

(2013) 04 AHC CK 0005
In the Allahabad High Court
Case No : Criminal M.W.P. No. 23982 of 2011

Dr. K.M. Agrawal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Citation : (2013) 3 ACR 3148 : (2013) 82 ALLCC 138

Hon'ble Judges : Ravindra Singh, J;Anil Kumar Agarwal, J

Bench : Division Bench

Advocate : Rajiv Gupta, Dileep Kumar, Rajrshi Gupta and Swapnil Kumar, for the Appellant;

Judgement

Ravindra Singh and Anil Kumar Agarwal, JJ.—Heard Sri Dileep Kumar, Sri Rajiv Gupta. Sri Rajrshi Gupta and Sri Swapnil Kumar, learned counsel for the petitioner and learned A.G.A. for the State of U.P. This petition has been filed with the following prayers:

(a) to issue a writ, order or direction in the nature of certiorari, quashing the order dated 17.8.2011 (Annexure-X to this writ petition), passed by respondent No. 1 granting permission to prosecute the petitioner.

(b) to issue any other writ, order or direction which this Hon''ble Court may deem fit and proper under the circumstances of the present case.

(c) to award cost to the petitioner of the present writ petition.

2. The facts, in brief, of this case are that the petitioner is a Member of Provincial Medical and Health Services, U.P., he was initially appointed as Medical Officer in the year 1975, ultimately, promoted upto the cadre of Joint Director, Medical Health in May 2005, on attaining the age of superannuation on 30.11.2010, he has retired from his services, he discharged his duties to the full satisfaction of his superior officers and no complaint whatsoever, has been made against him during his service tenure as Chief Medical Officer, Azamgarh. The petitioner

joined as C.M.O., Azamgarh on 13.8.2009 in pursuance of the order of State Government. The State of U.P. decided to engage Ayurvedic, Unani and Homeopathy Doctors on contract basis. For the said purpose, a Government order dated 3.2.2005 has been issued laying down the procedure for engaging the doctors on contract basis. A Selection Committee under the Chairman-ship of District Magistrate was constituted on 19.12.2009, the District Magistrate, Azamgarh, being the Chairman of the Selection Committee, directed the petitioner to terminate the services of Dr. Sailesh Kumar Rai, Medical Officer of Ayurvedic, working on contract basis at Additional Primary Health Centre, Gomadeeh, District Azamgarh, in pursuance of the impugned order aforesaid letter dated 19.12.2009, the petitioner being the Chief Medical Officer, terminated the contract of Dr. Sailesh Kumar Rai vide order dated 21/23.12.2009, thereafter Dr. Sailesh Kumar Rai alongwith some political leaders belonging to Bahujan Samaj Party and his 2-3 other associates came at the petitioner's house and asked the petitioner to restore the service contract of Dr. Sailesh Kumar Rai, otherwise he would have to face the consequences, its information was immediately given by petitioner to the District Magistrate by sending a letter, One Sri Radhey Shyam Singh, Senior Congress leader, resident of Pawai, District Azamgarh, Sri Manoj Rai, leader of Bahujan Samaj Party and some other leaders tried to influence and pressurised the petitioner to withdraw the order terminating service contract of Dr. Sailesh Kumar Rai, whereas his service contract was terminated in pursuance of the order passed by District Magistrate, Azamgarh and the petitioner was having no power to withdraw the said order due to this reason aforesaid persons bearing animosity and personal grudge against the petitioner and extended threat to teach a lesson, on this background, with an intention to harass and malign the petitioner, a well planned conspiracy was hatched by above mentioned persons for falsely implicating him in a case accepting the bribe from Dr. Sailesh Kumar Rai. In execution of aforesaid conspiracy, Dr. Sailesh Kumar Rai wrote a letter addressed to Superintendent of Police, U.P. Vigilance Department, alleging therein that the petitioner has demanded an amount of Rs. 20,000 for restoring his service contract, since he did not want to pay the aforesaid amount, appropriate action may be taken against him, on the basis of complaint, a trap was made in the office of the petitioner on 20.2.2010 at about 3.30 p.m. and the petitioner has been shown accepting a packet containing Rs. 20,000 given by Dr. Sailesh Kumar Rai, the petitioner was arrested, its F.I.R. was lodged against him in Case Crime No. 325 of 2010 u/s 7/13(2), Prevention of Corruption Act at Police Station Kotwali. District Azamgarh, after lodging the F.I.R., the proper investigation has not been done, even none of the officials of office of the Chief Medical Officer was interrogated during the course of investigation and large number of the witnesses of the C.M.O. office submitted their affidavits before the S.P. Vigilance, Gorakhpur requesting to ensure fair and impartial investigation. On the same allegation Principal Secretary to the Medical Health and Family Welfare, U.P., Lucknow initiated the departmental inquiry against the petitioner vide order dated 20.2.2010 after placing him under suspension, subsequently, the

departmental charge-sheet has been served upon the petitioner vide order dated 5.5.2010. The departmental inquiry has been conducted by the Director Administration, Medical Health, U.P., Lucknow. The petitioner submitted its reply, the departmental inquiry was ultimately culminated in which no charge could be proved against the petitioner, thereafter, he was discharged from all the charges levelled against him. The Director Administration, Medical Health submitted its report that no charge is found proved against the petitioner. The disciplinary proceedings against the petitioner have been conducted as per the U.P. Government Servant (Disciplinary and Appeal) Rules, 1999. After submission of inquiry report the petitioner filed a representation before the Principal Secretary, Medical Health and Family Welfare, U.P. Lucknow, respondent No. 1, but no final order was passed then the petitioner filed Civil Misc. Writ Petition No. 61269 of 2010 which was finally disposed of on 6.10.2010 with a direction to the Disciplinary authority to pass appropriate order, preferably within a period of 3 months from the date of receipt of the certified copy of the order. The respondent No. 1, after considering the inquiry report dated 7.9.2010, decided to reinstate the petitioner in service by recalling the suspension order and he was posted in the office of Additional Director, Medical Health and Family Welfare, Agra Region, Agra on the post of Joint Director. However, final order in the departmental inquiry initiated against the petitioner has not been passed, it has been kept pending, then the petitioner filed a Civil Misc. Contempt Application No. 3455 of 2011 in which notice has been issued to the opposite party by this Court on 25.7.2011. In the meantime, the petitioner submitted the representation to Principal Secretary (Vigilance) with a request that no permission to prosecute the petitioner may be given, for the same purpose, many reminders have also been sent by the petitioner, but without considering the representation and reminders sent by the petitioner, the respondent No. 1 has granted permission to prosecute the petitioner u/s 19 of the Prevention of Corruption Act vide order dated 17.8.2011. After granting the permission for prosecution vide order dated 17.8.2011, the respondent No. 1 has accepted the report of inquiry officer exonerating the petitioner from charge and the disciplinary inquiry initiated against the petitioner has ultimately been dropped by accepting the inquiry report dated 7.9.2010 with a rider subject to the ultimate result of permission to prosecute the petitioner. The impugned order dated 17.8.2011 is illegal, the same has not been passed after going through the representations sent by the petitioner and inquiry report. The inquiry report submitted thereafter has exonerated petitioner from the charge by dropping the disciplinary proceedings. Being aggrieved from the order dated 17.8.2011, the present writ petition has been filed.

3. It is submitted by counsel for the petitioner that admittedly, the charge against the petitioner in the disciplinary proceedings as well as in criminal proceedings are same and similar, once the respondent No. 1 has accepted the inquiry report in the disciplinary proceedings exonerated the petitioner from the charge, the respondent No. 1 was not justified to grant permission to prosecute

the petitioner. The respondent No. 1 has not considered the various representations submitted by the petitioner before passing impugned order dated 17.8.2011. As per Rule 9 of the Rules of 1999, if the disciplinary authority agrees with the report of inquiry officer when charges are not proved then it has to exonerate the charged officer. In the present case, the petitioner has been exonerated by respondent No. 1 as per Rule 9(1)(2), thus the disciplinary authority has decided not to give any penalty to the petitioner as provided under Rule 3 of the Rules of 1999. Thus on the same set of facts the respondent No. 1 was not justified to pass impugned order dated 17.8.2011, giving permission to prosecute the petitioner. The petitioner has been falsely implicated by concocting the story in case of Prevention of Corruption Act, it was mala fide with an ulterior motive for wrecking vengeance. The impugned order dated 17.8.2011 permitting to prosecute the petitioner is illegal, it has been passed in an arbitrary manner, after passing the impugned order the petitioner has been exonerated by the respondent No. 1 by accepting the inquiry report. In such circumstances, the prosecution of the petitioner will violate the provisions of Article 21 of the Constitution of India. Therefore, the impugned order dated 17.8.2011 may be set aside.

4. In reply of the above contention it is submitted by learned A.G.A. that in the present case, petitioner has been apprehended accepting the bribe, the proper procedure has been followed, the recovery of tainted notes kept in a packet has been made, F.I.R. in Case Crime No. 325 of 2010 u/s 7/13(2) of Prevention of Corruption Act, Police Station Kotwali, District Azamgarh has been lodged, during investigation credible evidence has been collected by the Investigating Officer showing his involvement in the commission of the alleged offence, the permission as required u/s 19 of Prevention of Corruption Act has been accorded by the respondent No. 1 vide order dated 17.8.2011. The Hon'ble Governor of State of Uttar Pradesh has accorded the sanction, the impugned order dated 17.8.2011 is not suffering from any illegality or irregularity, it has been passed on the basis of allegation made against the petitioner and evidence collected by the Investigating Officer during Investigation. On the basis of subsequent order dated 30.8.2011 by which the representations dated 15.10.2010 and 29.11.2010 submitted by the petitioner have been decided. Even on the basis of order dated 30.8.2011 the petitioner has not been exonerated from the charge levelled against him. The departmental proceedings have been closed subject to the result of criminal proceedings in which the sanction has been accorded, it does not mean that petitioner has been exonerated from the charges levelled against him. The report of inquiry has been accepted conditionally by the respondent No. 1. In such circumstances, the submission made by learned counsel for the petitioner that on same set of charge the petitioner has been exonerated and the report has been accepted, is not applicable in the present case. The departmental inquiry report cannot either operate as estoppel or res judicata in case of the prosecution of the petitioner. The criminal prosecution is based on the evidence collected by the Investigating Officer during investigation.

The evidence collected by the Investigating Officer during the investigation is, prima facie, disclosing the constitution of the offence punishable u/s 7/13(2) of the Prevention of Corruption Act and after going through the allegations and material collected by the Investigating Officer the sanction has been accorded to prosecute the petitioner by passing impugned order, the impugned order is not suffering from any illegality or irregularity, the present writ petition is devoid of the merits and the same may be dismissed.

5. Considering the facts, circumstances of the case, impugned orders dated 17.8.2011 and 30.8.2011 passed by respondent No. 1 in the departmental inquiry after considering the representation dated 15.10.2010, 29.11.2010, submission made by the learned counsel for the petitioner and the learned A.G.A., it appears that in the present case, the petitioner was apprehended red handed accepting the bribe of Rs. 20,000 by the trap team of vigilance establishment, Gorakhpur, U.P. On 20.2.2010 at 3.30 p.m., in the office of the Chief Medical Officer, Azamgarh. The trap was made on the basis of the complaint made by Dr. Shailesh Kumar Rai, whose contract of service was terminated by the petitioner. During investigation the Investigating Officer collected the evidence which has been considered by the sanctioning authority who came to the conclusion that on the basis of the evidence collected by the Investigating Officer, prima facie offence punishable u/s 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988, is made out. The sanction is required u/s 19 of the Prevention of Corruption Act, the sanctioning authority accorded the sanction to take the cognizance of the offence against the petitioner by the competent court. The impugned order dated 17.8.2011 shows that the sanctioning authority has considered the allegations made against the petitioner and evidence collected by the Investigating Officer also on merits granted sanction to prosecute the petitioner and the sanction to take the cognizance by the competent court, is not suffering from any illegality or irregularity. So far as the submission made by the learned counsel for the petitioner that on the basis of same allegation, departmental proceedings have already been initiated and the inquiry officer has submitted the report exonerating the petitioner from the charges levelled against him, and the same has been conditionally accepted by respondent No. 1, the prosecution of the petitioner in criminal side, is against the principle of natural justice because on one hand for the same charges he has been exonerated in the departmental inquiry, on the other hand he has been charge-sheeted by the Investigating Officer and the same authority has accorded sanction to prosecute the petitioner and to take the cognizance by the competent court, on the other hand has accepted the inquiry report exonerating the petitioner from the same charges. We have perused the order dated 30.8.2011, which has been passed by the Principal Secretary. Medical Health and Family Welfare, U.P., Lucknow but it has been passed on the inquiry report and the representations dated 15.10.2010 and 29.11.2010 submitted by the petitioner. The order dated 20.8.2011 and order dated 17.8.2011 by which the sanction has been accorded to the vigilance department, has been properly considered and

the inquiry report has been conditionally accepted subject to the decision of the criminal proceedings in which sanction has been accorded, in such circumstances, it cannot be said that the departmental inquiry report exonerating the petitioner from the charges levelled against him, has been accepted in toto. In the present case, the sanction to prosecute the petitioner and to take cognizance by the competent court has been accorded by His Excellency the Governor, its communication has been made by the Principal Secretary, Medical Health and Family Welfare, U.P., Lucknow whereas the departmental inquiry report has been conditionally accepted by the Principal Secretary, Medical Health and Family Welfare, U.P., Lucknow, both the authorities are different for criminal prosecution of the petitioner in which the petitioner was apprehended on the spot accepting the bribe, its F.I.R. in Case Crime No. 325 of 2010 u/s 7/13(2) of the Prevention of Corruption Act, has been registered at the Police Station Kotwali, District Azamgarh. The departmental Inquiry report cannot either operate as estoppel or res-judicata because on the basis of the allegation and material collected by the investigating Officer, prima facie, offence punishable u/s 13(1) (d) read with Section 13(2) of Prevention of Corruption Act, 1988 is made out. The sanctioning authority by passing the impugned order dated 17.8.2011, after considering the allegation and the evidence collected by the Investigating Officer during investigation on the basis of the subsequent order dated 30.8.2011 by which the departmental inquiry report exonerating the petitioner from the charges was conditionally accepted, which has been accepted subject to the decision of the criminal case against the petitioner in which the sanction has been accorded, the sanction accorded by the sanctioning authority cannot be vitiated. The impugned order dated 17.8.2011 is not suffering from any illegality or irregularity, the sanctioning authority has not committed any error in according sanctioning to prosecute the petitioner and to take the cognizance of the offence by the competent court, therefore, the prayer for quashing the impugned order dated 17.8.2011 is refused. Accordingly this petition is dismissed.