injustice being caused or any unfair decisions, it should be revised as far as possible. This case was referred by the Hon'ble Supreme Court in case of ***Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney,***[15] the Constitutional Bench reiterated in this case that, for people to have faith in the judicial system it is important to record reasons and it is also important test to find out if the authority while deciding the matter has applied mind or not. The Hon'ble Supreme Court also discussed this case in case of ***Union of India v. J.S. Brar,*** [16] and held that without reasons it is not possible to say whether all the points were considered before taking the decision. This case also referred by the Hon'ble Supreme Court in many cases like in ***Paul George v. State***[17]***, M.L. Jaggi v. Mahanagar Telephones Nigam Ltd.***[18]***, State of U.P. v. Ashok Kumar Nigam,*** [19], etc.

[15] *Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney*, (2009) 4 SCC 240 (India).
[16] *Union of India v. J.S. Brar*, (1993) 1 SCC 176 (India).
[17] *Paul George v. State*, (2002) 2 SCC 406 (India).
[18] *M.L. Jaggi v. Mahanagar Telephones Nigam Ltd.,* (1996) 3 SCC 119 (India).
[19] *State of U.P. v. Ashok Kumar Nigam,* (2013) 3 SCC 372 (India).