
(2008) 03 GAU CK 0009
In the Gauhati High Court

Kalyanasish Kargupta

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Citation : (2008) 2 GLT 474

Hon'ble Judges : Utpalendu Bikas Saha, J

Bench : Single Bench

Judgement

U.B. Saha, J.—By this writ petition the petitioner, a junior Engineer holding the post of Scientific Officer, prays for a direction on respondent No. 3 to change the respondent No. 4, Shri Babul Chakraborty, Engineer (Electronics) as Inquiring Authority and to re-arrange any other independent person outside the department to conduct the inquiry in the disciplinary proceeding initiated against the petitioner, and also for quashing the order of suspension dated 03.06.06 (Annexure-3 to the writ petition) alongwith other prayers.

2. Heard Mr. S.M. Chakraborty, learned Sr. Advocate as assisted by Mr. S. Bhattacharjee, learned Counsel appearing for the petitioner as well as Mr. N.C. Pal, learned Government Advocate for the State respondent as well as Mr. P. Dutta, learned Counsel for the respondents-2 to 4.

3. Keeping in mind the nature of the prayer of the writ petitioner and as agreed to by the learned Counsel of the parties, the entire writ petition is taken up for disposal at this stage.

4. The brief facts, which requires for disposal of the present writ petition, are stated herein under: the petitioner, Shri Kalyanasish Kargupta, was initially appointed as Junior Engineer under the Tripura Renewable Energy Development Agency (for short TREDA), respondent No. 2, in the year, 1999 and thereafter he was transferred to Udaipur and assigned the responsibility of Scientific Officer along with his normal charge as Jr. Engineer without any extra remuneration. While acting so, the respondent No. 3, Executive Officer, TREDA, issued work

order in the name of M/S Bharat Electronics Ltd. for supplying of Solar lighting system in connection with remote village electrification programme. On 03.06.06, in contemplation of a disciplinary proceedings, the petitioner was suspended by the Chief Executive Officer, TREDA, respondent No. 3, under Rule 10(1) of CCS (CC & A) Rules, 1965 as adopted by the respondents-1 and 2 and thereafter vide memorandum dated 02.08.06 (Annexure-4 to the writ petition) specific charges were brought against the petitioner. In response to the aforesaid memorandum dated 02.08.06, i.e., Article of Charges, the petitioner submitted his written statement of defence on 11.08.06 and thereafter on 18.12.06, the respondent No. 4, Babul Chakraborty, Engineer (Electronics) was appointed by the respondent No. 3, the Chief Executive Officer as inquiring authority vide Annexure-7 to the writ petition, to inquire into the charges framed against the petitioner. Since the respondent No. 4 himself issued the work order dated 22.10.2005 in the capacity of the Chief Executive Officer, TREDA, he had some personal knowledge in the matter and that apart since inception of the proceedings, the petitioner started gathering impression that the respondent No. 4 was interested to find the petitioner guilty and slowly proceeding in that direction. Not only that, the prayer of the petitioner for copies of the documents and for making the documents as Exhibit in support of his defence were refused and ignored by the said respondent No. 4. Such act of refusal made the petitioner to infer that he would not get justice if the proceeding is conducted by the said respondent No. 4. Accordingly, the petitioner submitted the representation on 14.05.2007 (Annexure-8) before the respondent No. 3 wherein he specifically prays for changing the Inquiry Officer on the ground of bias towards the petitioner. On receipt of the same, the respondent No. 3, after going through the contention made in the said representation, rejected the prayer for changing the Inquiring Authority. Even after rejection of the said prayer of the petitioner dated 14.05.07, petitioner again submitted another representation on 04.04.07, which was not considered by the respondent No. 3 and informed the petitioner vide letter dated 08.06.07, inter alia, that the decision communicated on 29.05.07 stands valid and no further communication on this subject will be considered. Being aggrieved by the said decision of the respondent No. 3, the petitioner prefers the present writ petition.

5. The respondents have filed detailed counter affidavits wherein they have denied all the allegations made by the petitioner in his writ petition.

6. Mr, S.M. Chakraborty, learned Sr. counsel, in support of the writ petition, contends that though the petitioner initially did not raise any objection as to the appointment of the respondent No. 4 as Inquiry Authority. But, while appearing in the disciplinary proceeding, he got some impression regarding the conduct of the inquiring authority which prompted him to raise objection and accordingly he made his grievance to the Chief Executive Officer, TREDA, respondent No. 3, for changing the inquiring authority as the said respondent No. 4 is bias to him and not only that the respondent No. 4 himself issued the work order (supra) and for non-supervising of the work properly the petitioner was charged and the

departmental proceeding in question was initiated against him. On that ground also it would not be proper to allow the respondent No. 4 to continue as an inquiring authority as he had has personal knowledge regarding the said work order. Mr. Chakfaborty also contends that the decision of the authority for not changing the inquiring authority was not proper on the ground that the authority judged the matter for its own interest and not honestly looking into the matter considering the apprehension of the biasness of the petitioner against the respondent No. 4. He further contends that even if there are no materials, against the respondent No. 4 relating to bias directly, though there are some apprehension in the mind of the petitioner then also it was the duty of the respondent No. 3, Executive Officer, TRED A, to change the inquiring authority to clear the mind of the petitioner so that he can appear in the proceeding with free mind and without any doubt to any authority including the respondent No. 4.

7. Mr. P. Dutta, learned Counsel appearing , for the respondents-2 to 4, relying the counter affidavits filed by them, contends that the whole allegations of the petitioner is based on surmise and conjecture and there is nothing in the writ petition that the petitioner was deprived by the respondent No. 4 of getting the benefits of the procedural safeguards as prescribed under the statute in a matter relating to disciplinary proceeding. He also contends that the petitioner appeared and participated in the departmental proceeding and also cross- examined the witnesses without raising any objection regarding bias against the respondent No. 4. Hence, he is now estopped from raising such plea of changing the inquiring authority on the ground of biasness and as such it would not be proper for the Court to direct the respondent No. 4 as an inquiring authority only on the basis of the apprehension of the petitioner when there is no specific allegation against the respondent No. 4 except the allegations that he had has knowledge regarding the nature of the work order being the same was issued by him and nowhere in the petition, the petitioner also stated how and in what manner the petitioner is going to be prejudiced if the respondent No. 4 is allowed to be continued as inquiring authority, more so, when the respondent No. 4 is not the final "authority to take any decision regarding the guilt of the petitioner in the proceeding. Mr. Dutta, relying the affidavit-in-oppositions filed by the respondents-2 and 3, further contends that the deposition of three witnesses has already been recorded and the petitioner also cross-examined those witnesses and the writ petitioner was allowed to go through the documents relied upon by the Presenting Officer so that the access to some documents for preparing his defence, he was asked to explain relevancy of those additional documents. But the petitioner fails to explain the reason and hence, the authority, after hearing, disallowed the access to such documents to the petitioner as per provisions of Sub rule 12 of Rule 14 of CCS (CCA) Rules, 1965. He also refers to sub para J of para 4 of the counter affidavits of the respondents-2 and 3 wherein it is specifically stated that the respondent No. 4 issued supply order in his capacity as Chief Executive Officer during the leave period of the Chief Executive Officer, but the work on the project did not start during his incumbency as in-charge

Chief Executive, Officer. Hence, the allegations of the petitioner that respondent No. 4 had any personal knowledge regarding the development of the work, is not correct. He finally contends that if the petitioner has any grievance, he could raise the same before the disciplinary authority and even after completion of the proceeding also he can prefer an appeal and therefore it would not be proper for the Court to stall the proceeding and/or to issue any direction to change the inquiring authority when there is no specific allegation against the respondent No. 4 except the apprehension.

8. This Court has given its thoughtful consideration to the submission of the learned Counsel of the parties as also to the pleadings. It appears from the records that the petitioner has already appeared in the proceeding by way of filing written statement and also cross-examined the witnesses and when the disciplinary proceeding is almost going to be over he raised his voice by filing representation dated 14.05.07 (Annexure-8) wherein he stated that the respondent No. 4 is not impartial and it also appears that he determined to hold easily the petitioner guilty. But in the representation there is nothing as to why the respondent No. 4 is not impartial and for what reason there is some impression in the mind of the petitioner against the respondent No. 4. According to this Court mere using the word that the respondent No. 4 is not impartial and the petitioner has some apprehension in his mind regarding functioning of the inquiring authority, is not sufficient for holding the respondent No. 4 bias to the petitioner. Furthermore, even from the facts narrated by the petitioner in his petition that a reasonable man would not be in a position to infer the bias of the respondent No. 4 against the petitioner as mere general statements in the pleadings are not sufficient to establish bias. Not only that petitioner also fails to prove the spite or ill will of respondent No. 4 which is the basic requirement for taking inference of bias by a Court, which would be evident from the decision of the Apex Court in *Abraham Kuruvila v. S.C.T. Institute* (2005) 9 SCC 49 wherein the Apex Court held, inter alia that bias which would mean and imply "spite or ill will" must be proved by raising requisite plea in this behalf and by adducing cogent and sufficient evidence in support thereof. In fact, bias is a state of mind and it shows predisposition. Thus, general statements would not meet the requirements of law. Certain correspondence/orders which might have been passed against the petitioner as far back as in 1994 and 1998 would not meet the requirement of law to prove bias. Not only existence of a factual bias has to be proved, but it must also be shown that the same has resulted in miscarriage of justice.

9. It is the settled position of law that the test of real likelihood of bias is not dependent on statement only unless the same has not been substantiated by way of specific pleading which is absent in the instant case and the allegations made by the petitioner in his writ petition are denied by the respondent in their counter affidavits/affidavit-in-opposition and the petitioner also fails to make out any case that the inquiring authority violated any provisions of rule dealing with procedural safeguard relating to the disciplinary proceeding prescribed under

CCS (CCA) Rule which caused or to be caused any prejudice to the petitioner. Mere issuance of work order would not be a bar for the respondent No. 4 to act as an inquiring authority when he was appointed by the disciplinary authority. This Court has already expressed earlier that mere apprehension would not be enough for the petitioner to draw an inference that he would not get justice from the inquiring authority, respondent No. 4, being, the said officer would act in a bias and partisan manner and inquiry in the proceeding would be conducted by the inquiring authority is only a predecisional one. He is even not in a position to suggest to take action against the petitioner as he is not the authority to determine guilty of the petitioner. It is the disciplinary authority, who will take final decision and even after the decision of the disciplinary authority he could approach the appellate authority before whom he could raise all his grievance including the procedural illegality and infirmities including the allegations of biasness.

10. Therefore, it would not be proper for this Court to exercise writ jurisdiction in such case for directing the respondent No. 3 to change the respondent No. 4, who is the inquiring authority only on the mere apprehension of the petitioner without any valid reason, more so when the petitioner already took part in the proceeding and cross-examined the witness leading to estoppel of raising such an issue. When the petitioner has some apprehension in his mind, it is the duty of the authority to remove the same from the mind of the petitioner by their action and protect the procedural safeguard, which he is entitled to in accordance with rules. With this the parties of the writ petition have agreed to complete the disciplinary proceeding within a reasonable period, preferably within six months from the date of receipt of the judgment.

11. In the result, with the aforesaid observations and direction, the writ petition is disposed of. However, disposal of the writ petition will not be a bar for the authority to revoke the order of suspension if they so desire since about 2 years is going to be elapsed from the date of suspension. This Court also hopes and trusts that the inquiring authority will not act prejudicially to the interest to the petitioner in the proceeding and he will be provided the procedural safeguard as he is entitled to so that he may not raise his voice against the respondent/inquiring authority. No order as to costs.