
(2006) 04 MAD CK 0233

In the Madras High Court

Case No : Writ Petition No. 7713 of 2006 and W.P.M.P. No. 8481 of 2006

K. Kandaswamy

APPELLANT

Vs

The Chief Commissioner of Central Excise, The Joint
Commissioner (CCO) and The Commissioner of Central Excise

RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Citation : (2006) WritLR 566

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : V.R. Shanmughanathan, for the Appellant; S. Manikumar Sr. Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The petitioner is working as Superintendent of Central Excise at Erode-1 Division (Preventive) within the Salem

Commissionerate. By the impugned order dated 8.3.2006, he has been transferred from Erode to Tiruchi Central Excise Commissionerate. The

order of transfer is challenged on the ground that the petitioner was working in sensitive post at the time of transfer and as per the judgment of the

Supreme Court reported in N.K. Singh v. Union of India AIR 1995 SC 432 before an Officer holding a sensitive post is transferred, it must be

considered as to whether such transfer could be avoided and to his place a suitable successor is found. Secondly he would contend that the

impugned order suffers on the ground of mala fide or atleast for lack of bona fide as he was instrumental in detecting the excise evasions by some

of the local traders and more particularly, by one Mahalingam of M/s Ariya Plastics and M/s Aravind Plastics, Perundurai, who happens to be a

close friend of the Chairman of local Municipality and at his instance the order of transfer is made. Hence, the impugned order of transfer is liable to be set aside.

2. Mr. S. Manikumar, learned Senior Central Government Standing Counsel appearing for the respondents, on the other hand, would submit that

the order of transfer is made purely on administrative grounds. He would also submit that the allegation of bias or the mala fide is vague and is not

supported by any material. He would further submit that as the transfer order is made on administrative reasons, the same cannot be interfered

with.

3. As far as the scope of judicial review of transfer, law is well settled that this Court will not be justified in interfering the order of transfer, if it is

made on administrative grounds or in the public interest unless a strong ground of mala fide is made out or the transfer is questioned on the ground

of want of jurisdiction or violation of provisions of law, as the transfer is incident of service. It is the contention of the learned counsel appearing for

the petitioner that the petitioner was holding a sensitive post and he was instrumental for detecting excise evasion and only at the instance of those

who were affected by the action of the petitioner, the impugned order of transfer is made. In para 4 of the affidavit, the petitioner has stated as

follows:

I submit in pursuance of same posting order, I started working sincerely and identified certain elements/areas where revenue leakage is taking place

in large scale and accordingly, I started official enquiry by issue of various letters and reminders to various such persons. Some of them responded

and the enquiry is on.

In the midst of enquiry some disgruntled elements particularly one Mr. Mahalingam of M/s Ariya Plastics and M/s Avavind Plastics, Perundurai,

Erode threatened me over phone not to proceed with the enquiry against them, failing which I will be facing consequences like getting transferred

to far off places so that I cannot continue with the enquiry. He would further state that Erode Municipal Chairman is his relative, who is close

Associate of Central Minister of State for Finance and he would see that the Petitioner would be shunted to a far off place and disciplinary

proceedings would also be initiated against the Petitioner.

4. From the above allegation it is seen that the transfer was effected at the instance of one Mahalingam of M/s Ariya Plastics and M/s Aravind

Plastics, Perundurai, a close relative of the chairman of Erode Municipality. First of all, it must be seen that though alleged hands of Thiru

Mahalingam and his close friend, the Chairman of the Municipality, in transferring him to Tiruchi he has not chosen to add them as party

respondents. The learned Senior Central Government Standing Counsel produced the files relating to the transfer of the petitioner. From a perusal

of the files, it is seen that various complaints have been received by the respondents from Erode District Small Industries Association (EEDISSIA)

making certain serious allegations against the petitioner. Individual complaints have also been received containing similar allegations against the

petitioner. A file has been opened by the Vigilance Department of the respondent and an enquiry into the complaints is on the way. There is nothing

to indicate that the transfer is made solely on the ground that the petitioner had taken some action against one Mahalingam of M/s Ariya Plastics

and M/s Aravind Plastics, perundurai as no such complaint has been received from him by the respondents. Except the averments made in para 4

of the affidavit, no details as to what date the petitioner had enquired the said Mahalingam and on what date he threatened the petitioner of further

consequences. Vague allegations without sufficient materials cannot be the grounds to sustain a claim of mala fide. That apart, except the above

averment, no allegation has been specifically made against the Officer who has passed the impugned order of transfer. In the absence of such

allegations, the submission of the learned counsel for the petitioner as to the bias should be rejected.

5. The learned counsel appearing for the petitioner would rely upon the judgment of the Supreme Court reported in Rajendra Roy Vs. Union of

India (UOI) and Another, . Of course in the said judgment the Supreme Court has observed as follows:

It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference

of mala fide action from the pleadings and antecedent facts and circumstances.

6. In the same judgment the Supreme Court has further observed that for such inference there must be firm foundation of facts pleaded and

established. In my opinion, the abovesaid judgment cannot be pressed into service on the facts of this case. A mere allegation, without any supporting material, cannot be construed to be a strong ground to draw inference of malice or bias. That apart, from the files, it is revealed that he petitioner was transferred only on administrative grounds. But only a general allegation is made that since he has taken action against some of the traders, transfer is made. On the facts of the case, I am of the considered view that the petitioner is not entitled to place reliance on the observations made by the Supreme court as to the drawal of reasonable inference of mala fide to interfere with the order of transfer.

7. The learned counsel appearing for the petitioner would rely upon the judgment of Madhya Pradesh High Court reported in R.K. Dubey v. M.P.

State Agro Industries Development Corporation and Ors. 1992 (2) LLJ (MP) 182 to contend that even if transfer is not mala fide, it can be

interfered with when court finds that it lacks bona fide. In my opinion, the said judgment is also not applicable to the facts of this case as the

petitioner has not established the lack of bona fide on the part of the officer who has passed the impugned order of transfer, more particularly,

when this Court finds that the impugned order of transfer is made solely on administrative grounds and in the public interest as could be seen from

the files.

8. As far as the other submission that respondent ought to have considered as to whether the transfer could be avoided regarding sensitive post

and there was no successor to the post, the learned counsel appearing for the petitioner would rely upon the judgment of the Supreme Court

reported in N.K. Singh Vs. Union of India and others, . Here again also I am convinced with the reasons for transfer as could be seen from the

records. The materials placed by the respondents before this Court would satisfy that such transfer order cannot be avoided. As the complaints

have drawn the attention of Vigilance Department of the respondent, I am not inclined to elaborate the nature of complaints to arrive my

conclusion, as it may not be proper to do at this stage. On facts, I am of the considered view that the judgment relied upon by the learned counsel

for the petitioner is of no use. Further, transfer is incident of service. In this regard the judgments of the Supreme Court reported in National

Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, and State of Punjab and Others Vs. Chaman Lal Goyal, can be referred to.

9. For the above reasons, I am not inclined to interfere with the impugned order of transfer and accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, W.P.M.P.No.8481/2006 is also dismissed.