
(2009) 02 MAD CK 0106

In the Madras High Court

Case No : Writ Appeal No. 487 of 2008 and M.P. No's. 1 to 3 of 2008

Government of India and Others

APPELLANT

Vs

Md. Abbas Mohidden

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Border Security Force Act, 1968 — Section 71(4)
Coast Guard Act, 1978 — Section 16, 51, 51(1), 66, 66(1)
Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 354

Citation : (2009) WritLR 304

Hon'ble Judges : S. Tamilvanan, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : B. Shanthakumar, for the Appellant; G. Rajagopalan for G.R. Associates, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—The respondent herein is a B. Tech (Mechanical) and joined the services of Coast Guard as Assistant Commandant (Technical) in Class I Group on 6.8.1989 and on completion of training and probation, he served on various coast guard ships in Western command and thereafter joined Eastern Command on board C.G.S. Jijabai at Paradeep, Orissa on 12.8.1993. It is the case of the respondent herein that when he was the Technical Officer in the said ship, on 18.10.1994, the Commanding Officer S.E.D. Anand Kumar/the 5th appellant herein seized two Taiwan Trawlers, which are in international water, and looted them and decided to apprehend the trawlers and bring them to Indian waters and boarded the trawlers; that the Commanding Officer/the 5th appellant herein sent two boarding parties, one led by Assistant Commandant Bhattacharya and the other led by Assistant Commandant Praveen Gaur; that the boarding party led by Assistant Commandant Praveen Gaur looted the Thai trawler, which they boarded at the instruction of the Commanding Officer and the boarding party led by the Assistant Commandant Bhattacharya brought the trawler intact

to Paradeep Port and Praveen Gaur carried out the instructions of the Commanding Officer and looted the Thai Trawler and thereafter it was taken to Paradeep Port on 19.10.1994, which was stiffly objected to by the respondent and he also opposed when the incomplete seizure list was given to the Paradeep Police Station on 19.10.1994. This strong objection of the respondent for the illegal acts committed by the 5th appellant has irked the 5th appellant and therefore, he plotted to send the respondent out of Paradeep and on 2.10.1994, the respondent was sent to Madras for participating in the Eastern Region games and while the respondent was still in Madras, a telex message was sent to the respondent by the Commanding Officer/the 5th appellant, granting leave for the respondent, even though the respondent has never applied for the same and during the absence of the respondent, a new firm Rajan Engineers was introduced by the 5th appellant to do the maintenance work of the ship even though the said firm has no workshop or background to do this kind of work.

2. It is seen from the records that while things stood thus, the 5th appellant has forwarded the annual confidential report of the respondent for the period November, 1993 to October, 1994, with adverse remarks on 10.11.1994. It is the case of the respondent/workman that since his marriage was fixed on 4.4.1995, he applied for leave for 26 days on 27.3.1995, but even before completion of the leave, a telegram was sent to his residence to join immediately and therefore, he reported to duty on 17.4.1995. It is his strong case that in the farewell party to one Dr. Mishra of C.I.S.F. In the Paradeep Port on 10.4.1995, the 5th appellant had made a statement that "Abbas will be court martialled".

3. It is submitted by the respondent that on 15.4.1995, the Port Diesel alternator top overhaul was said to have been done by one Mr. Govindarajan and the work completion was signed by the 5th appellant, without any trial and that the 5th respondent is not a technically competent person to decide whether the work has been completed properly and whether the work has been attended to properly and without trial, no work completion certificate could be signed. But, the 5th appellant did so and if normally even a superior officer signs a work order, he will take the signature of technically competent person before the person who is technically competent. It is further submitted that on 17.4.1995, he reported for duty, since the 5th appellant had directed him over phone on 15.4.1995 to report back immediately and during the period from 15.4.1995 to 25.4.1995, the ship was in the Assisted Maintenance Period; that on 19.4.1995, in the evening when the ship was in harbour, the sea water problem in the star board D.A. has occurred and thereupon the 5th appellant has lodged a complaint against the respondent.

4. This motivated and malicious complaint of the 5th appellant lodged against the respondent, has paved way for the impugned proceedings against him, ultimately leading to his dismissal from service. It is also to be noted that on 31.10.1995, the Departmental Promotion Committee (DPC) was convened to consider the issue of promotions to the post of Deputy Commandant and on

6.12.1995, the promotion list was displayed but his name was not included, though he was the first in his batch and though he has given a representation to the 5th appellant on 29.12.1995 as required under the Rules against his non-promotion and within one month, he was transferred to the Regional Headquarters of the Eastern Command viz. Madras for duties of O.I.C.IPV. Stores. On 15.2.1996, a charge sheet was issued with the following charges:

a. Failure to discharge duties properly and was fully responsible for non-preservation of star board D.A. after ingress of sea water leading to deterioration of material state of star board D.A., thereby committed an offence u/s 16 of the Coast Guard Act, 1978.

b. Knowingly concealed the vital information of sea water ingress in star board D.A. from his Commanding Officer, administrative authority and repair agency thereby committed an offence u/s 16 of the Coast Guard Act, 1978.

c. Grossly derelicted his duty by allowing the damage to get compounded on port D.A. In overheated condition over a long period without proper fault diagnosis thereby committed an offence u/s 16 of Coast Guard Act, 1978.

d. Showed total irresponsible and careless attitude in fault diagnosis and repair of defects affecting the ship's operational efficiency and delay in repair process thereby committed an offence u/s 16 of the Coast Guard Act, 1978.

It is submitted by the respondent in the above charges, Record of Evidence was completed at the end of February, 1996 and the then Commanding Officer Mr. S.K. Singh/the 6th appellant herein has held that there was no case against the respondent and recommended dropping of the charges.

5. However, thereafter, once again, another charge sheet was issued to the respondent on 30.7.1996, with the following charges:

First charge Failed to perform the duty imposed on him Section 16(c) of In that he while on board Coast Guard Ship Jijabai as Coast Guard Act Engineer Officer, during the month of April and May 1978 1995, was negligent in ensuring maintenance and timely defect rectification of the ship's machinery, which adversely effected the ship's operational availability.

Second charge Violation of orders Section 42 of In that he during place, months and while performing Coast Guard Act duty mentioned in first charge, failed to immediately 1978 report the defects occuring in the said ship's machinery to his Commanding Officer, thus contravening para 306(a)(iii) of Coast Guard Ship Jijabai Captain Standing Order.

6. As the above said charges were liable to be straight away tried by the Coast Guard Court, the respondent herein filed Writ Petition O.J.C. No. 10043 of 1996 before the Orissa High Court and he had also filed Writ Petition O.J.C. No. 6959 of 1997 regarding his promotion. When in the previous charges, Record of Enquiry was conducted and the then Commanding Officer/the 6th appellant has

recommended to drop the charges, why a fresh charge sheet with the same allegations was issued on 30.7.1996 has not been explained by the appellants. For the charge sheet dated 30.7.1996, a convening order for the Coast Guard Court was issued on 26.8.1996 to assemble on 24.9.1996, but the same was stayed by the Orissa High Court on 23.9.1996 by its order dated 23.9.1996 passed in OJC. No. 10043 of 1996 and the final order was passed therein on 6.4.1998 directing the respondent to make a representation to the authorities and/or to the Director General to contend that further proceeding in the matter would not be desirable. Thereupon, the Coast Guard Court was dissolved on 27.4.1998 and thereafter another charge-sheet was issued on 10.8.1999 with the following charges:

First charge Failed to perform the duty imposed on him Section 16(c) of In that he while on board Coast Guard Ship Jijabai as Coast Guard Act Engineer Officer, during the month of April and May 1978 1995, was negligent in ensuring maintenance and timely defect rectification of the ship's machinery, which adversely effected the ship's operational availability.

Second charge Violation of orders Section 42 of In that he during place, months and while performing Coast Guard Act duty mentioned in first charge, failed to immediately 1978 report the defects occurring in the said ship's machinery to his Commanding Officer, thus contravening para 306(a)(iii) of Coast Guard Ship Jijabai Captain Standing Order.

Thus, it is clear that the very same charge sheet, which was issued earlier on 30.7.1996 was re-issued on 10.8.1999, with just changing the date and it is only a cyclostyled one of the earlier charge-sheet. Therefore, a legal question has been raised on the part of the respondent that since the Coast Guard Court once appointed was dissolved earlier for the same charges, the appellants cannot issue fresh convening order of the Coast Guard Court for the same charges. According to him, the reconvening of the Coast Guard Court is violative of Section 66 of the Coast Guard Act, 1978.

7. For better appreciation, we extract hereunder Section 66 of the Coast Guard Act, 1978:

66.(1) If a Coast Guard Court after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If on account of the illness of the Law Officer or of the accused before the finding, it is impossible to continue the trial, a Coast Guard Court shall be dissolved.

(3) The convening authority of a Coast Guard Court may dissolve the same if it considers that the exigencies of the service or necessities of discipline render it impossible or inexpedient to continue the said Coast Guard Court.

(4) Where a Coast Guard Court is dissolved under this section, the accused may be tried again.

From the reading of this Section it is clear that the Coast Guard Court can be dissolved if the minimum number of officers required by the Act was reduced, after the trial is commenced; if it is impossible to continue the trial on account of the illness of the Law Officer or other accused before the finding and if the Convening Authority considers that there are exigencies of the service or necessities of discipline, which render it impossible or inexpedient to continue the same and only if the Coast Guard Court is dissolved for the above specified three reasons, the accused may be tried again.

8. In the case on hand, the Coast Guard Court for which a Convening Order was issued on 26.8.1996, was dissolved, without assigning any reason on 27.4.1998, by a wire order. It has not at all been proved by the appellants/authorities that the Coast Guard Court was dissolved only as per Sub-sections (1) to (3) of Section 66 of the Coast Guard Act, 1978 and therefore, they are entitled to try the respondent, as contemplated under Sub-section (4) of Section 66. The dissolving order is available at Page No. 8 of the typed set of papers filed on behalf of the respondents, which, as has been observed supra, is only a wire message with no reasons for dissolving the Coast Guard Court, much less the ones specified and mandated under Sub-sections (1) to (3) of Section 66. In the absence of any such conditions or contingencies as specified under Sub-sections (1) to (3) of Section 66, the appellants cannot make use of the power u/s 66(4) of the Coast Guard Act so as to try the respondent again.

9. In the case on hand, after dissolving the Coast Guard Court on 27.4.1998, another charge-sheet dated 10.8.1999 was issued to the respondent, which is nothing but a cyclostyled one of the earlier charge sheet dated 30.7.1996. Therefore, aggrieved, the respondent filed O.J.C. No. 12975 of 1999 before the Orissa High Court and by the interim order dated 13.10.1999, it has been ordered that no final order in respect of the charge will be passed without leave of the Court and ultimately, by the order dated 5.3.2003, the said O.J.C. was disposed of on 5.3.2003 with a direction to the respondent to raise such objections before the Coast Guard Court. Thereafter, on 7.4.2003, an order of re-assembly of Coast Guard Court was issued ordering re-assembly of the Coast Guard Court at Chennai on 2.5.2003 and the respondent filed W.P. No. 14388 of 2003 before this Court to quash the said proceedings and also filed WPMP. No. 18006 of 2003 praying to stay the proceedings of Coast Guard Court and by the order dated 30.4.2003 interim stay for a period of ten weeks on conducting Coast Guard Court proceedings was granted and this Court by the order dated 18.8.2003, has dismissed the said writ petition with a liberty to the respondent to raise or restate his plea of jurisdiction or other objections before the Coast Guard Court and in case Coast Guard Court overrules the plea, the respondent shall be granted atleast four weeks time to work out his remedy, if any, under the Act or as open to him in law.

10. Thereafter, the respondent filed Contempt Petition No. 918 of 2003 before this Court alleging disobedience of the said order by the appellants. The above

said order of the learned single Judge was challenged by the appellants in W.A. No. 1401 of 2004 and the 1st Bench of this Court, by the judgment dated 28.9.2005, has allowed the same, thereby setting aside the order passed by the learned single Judge dated 18.8.2003. In this judgment, the 1st Bench of this Court has observed that since for the same relief, the respondent/Officer has already initiated proceedings before the Orissa High Court in OJC. No. 12775 of 1999 and it was dismissed, the same will operate as resjudicata and therefore, the learned single Judge ought not to have entertained the writ petition and ought to have dismissed the writ petition on this sole ground of res judicata. While, thus allowing the writ appeal filed by the authorities, the 1st Bench of this Court has imposed a cost of Rs. 10,000/= on the respondent. In view of the said judgment of the 1st Bench of this Court, the Contempt Petition No. 918 of 2003 was dismissed on 8.12.2005.

11. At this juncture, the learned Counsel for the appellants would submit that the learned single Judge has failed to consider this aspect, which would establish the attitude of the respondent. On the other hand, the learned senior counsel for the respondent would submit that it is unfortunate that such an order has visited the respondent, since even from the reading of the order of the learned single Judge, dated 18.8.2003, it is crystal clear that the fact of filing of the earlier writ petition before the Orissa High Court was clearly brought to the notice of the Court further bringing to the notice of this Court about the necessity to file the writ petition before this Court and after considering all the facts and circumstances of the case and even the filing of the earlier writ petition before the Orissa High Court, the learned single Judge has passed the said order and there was no hiding of any information or fact before this Court and owing to his poverty-stricken conditions, the respondent could not file any appeal against this order passed by the 1st Bench of this Court before the upper forums of law. But, we are not in a position to re-appreciate this issue, since the respondent has not challenged the same before the upper forums of law and we do not propose to offer any opinion on this point. But, it must be made clear that the case on hand is entirely on a different footing and no adverse approach to the claim of the respondent can be made, simply based on the judgment earlier passed by the 1st Bench of this Court and the case on hand has to be decided on its own merits and demerits.

12. In this backdrop, the learned Counsel for the appellants would submit that since the dissolving order was passed because of the stay order obtained by the respondent in O.J.C. No. 10043 of 1996, the appellants are very well within their powers to issue another charge sheet on 10.8.1999 and the reconvening order on 20.9.1999. In support of his contentions, the learned Counsel for the appellants would rely on a judgment of the Honourable Apex Court in O.P. Dahiya Vs. Union of India (UOI) and Others, . In the said case, the General Security Force Court was initiated to enquire into the misconduct of a Border Security Force staff and it was dissolved since he alleged denial of fair trial and a fresh Court for retrial was ordered. When in such circumstances, the retrial was

challenged by the accused, the Honourable Apex Court has held that since the fresh court was constituted in the interest of the employee, no prejudice has been caused to him and thus the authorities are well within their authority u/s 71(4) of the Border Security Force Act, 1968.

13. The same is not the situation in the case on hand. In the case on hand, as has been discussed supra, the three reasons enunciated in Section 66 to (3) of Coast Guard Act, 1978 will only pave way for the accused to be tried again. But, no such reasons are offered while dissolving the earlier Coast Guard Court. The second charge-sheet and the consequential reconvening order for the Coast Guard Court were issued only to the detriment of the accused officer. The facts in the case before the Supreme Court are just opposite the one in hand. Therefore, the above said judgment of the Honourable Apex Court, relied upon by the learned Counsel for the appellant will not, in any way, augment their case.

14. The respondent has attacked the impugned order of dismissal on the ground of limitation also. The learned senior counsel appearing for the respondent would submit that Section 51(1) of the Coast Guard Act imposes a period of limitation to prosecute the accused persons and since the said limitation period is expired long back in the case on hand, the appellants are bereft of power in issuing the second charge memo.

15. For better appreciation, we extract hereunder Section 51(1) of the Coast Guard Act:

51(1) No person unless he is an offender who has avoided apprehension or escaped arrest or committed the offence of desertion or of giving false entry on enrolment or the offence of mutiny shall be tried or punished in pursuance of this Act for any offence committed by him unless such trial commences within three years from the commission of such offence.

16. This Section was amended by Central Act 44 of 2002, which received the assent of the President of India on 12.8.2002 and was published in the Gazette on the same day. It reads as follows:

51. Period of limitation for trial of offences under the Act:

(1) No person unless he is an offender who has avoided apprehension or escaped arrest or committed the offence of desertion or of giving false entry on enrolment or the offence of mutiny shall be tried or punished in pursuance of this Act for any offence committed by him unless such trial commences within a period of three years from the commission of such offence and such period shall commence:

(a) on the date of the offence; or

(b) where the commission of offence was not known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority; or

(c) where it is not known by whom the offence was committed, on the first day on which the identity of the offender becomes known to the person aggrieved by the offence or to the authority competent to initiate action, the first day on which such offence comes to the knowledge of such person or authority; or

(c) where it is not known by whom the offence was committed, on the first day on which the identity of the offender becomes known to the person aggrieved by the offence or to the authority, competent to initiate action, whichever is earlier.

Explanation: For the purposes of sub-section, in the computation of the period of time mentioned in this sub-section, any time spent by such person as a prisoner of war in the enemy territory, or in evading arrest, after the commission of the offence, shall be excluded.

(1A) Where a proceeding in respect of an offence has been stayed by an injunction or an order of a court, then, in computing the period of limitation under this section, the period of the continuance of the injunction order, the day on which it was issued or made, and the day on which it was withdrawn shall be excluded.

17. From the reading of the above section, it is clear that for any offence, the trial shall commence within three years from the commission of such offence, unless such an offender has avoided apprehension or escaped arrest or committed the offence of desertion or of giving false entry on enrolment or the offence of mutiny. In the amended provision, clarification has been given as to when the period shall commence. The case will not fall under Clauses (b) and (c) of Section 51(1), since the alleged commission of offence is claimed to have been known to the superior officer of the respondent and he also lodged the complaint. Therefore, the trial should commence within three years from the commission of such offence. For the alleged commission of offence, a complaint was lodged by the 5th appellant on 19.4.1995.

18. At this juncture, it is also relevant to point out that though the complaint was lodged on 19.4.1995, in the first charge, it has been mentioned that the respondent/Officer was negligent during April and May, 1995 in ensuring maintenance and timely defect rectification of the ship's machinery, which adversely affected the ship's operational availability. Charges must be specific. Here, in the complaint of 19.4.1995 itself, how can there be complaint regarding the future period of May also? Though the first charge-sheet was issued on 30.7.1996 since it has been issued only based on the complaint dated 19.4.1995, there cannot be accusation for the future period also. Therefore, it must be concluded that there is ambiguity in the very framing of the charges also and no specific details, as to in what way the defects occurred and how the charged official is responsible for the same etc. have been mentioned. Thus, it must be concluded that the very base of the charges is very vague, as has been rightly claimed on the part of the respondent.

19. Again reverting back to our discussion on the point of limitation, since the

alleged occurrence took place during the month of April, 1995 and the complaint was lodged on 19.4.1995, the trial should have commenced within three years i.e. by 18.4.1998. But, in the case on hand, the second charge-sheet was issued on 10.8.1999 i.e. well after the period of limitation. In this connection, the learned Counsel for the appellants would submit that due to filing of several writ petitions and obtaining different orders of stay/directions by the High Court of Orissa and this Court, the Coast Guard Court had to be adjourned sine die and re-assemble on different dates and at one stage, the convening Authority/Director General of Coast Guard had to necessarily dissolve the Coast Guard Court in view of the fact that the members of the Coast Guard Court were transferred to different places during the period September 1996 to 11.10.1999 when the Coast Guard Court assembled to continue the trial and completed the same in respect of the same charges framed against the respondent. It is further submitted that as the charges were neither dismissed nor the respondent was absolved of the commission of the offences, the Competent Authority and the Convening Authority were justified in their respective actions taken in the case of the respondent u/s 51(1), 66(3) and (4) of the Coast Guard Act, 1978. He would further submit that as per the amended Section 51(1A) of the Coast Guard Act, the period of injunction/stay should be excluded and therefore, the trial has been commenced very well within the limitation.

20. We are not in a position to accept this plea raised on the part of the appellants. True, an interim direction was issued by the Orissa High Court on 23.9.1996 in O.J.C. No. 10043 of 1996, directing that the trial fixed to 24.9.1996 shall not be taken up until further orders. Subsequently, by the order dated 6.4.1998, the Orissa High Court has disposed of the said Writ Petition O.J.C. No. 10043 of 1996, considering the request of the respondent/employee an opportunity to make representation to the Coast Guard Court and/or to the Director General, Coast Guard to contend that further proceeding in the matter would not be desirable, it has been directed that till the disposal of the representation by the authority to whom representation is made, the trial shall not proceed. Nowhere, there was any direction to dissolve the Court and there was no bar for conducting the trial, after complying with the order of the Court. Instead of following the orders of the Court, without assigning any reason, the Coast Guard Court was dissolved on 27.4.1998. The defence now raised by the appellants, that interim injunction period or the stay period should be excluded, would have been available to them had they not dissolved the Coast Guard Court. Having dissolved the Coast Guard Court not for any reason mentioned in Section 66 of the Act and having issued with a fresh charge, which is nothing but a old wine in the new bottle, on 10.8.1999, and passed fresh convening order for the Coast Guard Court, the appellants cannot be permitted to plead that their action is within the limitation period and that it is only continuation of the earlier Court and not a new one.

21. Further more, in compliance of the directions of the Orissa High Court, the respondent has submitted his representation on 23.4.1999, which was also not

considered by the appellants. When the respondent has made a detailed representation regarding the jurisdiction and limitation on 23.4.1999, the other argument advanced on the part of the appellant that such an issue should have been raised before the Coast Guard Court or the authorities concerned, has no legs to stand before us. Even otherwise, being a legal questions, they can be raised at any stage of the proceedings, as has been repeatedly held by the Honourable Apex Court. Therefore, this submission made on the part of the appellants is rejected.

22. From the above discussion, we have no hesitation to hold that having dissolved the Coast Guard Court constituted earlier, on 27.4.1998, without assigning any reason, much less the ones in Section 66 of the Act, the appellants cannot order reconvening of the Coast Guard Court and since fresh charge sheet has been issued belatedly i.e. more than the period of three years, as has been mandated u/s 51 of the Act, the action of the appellants is also barred by limitation, as has been rightly pointed out on behalf of the respondent/officer and elaborately discussed by the learned single Judge. On this score itself, the appeal preferred by the officials is liable to be dismissed. However, since further arguments were also advanced, to give a quietus to the entire aspect, we shall now proceed to discuss the other aspects of the case also.

23. The learned Counsel appearing for the appellants would argue that the High Court's power of judicial review under Article 226 is not in the nature of power of appellate authority enabling reappreciation of evidence and on the ground of insufficiency of evidence, to alter the conclusion reached by competent authorities. He further argued that court-martial proceedings are subject to judicial review under Article 226, but court-martial is not subject to superintendence under Article 227. In support of his arguments, the learned Counsel for the appellants would rely on the following judgments:

1. Union of India and Others Vs. Himmat Singh Chahar, ;
2. Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), and
3. Major G.S. Sodhi Vs. Union of India (UOI),

24. In the first judgment cited above, reported in Union of India and Others Vs. Himmat Singh Chahar, , the Honourable Apex Court has held that "the High Court's power of judicial review under Article 226 is not in the nature of power of appellate authority enabling reappreciation of evidence and, on the ground of insufficiency of evidence, to alter the conclusion reached by competent authorities in court-marital proceedings and hence in reappreciating the evidence and reaching the contrary conclusion that the complaint's evidence was not credible enough to hold the respondent guilty u/s 354 IPC, the High Court overstepped its jurisdiction."

25. In the second judgment cited above, reported in Union of India (UOI) and Others Vs. Major A. Hussain (IC-14827), , the Honourable Apex Court has held

that "the proceedings of a properly constituted and properly convened court-martial, if conducted in accordance with the rules, are beyond the scope of judicial review and where evidence was sufficient, subject-matter was within its jurisdiction, prescribed procedure was followed, and the punishment awarded was within its powers, the conviction and sentence passed by court-martial should not have been interfered with by High Court."

26. In the third judgment cited above, reported in Major G.S. Sodhi Vs. Union of India (UOI), , the Honourable Apex Court has held that "procedural defects in the court martial, unless vital and substantial, will not affect the trial. When accused duly participated in the proceedings and there is no flagrant violation of any procedural provision causing prejudice to the accused, the Supreme Court will not interfere."

27. But, in Mathura Prasad Vs. Union of India (UOI) and Others, , considering the entire case law on the subject of judicial review, the Apex Court has categorically and in no uncertain terms has ruled:

When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. A judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review.

28. By virtue of this latest pronouncement of the Honourable Apex Court, even an error of fact, for sufficient reasons, would attract the principles of judicial review. Therefore, the submission of the learned Counsel for the appellant that there cannot be any judicial review over the findings rendered by the Coast Guard Court cannot be appreciated, since by virtue of the said finding rendered in the proceeding, which is in the nature of domestic enquiry, the livelihood of the respondent is plucked-away.

29. Further, it is seen from the records that even though the respondent has raised objections before the Coast Guard Court regarding the jurisdiction and limitation, in its hearing on 30.9.2003, they were simply over-ruled and no order was passed and even no copy of any order regarding the above said over-ruling was given to him, in spite of his demand, dated 21.10.2003. In the same manner, even the impugned order of dismissal is bereft of any reasons, even though lengthy proceedings were conducted before the Coast Guard Court. In this situation, we feel it apt to quote a judgment of the Honourable Apex Court in Union of India (UOI) and Others Vs. Jai Prakash Singh and Another, , wherein the Honourable Apex Court has held:

Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable

to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectively by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

30. When the judicial forums have directed the respondent to raise his plea regarding the jurisdiction and limitation and when he, accordingly, raised such legal questions before the Coast Guard Court, the Coast Guard Court, should have decided the said questions as preliminary questions, before proceeding further. Instead, a mere over-ruling of such legal objections raised by the respondent, was done, which, in our view, is illegal being bereft of reasons. Therefore, in view of the above flagrant violations committed by the Coast Guard Court, as against the principles of natural justice and in view of the above latest judgments of the Honourable Apex Court in Mathura Prasad case and Jai Prakash Singh case (supra), the judgments cited by the learned Counsel for the appellant will not come to their rescue.

31. The scrutiny of the entire materials placed on record would depict a sorrowful picture as to how an officer was made to run from pillar to post, since being non-cooperative to his higher official in his illegal thrust. The impugned actions seems to have been initiated solely based on the complaint lodged by the 5th appellant against the respondent and the entire materials placed on record would show that the 5th appellant has acted in a biased manner against the interest of the respondent.

32. Bias negates fairness and reasonableness by reason of which arbitrariness and malafide move creep in. Bias is included within the attributes and broader purview of the word "malice". The test of bias is as to whether there is a mere apprehension of bias or there is a real danger of bias. There can be two ways by which a case of mala fides can be made out; one that the action which is impugned has been taken with the specific object of damaging the interest of the party and, secondly, such action is aimed at helping some party which results in damage to the party alleging mala fides. The case on hand, falls within the first category, since, throughout, the respondent is alleging that the impugned action has been initiated against him only at the instance of 5th appellant, who is personally biased against him, since he stood as a stumbling block for the illegal

desire of the 5th appellant. From the materials placed on record, there is cogent and unassailable evidence that the 5th appellant, who is expected to act in an unbiased and judicious manner, is personally biased against the respondent, since the respondent has refused to heed to the illegal and unbecoming activity of looting by the 5th appellant.

33. Even dissecting the case factually, we find no evidence or material to find fault with the respondent. On 15.4.1995, the Port Diesel alternator top overhaul was said to have been done by one Mr. Govindarajan and the work completion was signed by the 5th appellant, without any trial and that the 5th respondent, who is not a technically competent person to decide whether the work has been completed properly and whether the work has been attended to properly has issued a work completion certificate signed by him, without even taking the ship for trial. When such is the situation, the respondent reported for duty on 17.4.1995, since the 5th appellant had directed him over phone on 15.4.1995 to report back immediately. It is seen that during the period from 15.4.1995 to 25.4.1995, the ship was in the Assisted Maintenance Period and on 19.4.1995 evening, when the ship was in harbour, the sea water problem in the star board D.A. has occurred. Had it been properly repaired on 15.4.1995 and trial was also conducted, which has even been certified by the 5th appellant by issuing work completion certificate to the said Govindarajan, there would have been little or no chances of the recurrence of the same problem. The respondent joined duty on 17.4.1995 and the complaint against the respondent was lodged by the 5th appellant on 19.4.1995. When the respondent was on leave for his marriage from 27.3.1995 and when the repair work was done even on 15.4.1995 and certified by the 5th respondent of course, without any trial, the blame cannot be put on the respondent on 19.4.1995, who reported for duty only on 17.4.1995, as per the directions of his superior/the 5th appellant. In this aspect, the plea advanced on the part of the 5th appellant that he never directed the respondent to report for duty cannot be appreciated since no prudent man, particularly the personnel belonging to such services, who could spend days with their family members once in a blue moon, will cancel the leave already granted that too for his marriage.

34. This motivated and malicious complaint of the 5th appellant lodged against the respondent, has paved way for the impugned proceedings against him, ultimately leading to his dismissal from service. It is also to be noted that on 31.10.1995, the Departmental Promotion Committee (DPC) was convened to consider the issue of promotions to the post of Deputy Commandant and on 6.12.1995, the promotion list was displayed but his name was not included, though he was the first in his batch and though he has given a representation to the 5th appellant on 29.12.1995 as required under the Rules against his non-promotion and within one month, he was transferred to the Regional Headquarters of the Eastern Command viz. Madras for duties of O.I.C.IPV.Stores. Since the tussle started on 18.10.1994, when the respondent had objected to the illegal looting of the 5th appellant, there cannot be any wonder that the 5th

appellant offered only adverse remarks against the respondent/workman in the confidential report for the period November 1993 to October, 1994.

35. Our finding that there is no evidence on record to proceed against the respondent has been fortified by the fact that in the previous charges framed on 15.2.1996, Record of Enquiry was conducted and the then Commanding Officer/ the 6th appellant has recommended to drop the charges. Further more, the material on record would show that the defects attributed to the carelessness of the respondent are of routine nature and can be rectified and no Technical person has attributed the mistakes to the respondent. There is plethora of evidence to show that the 5th appellant, who is the superior officer of the respondent, is biased towards the respondent and only because of this, all the impugned actions have been initiated against the respondent for no-fault of him and since he questioned the illegal attitude of the 5th appellant. It is also to be pointed out that in spite of such specific allegations, no individual counter has been filed by the 5th appellant before the learned single Judge.

36. The learned single Judge has considered all the facts and circumstances of the case in their proper perspective and has arrived at an unerring conclusion of granting the relief in favour of the writ petitioner therein, who is the respondent herein, wherein we find no illegality or irregularity to cause our interference. Therefore, this writ appeal is liable only to be rejected.

37. From the above discussions, the following conclusions will arrive at:

1. The 5th appellant is biased towards the respondent, since he has not cooperated rather questioned the illegal attitude of the 5th appellant, which resulted in initiation of these proceedings against the respondent.

2. When the earlier Coast Guard Court was dissolved without assigning any reasons, much less the ones specified and mandated in Section 66 of the Coast Guard Act, the reconvening of the same is barred under law.

3. The entire proceedings are barred by limitation, since have been initiated beyond the period of three years mentioned in Section 51 of the Coast Guard Act.

4. The Coast Guard Court has not assigned any reason for over-ruling the legal objections raised by the respondent regarding the jurisdiction and limitation and has also not assigned any reason for finding the respondent guilty of the charges, which is illegal.

5. There is ambiguity in the very framing of the charges also and no specific details, as to in what way the defects occurred and how the charged official is responsible for the same etc. have been mentioned. Thus, it must be concluded that the very base of the charges is very vague.

5. From the materials placed on record, we are able to see that the defects attributed to the carelessness of the respondent are of routine nature and can be rectified and no Technical person has attributed the mistakes to the respondent

and therefore the finding of the Coast Guard Court, holding the respondent guilty of the charges framed is not sustainable under law, particularly in view of the fact that the same charges earlier framed, were ordered to be dropped by the then officer/the 6th appellant, after considering the entire evidence.

In the result, this writ appeal is dismissed. The appellants are directed to reinstate the respondent into service with all consequential benefits, as if there was never any order of dismissal against him, within eight weeks from today. Consequently, M.P. No. 1 of 2008 is dismissed and M.P. Nos. 2 and 3 of 2008 are closed.