
(2006) 11 DEL CK 0066
In the Delhi High Court
Case No : W.P (C) No. 16041 of 2006

B. Murali Krishnan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (2006) 11 DEL CK 0066

Hon'ble Judges : Vipin Sanghi, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : B.B. Rawal, for the Appellant; R.V. Sinha, for the Respondent

Judgement

Vipin Sanghi, J.—This petition under Article 226 of Constitution of India is directed against the order dated 2nd January, 2004 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) whereby, Original Application No. 2253/1999 and M.A. No. 1393/2000 seeking production of certain records and documents was dismissed by the Tribunal as being without merit. Before the Tribunal, the petitioner herein was applicant No. 2, whereas one Shri Govind Singh was applicant No. 1.

2. The petitioner has also filed CM No. 13021/06 seeking condensation of delay in filing the present writ petition. As stated here-in-above, the order impugned before us is of 2nd January, 2004 but the writ petition was filed before this Court only on 19th September, 2006, that is, after a lapse of over 32 months. With the consent of parties, we heard the parties both on the aspect of delay and laches as well as on merits, and thereafter reserved orders. We shall first take up the aspect of delay and laches and thereafter deal with the merits of the present case.

3. In his application for condensation of delay, the petitioner states that though the judgment of the Tribunal was delivered on 2nd January, 2004 but the respondents kept the petitioner in false sense of complacency by allowing him to

join duty at Delhi and also making payment of salary and payment of TA/DA etc., for more than four months. The petitioner states that he suffered financially besides undergoing mental trauma because of the incident which occurred in Pakistan leading to his being sent back to India. He further states that there was a demise in his family and that he also suffered physical illness. He states all these circumstances put together incapacitated him in putting together his resources to consult and engage a counsel and approach this Court. He further states that the delay is not intentional since he does not gain anything by delaying the filing of this petition. The respondents have opposed the application for condensation of delay.

4. From the application filed by the petitioner, we are not satisfied that the petitioner has been able to make out any reasonable cause for condensation of delay in filing the present petition. The averments made in the application are not convincing since they are totally bereft of any particulars and they are completely vague. Though the petitioner claims to have suffered illness, no medical record or medical certificate has been produced on record. It is not even stated as to how the petitioner was bereaved and the circumstances leading to the bereavement in his family. We do not find that the petitioner had been put into any false sense of complacency, since his Original Application was clearly dismissed by the Tribunal by a speaking order. Petitioner had been dismissed from service by invoking Article 311(2)(c) of the Constitution of India vide order dated 10.11.1999, and obviously the petitioner could not entertain any such belief that the order of dismissal would not be given effect to. As we have noticed above, the impugned order was passed by the Tribunal on 2nd January, 2004 but the writ petition was filed only on 18th September, 2006, that is, more than 32 months of the passing of the impugned order. There is inordinate unexplained delay in the filing of present writ petition. Consequently we reject the application seeking condensation and hold that the writ petition is liable to be dismissed on the ground of delay and laches.

5. As we have heard the matter on merits also, we proceed to deal with the submissions made after noting the facts in brief:

(a) Petitioner joined the Information Bureau Headquarters as Security Assistant (General) on 15th January, 1991.

(b) Vide order dated 28th August, 1998, he was appointed to the post of Security Guard in the Ministry of External Affairs on deputation basis with immediate effect for the period of five years. He was posted by the Ministry of External Affairs at the High Commission of India in Islamabad as a Security Guard. He reported at the Indian High Commission in Islamabad on 28th December, 1998.

(c) On 17th July, 1999, which according to the petitioner was a holiday for the High Commission, the petitioner along with another person Sh. Govind Singh were on night duty at the residence of the High Commissioner of India as well as the office of the High Commissioner of India. The petitioner claims that he along

with Sh. Govind Singh went to the market to purchase goods and various articles for the mess, of which Sh. Govind Singh was the in-charge for the whole month. The petitioner states that since his duty was in the night, and he was free during the day he accompanied Sh. Govind Singh to the market. He claims that in the market he met Pakistani Police Officials who were on duty outside the High Commission. He states that he knew these Pakistani Police Officials who took the petitioner and Sh. Govind Singh to Lake View Hotel. He states that in the hotel they were framed into an incidence of raping a Pakistani girl. He further states that the Pakistani Police also took photographs of the petitioner and Sh. Govind Singh along with the girl under duress and they were also manhandled and made to write a confessional statement. He states that they were threatened that the photographs and the statement would be sent to the Indian High Commission and to the families of the two persons including the petitioner in India and that they would be published in the newspaper, unless they agreed to do their bidding. He states that thereafter they were let off.

(d) Thereafter, the petitioner and Sh. Govind Singh applied for leave. While the leave of the petitioner was sanctioned, Sh. Govind Singh was denied leave on account of shortage of staff. Thereafter, the petitioner and Sh. Govind Singh were sent back to India and they were interrogated. Vide order dated 10.11.1999, the petitioner was dismissed from services by the respondents by invoking Sub clause (c) of the Proviso to Clause (2) of Article 311 of the Constitution of India in the interest of the security of the State and by stating that it was not expedient to hold an enquiry in the case of the petitioner.

(e) The petitioner and Shri Govind Singh challenged their dismissal from services by filing Original Application No. 2253/1999. The applicants also moved M.A. No. 1393/2000 seeking production of all the relevant records which were submitted before the Committee of Secretaries to process the case for dismissal of the petitioner.

(f) The respondents appeared before the Tribunal and claimed privilege in respect of the relevant official records. An affidavit was filed by the Secretary to the Government of India, Ministry of Home Affairs. He stated that the records could not be disclosed without serious damage to the public interest and violation of the mandatory provision of the Constitution. He further stated that the disclosure of the material would seriously invade the secrecy enjoyed and the proceedings of the Cabinet. Privilege was claimed against production of the following records:

(i) The records and files containing the information on the basis of which the President of India was satisfied for the purpose of exercising his powers under proviso (c) to Clause (2) of Article 311 of the Constitution of India.

(ii) The records and files containing the narration of description of activities of S/ Shri Govind Singh and B. Muralikrishnan which led to their dismissal from service in exercise of powers under Article 311(2)(c) of the Constitution of India.

(iii) The records and files containing the details of misconduct of S/Shri Govind Singh and B. Muralikrishnan leading to their dismissal as covered in CCS (Conduct) Rules, 1965, in so far as the same relates to dismissal under Article 311(2)(c) of the Constitution of India.

(iv) Records and files containing the deliberations, recommendations and findings of the Committee of Advisers (as envisaged in O.M. dated 26th July, 1980) advising the President to exercise powers under Article 311(2)(c) of the Constitution of India."

(vii) The Tribunal, thereafter, proceeded to consider the claim of privilege. After considering the Law laid down by the Supreme Court on the subject of claim of privilege, the Tribunal in paragraph 12 and 13 of its order observed as follows:

12. From the aforesaid, it is clear that unpublished official records which the applicants wanted to be produced regarding which privilege is being claimed pertaining to the same controversy as we have referred to above, the Head of the department, namely, the then Home Secretary had claimed privilege in this regard. As would be noticed hereinafter, the same pertained to certain documents which are kept away from the public gaze in public interest. When such is the situation, the respondents indeed could claim privilege though the files were made available to the Bench for perusal.

13... In the present case before us, documents do pertain to the information relating to the narration and description of activities of the applicants, their misconduct and also the record containing the deliberations, recommendations and findings of the Committee. Keeping in view the nature of the acts purported to have been committed by the applicants, their disclosures certainly would not be in public interest and the privilege has rightly been claimed. Consequently the Misc. Application No. 1393/2000 must fail.

(viii) After disposing of the Miscellaneous Application No. 1393/2000 and upholding the claim of privilege made by the respondents, the Tribunal proceeded to consider the scope of Article 311(2)(c) of the Constitution of India. It referred to the Supreme Court's decision in the case of Union of India and Another Vs. Tulsiram Patel and Others, , Satyavir Singh and Others Vs. Union of India (UOI) and Others, and Union of India and Another Vs. Balbir Singh and Another, . After examining the record, the Tribunal, in para 23, recorded its findings as follows:

The applicants, as already referred to above, were posted in the Indian High Commission at Islamabad. We have already given above the version of the applicants. The reply and the record indicate that a Constable posted by the Islamabad Police allured the applicants for arranging wine and women for them. The applicants had weakness for the same. It appears that even the applicants disclosed to the Pak officials, a few names of the Security Guards posted in the High Commission and the organisations in India to which they belonged. Though the incident took place on 17.07.1999, the applicants reported it only on

19.07.1999 and that too after the applicant No. 1 was scared by a telephone call from a lady. It is denied that they had reported the matter to the senior officers immediately or a clean chit had been given to them. Giving any other country, such information, can affect the security of the State or be prejudicial to the security of the State. The facts show, Therefore, that in the peculiar facts it cannot be termed that the exercise of power was without any basis, material facts or for any extraneous reasons. We find, on judicial review, no ground to interfere.

6. Before us Mr. Raval, learned Counsel for the petitioner submits that the impugned order calls for interference on account of variance between the versions of the Information Bureau and the Ministry of External Affairs. He questions the authenticity and credibility of the record, which he says, was prepared behind the back of the petitioner. He relied on the judgment in A.K. Kaul and another Vs. Union of India and another, . He submits that the preponderance of probability is that there was no case on merits against the petitioners as the Pakistan authorities would have otherwise proceeded against him. Further, it was not followed by arrest in India, which shows the innocence of his client. The respondent delayed the prosecution of the case before the Tribunal with a view to fabricate documents. Mr Raval submits that it was factually incorrect that the petitioners did not report the incident to the respondent soon after its occurrence. He states that the Tribunal was mislead in appreciation of the evidence. He submits that during the pendency of OA, petitioners were dismissed and were permitted thereafter to amend the OA and include a challenge to the dismissal.

7. On the other hand, Mr. R.V. Sinha, learned Counsel for the respondents submits that the privilege has rightly been claimed in public interest and the claim upheld. He relied upon the observations of the Tribunal and urged that the record had been perused by the Tribunal. The Tribunal, after perusing the record was satisfied with regard to the genuineness of the claim for privilege and also with regard to the existence of relevant material justifying the invocation of the powers under Article 311(2)(c) of the Constitution of India, for dismissing the petitioner without an enquiry.

8. Having considered the matter, we are not inclined to interfere with the order of the Tribunal in the present case. The submissions made by the learned Counsel for the petitioner are all submissions of facts. The endeavor of the petitioner's counsel is to question the factual basis on which the respondents have proceeded against the petitioner. This Court while exercising its jurisdiction under Article 226 of the Constitution of India cannot go into the disputed question of facts. The Tribunal has gone into the facts and the factual findings of the Tribunal that have been extracted here-in-above. The same are based on the pleadings as well as the records perused by the Tribunal.

9. Learned Counsel for the petitioner has not been able to show as to how the said findings can be said to be perverse or being without any foundation or

evidence. Even according to the Petitioner, he was involved with a woman in Lake View Hotel in Pakistan. It is evident that there was documentary proof of his involvement. Whether it was a voluntary act on the part of the petitioner or not is not for us to judge. The petitioner was posted at the Indian High Commission in Pakistan, a country with whom the relations are sensitive. Admittedly, he accompanied Pakistani Policemen with whom he was acquainted to Lake View Hotel where the incident took place. While his version is that he did not delay in informing the Indian High Commission of the incident, the stand of the respondents is that the petitioner did not report the incident immediately, and it was reported only after two days. We are, Therefore, not inclined to go into the finding of facts arrived at by the Tribunal. We see no reasons to interfere with the well-reasoned and detailed order of the Tribunal.

10. We accordingly dismiss the present writ petition as being barred by laches and also on merits leaving the parties to bear their respective costs.