

(2018) 10 CAT CK 0143

In the Central Administrative Tribunal

Case No : Original Application No. 1400 Of 2017

B K Tripathi

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 03-10-2018

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 34(3), 23(1), 11(4)(a), 11(6)

Citation : (2018) 10 CAT CK 0143

Hon'ble Judges : K.N. Shrivastava, Member (A)

Bench : Single Bench

Advocate : Ajesh Luthra, Hanu Bhasker, Devashish Bharuka, Ravi Bharuka

Final Decision : Allowed

Judgement

1. In terms of the orders dated 28.08.2018 passed by the Hon"ble Chairman on administrative side, I have been nominated as a third Member to decide the controversy in the light of different opinions

having been expressed by two Hon"ble Members of this Bench.

2. The applicant, who belongs to 1983 batch of IAS, Jharkhand cadre, had worked as Principal Secretary, Human Resource Development Department, Government of Jharkhand from 18.07.2011 to 31.01.2013. He was also concurrently In-charge of the post of State Project Director, Jharkhand Education Project Council (JEPC) from 20.04.2012 to 10.10.2012 and from 12.11.2012 to 31.01.2013. The JEPC was nodal agency for the implementation of Sarva Shiksha Abhiyan (SSA) Project. The JEPC, inter alia, was mandated to distribute the text books free of cost to be intended beneficiaries. The JEPC used to procure text books from various printers/suppliers. The Chief Secretary of the State was the Chairman of the State Executive Committee of JEPC.

3. In its 30th meeting held on 21.09.2012, the State Executive Committee of JEPC, inter alia, resolved as under:

"....Looking at the practical difficulties, it is decided that even for payment of more than `20 lakh, the proposal be submitted to the Principal Secretary/Secretary, Human Resource Development Department.

The Delegation of financial powers should be considered amended as above."

4. The Agreements with the printers/suppliers envisaged that in the event of any dispute arising between them and JEPC, the same could be referred to the Principal Secretary, Human Resources Development Department, who would act as an Arbitrator under the Arbitration & Conciliation Act, 1996 (for short "1996 Act") for resolution of the dispute.

5. With the approval of the competent authority, Annexure A-1 charge memorandum dated 09.03.2016 came to be issued to the applicant alleging therein that the applicant did not follow the procedure prescribed under the provisions of 1996 Act, and without giving opportunity to both the parties to submit reply, conducted the arbitration proceedings on 19.01.2013 and ordered JEPC to make payment of `7,92,33,899/- towards the supply received from various printers/suppliers by it during the years 2007-08 to 2011-12, and as a Project Director of JEPC, issued cheques to the printers/suppliers on the same day without any forwarding letter and without obtaining approval of the Chief Secretary in spite of the fact that the Chief Secretary had ordered deduction of amounts from the bills of the suppliers due to delay in supply of the text books.

6. The disciplinary authority, vide its Annexure A-2 order dated 17. 03.2017, has appointed the enquiry officer and presiding officer. The applicant has challenged the Annexures A-1 & A-2 orders in the instant O.A.

7. The main contention of the applicant is that as an Arbitrator, he has acted in quasi-judicial capacity and as such, he cannot be subjected to any disciplinary proceedings for his action in that capacity. In the other words, the applicant's contention is that no disciplinary action can be taken against him for passing the Arbitral Awards and pursuant to which, payments have been released by the JEPC to printers/suppliers.

8. The Hon"ble Judicial Member, relying on various judgments, had come to the conclusion that the applicant cannot be subjected to the disciplinary proceedings for his action as quasi-judicial authority, but Hon"ble Administrative Member had taken a completely opposite view.

9. Heard Mr. Ajesh Luthra, learned counsel for applicant, Mr. Hanu Bhasker, learned counsel for respondent No.1 and Mr. Devashish Bharuka with Mr. Ravi Bharuka for respondent Nos. 2 & 3.

10. Relying on the judgment of Hon"ble Apex Court in Zunjarrao Bhikaji Nagarkar v. Union of India & others, (1997) 7 SCC 409 and Ramesh Chander Singh v. High Court of Allahabad & another, (2007) 4 SCC 247, Mr. Ajesh Luthra, learned counsel for applicant argued that the disciplinary proceedings started against the applicant through Annexures A-1 & A-2 orders are illegal.

11. Per contra, the argument of Mr. Hanu Bhasker, learned counsel for respondent No.1 and Mr. Devashish Bharuka, learned counsel for respondent Nos. 2 & 3 was that the applicant can be proceeded against in departmental proceedings even for his action in quasi-judicial capacity. In this regard, they have primarily placed reliance on the judgments of Hon"ble Apex Court in *Union of India & others v. K.K. Dhawan*, (1993) 2 SCC 56 and *Union of India & others v. Duli Chand*, (2006) 5 SCC 680.

12. Additionally, Mr. Devashish Bharuka, learned counsel for respondent Nos. 2 & 3 submitted that the illegal action of the applicant in releasing the payments to the printers/suppliers came to the notice of the respondents much belatedly on 10.01.2016 when the Audit pointed it out, and the Arbitral Award passed by the applicant could not be challenged before the Hon"ble High Court within the mandatory period of 120 days in terms of Section 34 (3) of 1996 Act. He further stated that in terms of the ratio laid down by the Hon"ble Apex Court in *Union of India v. Popular Construction Company*, (2001) 8 SCC 470 and *Chief Engineer of BPDP/REO, Ranchi v. Scoot Wilson Kirpatrick India (P.) Ltd.*, (2006) 13 SCC 622, no appeal can be filed in the High Court against an Arbitral Award after the expiry of the statutory period prescribed for such appeal under Section 23 (1) of the 1996 Act. He also stated that the supplier M/s. Pitambara Books Pvt. Ltd., through its letter dated 14.12.2012 (pp.202-204) to the Secretary, Human Resources Development Department of the State, had only requested for release of its pending dues of `1,04,07,968.44 and had not requested for starting any arbitration proceedings as such. He also stated that there was nothing on the record to substantiate that Mr. Mahip Kumar Singh, Administrative Officer of JEPC was officially authorized by the JEPC to represent it in any arbitration proceedings. He also stated that the applicant passed the Award vide order dated 19.01.2013 and as per the directions of the applicant, the JEPC released the payments on the very same day, and that the said order was never brought to the notice of the State Executive Committee of JEPC.

13. Both Mr. Hanu Bhasker and Mr. Devashish Bharuka, learned counsel strenuously argued that the judgments of Hon"ble Apex Court in *K.K. Dhawan* and *Duli Chand* (supra) are of Three Judge Bench, whereas the judgments in *Zunjarrao Bhikaji Nagarkar* and *Ramesh Chander Singh* (supra) are of Two Judge Bench, and hence, in terms of the ratio laid down in these judgments, the applicant can be proceeded against departmentally even for his action as quasi-judicial authority.

14. Replying to the arguments of Mr. Hanu Bhasker and Mr. Devashish Bharuka, learned counsel for respective respondents, Mr. Ajesh Luthra, learned counsel for applicant argued that all the four judgments of Hon"ble Apex Court, relied upon by the applicant and the respondents, had been discussed and analyzed by the Hon"ble High Court of Judicature at Madras in *Dr. G. Sreekumar Menon v. Union of India & others*, who had concluded that an officer cannot be subjected to disciplinary proceedings for his action as quasi-judicial authority and that there is

no inherent contradiction between the judgments of Hon"ble Apex Court, relied by two sides, as learned counsel for respondents have attempted to make.

15. I have considered the arguments of learned counsel for the parties and have perused the pleadings.

16. It would be appropriate to analyse the following four judgments of Hon"ble Apex Court, which have dealt with the issue of disciplinary action against government officials exercising the powers of judicial or quasi-judicial authority.

a) The judgment in K.K. Dhawan (supra) by a Three Judge Bench decided on 27.01.1993. The Hon"ble Apex Court in this case has held that the disciplinary proceedings could be initiated against a government servant with regard to exercise of judicial powers. The relevant paragraph 28 of the judgment is extracted below:-

"28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-,

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

(emphasis supplied)

b) The judgment in Zunjarrao Bhikaji Nagarkar (supra) is by a Two Judge Bench decided on 06.08.1999. In this case, the Hon"ble Apex Court held that the disciplinary proceedings against an officer cannot take place on an information, which is vague or indefinite. Suspicion has no role to play in such matter. There

must be reasonable basis for authority to proceed against the delinquent officer. Relevant paragraph 43 is extracted below:-

"43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

(emphasis supplied)

c) The judgment in Duli Chand (supra) is by a Three Judge Bench decided on 21.04.2006, wherein the Hon"ble Apex Court has endorsed its judgment in K.K. Dhawan (supra) and observed as under:-

"9. In our opinion, Nagarkar case was contrary to the view expressed in K.K. Dhawan case. The decision in K.K. Dhawan being that of a larger Bench would prevail. The decision in Nagarkar case therefore does not correctly represent the law. Inasmuch as the impugned orders of the Tribunal and the High Court were passed on the law enunciated in Nagarkar case this appeal must be allowed. The impugned decisions are accordingly set aside and the order of punishment upheld. There will be no order as to costs."

d) The judgment in Ramesh Chander Singh (supra) is by a Three Judge Bench decided on 26.02.2007, wherein the Hon"ble Apex Court observed as under:-

"11. We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality. The appellant-officer was well within his right to grant bail to the accused in discharge of his judicial functions. Unlike provisions for granting bail in TADA Act or NDPS Act, there was no statutory bar in granting bail to the accused in this case. A Sessions Judge was competent to grant bail and if any disciplinary proceedings are initiated against the officer for passing such an order, it would adversely affect the morale of subordinate judiciary and no officer would be able to exercise this power freely and

independently."

17. After going through the aforementioned judgments of Hon"ble Apex Court, one would reach to a conclusion that there are no inherent contradictions in them and they have to be read in a harmonious manner. In K.K. Dhawan's case (supra), the Hon"ble Apex Court has clearly held that the disciplinary proceedings can be initiated against a government officer even in regard to exercise of powers of quasi-judicial authority. In Zunjarrao Bhikaji Nagarkar's case (supra), the Hon"ble Apex Court does not grant any immunity to a government official in his exercise of powers of quasi-judicial authority. It only says that for mere mistake of law, disciplinary action cannot be taken, but if there is "something more", then such action can be taken against him.

This would clearly indicate that in Zunjarrao Bhikaji Nagarkar (supra), the Hon"ble Apex Court has defined the conditions under which a government official, exercising powers of quasi-judicial authority, could be subjected to departmental proceedings. The Judgments of Hon"ble Apex Court in Duli Chand and Ramesh Chander Singh (supra) have also enunciated the same ratio broadly.

18. A harmonious reading of the aforementioned judgments of Hon"ble Apex Court leaves no doubt in my mind that a government official exercising powers of quasi-judicial authority cannot be subjected to disciplinary proceedings for committing any mistake of law but if there is "something more", then he can certainly be subjected to such proceedings.

19. Now I come to the present case. The applicant was putting three hats on his head; (a) he was Project Director of JEPC, (b) he was Principal Secretary, Human Resource Development Department, Government of Jharkhand, under whose administrative control the JEPC was; and (c) he was also the Arbitrator under the 1996 Act for resolution of any dispute arising between the printers/suppliers and JEPC. The records would indicate that in the context of certain supplies of text books made by the printers/suppliers, the Chief Secretary of the State, who was the Chairman of the State Executive Committee, had found some shortcomings in those supplies and had ordered withholding of some payments to the printers/suppliers. One of the suppliers, namely, M/s. Pitambara Books Pvt. Ltd., had written a letter dated 14.12.2012 (pp.202-204) to the Secretary, Human Resources Development Department of the State for releasing the withheld payment (₹ 1,04,07,968). Naturally, it was the duty of the applicant as Chief of JEPC to discuss the matter with the Chief Secretary for a decision. The supplier had never requested for initiation of arbitration proceedings under the 1996 Act. The applicant, for the reasons best known to him, chose to resolve the issue by suo motu starting the arbitration proceedings. Before starting the arbitration proceedings, the applicant, for reasons best known to him, chose not to deliberate over this matter in an appropriate forum of JEPC, like State Executive Committee. Even though he was the Principal Secretary of the Department, under whose administrative control the JEPC was, it was incumbent upon him to get a formal resolution of JEPC agreeing to the arbitration proceedings. The

records would indicate that there is no such resolution or letter from JEPC. Even it is not clear as to whether JEPC has actually authorized Mr. Mahip Kumar Singh, Administrative Officer, to participate in the arbitration proceedings, as its representative. Furthermore, the arbitration Award was passed by the applicant in his capacity as Arbitrator on 19.01.2013 and as per his directions, the JEPC released the payments on the very same day even without bringing the matter to the notice of the State Executive Committee of JEPC. All these hurried action of the applicant would certainly give room to a genuine suspicion / doubt and would also prima facie allude that there was "something more".

20. Starting of arbitration proceedings even without a request from the parties concerned is certainly in violation of the ratio laid down by the Hon"ble Orissa High Court in M/s. Hindustan Construction Company Ltd. V. State of Orissa & another, 2013 (1) ILR - CUT - 548, wherein it has been observed as under:-

"12. It is also further stated that the petitioner has never requested the opp. Parties for appointment of an Arbitrator by giving thirty days notice as required under Section 11 (4) (a) of the Act, 1996. The Chief Justice of this Court while exercising his power under Section 11 (6) of the Act, 1996 is to decide as to whether the conditions for exercise of the power have been fulfilled by the petitioner.

13. It is stated that the Act, 1996 is a special statute. An arbitrator is to be appointed in accordance with the procedure provided in the Act, 1996 itself and not otherwise. Since there is no demand by the petitioner for appointment of an Arbitrator with the opp. Parties, the Arbitration Petition for appointment of an Arbitrator in exercise of my power under Section 11 (6) of the Act, 1996 is premature, wholly misconceived, not maintainable and liable to be rejected being devoid of any merit."

21. The hurried action of the applicant has also deprived JEPC to challenge the arbitration Award in the High Court, which ought to have been done within 120 days in terms of Section 34 (3) of the 1996 Act. The Award could not have been challenged after 120 days as per the ratio laid down by Hon"ble Apex Court in Popular Construction Company (supra).

22. In the conspectus, I am of the view that even though the applicant might have acted as a quasi-judicial authority, but his hurried action has definitely given room to a genuine doubt of there being "something more". Therefore, the respondents were fully justified in initiation of disciplinary proceedings against him by issuing the impugned Annexure A-1 charge memorandum dated 09.03.2016.

23. I, therefore, agree with the findings given by Hon"ble Administrative Member and hold that the applicant cannot be granted the relief that he has prayed for. Needless to say that the applicant would get adequate opportunity during the course of the enquiry to vindicate himself.