A

CHAIRMAN, BOARD OF MINING EXAMINATION & ANOTHER

v.

RAMJEE

February 3, 1977

B

[V. R. KRISHNA IYER AND A. C. GUPTA, JJ.]

Coal Mines Regulations—Regulation 26*—Interpretation of.*

Rules of natural justice—Concept of reasonably opportunity cannot be fitted into a rigid mould—Need for a strict liability—Code for subterranean occupations.

C

Under regulation 26(1) if, in the opinion of the Regional Inspector, a person to whom an Overman's, Sirdar's, Engine-driver's, Shot-firer's, or Gas-testing Certificate has been granted is incompetent or is guilty of negligence or misconduct in the performance of his duties, he may, after giving the person an opportunity to give a written explanation, suspend his certificate by an order in writing. U/r 26(2) he shall within a week of such suspension report the fact to the Board together with all connected papers including the explanation, if any received from the person concerned. U/r 26(3) the Board may, after such
D inquiry as it thinks fit, either confirm or modify or reduce the period of suspension of the certificate, or cancel the certificate.

The respondent, a shot-firer in a colliery, violated the provisions of the Coal Mines Regulations by entrusting his risky, technical work to an unauthorised person which resulted in an accident injuring one Bhadu. The Regional Inspector u/r 26(1) gave him an opportunity for an explanation in writing and after considering the materials before him forwarded the papers to the
E Chairman of the Board together with a recommendation for cancellation of the certificate under Regulation 26(3). The Board bestowed its judgment on the materials gathered which included the delinquent's admission, and cancelled the shot-firing certificate. The High Court allowed the writ petition assailing the said orders of cancellation of the licence and held : (1) The Board had no jurisdiction since the Regional Inspector did not suspend the certificate first before reporting (2) The Regional Inspector had no power to recommend but only to report and so the Board's order influenced by the recommendation was
F bad in law and (iii) the Board should have given a fresh opportunity to be heard before cancellation of the certificate and its absence violated natural justice, voiding the order.

Accepting the Court,

HELD : (1) Law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfilment as 'social engineering' depends
G on its scrutinized response to situation, subject-matter and the complex of realities which require ordered control. A holistic understanding is simple justice to the meaning of all legislations. Fragmentary grasp of rules can misfire or even backfire, as in this case. [906 H, 907 A]

(2) The judicial key to construction is the composite perception of the *daha* and the *dahi* of the provision. To be literal in meaning is to see the skin and miss the soul of the Regulation. [909 A-B]

H

(3) Over-judicialisation can be subversive of the justice of the law. To invalidate the Board's order because the Regional Inspector did not suspend the certificate is a fallacy. The Board's power is independent and is ignited by

the report, which exists in this case, of the Regional Inspector. There is an overall duty of oversight vested in the board to enforce observance of rules of safety. [909 D] A

(4) To set aside the order on the ground that the Regional Inspector had no power to recommend but only to suspend and report that his recommendation influenced the Board's order is to enthrone a processual nicety do dethrone plain justice. Suspension, on an enquiry, predicates a prior *prima-facie* finding of guilt and to make that known to the Board implicitly conveys a recommendation. The difference between suspension plus report and recommendatory report is little more than between Tweedledum and Tweedledee. Recommendations are not binding but are merely raw materials for consideration. Where there is no surrender of judgement by the Board to the recommending Regional Inspector, there is no contravention of the cannons of natural justice. B
[909 E-F, 910D-E]

(5) Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. C

Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures. In the instant case, the Board cannot be anathematised as condemning the man without being heard. The respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Regulation 26 in the circumstances is complete. [909 G-H, 910 A-G] D

Tereaesai's case [1970] 1 S.C.R. 251; *Management of DTU* [1973] 2 S.C.R. 114: *Tandon's case* [1974] 4 SCC 374 referred to. E

Observations : Sensitive occupations demand stern juristic principles to reach at scapegraces, high and low, and not mere long drawn-out commissions whose verdicts often prove dilatory 'shelter' for the men in whom Parliament has entrusted plenary management. Any sensitive jurisprudence of colliery management must make it cardinal to punish the Board vicariously for any major violations and dreadful disasters, on macro-considerations of responsibility to the community. The Board must quit, as a legal penalty, if any dreadful deviation, deficiency, default or negligence anywhere in the mine occurs. This is a good case for new principles of liability, based on wider rules of sociological jurisprudence to tighten up the law of omission and commission at the highest levels. Responsibility and penalty must be the concomitants of highly-paid power vested in the top-brass. Any deviance on the part of these high-powered authorities must be visited with tortious or criminal liabilities. [908 F-H, 907 D-F] F

(The Court emphasised the need for evolving a code of strict liability calling to utmost care not only the crowd of workers and others but the few who shall care or quit so that subterranean occupations necessary for the nation are made as risk-proof as technology and human vigilance permit). G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2294 of 1968.

Appeal from the Judgment and Order dated 25-9-1967 of the Madhya Pradesh High Court in Misc. Petition No. 595/66. H

L. N. Sinha, Sol. Genl, *B. Datta* and *Girish Chandra* for the Appellants.

A *S. K. Gambhir,* amicus curiae, for the Respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—If the jurisprudence of remedies were understood and applied from the perspective of social efficaciousness, the problem raised in this appeal would not have ended the erroneous B way it did in the High Court. Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law cannot be done. Here, the socio-legal situation we are faced with is a colliery, an explosive, an accident, luckily not lethal, caused by violation of a regulation and consequential cancellation of the certificate of the delinquent shot-firer, eventually quashed by the High Court, for processual solecisms, by a C writ of certiorari.

We may state at the outset that the learned Solicitor General agreed that the appellant, the Board of Mining Examination, would be satisfied if the law, wrongly laid down by the High Court, were set aside and declared a right and he was not insisting on the formal reversal of the order affecting the respondent (who is unrepresented D before us). We proceed on that footing.

The few necessary facts may be narrated to bring up the legal issue in its real setting.

The respondent was a shot-firer in a colliery and being a risky, technical job, had to possess a certificate for it. He handed over an E explosive to an unskilled hand who fired it, an accident occurred and one Bhadu, employed in the mine, was injured. The Regional Inspector of Mines immediately enquired into the cause of the accident and found, on the respondent's virtual admission, qualified by some prevarication, that the shots were fired not by himself but by a cutter, an unauthorised person for shot-firing to whom the respondent had wrongfully entrusted the work. Thereby he contravened F the relevant Coal Mines Regulations. The Regional Inspector gave him an opportunity for explanation and, after considering the materials before him, forwarded the papers to the Chairman of the Board together with a recommendation for cancellation of the certificate under Reg. 26. The Board bestowed its judgment on the materials gathered by the Regional Inspector at the enquiry, which included G the delinquent's admission, and cancelled the shot-firing certificate. The said cancellation was shot down by a writ of the Court on the ground of violation of Reg. 26.

Was Regulation 26, in the context and setting of the Mines Act, misinterpreted by the High Court at all? This is the short question canvassed before us. We permit ourselves a few observations which H serve as perspective-setters. Law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfilment as social engineering depends or its sensitized response to situation, subject-matter and the complex of realities which require

ordered control. A holistic understanding is simple justice to the meaning of all legislations. Fragmentary grasp of rules can misfire or even backfire, as in this case. It is a notorious fact that collieries—Indian collieries, both before and after nationalisation—are strategic sources of the nation's fuel and, operationally, areas of tragic human hazards. We need coal, we want miners to bring it from the bowels of the earth. The dangerous technology is not yet so perfect in India as to ensure risk-free extraction. And, after many lives have been lost by the neglect of operatives or supervisors or supine bosses, follows the scenario of tears and torn-down homes, a little monetary compensation, a flutter in Parliament, a long-drawn-out Commission, a routine Report about lapses and recipes and the little man's life-or death lot continuing to receive callous consideration at the hands of the law, law-matter, law-enforcer—this sombre colliery disaster sequence must educate and inform the jurisprudence of high-risk operations. In short, the Mines Act (and Regulations) must receive its judicial construction in the total setting, teleologically approached, not fragmentarily dissected. The relevant regulation is only a tiny inset in the larger justice of the statute.

The Mines Act has a scheme designed to avoid accidents and ensure safety. A system of certificates, supervisions and penalties is part of this scheme. The broad responsibility for due enforcement of the Act rests on the Board and the relevant regulation casts liabilities on the lesser men. Any sensitive jurisprudence of colliery management must make it cardinal to punish the Board vicariously for any major violations and dreadful disasters, on macro-considerations of responsibility to the community. The Board must quit, as a legal penalty, if any dreadful deviation, deficiency, default or negligence anywhere in the mine occurs. In the present case a micro-breach is being punished, but when major mishaps occur the top echelons, on account of inadequacies in colliery codes, escape and make others the scapegoats. Although, in this case, only injury, not death, has occurred, there is a good case for new principles of liability, based on wider rules of sociological jurisprudence, to tighten up the law of omission and commission, at the highest levels. Responsibility and penalty must be the concomitants of highly-paid power vested in the top-brass.

Back to the pedestrian statement of facts. The respondent's curious contention, accepted by the learned Judge, is best understood after reading Regulation 26 :

> "26. *Suspension of an Overman's, Sirdar's, Engine-Driver's, shot-firer's, or Gas-testing Certificate—*
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> (1) If, in the opinion of the Regional Inspector, a person to whom an Overman's, Sirdar's, Engine-driver's, Shot-firer's, or Gas-testing Certificate has been granted is incompetent or is guilty of negligence or misconduct in the performance of his duties, the Regional Inspector may, after giving the person an opportunity to give a written explanation, suspend his certificate by an order in writing.

A (2) Where the Regional Inspector has suspended a certificate under sub-regulation (1) he shall within a week of such suspension report the fact to the Board together with all connected papers including the explanation if any received from the person concerned.

(3) The Board may, after such inquiry as it thinks fit, B either confirm or modify or reduce the period of suspension of the certificate, or cancel the certificate."

The plain purpose of the regulation is to pre-empt further harm by suspending the certificate of the shot-firer 'if in the opinion of the Regional Inspector' he 'is incompetent or is guilty of negligence or misconduct in the performance of his duties... after giving the person C an opportunity to give a written explanation'. This suspension is itself a punishment liable to confirmation, modification, reduction of the period of suspension or, by way of enhancement, cancellation of the certificate by the Board. Before taking such action by way of cessation, as it were, the Board gets a report from the Regional Inspector of the fact of suspension and makes 'such enquiry as it thinks fit'. In the present case, the Board had an explanation D (styled an appeal) from the respondent, and also a recommendation by the Regional Inspector for cancellation of the certificate. The latter had not suspended the delinquent but had merely held an enquiry, reached the *prima facie* view of guilt and and instead of suspension at once, only made a recommendation to the Board for cancellation.

E The Regional Inspector has, among his statutory duties, the supervision of the observance of the safety rules and the holding of enquiries (see sections 7 & 14). He has to report to the Board on breaches of regulations and conditions. The Board, in its turn, has the over-all charge of the safe management of the mine. Derelictions and violations must reach its vigilant eye and be visited with F prompt action. Jurisprudentially speaking, there is need to cast an obligation on the Board and the higher inspectorate not to be negligent, indifferent or insoucient in the discharge of its overall responsibility which includes anticipation of likely mishaps and introduction of the latest measures to promote safety for the men working in the dark depths at the mercy of the wicked mood of *Yama*. Any deviance on the part of these high-powered authorities must be G visited with tortious or criminal liability. Such is the price which high position must pay for the consequences of calamitous failures. Sensitive occupations demand stern juristic principles to reach at scapegraces, high and low, and not mere long-grown-out commissions whose verdicts often prove dilatory 'shelter' for the men in whom Parliament has entrusted plenary management. We emphasize this matter to awaken the law-makers to evolve a code of strict liability H calling to utmost care not only the crowd of workers and others but the few who shall care or quit so that subterranean occupations necessary for the nation are made as risk-proof as technology and human vigilance permit.

Unfortunately, the High Court surrendered to narrowness of interpretation of Regulation 26 by accepting the submission of the respondent. To be literal in meaning is to see the skin and miss the soul of the Regulation. The judicial key to construction is the composite perception of the *deha* and the *dehi* of the provision. So viewed, Reg. 26 is easy of comprehension.

The High Court held that the order of cancellation was illegal for a few reasons which strike us as untenable. The argument runs thus. Without first suspending the certificate, the Regional Inspector cannot report to the Board and without such a report following upon a suspension the latter cannot take seisin of the matter. Since the Regional Inspector did not suspend the respondent, the Board had no jurisdiction. Secondly, the Regional Inspector had no power to *recommend,* but only to report and so the Board's order, influenced by the recommendation, was bad in law. Thirdly, the Board should have given a fresh opportunity to be heard before cancellation of the certificate and its absence in the present case violated natural justice, voiding the order.

All the three points serve to warn the courts how over-judicialisation can be subversive of the justice of the law. Now, how can the cancellation order by the Board be bad for failure to suspend the certificate by the Regional Inspector? The Board's power is independent and is ignited by the report of the Regional Inspector. Such a report exists here. There is an overall duty of over sight vested in the Board to enforce observance of rules of safety. To invalidate the Board's order because the Regional Inspector did not suspend the certificate is a fallacy.

Now to the next point. The vice that vitiates the Board's order is stated to be the *recommendation* contained in the Regional Inspector's report. Had he suspended and reported, he would have been in order. But suspension, on an enquiry, predicates a prior *prima facie* finding of guilt and to make that known to the Board implicity conveys a recommendation. The difference between suspension plus report and recommendatory report is little more than between Tweedledum and Tweedledee. And to set aside an order on such a ground is to enthrone a processual nicety to dethrone plain justice.

The last violation regarded as a lethal objection is that Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Reg. 26, in the circumstances, is complete. Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion

A of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt—that is the conscience of the matter.

Shri Gambir, who appeared as *amicus curiae* and industriously
B helped the Court by citing several decisions bearing on natural justice, could not convince us to reach a contrary conclusion. It is true that in the context of Art. 311 of the Constitution this Court has interpreted the quality and amplitude of the opportunity to be extended to an affected public servant. Certainly we agree with the principles expounded therein. But then we cannot look at law in the abstract or natural justice as a mere artifact. Nor can we fit into a rigid mould
C the concept of reasonable opportunity. Shri Gambhir cited before us the decisions in *Teredesai*(1); *Management of DTU*(2) and *Tandon*(3); and one or two other rulings. The ratio therein hardly militates against the realism which must inform 'reasonable opportunity' or the rule against bias. If the authority which takes the final decision acts mechanically and without applying its own mind, the order may be bad, but if the decision-making body, after fair and
D independent consideration, reaches a conclusion which tallies with the recommendations of the subordinate authority whch held the preliminary enquiry, there is no error in law. Recommendations are not binding but are merely raw material for consideration. Where there is no surrender of judgment by the Board to the recommending Regional Inspector, there is no contravention of the canons of natural justice. We agree with Shri Gambhir that the adjudicating
E agency must indicate in the order, at least briefly, why it takes the decision it does unless the circumstances are so clear that the concluding or decretal part of the order speaks for itself even regarding the reasons which have led to it. It is desirable also to communicate the report of the Inquiry Officer, including that part which relates to the recommendation in the matter of punishment, so that the representation of the delinquent may be pointed and meaningful.

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These general observations must be tested on the concrete facts of each case and every miniscule violation does not spell illegality. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

G We are satisfied that the order of the Board cannot be anathematised as condemning the man without being heard.

The appeal, on the point of law, must be allowed but, in the light of the concession made, as stated earlier, we leave the formal order of the High Court undisturbed. No costs.

S.R. *High Court orders maintained.*

H (1) [1970] 1 S.C.R. 251.
(2) [1973] 2. S.C.R. 114.
(3) [1974] 4 S.C.C. 374.