(1986) 03 CAL CK 0031

In the Calcutta High Court

Case No : C.R. No. 3437 (W) of 1979

Arun Kumar Mitra APPELLANT

Vs

Central Vigilance Commissioner RESPONDENT

Date of Decision : 14-03-1986

Acts Referred:

Citation : 90 CWN 1009

Hon'ble Judges : Sudhir Ranjan Roy, J

Bench : Single Bench

Advocate : Pradip Ghosh and Rupen Mitra, for the Appellant;Nani Kr. Chakraborty, A. Dutta and Kalimuddin, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Ranjan Roy, J.—The petitioner, a Deputy Finance Manager in the Eastern Coal Fields Ltd., (hereinafter to be referred to as "E.C.L.") a subsidiary of Coal India Ltd. (hereinafter to be referred to as "C.I.L.") was served with a charge-sheet by the Chairman-cum-Managing Director of the ECL, the respondent no. 4, on March 5, 1979 proposing to hold an enquiy against him on alleged imputation of misconduct and msibehaviour under the Conduct, Discipline and Appeal Rules, 1978 of the Coal India Limited (Annexure C). The petitioner was directed to submit his written statement within 10 days from the date of receipt of the said purported charge-sheet. The petitioner by his letter dated March 5, 1979 (Annexure D) denied each and all the allegations contained therein. Subsequently, the petitioner was given inspection of the relevant records (Vide annexure E) and the petitioner in fact, took inspection of such documents. According to the petitioner; the charges framed against him are tainted by bias of certain authorities, since he subsequently came to know from the relevant records that the Director of Finance absolved him from all the charges and so also the Management Committee consisting of the (Technical) and the Additional Chief Engineer (Vide annexure I).

2. The Chief Vigilance Officer by his letter dated January 17, 1979 informed the

D.I.G. of Police, Central Bureau of Investigation (hereinafter to be referred to as "C.B.I.") that in view of the Managing Committee''s opinion no regular departmental action was warranted against the petitioner (Annexure J).

3. However, inspite of the unanimous opinion of the Managing Committee, the Chairman-cum-Managing Director of the Central Vigilance Commission directed the Chairman-cum-Managing Director of the ECL, to initiate major penalty proceedings against the petitioner and proposed to nominate Sri R.N. Muhuri, the Commissioner for Departmental Enquiries to hold the purported enquiry if necessary (Annexure X). According to the petitioner, the respondent no. 4 has purported to act at the dictates and/or behest of the Central Vigilance Commission, New Delhi. It is further the case of the petitioner that the charges were framed against him with a closed mind as the language of the charges will clearly indicate.

4. The petitioner has, accordingly, invoked the writ jurisdiction of this Court for quashing and/or setting aside the charge-sheet and for a direction upon the respondents to cancel, withdraw or rescind the same and all further proceedings connected thereto.

5. Now, regarding the charge-sheet the petitioner''s main contention is that it was issued with a closed mind and also that behind the issuance of the charge-sheet there is a strong element of bias of the Central Vigilance authorities, who in fact, persuaded the unwilling departmental authorities to issue the charge-sheet against him and to hold a departmental enquiry presided over by the Commissioner of Departmental Inquiries of the Central Vigilance.

6. These allegation have, however, been seriously controverted by the respondents nos. 2, 4, 5 and 6 in their affidavit-in-opposition.

7. As it appears, the E.C.L. is a subsidiary Company of the C.I.L. and is a Government Company.

8. The services of the petitioner who was working as Senior Accountant in the Lodha Colliery, was subsequently transferred to the Coal India Ltd. and the E.C.L.

9. An anonymous complaint dated February 21, 1976 was received by the E.C.L. from the C.I.L. to the effect that certain contractors were being given special favour by Sri S.N. Jha, the Senior Executive Engineer of Sripur area of the E.C.L. in consideration of illegal gratifications. Inquiries having been made into the allegations by the Vigilance Officer of the E.C.L., certain gross irregularities were detected. This was followed by subsequent departmental inquiries and ultimately the case was referred to the Central Vigilance Commission for advice. The Central Vigilance Commission in their turn, asked the C.B.I. Ranchi to take up the investigation. A case was registered by the C.B.I. against Sri S.N. Jha, the Senior Executive Engineer.

10. On November 21, 1978 the C.B.I, completed the enquiry and sent a report to the Vigilance Officer of the E.C.L. in which prima facie evidence of corruption was

disclosed against Sri S.N. Jha and the present writ petitioner Sri A.K. Mitra. This followed initiation of a departmental proceeding against both and on February 22, 1979 the petitioner was charge-sheeted along with Sri S.N. Jha and the delinquents including the petitioner, submitted their written explanations. Annexure ''I'' to the writ petition however, shows that there was initially an attempt on the part of the departmental authorities to take a soft attitude towards the petitioner and this was intimated by the Central Vigilance Officer, Sri S.N. Mukherjee to the D.I.G. of Police, C.B.I, the respondent no. 3 in the writ petition (Vide annexure J). The C.B.I., however took a very firm view of the matter and the letter dated February 9, 1979 to the Central Vigilance Commission (Annexure K) pointed out certain gross irregularities committed by the Chairman of the tender committee Sri S.N. Jha and the present writ petitioner, the Deputy Finance Manager of the ECL and a member of the said Tender Committee. It was, accordingly, advised that major penalty proceedings should be taken against Sri Jha and Sri Mitra. Sri R.N. Muhuri, I.A.S. the Commissioner of Departmental Inquries was nominated to hold the enquiry in case such enquiry became necessary. It may be recalled in this connection that at the material time certain amendments to the Conduct, Discipline and Appeal Rules for Executive Cadre Employees of Coal India Ltd. and its subsidiaries was in the offing and on February 19, 1979 there was an amendment to the rules whereby a public servant could be designated as an Inquiring Authority.

11. The petitioner, however, did not wait for the Inquiry Proceedings to commence and at once rushed to this Court challenging the charge-sheet issued to him and all further proceedings connected thereto.

12. The main contention of Mr. Ghosh, the learned Advocate, appearing on behalf of the petitioner, being that the impugned Charge-sheet discloses a closed and biased mind of the departmental authorities. It may be useful to mention hereunder the Articles of Charges issued against the petitioner (vide page 41 of the writ petition).

ARTICLES OF CHARGES:

That Shri A.K. Mitra, while functioning as Area Finance Manager, during 1974-77, committed misconduct and failed to maintain absolute integrity and devotion to duty inasmuch as:

Firstly, he did not point out to his Area General Manager that the amount involved in the award of work against Tender Notice CMAL/ED/A-E/EE, 38/405 9 dt. 16.5.1975, was beyond the financial powers delegated to General Managers.

13. Secondly, as a representative of finance in T.C. meetings, he failed to raise objections on financial aspects and agreed to the recommendations without insisting for negotiations, in cases of award of work against the following Tender Notices:

(a) CMAL/ED/A-E/EE(C)/378/52/6822 dt. 12.8.75

(b) CMAL/ED/A-2/EE(C)/378/58/6872 dt. 14.8.75

(c) ECL/A-2/Sr.-EE(C)/378/8/1278 dt. 18.2.76

(d) CMAL/ED/A-2/EE(C)/CW/Tender/6 dt. 8.4.74

(e) CMAL/ED/A-2/EE(C)/378/38/4059 dt. 16.4.75

14. Thirdly as a finance representative, he failed to treat those tenders, as invalid, which were not supported by Earnest Money and allowed them to be given due consideration in T.C. meeting in the following cases:

(a) ECL/A-2/Sr.EE(C)/378/8/1278 dt. 18.2.76

(b) CMAL/ED/A-2/EE(C)/Tender/6 dt 8.4.74

(c) CMAL/ED/A-2/EE(C)/378/CW/Tender/7 dt. 16.4.74

(d) ECL/A-2/Sr.EE(C)/378/76/24/3488 dt. 24.5.76

(e) CMAL/ED/A-2/EE(C)/378/J8/4059 dt. 16.5.75

(f) ECL/A-2/Sr.EE(C)/378/6/965 dt. 9.2.76

(g) CMAL/ED/A-II/EE(C)/378/32/2728 dt. 2.4.75

And thereby he contravened rule 4 of the Conduct, Discipline and Appeal Rules, 1978 of the Coal India Ltd. (CIL).

In this connection Mr. Ghosh relied upon certain decisions of this Court.

15. In the Bench decision of this Court in Sunil Kumar Mukherjee v. State of West Bengal & Ors., 1977 CHN 1014 the petitioner was issued a charge-sheet calling upon him to explain disproportionate income alleged to have been made by him. It was held that the wordings of the charge disclosed a closed mind of the disciplinary authorities since the charge-sheet showed that the delinquent officer was found to be in possession of a specific amount. Similarly, in the subsequent Bench decision of this Court in Bimalakanta Mukherjee vs. The State of West Bengal & Ors., 1980(11) C.H.N. 35 the delinquent Officer was found to have acquired a specific amount which was arrived at on a detailed calculation of income and expenditure during a particular period, it was held that the charge-sheet was issued with a closed mind which by itself rendered the charge-sheet void and bad in limine as the same had violated the principles of natural justice.

16. It need not, however, be mentioned that the object of a charge-sheet is to tell the accused what he is supposed or alleged to have done and it is now more than well-settled that the charges must be specific with a statement of allegations on which they are based, with such particulars and details as are necessary to give a reasonable opportunity of defence.

17. A Learned Single Judge of this Court in Surendra Chandra Das vs. State of West Bengal & Ors. 1981(3) SLR 737 took rather a pragmatic approach to the

matter when he observed that whether a charge-sheet has been issued with a closed mind or not cannot always be decided by a mere reference to the charge-sheet itself.

18. In my judgment, no fixed principle can be laid down for determining whether a charge-sheet was issued with a biased and/or closed mind or not. Every case has to be distinguished on its own peculiar facts and circumstances.

19. So far the two Bench decisions as referred to earlier are concerned, the Learned Judges were of the view that the words used in framing the charges disclosed a closed mind of the disciplinary authorities. But the same may not be the case everywhere. As a matter of fact, the instant case is very much distinguishable on facts. Here, all the material facts concerning the charges have been specifically disclosed in the charge-sheet so that under no circumstances the charges can be said to be vague or embiguous.

20. I may mention here that the charges framed relate to contravention of rule 4 of the Conduct, Discipline and appeal Rules, 1978 of the Coal India Ltd. and while framing the charges, specific allegations had to be clearly stated so that the petitioner could not have any difficulty in understanding their real nature and import and he could explain the same properly. In my view, without the allegations being so specific, the charges would have been vague.

21. It need not be emphasized that the charges relate to certain omissions and commissions of the petitioner as the financial member of the Tender Committee and unless he was made to know what those omissions and commissions were, he would have been caught napping and would not have been in a position to explain them properly in order to exonerate himself of the said charges. As a matter of fact, I myself am to sure how else the charges could have been framed so as to take them out of the harm''s way of the ''closed mind'' theory and at the same time to avoid their being branded as vague and indefinite.

22. I personally have a feeling that this ''closed mind'' theory which possibly was intended to come to the rescue of the charge-sheeted delinquent officers in appropriate cases does not very often actually serve that purpose. Because, even when the charge is quashed on that ground, the disciplinary authority is always-given liberty to proceed afresh against the delinquent in accordance with law. The same authority against whom there is allegation of closed mind then frames the charge afresh simply by changing the languages. But the question is, does a ''closed mind'' become ''open'' as soon as the language is changed or in other words, does a mere change in the language of the charge-sheet, effect a corresponding change in the mind of the disciplinary authority.

23. The whole process, therfore, is nothing but an exercise in futility and the only purpose it has so far been able to achieve is to delay the departmental proceeding by obtaining an interim stay order from the Court. In the said process the disciplinary authorities in some cases may lose track of their important witnesses; some important witness may also die and some times important

documents may also be lost or misplaced. To cite the instance of the present case the charge-sheet was issued against the petitioner as far back in February 1979 and we are now in March 1986, that is, the departmental proceedings have been kept hanging for long 7 years and now, if the charge is quashed with liberty to the respondents to proceed afresh against the petitioner in accordance with law, who knows that it will not take another 8 or 10 years for the departmental proceeding to conclude; court proceedings intervening at stages.

24. Of course, there are likely to be cases and cases and some rare cases may possibly justify interference by the Court in view of the two Bench decisions of this Court as already cited. But what I feel is that when in all cases elaborate departmental proceedings follow the issuance of a charge-sheet and when the aggrieved delinquent has a legal right to challenge the concluded departmental proceedings in a court of law for violation of the principles of natural justice etc., staying of the proceeding at the threshold for a few years and then to allow it to continue afresh, really helps nobody. More often than not it is only an abuse of the legal process.

25. Coming to the instant case, the charges framed only state the facts which it is essential for the petitioner to know to explain his position and to prove his innocence and I do not think that they disclose the closed mind of the authorities. A departmental proceeding has, in fact, been proposed and in the said departmental proceding the petitioner will have ample opportunity to explain his position to defend himself and to prove his innocence.

26. As regards to the allegation of bias the letter stated February 9, 1979 (Annexure K) does not prima facie indicate anything as such and there is also no reason why the C.B.I, should have a bias against the petitioner and so also the Commissioner for Departmental Inquiries of the Central Vigilance or any other Officer who has been or may be nominated to hold the enquiry.

27. It is true that departmental authorities initially took a soft attitude towards the petitioner and had a mind to exonerate him of the charges but there can be nothing wrong if they have ultimately changed their mind on the basis of the report of enquiry submitted by the C.B.I.

28. For a writ Court to be unnecessarily sensitive in such matters may not always advance the cause of justice.

29. There is hardly any occasion to emphasize that a departmental proceeding following issuance of a charge-sheet is a quasi-judicial proceeding and in such proceedings all reasonable opportunities are given to the delinquent to defend himself, to cross-examine the prosecution witnesses and also to examine his own witnesses and produce his own documents if he so likes. In appropriate cases he may also be permitted to be represented by a lawyer, and that being so, a writ Court, in my view, should normally be reluctant to stall such proceedings at the threshold unless there are very strong grounds for doing so. The ''closed mind'' theory unless its application is restricted to the rarest of the rare cases, is bound

to, be a very convenient weapon in the hands of the delinquents, if not for anything else, but only to delay and/or to trustrate the departmental proceeding knowing fully well that once this Court issues a Rule with an interim order of stay, that can go on merrily for an indefinite period. Such abuse of the legal process, a writ Court, in my view, can never encourage.

30. The writ application, accordingly, fails and is dismissed on contest.

31. The Rule issued be discharged and the interim order issued do stand vacated. No order is made for costs.

On the prayer of Mr. Ghosh, the learned Advocate appearing for the petitioner, let the operation of the impugned order be stayed for a period of four weeks from this date.