
(2011) 09 DEL CK 0020
In the Delhi High Court
Case No : Writ Petition (C) 2564 of 2001

Ashok Sachdeva

APPELLANT

Vs

Tuberculosis Association of India and Others

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2011) 09 DEL CK 0020

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Sanjiv Kakra and Irfan Ahmad, for the Appellant; Ritin Rai, Siddhartha Jha and S. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.

Introduction

1. The Petitioner who was working as Secretary General and Chief Executive Officer of the Tuberculosis Association of India ("TAI") filed this petition on 23rd April 2001, challenging the appointment of the Management Committee ("MC") by the Central Committee ("CC") of TAI at its meeting on 23rd March 1998; the constitution of the Disciplinary Committee ("DC") by the CC of TAI at its meeting on 2nd December 1999; the memorandum and articles of charge dated 16th May 2000 issued by Respondent No. 6, i.e., the Vice Chairman of TAI; quashing of Memorandum dated 20th March 2001 and two other Memoranda dated 23rd March 2001 issued by Respondent No. 6.
2. While directing notice to issue in the petition on 27th April 2001, this Court had directed that any order passed by the Respondent would be subject to further orders of this Court.
3. On 6th September 2001, this Court was informed that TAI had on 29th May

2001 passed an order removing the Petitioner from the service of TAI pursuant to a resolution passed by the MC and the Executive Committee (`EC'). The application filed by the Petitioner to amend the writ petition to challenge the said order of removal was allowed by the Court on 6th September 2001.

Factual background

4. The Petitioner was appointed as Secretary General of TAI vide letter dated 1st January 1990. He joined his duties on 12th February 1990. Prior thereto, he was Director (Finance) in the Air Force Naval Housing Board, New Delhi. The Petitioner states that during his service he received several citations from State Tuberculosis Associations. The Petitioner states that in the year 1994, he found that TAI was endorsing a journal "Experta Medica" published by a pharmaceutical company "Glaxo". This according to the Petitioner was contrary to the Regulations governing TAI which did not permit the endorsement of any products or services of private bodies. He brought this to the notice of Mr. S.P. Agarwal, Respondent No. 3 herein, who became the Chairman of TAI in 1996. The Petitioner states that since Respondent No. 3 refused to examine the complaint, the Petitioner referred it to the Auditors of TAI. The report of the Auditors, however, was not made public. Subsequently, there was a committee appointed to examine the issue but even its report was not made public.

5. The Petitioner states that on account of his pointing out several irregularities being committed by TAI, he was harassed. He had made representations in this behalf to the President of India in 1999 and 2001. The Petitioner states that in the meeting of the EC held on 31st January 1996, his promotion to the senior grade was recommended. However, when Respondent No. 3 took over as Director General of Health Services he stalled the implementation of this proposal, and the EC which met thereafter on 26th September 1997 did not take any decision on Petitioner's promotion.

6. At the joint meeting of the Finance and Executive Committees of TAI held on 23rd March 1998, the question of Petitioner's promotion, as well as maintenance and repair of his accommodation, was discussed. Several "acts of commission and omission" of the Petitioner were discussed and disapproved. At the said meeting, the EC resolved to constitute an MC with the following persons:

(i) Shri G.R. Khatri, DDG and Director, National Tuberculosis Control Programme - Chairman.

(ii) Dr. R.C. Jain, Retired Director, L.R.S. Institute of T.B. and Allied Diseases, Delhi.

(iii) Dr. D.R. Nagpaul, Retired Director, National T.B. Institute, Bangalore and Vice Chairman, T.A.I.

7. The above MC was to report to the Chairman, TAI. The Secretary General was to submit all proposals and communications to the MC through the Vice Chairman, TAI. Further, the MC was to "exercise all powers of the Central

Committee as have been authorized to the Executive Committee save and except the powers mentioned in Rule 8 (e), (f) & (g)" of the Tuberculosis Association of India Rules (`TAI Rules").

8. The Petitioner submits that Mr. S.P. Agarwal, the Chairman of TAI, Respondent No. 3, was inimical towards him. The constitution of MC was contrary to the TAI Rules. It was done only to sideline the Petitioner and make him subordinate to the MC. At the meeting of the CC held, on 2nd December 1999, an unexpected development took place as recorded in its minutes (annexed as Annexure P-12 to the petition). The members of the CC objected to the Petitioner sitting with them. According to the minutes of the meeting, the Petitioner refused to sit at another table and then suddenly left the room. According to the Petitioner this was at the behest of Respondent No. 3 and further at his instance other members present at the meeting also made statements against the Petitioner. The version of the TAI of what transpired at the meeting of the CC on 2nd December 1999 is different. The minutes of the meeting records the concerns expressed by the Members about the "arrogant and irresponsible behavior of the Secretary General". One of the Members Mr. R.S.V. Easwaran was asked to request the Petitioner to return to the meeting. However, the Petitioner declined to do so. Thereafter the conduct of the Petitioner was discussed where concerns were expressed by Dr. S.B. Trivedi, Dr. R.C. Jain, Dr. M.S. Agnihotri and Mr. U.N. Vidyarthi, and immediate action was called for against the Petitioner for his behavior. Dr. R.N. Patel stated that any delay in taking action against the Secretary General would encourage indiscipline and would be detrimental to the interests of TAI. Many other members voiced the same concern and requested for immediate strict disciplinary action. Dr. D.R. Nagpaul, the then Vice Chairman, referred to the meeting held on 23rd March, 1998 where also the Secretary General had walked out of the meeting. Mr. T.N. Chaturvedi stated that this was a serious matter calling for disciplinary action. The minutes record the concerns expressed, and the unanimous decision as follows:

1. A written warning is issued to the Secretary General for this misconduct.
2. A disciplinary subcommittee comprising of Mr. T.N. Chaturvedi, Dr. R.C. Jain, Honorary Legal Advisor, Honorary Treasurer and Vice Chairman TAI will consider the entire record of the Secretary General and put up its recommendations to the Chairman, TAI. Mr. Chaturvedi expressed his inability to join the Committee on account of his busy schedule and the name of Dr. R.N. Jindal was unanimously approved in place of Mr. Chaturvedi.

9. Following the decision taken in the above meeting, a memorandum was issued to the Petitioner by the Vice Chairman, TAI on 16th May 2000, enclosing nine Articles of Charge requiring the Petitioner to reply thereto within ten days.

10. On 27th September 2000, the Petitioner raised certain queries but did not reply to the charge sheet. On 19th October 2000, he was informed that an Inquiring Authority ("IA") had been appointed and that he should cooperate with

the inquiry. Enclosed with this letter was a letter dated 25th September 2000 appointing Shri Lachhman Singh by the MC of TAI, empanelled by the Central Vigilance Commission, as the IA to inquire into the charges. By a separate letter of the same date, Mr. R.S.V. Easwaran, Superintendent, TAI was appointed as the Presenting Officer ('PO'). The first sitting of the IA took place on 19th January 2001 when only the PO was present. The PO informed that the Petitioner had not come on 15th and 16th January 2001 for inspection of documents as had been decided in the previous sitting of the IA held on 11th January 2001. Another opportunity was given to the Petitioner to inspect the documents on 6th and 7th February 2001 from 10 am onwards in the office of the PO. A schedule was then drawn up for further proceedings in the inquiry. The IA enclosed the order sheet dated 19th January 2001 and the letter of the same date addressed to the Petitioner and informed that the next sitting would be on 15th February 2001 at 2:30 pm.

11. The Petitioner did not attend the hearing on the adjourned date. On the other hand, he addressed a letter dated 21st February 2001 to the Patron, TAI complaining of the action by TAI against him. The Petitioner states that in February 2001, he was deprived of his car without any official order being passed to that effect. A memorandum dated 23rd March 2001 was issued in which it was noted that the Petitioner had violated the decision of EC at its meeting on 31st August 1999 prohibiting making of representations regarding the actions of TAI to its Patron, the Health Minister, the Secretary or any government authority and requiring that all representations should be made to the Chairman, TAI and representations against the decision of the Chairman to the EC through the Chairman. The above decision was endorsed by the CC by its meeting on 2nd December 1999. It was stated in the memorandum dated 23rd March 2001 that by writing letter dated 21st February 2001 directly to the Patron of TAI, the Petitioner had violated the above decision. A separate memorandum was issued on 23rd March 2001 regarding a news item dated 19th November 1999 in the Hindustan Times which reported him having made derogatory references to the High Court and Supreme Court. The Petitioner was also asked to cooperate in the inquiry. In the memorandum dated 20th March 2001, it was alleged that the Petitioner "did not care to check the visitors" register and whether it is properly maintained and filled". The earlier security agency, whose term had expired on 31st December 2000, had returned the visitors" register only a month and a half later without any entry in the register since 16th February 1999. It was this memorandum that impelled the Petitioner to file the present petition on 23rd April 2001.

12. The IA submitted its report on 24th April 2001 and a copy thereof was sent by TAI to the Petitioner on 27th April 2001. The Secretary General made an endorsement on 1st May 2001 stating that he was on earned leave after 11th May, 2001 and had received the said "back-dated letter of 27th April, 2001" at 4:45 pm on 1st May 2001. He referred to the pendency of the present writ petition and complained about not receiving the salary. The IA held the charges

to be proved. The report of the IA was accepted by the EC and on 29th May 2001, the Petitioner was removed from service.

Plea regarding maintainability of the writ petition

13. In the counter affidavit filed on behalf of the TAI, a preliminary objection was taken to the maintainability of the present writ petition against the TAI. Inter alia, it was contended that CC of the TAI consists of about fifty-six members and the EC nineteen. Each of them has four ex officio members who are government officers. Although the President of India is the Patron of TAI and its members are the State Tuberculosis Associations, TAI does not receive any grant or financial assistance either from the Central Government or any State Government. Its main income is from the interest of its corpus, 5% share in the sale proceeds of Tuberculosis seals and 2% share in the said sale proceeds for research purpose, donations from public, income from advertisement from publishing a souvenir and some income from the journal. It is stated that TAI is neither a part of the central government nor does any government have control over the management and policies of the TAI, and No. monopoly is created in favor of the TAI. It is stated that it is a private voluntary organization and not State within the meaning of Article 12 of the Constitution. It is further submitted that TAI is not discharging any public function and therefore, No. writ petition under Article 226 of the Constitution is maintainable against it.

14. Mr. Sanjiv Kakra, learned Counsel appearing for the Petitioner relied on the observations of the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, and *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, to urge that the present writ petition against TAI would be maintainable. On the other hand, relying upon the same judgments, it is contended by Mr. Ritin Rai, learned Counsel appearing for the Respondent TAI that in the absence of the Petitioner being able to show that the TAI was discharging any public function, No. writ petition would be maintainable against it.

15. This Court is not inclined to dismiss the present petition on a preliminary objection as to maintainability. The writ petition has been pending in the Court for more than ten years. It is neither expeditious nor in the interests of justice to dismiss the petition at this stage after so many years and relegate the Petitioner to an alternate remedy. The better course would be to leave the question of maintainability open to be decided in an appropriate case. Consequently, the question whether a writ petition is maintainable against the TAI is left open for consideration in any other appropriate case.

Allegations of mala fides against Respondent Nos. 3, 4 and 5

16. Turning to the merits of the writ petition, at the very outset, it may be noted that the Petitioner has withdrawn the statement made in the writ petition about Mr. S.P. Agarwal being one of the persons who competed with him for appointment as Secretary General. It has been clarified in the counter affidavit,

and has been admitted by the Petitioner subsequently, that the person who also applied for the post of Secretary General way back in 1988 was some other Dr. S.P. Agarwal and not Respondent No. 3 who subsequently became its Chairman.

17. Mr. Kakra has attacked the findings of the IA on several grounds. The first is that the inquiry was vitiated due to mala fides. It is submitted that the inquiry proceedings were initiated against him at the behest of Respondent No. 3 in collusion with certain officers of TAI including Dr. D.R. Nagpaul and Dr. R.C. Jain, who were Vice Chairman and member of the CC of TAI, respectively. It is also alleged that after he took over as Chairman TAI, on 26th November 1996, Respondent No. 3 issued two orders. In the first order, he directed that all correspondence and files should be referred to him only after scrutiny by Dr. Nagpaul and the second was that the Petitioner's signatures on cheques issued by TAI would No. longer be necessary. It is alleged that Respondent No. 3 deliberately stalled the promotion of the Petitioner although the EC at its meeting on 31st September 2006 had recommended it. It is further alleged that the irregularities pointed out by the Petitioner were not heeded to by Respondent Nos. 3, 4 and 5, thus compelling him to make representation to the Patron, TAI. It is also alleged that Respondent No. 3 used influence to get disapproved the representations made by the Petitioner. It is stated that in view of the embarrassment caused to them by the Petitioner's representations, Respondent Nos. 3, 4 and 5 got disciplinary proceedings initiated against the Petitioner.

18. Having perused the minutes of the meeting of the CC held on 23rd March 1998 and 2nd December 1999, this Court is unable to come to the conclusion that the entire proceedings against the Petitioner are vitiated by mala fides on the part of Respondents Nos. 3, 4 and 5. The behavior of the Petitioner was adversely commented upon by not just these three but several other members present in the meeting. Each of them expressed concern and recommended taking action as to the conduct of the Petitioner. The decision to initiate disciplinary proceedings against him was a near unanimous one of the members present in the meeting on 2nd December 1999.

Constitution of the MC and the DC

19. Learned Counsel for the Petitioner next questions the validity of the constitution of the MC by the EC. In this connection, it has been submitted on behalf of the Respondent TAI that in terms of Rule 23 of the TAI Rules, EC has all the powers of CC except the powers mentioned in Rule 8 (e), (f) and (g). The EC created MC and delegated certain powers to the MC. The relevant portion of Rule 23 of the TAI Rules reads as under:

At the first meeting after the Annual General Meeting each year, the Central Committee shall appoint from amongst its members an Executive Committee for the conduct of the affairs of the Association.

The Executive Committee shall exercise all the powers of the Central Committee save and except the powers mentioned in Rule 8 (e), (f) and (g).

The transactions of the Executive Committee shall be duly recorded by the Secretary-General and laid before the new meeting of the Central Committee for its information. The Executive Committee may however refer any specific item of business within its powers for decision by the Central Committee.

20. The EC is empowered to initiate any disciplinary action and the reasons in setting up of the MC have been indicated in the minutes of the meeting of the EC on 23rd March 1988. This Court is unable to agree with the submissions of learned Counsel for the Petitioner on the legality of setting up of the MC, or for that matter of the DC.

21. On the constitution of the DC, it is submitted by Mr. Kakra that when Dr. Nagpaul was No. longer the Vice Chairman of TAI, DC was not properly constituted. The succeeding Vice Chairman of TAI could not have been inducted without there being a proper resolution in that behalf by the EC. This Court is unable to agree with this submission either. It appears that Dr. Nagpaul was made a member of the DC essentially by designation. When he No. longer was the Vice Chairman, the DC could obviously not be left incomplete. The idea was to have the Vice Chairman of TAI as a member of the DC. Consequently, the successor Vice Chairman had to fill the vacancy in the DC. The absence of a resolution of the EC to ratify this can at the highest is considered to be an irregularity. It does not vitiate the enquiry proceedings.

The articles of charge

22. There were several articles of charge on which the inquiry was held against the Petitioner. They have been summarized by TAI in its written submissions as under:

(i) Not cooperating with the Inquiry ordered by the Chairman to liquidate a pending Parliamentary Assurance regarding financial irregularities reported in media way back in 1992 resulting in the displeasure of the Minister of State of Health;

(ii) Circulating repeatedly and frequently among members of the Executive as well as Finance Committees unnecessary and avoidable notes and documents which include photo copies of the nothings/decisions recorded in office files;

(iii) Putting up long, unnecessary and avoidable notes which even contain unsubstantiated allegations, derogatory and at times intimidator language in respect of the honorary functionaries appointed with the approval of President of India in his capacity as Patron of TAI.

(iv) Complaining to the Chairman and other authorities but refusing to cooperate with the senior officers of Directorate General of Health services specially deputed by Chairman, TAI for the purpose of looking into various grievances of Secretary General.

(v) Incurring avoidable expenses of stationery and money on unnecessary fax

messages, phonograms and misuse of other official facilities of TAI HQs.

(vi) Inability to function and seek cooperation as a responsible officer vis-?-vis the entire staff of TAI HQs.

(vii) Failure of the Secretary General to improve his day to day functioning in spite of advice from senior officers and continued indulgence in unnecessary and unproductive activities which are detrimental to the reputation and interests of TAI.

23. In regard to each of the above articles of charge, a detailed enquiry was held by the IA. Learned Counsel for the Petitioner painstakingly took this Court through the documents on record and sought to demonstrate how the same were not proved in accordance with law in the inquiry proceedings by the PO of the TAI. The limited scope of powers of this Court under Article 226 of the Constitution does not permit it to undertake an elaborate exercise of examining the evidence before the IA. To recapitulate the law explained by the Supreme Court in para 16 of the decision in R.S. Saini Vs. State of Punjab and Others,

16....we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

24. of the charges against the Petitioner one related to his son availing HRA from Sri Ram College of Commerce (SRCC) and the University Grants Commission (UGC) and yet staying with the Petitioner in the residential accommodation allotted to the Petitioner by the TAI at C-409, Defense Colony. Learned Counsel for the Petitioner referred to the letters written by the Chairman of the TAI to the UGC and SRCC urging them to proceed against the Petitioner's son and that this demonstrated the mala fides of the Respondents. While it does appear that it was not proper for the TAI to have gone after the Petitioner for his son availing HRA from SRCC which was of No. concern to the TAI, the exoneration of the Petitioner on this charge would by itself not make a significant change since the other charges against the Petitioner have been held to be proved.

25. This Court is not persuaded to hold that the findings of the IA on the other charges are perverse or based on No. evidence. The report of the IA was accepted by the EC at the meeting held on 28th and 29th May 2001. Fifteen members of the EC attended the meeting. Respondent No. 3 did not express any opinion in the matter. Dr. Bhai Mohan Singh did not participate in the discussion. The other thirteen members unanimously accepted the report. Eleven of the thirteen members decided to impose the penalty of removal of the Petitioner

from service.

26. The acts of insubordination, bypassing the Chairman and the Vice Chairman by making representations directly to the Patron are instances which underscore the mutual lack of trust between the Petitioner and the MC of the TAI. Considering the position held by the Petitioner the decision of the TAI to impose on the Petitioner the punishment of removal from service cannot be held to be disproportionate.

27. For the aforementioned reasons, this Court does not find any merit in the writ petition and it is dismissed as such, with No. order as to costs.