
(2017) 01 RAJ CK 0029
In the Rajasthan High Court
Case No : 3902 of 2011

Himmat Singh Bhati S/o Shri Raj Kumar Singh Bhati,	APPELLANT
Vs	
The State of Rajasthan,	RESPONDENT

Date of Decision : 16-01-2017

Acts Referred:

[Constitution of India](#), [Article 14](#) -
Appointment of Commission to inquire into and report on the administration of
autonomous districts and autonomous regions
[Registration Act, 1908](#), [Registration Act, 1908](#)

Citation : (2017) 01 RAJ CK 0029

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Vikas Balia, Kusum Rao, N.S. Rajpurohit

Final Decision : Allowed

Judgement

1. By way of this writ petition, the petitioner Himmat Singh Bhati has approached this court imploring the order (Annexure-7) dated 09.03.2011 issued by the Deputy Secretary, Department of Personnel being the petitioner's disciplinary authority, imposing upon him a penalty of stoppage of one year annual grade increment with cumulative effect.
2. Facts relevant and germane for disposal of the instant writ petition are noted herein below:-
3. The petitioner entered services of the respondent Registration and Stamp Department, Government of

Rajasthan in the year 1985. He was serving the Department satisfactorily without any complaint whatsoever till the year 2008 when for the first time, a charge-sheet dated 26.06.2008 was served to the petitioner for alleged misconduct committed in the year 2004, while serving on the post of Sub-Registrar, Udaipur. A sale-deed of agricultural land of Meetharamji Temple in village Ayar, Tehsil Girwa, District Udaipur was presented for registration by one Mahant Shri Ramchandra Das before the petitioner, who registered the document on 30.11.2004. It was alleged in the charge-sheet that registration of sale-deed of agricultural land belonging to temple was carried out by the petitioner in flagrant violation of Section 46 of the Rajasthan Tenancy Act, 1955 as well as the notification dated 10.01.1990 issued by the Finance Department, Government of Rajasthan. Alongwith the charge-sheet, statement of allegations and memorandum of charge were also served to the petitioner. The petitioner submitted a reply to the charge-sheet. Referring to Section 34 of the Indian Registration Act, he contested the charges claiming that scope of inquiry required to be conducted by the Registering Officer before registering any document is very limited. Validity of title of the land described in the documents presented for registration cannot be gone into by the registering authority. Reference was also given to Rule 39 of the Rajasthan Registration Rules, 1955 as per which, the Registering Officers are not required to examine or inquire into validity of the

document presented for registration. Reference was also made to the Division Bench Judgment of this Court in the case of Basant Nahata vs. The State of Rajasthan & Ors ., reported in AIR 2001 Rajasthan 127 whereby, Section 22A of the Registration Act was declared ultra vires and struck down. It was asserted that the notification dated 10.01.1990 issued under Section 22A of the registration Act requiring the Registering Officers to register a document only after satisfying himself that the property in question does not belong to the State Government, local body or temple was impliedly annulled by effect of the above Judgment. The thrust of the petitioner's case in the reply and the writ petition is that with declaration of the main provision (Section 22A of the Registration Act) to be ultra vires, any notification issued therein would per se become null and void and thus, the charge-sheet lacks foundation. A further case is set up in the writ petition that pursuant to the Division Bench Judgment, the Registration Department issued a Circular No.04/2004 intimating all the Registering Authorities that Section 22A of the Registration Act, 1908 had been declared ultra vires but a note in terms of Rule 39 of the Rules of 1955 should be appended by the Sub-Registrar before registering any such document. The petitioner claims that while registering the disputed document, he appended thereupon, a note in terms of Rule 39 of the Rules in his own handwriting mentioning that the seller claims to be the owner of the property and if

eventually the property was found to be of Devasthan/Temple, the responsibility would be that of the seller. The petitioner has further asserted that without considering the legal issues raised by him in the reply, the Disciplinary Authority, Principal Secretary, Department of Personnel, in an absolutely mechanical manner, proceeded to appoint the Commissioner, Departmental Inquiries as an enquiry officer to conduct inquiry against the petitioner. The Inquiry Officer too, without considering the legal objections of the petitioner, proceeded to submit an adverse inquiry report dated 17.11.2009 against the petitioner. Copy of the inquiry report was provided to the petitioner by the Department of Personnel. The petitioner submitted a representation against the inquiry report to the disciplinary authority reiterating the abovementioned legal objections. However, the disciplinary authority passed the order dated 09.03.2011 holding the petitioner guilty of the charges and imposing upon him the penalty of stoppage of one annual grade increment with cumulative effect. The said order has been placed on record as Annexure-7 and is implored in the instant writ petition.

4. The respondents have filed a reply to the writ petition wherein, they have attempted to defend the impugned order on various grounds amongst others.

An averment is made in the reply to the effect that the petitioner has an alternative remedy of approaching

the Appellate Tribunal against the impugned order.

However, about the legal submission raised in the writ

petition regarding the striking down of Section 22A of the Registration Act and its effect on the controversy, the reply is tacitly silent.

5. Shri Vikas Balia, learned counsel for the petitioner submitted that the above mentioned Division Bench judgment of this Court in Bharat Nahta's Case whereby, Section 22A of the Registration was declared ultra vires and struck down, was challenged by the State of Rajasthan by filing a SLP before the Hon"ble Supreme Court in the case titled as State of Rajasthan & Ors. vs. Basant Nahata, reported in (2005) 12 SCC 77 which was rejected and the Division Bench Judgment was upheld. He submits that the notification dated 10.01.1990 was issued under Section 22A of the Registration Act. As the principal provision was struck down, any notification issued under such redundant provision would per se stand annulled and thus, the charge-sheet issued to the petitioner was totally without foundation. Consequently, there was no justification in the action of the respondents in initiating the department inquiry and subjecting the petitioner to penalty vide the impugned order. He thus urged that the impugned order (Annexure-7) dated 09.03.2011 being grossly illegal, perverse, arbitrary and without jurisdiction deserves to be quashed and set aside and ensuing consequential service benefits be extended to the petitioner.

6. Per contra, Ms. Kusum Rao and Shri N.S. Rajpurohit, learned Assistant Government Counsel

representing the respondent departments, vehemently opposed the submissions advanced by the petitioner's counsel and urged that the petitioner acted in contravention of the statutory rules, regulations and notifications while registering the disputed document. They urged that the pleas raised by the petitioner are hyper-technical and not forceful enough so that this Court should feel persuaded to interfere in the well reasoned order imposing penalty passed by the disciplinary authority.

7. I have heard the arguments advanced by the learned counsel for the parties and have gone through the impugned order as well as the material available on record.

8. The charge framed against the petitioner in the questioned disciplinary proceedings reads as below:

VERNACULAR MATTER OMITTED

9. On a bare reading of the language of the charge, it is evident that the allegations against the petitioner were totally founded on the alleged violation of notification dated 10.01.1990 issued by the Government of Rajasthan, the relevant part whereof is reproduced hereinbelow for sake of ready reference:

VERNACULAR MATTER OMITTED

10. Evidently, the above notification was issued by the Government of Rajasthan while exercising powers under Section 22A of the Registration (Rajasthan Amendment) Act, 1976. Validity of Section 22A was challenged before Division Bench of this Court in Basant Nahta's case (supra) and after an exhaustive

analysis of entire legal matrix, the Division Bench declared the provision to be unconstitutional and struck the same down vide judgment dated 28.11.2000. The State Government challenged the said judgment by way of an appeal to the Hon"ble Supreme Court which too affirmed the judgment of the Division Bench vide its Judgment reported in (2005) 12 SCC 77 (State of Rajasthan & Ors. vs. Basant Nahata). Manifestly, no sooner the principal provision was struck down, any notification issued while exercising powers thereunder would be impliedly rendered redundant and stand annulled. After striking down of Section 22A and consequent automatic annulment of the notification dated 10.01.1990, the Inspector General, Registration and Stamp Department, Government of Rajasthan issued a circular No.4/2004 addressed to all the Registering Officers in the following terms:

VERNACULAR MATTER OMITTED

"The writ petition is allowed and section 22- A of the Registration Act as inserted by Rajasthan Amendment Act, 1976 (Act No. 16 of 1976) is declared as unconstitutional and that the said section had all the features of deleterious and being violative of Art. 14 of the Constitution of India."

VERNACULAR MATTER OMITTED

11. Thus evidently, pursuant to striking down of Section 22A of the Registration Act and the automatic nullification of notification dated 10.01.1990, the only duty cast upon a Registrar registering any document of the nature specified under the notification would be to append a note in the document in terms of Rule 39 of the Rajasthan Registration Rules before registering

it. The disputed document registered by the petitioner has been placed on record of the writ petition as Annexure-2 wherein, the petitioner appended the following note before registering the same:-

VERNACULAR MATTER OMITTED

12. The petitioner apparently registered the document in question after following all requirements of law. By no stretch of imagination, could the petitioner have refused registration of the document in reference to the notification dated 10.01.1990 as the same no longer existed. Rather, this Court is of the opinion that the petitioner could have been made liable to face disciplinary action had he refused registration of the document. The petitioner, in his representation and reply to the statement of allegations, took a specific plea in the above terms referring to the Division Bench judgment and implored the disciplinary authority to drop the proceedings. However, the disciplinary authority, without even referring to any of the petitioner's written legal and factual submissions, in an absolutely mechanical manner proceeded to hold him guilty for major misconduct and inflicted upon him the penalty of stoppage of one annual grade increment with cumulative effect vide the impugned order (Annexure-7) dated 09.03.2011.

13. In view of the discussion made hereinabove, this Court is of the firm opinion that the petitioner did not violate any provision of law, circular/notification issued by the Government of Rajasthan while registering the

disputed document on 30.11.2004 so as to make him liable for misconduct. The specific plea set up by the petitioner, in his reply regarding striking down of Section 22A and the consequent obligation upon him to register the document by appending a note in terms of Rule 39 of the Registration Rules was not even considered by the disciplinary authority while passing the impugned order. The impugned order is grossly arbitrary, laconic, perverse and suffers from total non-application of mind to the relevant facts and statutory provisions and cannot be sustained.

14. Consequently, the writ petition deserves to be and is allowed. The impugned order (Annexure-7) dated 09.03.2011 is hereby struck down and set aside. The petitioner shall be entitled to all consequential benefits flowing from the above direction.

15. No order as to costs.