

(2009) 04 DEL CK 0229
In the Delhi High Court
Case No : WP (C) No. 7939 of 2009

Devinder Pawar

APPELLANT

Vs

Delhi Jal Board and Another

RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Delhi Water Board Act, 1998 — Section 3

Citation : (2009) 04 DEL CK 0229

Hon'ble Judges : A.P. Shah, C.J.; Neeraj Kishan Kaul, J

Bench : Division Bench

Advocate : Harish Malhotra and Rajan Bajaj, for the Appellant; Chetan Sharma and Suresh Tripathy, for R-1 and Nandita Rao, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Neeraj Kishan Kaul, J.—The petitioner in the present petition claims to be a journalist and Chief Editor of a weekly newspaper "Meri Kalam". By way of the present petition, he has challenged the appointment of respondent No. 2 as Member (Water Supply) of Delhi Jal Board and prays for a writ, order or direction in the nature of Quo Warranto for quashing the (Signer's identity unknown) Signed by Naresh Mehta MEHTANARESH@REDIFFMAIL.COM Time: 2009.05.11 10:53:50 +05"30" Reason: Location: appointment of respondent No. 2 as Member (Water Supply), Delhi Jal Board.

2. It is the allegation of the petitioner that the appointment of respondent No. 2 as Member (Water Supply) was mala fide, illegal and the requisite procedure for reemployment had not been followed. It is further submitted by the petitioner that he had come to know from his journalistic sources that respondent No. 2 had been found to be guilty of misconduct by the State of Haryana and a major penalty had been imposed and since the respondent No. 2 had already retired, a penalty of 50% cut in pension had been imposed on him by the State of Haryana. It was also the case of the petitioner that the office of Member(Water Supply) DJB is a public office and that respondent No. 2 was holding on to the

said post in clear violation of the statutory provisions inasmuch as the post of Member (Water Supply) can be held by only a serving engineer, drawing salary in the scale of Joint Secretary to Government of India. As per the petitioner, respondent No. 2 did not fulfil the criteria laid down in Section 3 of the Delhi Water Board Act, 1988 and was accordingly an usurper of the post of Member (Water Supply) against which a writ of Quo Warranto would lie.

3. Counter affidavits were filed by respondent Nos. 1&2. A preliminary submission is made on behalf of respondent No. 1 that the present petition filed by the petitioner styled as public interest litigation is nothing but a camouflage to foster the present litigation at the behest of a particular contractor. It is further submitted that the petitioner is an agent of contractor M/s.Kaveri Infrastructure Pvt. Limited and had initiated this proceeding at the behest of the contractor.

4. Respondent No. 1 in its affidavit also stated that M/s.Kaveri infrastructure Pvt. Limited was awarded work some time in 2005 by the Delhi Jal Board and an FIR was registered by the CBI against the contractor. The registration of FIR by the CBI led to a decision by the Delhi Jal Board not to permit the contractor to participate in future tendering. This was challenged by the contractor and subsequently, in the SLP filed by the Respondent No. 1-DJB before the Supreme Court, the Court was pleased to direct the Delhi Jal Board vide order dated 14th March, 2008 to render a decision on blacklisting the contractor subject to affording a hearing to him. In terms of the said order, the Chief Executive Officer of Delhi Jal Board had appointed a committee comprising respondent No. 2 amongst others to grant personal hearing to the contractor. After personal hearing, vide order dated 28th March, 2008 the said Committee recommended that the contractor be not allowed to participate in the tendering process till the outcome of investigation being carried out by the CBI is made known to Delhi Jal Board. Consequent upon the said recommendation an order dated 28th March, 2008 was issued by the respondent No. 2 conveying the decision that the contractor shall not to be allowed to participate in the tendering process till such time the outcome of the investigation being carried out by the CBI was made known to the Delhi Jal Board. As per the respondent No. 1/Delhi Jal Board it was because of this decision the contractor felt disturbed and ever since he has been launching one personal attack after another against the officials of Delhi Jal Board and all concerned, either in person or through others like the present petitioner. The Delhi Jal Board also alleged that the sinister design of the contractor was evident from the fact that he had utilized the petitioner, who claims himself to be a journalist, in the past in seeking information through RTI from Delhi Jal Board on the same issues as that of the contractor himself. Copies of the RTI applications filed by the contractor and the petitioner on identical issues are annexed to the counter affidavit of the Delhi Jal Board as Annexure R-2 collectively.

5. In the counter affidavit filed by respondent No. 2 it is stated that his reemployment was in accordance with the rules and there had been no

irregularity or illegality in the same. The present petition is nothing but a proxy litigation based on false and baseless allegations to vindicate the personal grudge of the contractor against respondent No. 2. Respondent No. 2 further stated in the affidavit that another petition titled Mann Singh v. Delhi Jal Board and Anr. being WP(C) No. 2139/2007, was also filed at the instance of the said M/s.Kaveri Infrastructure Pvt. Limited with the identical allegation of irregular reemployment of respondent No. 2, in November, 2007 before this Court. This Court had refused to grant interim relief and the matter had been transferred to Central Administrative Tribunal for adjudication.

6. Respondent No. 1 vide Office order No. 263 dated 7th August, 2006 nominated and posted respondent No. 2 for the post of Member (Water Supply) in Delhi Jal Board. The State of Haryana relieved the petitioner from the parent department vide order dated 29th August, 2006. However, as per the respondent No. 2, the State of Haryana in a completely arbitrary manner prematurely terminated his deputation and recalled him vide order 28th March, 2007. Simultaneously, the State of Haryana issued to him a show cause notice dated 28th March, 2008 alleging that he had wrongly reported the date of commencement of a particular work carried out by UP Irrigation Department. Further, vide order dated 18th October, 2007 the State of Haryana offered to respondent No. 2 the post of Engineer-in-Chief (Projects) if he returned. This according to respondent No. 2 shows that his competence and integrity was beyond question. The said order of his recall was challenged by the respondent No. 2 in Writ Petition No. 4559/2007 before the Delhi High Court. Vide order dated 15th June, 2007 this Court was pleased to issue notice and restrain the State of Haryana from taking any penal action against respondent No. 2. Hence he continued to serve with the respondent No. 1. In November, 2007 the State of Haryana moved an application seeking to issue the respondent No. 2 a charge sheet in furtherance of the show cause notice dated 28th March, 2007. During the pendency of the writ petition the petitioner retired from the State of Haryana and was reemployed with the Delhi Jal Board as per the rules. During the course of arguments in WP(C) No. 4559/2007 the parties agreed to the passing of a consent order dated 29th August, 2008. Vide the said order this Court was pleased to direct that:

The stay order against the charge sheet passed by this Court on 23.10.2007 is vacated. Respondent Nos. 1 & 2 shall start the inquiry against the petitioner pursuant to charge sheet served upon the petitioner on 29.10.2007 and shall conclude the same by 30.11.2008 while conducting the inquiry, the respondents shall also adjudicate the show cause notice dated 28.3.2007.

7. In compliance of the said order, the State of Haryana appointed an inquiry officer. As per respondent No. 2 he fully cooperated with the inquiry as had been undertaken by him in the consent order. However respondent No. 2 was shocked to receive a show cause notice dated 12th January, 2009 from the State of Haryana which was in disobedience of the specific direction of this Court.

According to respondent No. 2, he then approached this Court vide a contempt petition pointing out that the show cause notice of 12th January 2009 is in contempt of order dated 29th August, 2009 passed by this Court in WP(C) 4559/2007. This Court issued notice on the said contempt petition file by respondent No. 2 on 13th April, 2009 and the matter is still pending.

8. A perusal of the writ petition clearly shows that it was filed by the petitioner at the behest of M/s.Kaveri infrastructure Pvt. Limited. This is evident from two letters dated 17th September, 2008 (Annexure P-1 collectively). It is interesting to note and reproduce below the averments of the petitioner in the said two letters written to the Hon"ble Prime Minister and the Hon"ble President of India. Contents of paragraph -11 of the letter addressed to the Prime Minister (Annexure P-1 at page 19 at page 23) are reproduced hereinbelow:

11. The DJB's Counsel Shri Suresh Tripathi is also a personal favourite of Sh. P.K. Tripathi, the Principal Secretary to the Chief Minister of Delhi and hence, helps in unnecessarily elongating the litigation procedures thereby causing the department to spend lakhs of rupees on litigation procedures. Like a case that belonged to the temporary debarment of a company M/s.Kaveri Infrastructure Pvt. Ltd has been ruled out in the company's favour time and again but still the CEO and Counsel are bent upon challenging the court's decisions again and again, thereby desperately trying to elongate the litigation as much as possible. What is being done is that the precious govt. funds are being wasted due to their personal enmity and without a check from higher administrative authorities on their acts; the public money is being free willingly wasted from their hands.

The contents of letter the letter addressed to the President of India, Annexure P-1 page 26 at page 37, are as under:

11. The DJB's Counsel Shri Suresh Tripathi is also s personal favourite of Sh. P.K. Tripathi, the Principal Secretary to the Chief Minister of Delhi and hence, helps in unnecessarily elongating the litigation procedures thereby causing the department to spend lakhs of rupees on litigation procedures. Like a case that belonged to the temporary debarment of our company M/s.Kaveri Infrastructure Pvt. Ltd has been ruled out in the company's favour time and again but still the CEO and Counsel are bent upon challenging the court's decisions again and again, thereby desperately trying to elongate the litigation as much as possible. What is being done is that the precious govt. funds are being wasted due to their personal enmity and without a check from higher administrative authorities on their acts; the public money is being free willingly wasted from their hands.

9. The said averments in the letters dated 17th September, 2008 leave no room for any doubt that the petitioner was actually an agent of M/s.Kaveri infrastructure Pvt. Ltd, and was clearly acting at the behest of the said contractor to the extent that not only was the petitioner advocating and canvassing the case of M/s.Triveni Infrastructure Private limited, it also referred to them as "our company" in the letter addressed to the President of India. On this being pointed

out to the learned senior Counsel appearing for the petitioner, the explanation sought to be given was that the same was a typographical mistake. Going by the tone, tenor and categorical averments in the said letters by the petitioner, we refuse to accept this explanation.

10. We were also anguished to note the highly irresponsible and disparaging comments made about the Counsel for the respondent No. 1-Delhi Jal Board in the said two letters. These letters have been referred to and relied on by the petitioner in paragraph 8 at page 4 and page F of the writ petition. The practice of making such irresponsible comments against a Counsel who is simply discharging his duties is liable to be deprecated and clearly amounts to obstruction of the process of justice.

11. Further, when we queried the petitioner, who was present in person, as to what was the basis of his making false averments against respondent No. 2 in para 25 at page 10 of the writ petition, he had no explanation for the same. The contents of para 25 at page 10 of the writ petition are re-produced hereinbelow:

25. That the petitioner has now come to know from his journalistic sources that respondent No. 2 has been found guilty of the misconduct charged and major penalty has been imposed. Since he had already retired, a penalty of 50% cut in pension has been imposed, a copy of which is annexed as Annexure P-4.

12. In view of the stand of the respondent No. 2, it is evident that the statement that respondent No. 2 had been found guilty of misconduct and major penalty had been imposed on him and that a penalty of 50% cut in pension had been imposed was clearly false and incorrect. The petitioner has not only filed this petition at the behest of a private contractor but has also made false and incorrect averments in the writ petition and is also guilty of making highly irresponsible and scandalous remarks about the Counsel for the Delhi Jal Board. The present petition and the conduct of the petitioner is clearly an abuse of the process of law and amounts to contempt of court.

13. In *Neetu v. State of Punjab* (2007) 1 SCC 614 it was held by the Supreme Court that when a particular person is the object and target of a petition styled as PIL, the Court has to be careful to see whether the attack in the guise of public interest is really intended to unleash a private vendetta, personal grouse or some other mala fide object. In *Ashok Kumar Pandey Vs. The State of West Bengal and Others*, the Supreme Court held that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. Courts must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Petitions of such persons deserves

to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs. Further, in T.N. Godavarman Thirumalpad Vs. Union of India (UOI) and Others, Supreme Court quoted from its earlier judgment in Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, wherein the Court held that the attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity oriented or founded on personal vendetta.

14. The present petition styled as public interest petition is clearly an abuse of the process of court for the reasons stated herein above.

15. The petitioner is also guilty of making false averments and allegations against respondent No. 2 in the present writ petition. The petitioner has falsely stated that respondent No. 2 had been found guilty of misconduct and that a major penalty had been imposed on him. When the petitioner, who was present in person, was confronted with the fact that no such thing had happened and only an inquiry proceeding was going on, he had no explanation for the false and incorrect averments made in the writ petition. The petitioner has clearly not approached the court with clean hands and has not stated the correct facts. The petitioner is therefore clearly guilty of deliberately making false and wrong averments in the writ petition and is not entitled to any relief from this Court. The conduct of the petitioner in resorting to the aforesaid mis-statements and false averments in the writ petition is a gross abuse of the process of the Court. A person who makes false averments and does not come to the court with clean hands is liable to be thrown out at the threshold and appropriate action initiated against him in accordance with law.

16. We were deeply anguished to note the irresponsible and grossly unfair comments made by the petitioner in his letters dated 17th September, 2008 which are relied on in the writ petition against the Counsel of Delhi Jal Board. The allegations are defamatory and grossly irresponsible. We deprecate the practice of personal attacks on Counsel appearing for rival parties without any basis or justification whatsoever. This tendency has to be curtailed and condemned. Such attempts to make scandalous and irresponsible personal allegations against a Counsel without any justification whatsoever clearly amount to obstruction of due process of court/justice. For the above stated reasons, we do not intend to go into the merits of the matter as the present petition is a gross abuse of the process of law and is clearly motivated by private malice and vested interest. The writ petition is liable to be rejected at the threshold with exemplary costs.

17. Accordingly, the present writ petition is dismissed with costs, quantified at Rs. 50,000/-, to be paid by the petitioner to the two respondents in equal share, within a period of two weeks from today.