
(2013) 01 CHH CK 0004
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 4438 of 2010

Gourpad Mirgha	Vs	APPELLANT
The State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 1 CGBCLJ 264 : (2013) 5 MPHT 31

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Parag Kotecha, for the Appellant; Gary Mukhopadhyay, Panel Lawyer for the State and Shri A.S. Kachhawaha, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—The petitioner was served with a charge sheet for committing certain financial irregularities during the period when he was working as Nodal Officer of Prathmik Vanopaj Sahkari Samiti, Chargaon and Manhakal (for short "the Samiti") for collection of tendu leaves during season in the year 2006. Substantive post of the petitioner at the relevant time was Forester. The Sub Divisional Forest Officer, East Kapsi-cum-enquiry officer conducted detailed enquiry and submitted his report on 15-5-2009. In the enquiry report, the enquiry officer came to the conclusion that the prosecution failed to establish that the labour payment and fadmunshi commission was not correctly paid in respect of the collected material. For collection of tendu leaves the purchaser has made payment, however, full bonus was not paid. It was held that the charge No. 1 was partly proved. The enquiry officer further held that for causing loss to the Government/Federation and also to the collectors of tendu leave purchaser of the Samiti was fully responsible. In respect of Samiti, Chargaon and Manhakal, it was held that the purchasers have committed manipulations and financial irregularities, in collusion with the Government employees.

2. The Disciplinary Authority holding that the charge No. 1 partly proved, issued a notice to the petitioner on 4-7-2009 (Annexure-P/1) calling upon him to submit his reply to the enquiry report. Thereafter, by order dated 19-8-2009 (Annexure-P/2) the Disciplinary Authority holding the petitioner responsible, ordered withholding of 5 increments without cumulative effect and also directed to recover an amount of Rs. 7,17,661/- from the petitioner in 95 installments at the rate of Rs. 7,500/- per month and the remaining amount of Rs. 5161/-, as 96th installment.

3. There against, on 18-9-2009 (Annexure-P/3) an appeal was filed by the petitioner before the Appellate Authority in which by order dated 23-3-2010 (Annexure-P/4), the Appellate Authority reduced the punishment of withholding of 5 increments to withholding of 3 increments without cumulative effect and in respect of recovery of Rs. 7,17,661/- the same was affirmed. Thus, this petition.

4. Shri Kotecha, learned counsel appearing for the petitioner, would submit that the petitioner is entitled to show cause notice before the Disciplinary Authority disagrees with the finding of the enquiry officer and take independent decision. Since the show cause notice was not served, the entire process is vitiated and deserves to be set aside. Shri Kotecha, placed reliance upon the decision of this Court in Ramadhar Bhaskar Vs. State of Madhya Pradesh and Others,

5. On the other hand, Shri Mukhopadhyay, learned Panel Lawyer appearing for the State and Shri Kachhawaha, learned counsel appearing for the respondent No. 3, while supporting the impugned orders, would submit that the Disciplinary Authority has not disagreed with the finding of the enquiry officer and on the basis of the finding wherein it was clearly recorded that the purchaser has committed manipulation and financial irregularities in collusion with the Government employees. It was also recorded that the charge No. 1 has been found proved to the extent that full bonus was not paid to the collectors of tendu leaves. Accordingly, the impugned order was passed.

6. Having heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto, it is found that the enquiry officer has conducted a detailed enquiry, examined all the witnesses and documents and thereafter, came to the conclusion that in the concerned Samiti, the labour payment for collection of tendu leaves and fadmunshi commission was not properly paid, however, it was found that the bonus amount as sanctioned by the higher offices was not paid properly. It is further found that the defence i.e. the petitioner had failed to establish that he had paid the entire bonus amount, which was sanctioned by the higher offices. Thus, charge No. 1 was found proved partially and at the last it was further found that the manipulation was done and loss was caused to the State/Federation in lacs of rupees by the purchaser in collusion with the Government employees. The petitioner was working as Nodal Officer/overall Incharge of the tendu leaves collection, distribution of money and also particularly distribution of bonus amount and as it was his responsibility to ensure full payment of labour charges, fadmunshi commission and bonus.

7. In fact, the Disciplinary Authority has not disagreed with the enquiry report and rightly held that the charge No. 1 was found partially proved. Thus, the connection of the petitioner that the Disciplinary Authority has disagreed with the enquiry report and imposed the punishment, is contrary to the facts.

8. The authorities issued a notice to the petitioner on 4-7-2009 i.e. before passing the impugned order. Reply was also filed by the petitioner on 16-7-2009 (as is evident from the order dated 19-8-2009-page 22 of the petition), but no copy of the said reply has been annexed by the petitioner with the petition.

9. There is no grievance that the enquiry is perverse or illegal and principles of natural justice was not followed. It is also not found that there was any illegality in conduct of the enquiry or the petitioner was not given full opportunity of hearing.

10. On perusal of the record, it is manifest that a detailed enquiry has been conducted affording proper opportunity of hearing to the petitioner and also after examining the documents, witnesses, etc. Thus, this Court has not found any infirmity or illegality in the enquiry and in the impugned orders passed by the Disciplinary Authority as well as the Appellate Authority.

11. In Dr. G.R. Uraon Vs. State of Chhattisgarh and Others this Court observed as under:

15. It is well settled principle of law that if there is no irregularity or illegality in the decision making process and the finding is also not perverse, the High Court may not interfere with the decision taken by the employer.

16. In State of U.P. and Another Vs. Man Mohan Nath Sinha and Another, wherein the High Court quashed the punishment order passed by the authorities, the Supreme Court held as under:

14. The scope of judicial review in dealing with departmental enquiries came up for consideration before this Court in the case of State of A.P. vs. Chitra Ventaka Rao and this Court held:- (SCC pp. 562-63, paras 21 and 23-24)

21. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled

themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

* * *

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See *Syed Yakoob vs. K.S. Radhakrishnan*.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision making process. The Court does not sit in judgment on merits of the decision. It is not open to the High Court to reappraise and reappraise the evidence led before the Inquiry Officer and examine the findings recorded by the Inquiry Officer as a court of

appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court.

17. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, , the Supreme Court observed that "judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process".

12. In *Ramadhar Bhaskar (supra)*, the fact was different. In the said case, the Disciplinary Authority clearly recorded its disagreement with the enquiry report and passed an order. Thus, the same is not applicable to the facts of the present case. As a sequel, the writ petition, sans substratum, is liable to be and is hereby dismissed, leaving the parties to bear their own costs.