

(2011) 04 DEL CK 0113
In the Delhi High Court
Case No : Writ Petition (C) 2503 of 2011

H.P.S. Deep and Others

APPELLANT

Vs

Superbazaar and Another

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2011) 04 DEL CK 0113

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Mohit Chaudhary, Rashi Bansal and Dheeraj Gupta, for the Appellant; Joydeep Mazumdar, Pinaki Addey and Vinod Kumar for R1, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the order dated 22nd March, 2011 of suspension and the charge sheet dated 29th March, 2011 served by the Respondent No. 1 on the four Petitioners.

2. Upon enquiry from the counsel for the Petitioners as to how the writ petition against the order of suspension and charge sheet is maintainable in as much as the Petitioners have the opportunity to show cause, the counsel for the Petitioners has invited attention to Union of India v. Vineet Ohri 2010 I AD (Del) 60 and to Govind Prajapati Vs. Union of India (UOI) and Others, with the preface that though in both the said judgments on facts the writ petition against the charge sheet was not held to be maintainable but the same lay down that the same can be maintainable.

3. A perusal of the judgments shows that the Division Benches of this Court have clearly laid down that it is only in rare cases that the discretion to entertain a writ petition against charge sheet is to be exercised or when charge sheet or show cause notice is found to be wholly without jurisdiction or for some other

reason it is wholly illegal and that ordinarily interference at the said stage is not permissible.

4. On enquiry as to how the present case falls in the said rare category, the counsel for the Petitioner by reference to the Cooperative Store Ltd., New Delhi Service & Conduct Rules and to the orders dated 26th February, 2009 of the Apex Court in SLP Nos. 8398-8399 & 12415/2005 concerned with the revival of Super Bazar and where under the bids for taking over the management of the Super Bazar were invited and accepted, has contended that the Disciplinary Authority which could have issued the charge sheet to the Petitioners was the General Manager. With reference to the charge sheet issued to the Petitioners, it is contended that the same is issued by a person who has described himself as the Managing Director.

5. It has been enquired from the counsel for the Petitioners whether a person superior in position to the Disciplinary Authority is prohibited from issuing the charge sheet.

6. The counsel for the Petitioners replies that though he is not but in the present case the person who has issued the charge sheet is neither the General Manager nor the Managing Director of Super Bazar. It is contended that the Respondent appearing on advance notice should be asked to show as to how the said person can be said to be the General Manager or the Managing Director of Super Bazar. It is contended that the Petitioners have stated so on affidavit and it is the Respondent who would be in possession of the documents, if any, showing the signatory of the charge sheet to have been appointed as the General Manager or the Managing Director.

7. The writ petition cannot be entertained to commence a roving enquiry, as appears to be the purport of the Petitioners.

8. From the arguments raised, it is clear that the present case does not fall in the category of "wholly illegal". The illegality alleged is not apparent/visible on the face and where, to establish illegality evidence is required, it cannot be said to be a case of charge sheet being wholly illegal for writ petition to be entertained at the stage of charge sheet. In the present case, the Petitioners are calling upon this Court to conduct an enquiry on the plea of illegality and which is to be conducted departmentally. The counsel for the Petitioners admits that all the said pleas have already been raised in reply to the charge sheet. The same are expected to be considered.

9. Moreover, it has been put to the counsel for the Petitioners as to how the Petitioners would suffer; that if at all there is any merit in their contention, the suspension/charge sheet would be recalled/set aside and a fresh charge sheet would have to be issued qua the misconduct even if committed by the Petitioners.

10. The counsel for the Petitioners replies by stating that the Petitioners will face the stigma of being under suspension.

11. Considering the fact that the Super Bazar has been non functional for nearly ten years and the Petitioners and other employees having not worked since then, no merit is found in the said contention also.

12. The petition is therefore dismissed as not maintainable with liberty to the Petitioners to agitate all pleas as raised in this petition in the disciplinary proceedings and if remain aggrieved there from, further before the fore to which they may be entitled to.

No order as to costs.

CM No. 5326/2011 (Under Section 151 CPC for exemption)

Allowed, subject to just exceptions.