
(2004) 09 GAU CK 0016
In the Gauhati High Court
Case No : Writ Petition (C) No. 9764 of 2003

Bipul Sarma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Citation : (2005) 2 GLR 557 : (2005) 2 GLT 158 : (2004) 3 GLT 438

Hon'ble Judges : D. Biswas, Acting C.J.

Bench : Single Bench

Advocate : P.K. Goswami, A.M. Buzarbaruah, D. Nath and R. Ali, for the Appellant; B.J. Talukdar, for the Respondent

Judgement

D. Biswas, Acting C.J.

1. This writ petition is preferred by Shri Bipul Sarma, Managing Director of Assam Urban Water Supply and Sewerage Board, Guwahati challenging the notification dated 21.11.2003 (Annexure-1) issued by the Commissioner and Secretary to the Government of Assam, Personnel (A) Department placing under suspension pending initiation of departmental proceeding.

2. I have heard Mr. P.K. Goswami, learned senior counsel for the petitioner and also Mr. B.J. Talukdar, learned State counsel.

3. The order dated 21.11.2003 shows that the writ petitioner has been suspended for purchase of five numbers of Pontoons at an inflated price of Rs. 2 lakh per Pontoon for Jorhat Water Supply Scheme against the market price of each Pontoon being Rs. 22,000/-. It further appears that the order for purchase of the aforesaid five numbers of Pontoons was issued without inviting tender and in violation of the prescribed procedure and the rules.

4. Mr. P.K. Goswami, learned senior counsel for the petitioner assailed the order of suspension on the following grounds :-

(1) That the suspension order was issued on 21.11.2003 and till date the

respondent authority has not initiated any proceeding against the writ petitioner.

(2) The order for purchase of Pontoons was placed by the writ petitioner in pursuance of a decision taken by the Board and not taken by him alone in his capacity as Managing Director.

(3) That the rate of the Pontoon was fixed by the Board long time back and it was followed in all purchases made by the Board.

5. Mr. Goswami, learned senior counsel relying on the statements made in the writ petition tried to justify the above contentions. According to Shri Goswami, the Managing Director of the Board cannot act on his own for entering into a contract or to place any order for any other item to be purchased by the Board. The decision taken is always collective and is given effect with due approval of the Chairman. The Managing Director is an authority who executes the decision of the Board.

6. It would appear that the respondent authority did not submit any affidavit in this petition though a Rule was issued on 24.2.2004. Mr. Talukdar, learned State counsel was directed by the order dated 21.6.2004 to produce the records relating to the purchase of Pontoons by the Board.

7. It would appear that the Executive Engineer of Jorhat Division of the Board wrote the letter dated 24.4.2003 to the Managing Director requesting him for supply of items including five numbers of M.S. Floating Pontoons. The said letter was accompanied by a report from the Assistant Executive Engineer which was appended with this requisition to justify requirements. On receipt of the said requisition, the Managing Director submitted a proposal to the Chairman of the Board that the above items be procured in compliance of Rules and at approved rate. The said proposal for purchase of the Pontoons at the approved rate was cleared by the Chairman on 3.5.2003 by putting his initial on the note sheet. After receipt of the approval from the Chairman, the file was sent to the Assistant Executive Engineer who in turn submitted a proposal for approval of the rate of hose pipe and as regards the price of the Pontoons, the Executive Engineer proposed the rate of the Pontoons as approved in the year 1995 and purchases of Pontoons were made according for Zoo Road Water Supply Scheme in Guwahati City. It transpires from the writ petition that the Board had approved and fixed the price of Pontoon at Rs. 1 lakh in the year 1985. It further appears that tender is not floated in case of purchase of items in respect of which the Board had already approved the price. It is on the basis of the price fixed in 1985 the petitioner tried to justify the price of each Pontoons at Rs. 2 lakh.

A note was prepared and placed before the Chief Engineer. The Chief Engineer placed the file before the writ petitioner (Managing Director) with the following note :-

"As we don't have approved rate for 300 mm ... hose pipe, we calculate the rate as per SL. 19 which seems to be genuine one and may perhaps be accepted.

Regarding Pontoon the rate is quoted from the agreement of Zoo Road W.S.S. and it comes Rs. One lakh for a single Pontoon. But as per the requirement of E.E., Jorhat Division, requirement is for twin type and hence it will be Rs. Two lakh. We may perhaps accept the above rate as accepted earlier.

F.F.O.

Signature, dated 17.05.2003."

8. The writ petitioner (Managing Director) considered the above note and placed the same before the Chairman with the observation that the price of twin type Pontoons will be Rs. 2 lakh. The Chairman approved the aforesaid note. It is on the basis of the approval given by the Chairman, as aforesaid, the writ petitioner as Managing Director cleared the proposal for purchase of the Pontoons.

9. From the averments made in the writ petition, it is clear that the decision arrived at was the collective decision of all concerned including the Chairman. The rate of Pontoons approved in 1985 have been followed in all subsequent purchases and, therefore, the responsibility for purchases made in 2003 cannot be placed on the writ petitioner alone. The writ petitioner as Managing Director had no option but to implement the decision of the Board. Hence, Shri Goswami, learned senior counsel submitted that the writ petitioner has been victimised in the instant case for no fault of his own. According to Shri Goswami, a thorough and intensive enquiry is necessary to find out the root cause for having fixed the price of the Pontoons at Rs. 1 lakhs in the year 1985.

10. Considering the above submission advanced by Shri Goswami, this Court is of the prima-facie opinion that the Board has taken a wrong decision to purchase an item worth Rs. 22,000/- at Rs. 2 lakh. Different functionaries of the Board appear to have participated in the decision making process. The petitioner is also one of them. Therefore, this is not a case where the writ petitioner can be exonerated at this stage. A deed-rooted conspiracy by certain groups having vested interest appears to have been working in the Board for a considerable length of time. It is, therefore, necessary to have a detailed investigation into the affairs of the Board in so far it relates to the purchases made. This is necessary in larger public interest.

11. I have duly considered the decision in *Dhirendra Kumar Barthakur, Petitioner v. The State of Assam and Ors.*, Respondents (1983) 2 GLR 459 and in *Jahirul Haque Choudhury, Petitioner v. State of Assam and Ors.* (1993) 1 GLR 207. There is no doubt that there must be reasons to justify an order of suspension and that an order of suspension cannot be continued for a long time without any attempt to bring it to its logical end. The decisions above explained the broad principles underlying the concept of suspension and the responsibility involved with the authority for early completion of disciplinary proceeding. But the case at hand is of such a nature that the order of suspension cannot be deprecated as one without any reason. However, there has been delay on the part of the respondent authority in initiating follow-up action.

12. Under the circumstances, the writ petition is disposed of with the direction that the respondent authority shall initiate and complete the departmental proceeding against the writ petitioner within three months from today failing which the writ petitioner will be entitled to reinstatement in service. However, his reinstatement will not stand on the way of the departmental proceeding. Further, the respondent authority, particularly the respondent Nos. 1 and 2 are directed to appoint a high power committee to investigate into the affairs of the Board in so far it relates to purchases made and to suggest action/ remedial measures in larger public interest. Suspension of an officer without any follow-up action, does not help public interest and such inaction is often viewed as a veil to cover-up the misdeeds perpetuated.

13. A copy of this judgment be forwarded to the Chief Secretary to the Government of Assam for necessary action.