

(2005) 05 DEL CK 0188

In the Delhi High Court

Case No : Writ Petition (C) 7281 of 2005 and C.M. 5205 of 2005

Dr. K.K. Arora

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 31-05-2005

Acts Referred:

Indian Medical Council Regulations, 2000 — Regulation 30, 39, 7

Citation : (2006) 90 DRJ 149

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Valmiki Mehta, A. Maitri and Anshul Sinha, for the Appellant; Suresh Kait and Mahabir Singh for Respondent No. 1 and J.L. Gupta A. Mariarputham and A. Mathur, for the Respondent

Judgement

Vikramajit Sen, J.—By these orders I propose to finally dispose of the writ petition, since pleadings have been completed and parties have been heard at length.

2. In order to avoid prolixity the interim orders passed on 28.4.2005 are reproduced since the question is whether these should be recalled, modified or confirmed:

"The challenge in this Writ Petition is to the Order of Suspension of the Petitioner. The charge against the Petitioner is that on 3rd April, 2004, the day on which he was on leave (Saturday), he had attempted to remove several files/documents of the Council. The Petitioner has not admitted the Charge.

In State of Orissa Vs. Bimal Kumar Mohanty, , the Hon"ble Supreme Court has taken pains to opine that it is not automatic that a delinquent should be suspended pending an enquiry. The following extract encapsulates the law :

"....It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct

or defalcation of funds or serious act of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

As has been observed by Justice V. Balakrishna Eradi, as His Lordship then was, in *Subramonian v. State of Kerala* and Ors. 1973 (1) S.L.R. 521, an order of suspension brings to bear on an employee consequences far from serious in nature than the penalties that may be imposed.

The Petitioner has been requesting the Respondent-Council to supply him copies of the Minutes and other documents connected with the Meeting of the Council held on 30th December, 2004, on which date he was suspended. As per Regulation 30 of the Medical Council of India Regulations 2000, a copy of the Minutes of the Meeting should be made available to a non-member or any other person/organisation, upon a written requisition and payment of such fee as may be determined by the Council from time to time. Transparency in functioning even at the highest echelons of governance is the order of the day; Freedom of information is now a statutory norm. The Petitioner's very existence is dependent on the legality of the suspension of his services. If interrogatories were filed in civil proceedings there would have been no hesitation to order them. The Petitioner was not unreasonable or unjustified in asking for copies of

these documents which according to the Respondent's own Regulations, could have been demanded by third parties. An adverse inference must be drawn at this stage of the proceedings. The reason for this demand is obvious keeping in view the submissions made before me. The contention is that neither in the Agenda nor in the Minutes of the Meeting held on that date does the question of suspension of the Petitioner feature. The general law pertaining to Meetings is that every important issue likely to be discussed deliberated and decided upon must be contained in the Agenda since that puts all members to notice/caution of this important subject. It is no doubt true that a general power is reposed in the Chairman of every Meeting to take up "any other business". However, such business must not partake of extremely significant nature. A person entitled to attend the Meeting may peruse the Agenda and find that there is nothing of interest to the member and Therefore, may either not attend or may find it irrelevant to probe further into the question. Regulation 7, however, contains a salutary requirement in respect of the Agenda Paper; not only does a matter have to be notified in advance, but the Agenda itself has to be settled. This is not an uncommon practice so far as Meetings are concerned. It is salutary for the reason that it makes the conduct of Meetings not only open and transparent to all, but also ensures democratic and efficient functioning of the Board.

Learned Counsel appearing for the Council states that although it was not in the circulated Agenda, it did form part of the Agenda for that date and the reason why it was not circulated was that it was of a confidential nature, relating to an officer of a Council and discipline of its functioning. I have already extracted above the jural view pertaining to the suspension of an employee. I am unable to agree that the question of suspension of an officer can ever be a confidential matter. The Respondent is not empowered to carry out an inquisition. Prima facie, Therefore, there is sufficient reason to believe that the matter may not have been discussed at all at the Council Meeting scheduled for 30th December, 2004. It is also difficult to appreciate how members who were present at a Meeting can take such a severe decision with far reaching consequences unless they had adequate notice of it and relevant documents had been circulated to them earlier. The failure to supply the Minutes of the Meeting leads me to believe that this decision was not taken in the open. The question remains whether, assuming for the present that Petitioner had in fact removed documents/files on a day on which he was not on duty, such conduct would constitute a confidential matter. In fact, good managerial skill should mandate that proceedings of this nature should be held in the open so that every employee is put to caution that removal of documents or conduct of such nature would not be tolerated.

The Council has in the past years already taken up vast amounts of time not only of this Court but also of the Hon'ble Supreme Court. Its Chairman was ordered to be removed. There is also prima facie reason to accept the grievance of the Petitioner that he is being victimised for not toeing the line of the previous President.

Learned Counsel for the Respondent had requested at the end of his submissions and after a forty-five minutes of hearing that an interim order should not be passed before affording the Respondent an opportunity to file a reply. Had the request been made at the threshold of the hearing, I may have found it more expedient to accede to his request. At this stage it must be seen as a dilatory tactics.

Learned Counsel for the Respondent also submits that he has brought the originals of the Agenda (uncirculated) and the Minutes of the Meeting of the Executive Committee as also the Sub-Committee Report on this issue. As I have already expressed that these are far from confidential, I see no reason to peruse them at this stage of the proceedings especially since copies thereof have been obdurately refused to be supplied to the Petitioner even on his specific request. Copies thereof may be filed, if the Respondent so desires".

3. The suspension order was directed to be held in abeyance and the Respondents have complied with this direction. Pleadings have been completed and further detailed arguments have been addressed on behalf of the parties.

4. Reliance has been placed by learned counsel for the Respondent on the opinion expressed in U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, and in particular to the following paragraph:

We find from the charge-sheet that the allegations against the first respondent are grave inasmuch as they indicate that the amounts mentioned therein are not deposited in the bank and forged entries have been made in the passbook of the relevant accounts and the amounts are shown as having been deposited. In the circumstances, the High Court should not have interfered with the order of suspension passed by the authorities. The Division Bench has given no reason for upholding the learned Single Judges order revoking the suspension order. In matters of this kind, it is advisable that the concerned employees are kept out of mischief's range. If they are exonerated, they would be entitled to all their benefits from the date of the order of suspension. Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question. In the present case, before the preliminary report was received, the Director was impressed by the first respondent-employee's representation. However after the report, it was noticed that the employee could not be innocent. Since this is the conclusion arrived at by the management on the basis of the material in their possession, no conclusions to the contrary could be drawn by the Court at the interlocutory stage and without going through the entire evidence on record. In the circumstances, there was no justification for the High Court to revoke the order of suspension.

(underlining added)

5. I am unable to apply these observations to the factual matrix of the present case. The allegation against the Petitioner is that he had attempted to remove documents on a holiday. It has been argued on his behalf that it is simply incredulous that any person intending to remove documents would place them for this nefarious purpose in the hands of the security personnel. Prima facie this has merit and Therefore there is a strong likelihood that the decision may eventually be seen as mala fide and unsubstantiable. It cannot also be overlooked that even after this incident the Petitioner continued to attend office for several months. The Management, Therefore, obviously found no urgent need and necessity for the Petitioner to be "kept out of mi chief"s range". The secretive manner in which the decision was taken on the question of his suspension needs to be unequivocally deprecated. As has already been seen an order of suspension invariably, irretrievably and irrevocably damages the reputation of a person. Every suspension has punitive trappings, apart from financial deprivation. It inflicts a punishment even before guilt is established. The analogy of bail being the rule and jail being the exception immediately comes to mind. If the only concern is to keep an employee out of mischief"s range it can be achieved by granting him extraordinary leave with pay. Managements should not automatically pass suspension orders as if it is the normal course in every case where an inquiry is contemplated or is underway.

6. It must be evident that some thought has been given to the necessity and expediency of a suspension order before it is passed. Such an order must be self-contained and self-explanatory and nothing can be added or subtracted there from. If authority is required for this proposition one needs only to refer to the celebrated decision of the Hon"ble Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , paragraph 8 of which commands careful cogitation and reads as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older.

A Caveat".

This principle was approved and applied in Chandra Singh Vs. State of Rajasthan and Another, in which the pronouncement was to the effect that "it is fairly well settled that the legality or otherwise of an order passed by a statutory authority must be judged on the face thereof as the reasons contained therein cannot be supplemented by an affidavit". These essentials should be applied to all orders whose consequences are of far-reaching and irreversible effect.

7. The Order dated 31.12.2004 makes only a passing or fleeting reference to the decision taken by the Executive Committee of the Council in its Meeting held on 30.12.2004 while conveying the decision to suspend the Petitioner. Reasons are wholly absent. Even if the Minutes of the Meeting of the Executive Committee held on 30.12.2004 are perused to appreciate the justification of the suspension [which may be impermissible in view of MS Gill's case (supra)] nothing is gatherable there from. On such a serious issue, apart from the compulsion of complete transparency in the Agenda as well as the proceedings of the Committee, there must be evidence of the deliberations and the platform on which the decision is predicated should be clearly discernible. I am not persuaded to alter the opinion already expressed by me on this aspect of the dispute.

8. It has next been contended that the rules applicable to the Annual Meeting cannot be strictly extrapolated onto meetings of the Executive Council. Learned counsel for the Respondent has argued, and with substance, that since the Meeting of the Council takes place only once in a year it is necessary to circulate the proposed agenda, thereafter permit all members to propose changes thereto and finally settle the agenda and adhere to it. Regulation 7 of the Medical Council of India Regulations, 2000 (hereinafter referred to as 'the MCI Regulations') which pertains to Meetings of the Council cannot be applied with full rigour to meetings of the Executive Committee. The contention of learned counsel for the Respondent is fortified by the fact that Regulation 39 of the MCI Regulations which deals with the Meetings of the Executive Committee in terms states that "the meetings of the Executive Committee shall be ordinarily governed by the regulations applicable to meetings of the Council". Deviations from Regulation 7 so far as the meeting of the Committee are concerned are, Therefore, permissible. Even so, I am of the unwavering opinion that important matters must be featured on the Agenda and cannot be dealt with in an flippant, conspiratorial or confidential manner. Furthermore, I am unable to find any reason why Part-III generally and Regulation 30 of the MCI Regulations in particular which deals with supply of the Minutes has not been adhered to. An inference must be drawn against the Respondents for their failure to do so leading to a strong suspicion that the Minutes may have been altered. It is significant that the Respondents have categorically admitted that the Agenda of the Executive Committee Meeting held on 30.12.2004 had not been circulated.

Any person who has attended Board Meetings would realise that wherever there is no advance notice of a particular item Members are unable to always arrive at an informed decision with which they would abide by even the following day. Unpreparedness at any Meeting which is a result of not having prior notice, is an anathema.

9. Although the opinion has already been expressed that an adverse inference should be drawn so far as the proceedings dated 30.12.2004 of the Executive Committee are concerned, I am unable to accept the contention of the Petitioner that no discussion took place and that discussions took place only up to Item 97 and that Minutes pertaining to Item 98 with which we are concerned was subsequently prepared and added on. There is also substance in the contention of the learned counsel for the Respondent that the Members of the Executive Committee were already aware for several months of the alleged misconduct of the Petitioner as is evident from a perusal of the Minutes of its Meeting held on 12.5.2004. At that Meeting a Sub-Committee had been constituted to look into this very question. The opinion of the Sub-Committee, inter alia, was that the act of removing 45 original and official documents/records amounted to grave misconduct. The Sub-Committee recommended the initiation of disciplinary proceedings against the Petitioner. What is notable is that there is no whisper that the Petitioner is likely to commit the same alleged misconduct again. This goes to the root of the justification of the suspension order.

10. The fact that the Petitioner had applied for Voluntary Retirement would have no bearing on this writ petition.

11. For all these manifold reasons the impugned suspension Order dated 31.12.2004 is quashed.

12. The second prayer viz. to restore the services of the Petitioner as on 31.12.2004 is too vague. What the Petitioner perhaps wants is the cancellation of the Order dated 15.3.2005 whereby an inquiry has been initiated. It has been repeatedly held by the Hon'ble Supreme Court that jural interference in such matters is to be abjured. I had the occasion to consider this very question in *Danvir Verma v. Punjab National Bank* 2005 II AD (DELHI) 237. Inquiries must run their course unless on a plain reading of the charges no offence is made out. This situation does not present itself in the present case. The prayer, Therefore, to interdict the inquiry which has commenced by means of Memorandum dated 15.3.2005 is rejected.

13. The parties to bear their respective costs.