
(2012) 02 DEL CK 0006
In the Delhi High Court
Case No : Writ Petition (C) 61 of 2012

G. Jayalal

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

Companies Act, 1956 — Section 6
Criminal Procedure Code, 1973 (CrPC) — Section 197

Citation : (2012) 5 AD 216 : (2012) 187 DLT 457 : (2012) 128 DRJ 280 :
(2012) 2 SLJ 214

Hon'ble Judges : V.K. Jain, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : M.N. Krishnamani, with Mr. Sanjai K. Pathak and Mr. Amit Kumar, for the Appellant; Mohi Kumari for Mr. D.S. Mehandru for R-1, Mr. Rajiv Sharma, Uddyam Mukherjee and Mr. Sahil Bhalaik for R-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This writ petition is directed against the order dated 30.11.2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal"), whereby Original Application No. 1290/2011, filed by the petitioner, was dismissed. The facts leading to the filing of the aforesaid Original Application can be summarized as follows:

Advertisements to fill up the posts of Director General in All India Radio and Doordarshan were issued on 20.10.2010 and 20.12.2010 respectively. A committee (Prasar Bharti Board) headed by Mrinal Pande, Chairperson, Prasar Bharti Board was constituted to make recommendations for appointment to the aforesaid posts. The other members of the committee were Shri Rajiv Takru, IAS (Nominated Member, Prasar Bharti), Shri A.K. Jain, IAS, (Member-Finance, Prasar Bharti), Shri Shivkumar, (Member-Personnel, Prasar Bharti), Dr Sunil Kapoor, Member, Prasar Bharti Board, Dr George Verghese, Member, Prasar Bharti Board, Shri Suman Dubey, Member, Prasar Bharti Board, Shri Muzaffar Ali,

Member, Prasar Bharti Board and Ms Noreen Naqvi, IBPS, DG-AIR. Nine persons, including the petitioner G. Jayalal, respondent No. 4 Shri L.D. Mandloi, respondent No. 5 Shri Tripurari Sharan and respondent No. 6 Shri Ram Subhag Singh were interviewed by the Selection Committee. The recommendations of the Selection Committee were forwarded to the Government of India vide letter dated 16.03.2011 by the Member (Personnel), Prasar Bharti. The committee forwarded the names of three persons, namely, Shri L.D. Mandloi, Shri Tripurari Sharan and Shri Ram Subhag Singh for the post of Director General, Doordarshan and two persons, namely, Shri G. Jayalal (the petitioner herein) and Shri L. Mandloi (respondent No. 4 herein) for the post of Director General, All India Radio.

A letter dated 21.03.2011 was circulated by Shri Dhiranjan Malvey, Officer on Special Duty (OSD) in Prasar Bharti, to all the Members of the Selection Committee, enclosing therewith a copy of the decision proposed to be taken by the Selection Committee, by circulation. It was stated in the proposed decision, annexed to the letter that in the special meeting held on 15.03.2011, the Selection Board (Prasar Bharti Board), after interviewing the candidates and taking into account all the relevant factors, had decided to recommend a panel of short-listed candidates for the two posts, without putting the names in the panels in any particular order of preference. It was further stated that since the Government had desired that the names in the panels be put into order of preference, the Board, after carefully considering the matter, had decided by circulation to put the names in the panels of short-listed candidates, in the order of preference, indicated therein. Each Member of the Selection Committee gave his recommendation by way of a separate endorsement. Out of the nine Members of the Selection Committee (Prasar Bharti Board) on the proposed decision, eight members placed respondent No. 4 Shri L.D. Mandloi at No. 1 and the petitioner Shri G. Jayalal at No. 2, in the order of preference, for the post of Director General, All India Radio. Five out of nine members of the Selection Committee (Prasar Bharti Board) placed Shri Tripurari Sharan at No. 1, Shri Ram Subhag Singh at No. 2 and Shri L.D. Mandloi at No. 3 in the said order of preference for the post of Director General,

Doordarshan. Another three Members, while agreeing that Shri Tripurari Sharan be placed at No. 1 for the post of Director General, Doordarshan, suggested the name of Shri L.D. Mandloi at No. 2 and did not suggest any third name. The ninth Member Dr George Verghese, however, placed Shri L.D. Mandloi at No. 1 and Shri Tripurari Sharan at No. 2. Thus, the majority (eight out of nine members) of the Selection Committee placed respondent No. 4 Shri L.D. Mandloi, at No. 1 in the order of preference for the post of Director General, All India Radio and Shri Tripurari Sharan at No. 1 for the post of Director General, Doordarshan. Shri G. Jayalal, the petitioner before this Court, was placed at No. 2 in the order of preference for the post of Director General, All India Radio. His name was recommended for the post of Director General, Doordarshan. The aforesaid recommendations of the Selection Committee were sent to the

Government of India vide letter dated 23.03.2011, written by Shri Dhiranjan Malvey, OSD, to the Joint Secretary (B), Ministry of Information and Broadcasting.

2. OA No. 1290/2011 was filed by Shri G. Jayalal, seeking quashing of the recommendations dated 21.03.2011. He also sought a direction to the respondents to act as per the recommendation dated 15.03.2011, whereby, according to the petitioner, he was placed at No. 1 in the order of preference, for appointment to the post of Director General, All India Radio. He also sought quashing of the order dated 30.03.2011, whereby current duty charge of post of Director General, All India Radio, was given to respondent No. 4 Shri L.D. Mandloi on a temporary basis. The Tribunal, vide impugned order dated 30.11.2011, held that vide its minutes dated 15.03.2011, the Selection Committee (Prasar Bharti Board) had only short-listed the candidates, without placing them in the order of preference. The Tribunal did not accept the contention of the petitioner that someone in the Government made the Selection Committee change its earlier decision. The Tribunal, however found merit in the contention that if the Selection Committee had short-listed the candidates on 15.03.2011, the order of preference could not have been decided by circulation and a meeting of the Prasar Bharti Board (Selection Committee) had to be arranged for the same and the decision was required to be taken after deliberations and consultations amongst the Members of the Board. A direction was accordingly issued by the Tribunal, directing the respondents to convene a meeting of the Board to determine the order of merit of the candidates. It was further directed that if the outcome of the meeting was an endorsement of the view which had emerged from the order of preference indicated through circulation, nothing more would be required to be done, since the candidature of those, who had been placed at No. 1 in the order of preference for both the posts, had already been approved by the Cabinet Committee on Appointments (ACC) and the selected persons had already been appointed and were in position. It was directed that if in the deliberations that take place in the meeting, a different result was to ensue, the Board shall make recommendations accordingly, for approval of ACC and in that event, if the appointment of any of the selected candidate was to be set aside, the order in that regard shall be passed. The Tribunal also directed that in case selection of Shri L.D. Mandloi was not approved for the post of Director General, All India Radio, his name shall be recommended for the post of Director General, Doordarshan.

3. During the course of hearing before us, we were informed that pursuant to the directions given by the Tribunal, a meeting of Prasar Bharti Board was convened and the decision taken in that meeting was in conformity with the result which had been obtained by circulation. We are also informed that three Members of the Selection Committee, which had interviewed the candidates, had, in the meanwhile, been replaced on account of reasons such as retirement or their tenure coming to an end and three new Members had participated in the meeting which was held pursuant to the order of the Tribunal.

4. Since the Tribunal did not approve the decision taken by circulation, pursuant to the proposed decision circulated by Shri Dhiranjan Malvey, OSD in Prasar Bharti to the Members of the Selection Committee and decision of the Tribunal in this regard is not under challenge before us, we need not go into the correctness or otherwise of the aforesaid procedure. During the course of arguments before us, the learned Senior Counsel for the petitioner submitted that since the three new Members of the Board had not interviewed the candidates, they were not in a position to take an informed view with respect to the merits of the candidates and, therefore, the decision taken by the Board in the meeting convened in compliance of the order passed by the Tribunal, got vitiated. We, however, need not examine this contention for the simple reason that if the petitioner is aggrieved by the decision taken in the meeting of the Board, convened pursuant to the directions of the Tribunal, he has to file an appropriate application before the Tribunal challenging the said decision and it is not open to the petitioner to assail the said decision in the present proceedings.

5. The only question which arises for our consideration in this petition is as to whether the Selection Committee (Prasar Bharti Board) had in its meeting held on 15.03.2011, placed the petitioner at No. 1 in the order of preference, for the post of Director General, All India Radio or not. The minutes of the meeting dated 15.03.2011, to the extent they are relevant, read as under:-

2. The Board interviewed the following officers (who responded to the intimation in respect of the interview) for the post of Director General, All India Radio:-

i. Shri G. Jayalal

ii. Shri L.D. Mandloi

iii. Shri Ashok Jailkhani

3. The Board interviewed the following officers (who responded to the intimation in respect of the interview) for the post of Director General, Doordarshan:-

EXTERNAL CANDIDATES

(i) Shri Sunil Kumar Singh

(ii) Shri Ram Subhag Singh

(iii) Shri Anil Kumar Aggarwal

(iv) Shri Manoj Kumar Panda

(v) Shri Jagmohan Singh Raju

(vi) Shri Tripurari Sharan

DEPARTMENTAL CANDIDATES

(i) Shri G. Jayalal

(ii) Shri L.D. Mandloi

(iii) Shri Ashok Jailkhani

4. Taking into account the considerations of overall merit and experience and with due regard to an assessment of suitability, the Board decided to forward recommendations to the Government of India, as given below:-

For the post of Director General, Doordarshan

1. Sh. L.D. Mandloi
2. Sh. Tripurari Sharan
3. Sh. Ramsubhag Singh

For the post of Director General, All India Radio

1. Sh. G. Jayalal
2. Sh. L.D. Mandloi

6. The learned Senior Counsel, relying upon use of the expression "over all merit and experience", contended that the Board had clearly placed the petitioner at No. 1 in the order of merit for the post of Director General, All India Radio and respondent No. 4 Shri L.D. Mandloi for the post of Director General, Doordarshan. We, however, do not find ourselves in agreement with the learned Senior Counsel for the petitioner. In our view, the aforesaid expression used by the Selection Committee would only mean that the recommendation of the Selection Committee was based on overall merit and experience of all the candidates interviewed by them and the Committee also had given due regard to the suitability of the candidates to the posts for which recommendations were being made. This recommendation, to our mind, cannot be interpreted to mean that the person whose name was shown at No. 1 was ranked first in the order of merit, the person whose name was placed at No. 2 ranked second in the order of merit and the person whose name was placed at No. 3 ranked third in the order of merit. If the Selection Committee was to place the names in the order of merit, it would have said that it was forwarding the recommendations in the order of merit, indicated in the minutes.

It would be appropriate to note here that in the proposed decision circulated by Shri Dhiranjan Malvey to the Members of the Selection Committee on 21.03.2011, it was specifically stated that in the meeting held on 15.03.2011, the Board, after interviewing the minutes and taking into account all the relevant factors, had decided to recommend a panel of short-listed candidates for two posts of the Government of India, without putting the names in the panel in any order of preference (emphasis supplied). It was further stated in this proposed decision that since the Government had desired from the Board that the names in the panels of short-listed candidates be put into order of preference, the Board, after carefully considering the matter decided by circulation, to put the

names in the panel of short-listed candidates in the order of preference indicated in the minutes. As noted earlier, each member of the Selection Committee gave his/her recommendation separately on the proposed decision circulated by Shri Dhiranjan Malvey. Not even a single member of the Selection Committee, while giving his recommendation, stated that in the meeting held on 15.03.2011, the Board had not recommended a panel of short-listed candidates, without any particular order of preference, but, had, in fact, recommended the names in the order in which the names were mentioned in the minutes dated 15.03.2011. It would also be pertinent to note here that even Dr George Verghese, who had recommended that the petitioner Shri G. Jayalal, be placed at No. 1 in the order of preference for the post of Director General, All India Radio, did not say that the Selection Committee, in its meeting held on 15.03.2011, had recommended the names in the order of merit or that it had placed the petitioner at No. 1 in the order of preference, for the post of Director General, All India Radio. Similarly, no Member of the Selection Committee, including Dr. George Verghese said that in its meeting held on 15.03.2011, the Selection Committee (Prasar Bharti Board) had placed the name of Shri L.D. Mandloi at No. 1 in the order of preference, for the post of Director General, Doordarshan. Had the Committee recommended the candidates in the order of preference on 15.03.2011, one or more members of the Selection Committee would certainly have stated so while making his recommendation on the proposed decision, circulated on 21.03.2011. We, therefore, have no hesitation in holding that in its meeting held on 15.03.2011, the Selection Committee (Prasar Bharti Board) had not recommended names in the order of preference. Consequently, we cannot direct the official respondents to send recommendations to the Government placing the petitioner at No. 1 in the order of preference, for the post of Director General, All India Radio.

7. During the course of arguments before us, the learned Senior Counsel for the petitioner contended that though it was stated in the draft decision circulated on 21.03.2011 that the Government had desired from the Board that the names in the panel of short-listed candidates be put into the order of preference, no communication from the Government to Prasar Bharti to this effect has been filed by the respondents, which, in turn, shows that in fact there was no such communication. This was also his contention that someone in the Government was able to influence the members of the Selection Committee, to change the recommendation which they had made on 15.03.2011 for the post of Director General in Doordarshan, so as to benefit Shri Tripurari Sharan, whose name was placed at No. 2 in the minutes dated 15.03.2011, but was later changed to No. 1 by way of circulation dated 21.03.2011 and also to deprive the petitioner of his legitimate claim for appointment to the post of Director General in All India Radio. We find from a perusal of the record that pursuant to a direction given by the petitioner, an affidavit was filed by Shri Dhiranjan Malvey, OSD in Prasar Bharti Secretariat, explaining the circumstances leading to the decision taken by circulation dated 21.03.2011. In his affidavit, Mr Dhiranjan Malvey, inter alia,

stated as under:

After interviewing the candidates, the Board shortlisted three candidates for the post of Director General, Doordarshan and two candidates for the post of Director General, All India Radio. As per the majority, the following appeared to be the order of merit amongst the short-listed candidates as per the trend of discussions in the Board:

For the post of Director General, Doordarshan:

1. Shri Tripurari Sharan
2. Shri Ram Subhag Singh
3. Shri L.D. Mandloi

For the post of Director General, All India Radio.:

1. Shri L.D. Mandloi
2. Shri G. Jayalal

There was considerable discussion amongst the Members as to whether the short-listed pan panel should be forwarded to the Ministry in any particular order of preference or not. Members were generally of the opinion that the names be not put in a particular order of preference. Accordingly, in the Minutes of the proceedings, which were drawn up, only the names of the short-listed candidates were listed without setting out any order of preference. The same was the position in the letter dated 16.03.2011 sent by the Member (Personnel) to the Government of India conveying the recommendations made by the Board. That subsequently, Ministry of Information & Broadcasting desired that the recommendations of the Board be put in order of preference since the matter had to be referred to the ACC. This was conveyed to him on 21.03.2011 by the Additional Secretary, Ministry of Information & Broadcasting, who is also a nominated Member of the Prasar Bharati Board and is discharging the duties of Executive Member, Prasar Bharati. The nominated Member directed me to prepare a proposed resolution setting out the recommendations in order of merit, having regard to the sense of the Board meeting held on 15.03.2011. I prepared the resolution accordingly and showed to the Nominated Member and thereafter circulated the same to all the Board Members, vide covering letter dated 21.03.2011.

That I state that the proposed resolution dated 21.03.2011 was not based on any decision allegedly taken by the Government of India nor was any such decision conveyed to me. The proposed resolution was prepared having regard to the sense of the Board meeting, which took place on 15.03.2011

We, however, need not further delve into this aspect of the matter and need not go into the question as to whether Additional Secretary, Ministry of Information and Broadcasting, who was also a Member of Prasar Bharti Board, could have

conveyed the desire of the Government in the manner it was done by him and could have directed Mr Dhiranjan Malvey to prepare a proposed resolution as the Tribunal has already quashed the decision taken by circulation and a fresh decision has since been taken by Prasar Bharti Board, pursuant to the order of the Tribunal dated 30.11.2011.

8. As regards the allegations of mala fides, we note that the petitioner has not attributed mala fide to any particular person, including any member of the Selection Committee. The petitioner does not say as to who influenced whom. In the absence of such particulars, the allegations of mala fides cannot be accepted. Even otherwise, we cannot accept that all the nine Members of the Selection Committee, majority of whom were independent persons, could have been influenced by someone in the Government. We also take note of the fact that in case we presume that in its meeting held on 15.03.2011, the Selection Committee had placed the petitioner at No. 1 in the order of merit for the post of Director General, All India Radio and Shri L.D. Mandloi at No. 1 for the post of Director General, Doordarshan, there could have been no valid reason to make an attempt to influence the Members of the Selection Committee in order to benefit Mr L.D. Mandloi, who in that case, was likely to be appointed to the post of Director General, Doordarshan. The contention that someone in the Government wanted to favour Shri Tripurari Sharan also cannot be accepted, since there is absolutely no material or circumstance from which such an inference can be drawn by us.

During arguments, the learned Senior Counsel for the petitioner contended that it was a case of malice in law. In this regard he has placed reliance upon Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, where the Supreme Court, with reference to legal malice, inter alia observed as under:

The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, ; Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another, ; State of Andhra Pradesh and Others Vs. Goverdhanlal Pitti, ; Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, and West Bengal State Electricity Board Vs. Dilip Kumar Ray,

The petitioner before this Court, however, has not been able to make out a case either of legal malice or of malice, in fact, on the part of the Government. He has

not been able to substantiate the allegations that someone from the Government intended to benefit Shri Tripurari Sharan by appointing him as Director General of Doordarshan and therefore Prasar Bharti Board (Selection Committee) was pressurized to change its recommendation.

9. It was contended by the learned Senior Counsel for the petitioner that neither the OSD nor the Government was competent to direct Prasar Bharti Board (Selection Committee) to change the decision taken by it on 15.3.2011. In this regard, he has relied upon Mansukhlal Vithaldas Chauhan Vs. State of Gujarat, . In that case respondent No.7, who was the authority competent to grant sanction u/s 197 of Code of Criminal Procedure, was directed by High Court of Gujarat to grant sanction for prosecution of the appellant Shri M.V.Chauhan within one month from the receipt of the Writ of the Court. In compliance of the direction, sanction was given and the appellant was prosecuted. The validity of sanction was challenged by the appellant. Upholding the challenge, Supreme Court inter alia observed as under:

By issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction and to act only in one way, namely, to sanction the prosecution of the appellant. The Secretary was not allowed to consider whether it would be feasible to prosecute the appellant; whether the complaint of Harshadrai of illegal gratification which was sought to be supported by "trap" was false and whether the prosecution would be vexatious particularly as it was in the knowledge of the Govt. that the firm had been black-listed once and there was demand for some amount to be paid to Govt. by the firm in connection with this contract. The discretion not to sanction the prosecution was thus taken away by the High Court.

The High Court put the Secretary in a piquant situation. While the Act gave him the discretion to sanction or not to sanction the prosecution of the appellant, the judgment gave him no choice except to sanction the prosecution as any other decision would have exposed him to an action in contempt for not obeying the mandamus issued by the High Court. The High Court assumed the role of the sanctioning authority, considered the whole matter, formed an opinion that it was a fit case in which sanction should be granted and because it itself could not grant sanction u/s 6 of the Act, it directed the Secretary to sanction the prosecution so that the sanction order may be treated to be an order passed by the Secretary and not that of the High Court. This is a classic case where a Branch name is changed to give a new colour to the package without changing the contents thereof. In these circumstances, the sanction order cannot but be held to be wholly erroneous having been passed mechanically at the instance of the High Court.

However, in the case before us, there is absolutely no material to indicate that either the OSD or the Government had directed Prasar Bharti Board (Selection Committee) to act in a particular manner. This judgment therefore has no application to the case before this Court.

10. The learned Senior Counsel for the petitioner also placed reliance upon Dr. A.K. Doshi Vs. Union of India, . In the case of Dr. A.K. Doshi (supra), the Selection Committee recommended two candidates in the order of merit, for the appointment of the members of the Company Law Board. Two persons namely, Dr. A.K. Doshi and Shri R. Vasudevan were recommended to be kept in reserved panel. Thereafter, Secretary to the Appointment Committee, while forwarding the name of the second respondent to the Appointment Committee, recorded a note in the relevant file that he did not seem to be fit person of character and unblemished record for occupying the position of Member, Company Law Board. The Appointment Committee was also informed by the Secretary that a penalty of reduction of pay by one step in the pay-scale for a period of one year with restoration to original stage on the expiry of that period had been imposed on the second respondent and that he had got published a brief analysis on the report of the Working Group on Companies Act through one Bharat Law House Private Limited and thereafter requested permission to accept Rs.10,000/- as honorarium from the Publisher, for which he was issued a warning and was directed to credit the entire amount to the Government. The Appointments Committee was also informed that a complaint against the second respondent had been received. Out of these allegations, two had not been brought to the notice of the Selection Committee. The Court felt that by placing on file the above mentioned comments and materials, which had not been placed before the Selection Committee, the Secretary had effectively ensured that the second respondent was not appointed. Supreme Court was of the view that after the Selection Committee completes the exercise and recommends names, the recommendations along with the material considered by the Selection Committee should be placed before the Appointments Committee, without any further addition or alteration. It was observed that if in an exceptional case the Appointments Committee feels that certain material, which was not available to be considered by the Selection Committee, has come into existence in the meantime, and the material is relevant for the purpose of appointment, then, the matter should be placed before the Appointments Committee with the additional material for its consideration. The Court felt that the note made by the Secretary was an attempt to interfere with the process of selection, which was neither permissible under the Rules nor otherwise desirable. This judgment has absolutely no application to the case before us. This is not the case of the petitioner that anyone in the Government had made notings adverse to him while forwarding the recommendations of the Selection Committee to Cabinet Committee on Appointments (ACC). In the case before us, the Selection Committee did not at all indicate the order of preference in the minutes of the meeting held on 15.03.2011 and the order of preference was conveyed only by way of a decision taken by circulation dated 21.03.2011.

11. For the reasons stated hereinabove, we find no merit in the Writ Petition, which is accordingly dismissed, without any order as to costs.