
(2003) 09 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3620 of 2003

Bhanwar Lal Kumawat

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Rajasthan Panchayati Raj Rules, 1996 — Rule 22, 22(2)

Citation : (2004) 2 RLW 1092 : (2004) 1 WLC 656

Hon'ble Judges : Bhagwati Prasad, J

Bench : Single Bench

Advocate : P.P. Choudhary, for the Appellant; R.P. Vyas, Addl. Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

Prasad, J.—Heard learned counsel for the parties.

2. This writ petition has been filed against the order of suspension Annexure P/7 issued by the Panchayati Raj Department, Government of Rajasthan, Jaipur dated 25.6.2003. Petitioner has challenged the impugned order on the basis of two fold arguments.

3. First argument of the learned counsel for the petitioner is that Rule 22 of the Rajasthan Panchayati Raj Rules, 1996 (for short "the Rules") provides that before any action is initiated against the petitioner, the opinion is required to be framed by the State Government and that opinion can only be based on the basis of the preliminary enquiry which admittedly was not held in the present case. Therefore, there being no basis available to the State Government to frame opinion, the enquiry could not have been initiated against the petitioner. That being the position, the initiation of enquiry itself is bad in the eye of law. Consequently, no order of suspension could have been passed against the petitioner.

4. Second argument of the learned counsel for the petitioner is that there is a

criminal case reportedly made against the petitioner. The case involves a fact of acceptance of gratification to the tune of Rs. 1400/-. There was a raid conducted and the petitioner was apprehended by the Anti-Corruption Department. If domestic enquiry is held in relation to those facts, then the petitioner will suffer a great prejudice at the criminal trial. Therefore, the petitioner cannot be subjected for departmental enquiry because that will jeopardise the defence of the petitioner before the Criminal Court. Thus, it has been prayed that the order Annexure-P/7 should be quashed.

5. Learned Additional Advocate General Mr. R.P. Vyas, appearing for the State has submitted that both the arguments raised by the learned counsel for the petitioner are not valid enough to annul order Annexure-P-7. According to the learned counsel for the State, Rule 22, Sub-rule (2) clearly makes a mention that State Government has to frame an opinion either on the basis of the report received after a preliminary enquiry, or otherwise. The term "or otherwise" has a definite connotation. It is distinct and separate from the consideration of the preliminary enquiry report. Thus, the legislative intent was expressed in clear terms that the State Government for the purposes of framing opinion can make the basis, either to the preliminary enquiry or otherwise, if there are circumstances to indicate that there was material available against the person. The opinion of the State Government in this background of allegation of acceptance of illegal gratification, is sufficient to indicate that the petitioner has been found guilty of the disgraceful conduct while accepting the amount of illegal gratification.

6. Thus, the argument of the learned counsel for the petitioner that in absence of preliminary enquiry, initiation of enquiry is bad in the eye of law, cannot be handed by the Anti-Corruption Department for a disgraceful conduct. Considering the report of the Anti-Corruption Department which is against the petitioner, the State desired that it is a fit case to initiate an enquiry into the disgraceful conduct, which the petitioner is alleged to have committed by accepting bribe and thus, it cannot be said that enquiry was initiated without there being proper foundation.

7. The argument of the learned counsel for the petitioner that in cases where there is a criminal case pending on the same facts, departmental enquiry should not be held, also cannot be accepted. The cases on which the petitioner has placed reliance relate to the government servants. In the opinion of the Hon'ble Supreme Court while a criminal case is pending against the petitioner, the domestic enquiry can proceed. In some cases, it has been said that such enquiries should not be held. Such views have been expressed on facts and circumstances of each case.

8. In the instant case, whether the petitioner accepted the bribe or not, and he has a defence as he alleges. Whether a case is made out for accepting bribe is made out or not will be gone into at the trial in criminal case. Nonetheless facts are not complicated. The facts are plain and simple. The rate fixed for the plot

was Rs. 1000/-but the petitioner accepted Rs. 1400/- which is illegal gratification and then he was caught red-handed by the officials of the Anti Corruption Bureau. According to the learned counsel for the State, in this case, any expression of defence at this juncture would not be in the interest of justice. This is not a justifiable approach. Prima facie acceptance of bribe can be seen. Thus, learned counsel for the State has emphasised that none of the grounds mentioned by the learned counsel for the petitioner, is made out, therefore, the suspension order against the petitioner is just and proper.

9. I have considered the rival submissions.

10. The first question which comes up for consideration is that, can there be an initiation of enquiry under Rule 22 (2) of the Rules without there being a preliminary enquiry? There was no preliminary enquiry conducted. Learned counsel for the petitioner has laid stress on the language of Rule 22(1). It has provided in this provision that the preliminary enquiry has to be initiated first and thereafter, under Sub-rule 2 of Rule 22, an opinion is required to be framed after considering that report by the State Government. According to the learned counsel for the petitioner, the opinion could only be framed after consideration of the preliminary enquiry. Learned Additional Advocate General has contended that this is otherwise possible.

11. Rule 22 of the Rajasthan Panchayati Raj Rules, 1996 reads as under:-"Rule 22. Procedure of enquiry:-

(1) Before taking any action under Sub-sec. (1) of Section 38, where on its own motion or upon any complaint the State Government may ask the Chief Executive officer or any other officer to get a preliminary enquiry done and to send his report to the State Government within one month.

(2) If, upon consideration of the report received as aforesaid or otherwise, the State Government is of the opinion that action under Sub-section (1) of Section 38 is necessary, the State Government shall frame definite charges and shall communicate them in writing to the Chairperson, Deputy Chairperson or Member of the Panchayati Raj Institution together with such details as may be deemed necessary, he shall be required to submit a written statement within one month admitting or denying the allegations, giving his defence, if any and whether he desires to be heard in person."

12. Rule 22 as quoted hereinabove is perused. There are two expressions available. One relates to the consideration of the preliminary report and other expression is or "otherwise." Both these expressions are separated by or. Thus, given a grammatical meaning to the word "or", this clearly comes out that either the first condition or the second condition should be satisfied. It is admitted that State has not conducted any preliminary enquiry. It has considered circumstances otherwise available. The circumstances were considered sufficient to order an enquiry as envisaged under Sub-Rule 2 of the Rule 22. The petitioner has been accused of accepting a bribe in a trap laid by Anti- Corruption

Department. Such conduct of an elected representative lowers down the image of democratically elected institution. If such persons are permitted to remain in office, when they are prima facie found guilty of accepting bribe, then this does not reflect a good health of the democracy.

13. I am prepared to lean in favour of the learned counsel for the State that without there being a preliminary enquiry, if there was otherwise material available to the State then it was possible to initiate an enquiry. Thus, the first argument of the learned counsel for the petitioner that there being no preliminary enquiry available to frame an opinion, no enquiry could have been initiated against the petitioner, is rejected. Consequently, it cannot be said that on this ground, the initiation of enquiry by the State can not be held to be bad in the eye of law.

14. The second argument of the learned counsel for the petitioner relates to pendency of the criminal case. No doubt as and when there is an offence committed, investigation may result into filing of challan. That has to be followed by a trial. At the Trial, the accused is required to disclose his defence. Disclosure of defence in a case which is plain and simple, is distinct than the one where complicated facts are involved. In the instant case, there is no complication in the facts. They are plain and simple. To an extent, the the writ petition, the petitioner had already disclosed his defence by claiming that he had accepted the money pursuant to a Panchayat Resolution. Thus, there are no intricate features in the case which if disclosed would prejudice his defence.

15. Thus, I propose to follow that line of law laid by the Hon"ble Supreme Court which says that it is not always prohibited to pursue both the enquiries simultaneously. The reference in this regard made in the case of State of Rajasthan v. B.K. Meena (1).

16. The second argument of the learned counsel for the petitioner is not valid enough to say that enquiry could not be held. Both the argument of the learned counsel for the petitioner fall short of laying down of a foundation which would be sufficient to grant the relief prayed for by the petitioner. Thus, the relief as prayed for cannot be granted to the petitioner.

17. There is no force in this petition and the same is hereby dismissed.