
(2002) 12 AP CK 0076
In the Andhra Pradesh High Court
Case No : Writ Petition No. 25352 of 2002

K.V. Ramana

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 24-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 ALD 589 : (2003) 2 ALT 68

Hon'ble Judges : S.R. Nayak, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : Ravindranath Reddy, for the Appellant; Government Pleader for Services-II, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J

1. This writ petition is filed by the delinquent against the order of Andhra Pradesh Administrative Tribunal dated 17-12-2002 declining to interfere with the Government Order vide G.O. Rt. No. 2013, Revenue (Ser.I) Department, dated 23-11-2002 by which the delinquent has been kept under suspension in contemplation of departmental enquiry. The suspension order vide G.O. Rt. No. 2013, Revenue (Ser.I) Department, dated 23-11-2002 reads as follows:

"1. Whereas it has come to the notice of the Government of Andhra Pradesh, alleging that Sri. K.V. Ramana, Special Grade Deputy Collector and formerly Managing Director, Andhra Pradesh State Seeds Development Corporation, Hyderabad has committed certain irregularities while working as Managing Director, Andhra Pradesh State Seeds Development Corporation, Hyderabad;

2. And whereas, disciplinary proceedings against Sri. K.V. Ramana, Special Grade Deputy Collector and formerly Managing Director, Andhra Pradesh State Seeds Development Corporation, Hyderabad are contemplated;

3. And whereas, the Government of Andhra Pradesh being the appointing authority, after careful consideration of the material available and having due regard to the circumstances of the case, are satisfied that it is necessary to place Sri. K.V. Ramana, Special Grade Deputy

Collector under suspension;

4. Now, therefore, in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, the Government of Andhra Pradesh hereby place the said Sri. K.V. Ramana, Special Grade Deputy Collector under suspension from the date of communication of this order and he shall continue to be under suspension until the conclusion of the disciplinary proceedings/termination of all proceedings;

5. It is further ordered that during the period this order remains in force, the headquarters of Sri K.V. Ramana Special Grade Deputy Collector shall be at Hyderabad and the said Sri. K.V. Ramana, Special Grade Deputy Collector, shall not leave the headquarters without obtaining the prior permission.

6. He shall be eligible for subsistence allowance during suspension period as per Rules."

2. At the time of hearing it was brought to our notice that subsequently the disciplinary authority issued charge memo on 9-12-2002. Two charges are framed against the petitioner/delinquent. The charges and the statement of imputations of misconduct or misbehaviour read as follows:

"CHARGE-I: That Sri. K.V. Ramana, Spl.Grade Deputy Collector while working as Managing Director, A.P. State Seeds Development Corporation Ltd., Hyderabad during the period from July, 2001 to November, 2002 has committed irregularities in purchase of 6,72,000 DWT bags of 30 Kg. capacity by negotiating directly on the basis of single quotation with M/s. East India Commercial Company, Eluru without calling for re-tender through proper paper publication and thereby violated Rule 3 of A.P.Civil Services (Conduct) Rules, 1964.

CHARGE-11: That Sri K.V. Ramana, Spl.Grade Deputy Collector while working as Managing Director. A.P. State Seeds Development Corporation Ltd., Hyderabad during the period from July, 2001 to November, 2002 has committed the irregularities of making advance payment of Rs. 58.80 lakhs for supply of 6,72,000 DWT bags of 30 Kg. capacity and Rs. 10.80 lakhs for supply of 1,80,000 DW Hessian bags of 70 Kg. Capacity to M/s. East India Commercial Company Limited, Eluru without obtaining any performance guarantee of a Nationalised Bank from the supplier and thereby violated financial propriety and Rule 3 of A.P. Civil Service (Conduct) Rules, 1964.

STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR:

In the year 2001, the assessment of requirement of bags for A.P. State Seeds Development Corporation Limited was done keeping in mind the quantum of seed

production, in the month of September, 2001 duly taking into account the bags available on hand. Accordingly, tender notice dated 6-10-2001 was published in Eenadu and Vartha on 9-10-2001 for 6,60,000 bags giving the tender opening date as 17.10.2001, The detailed specifications in respect of bags were given in the tender schedule. A total of 5 tenders were received. Comparative statement of the tenders received was prepared and placed along with the agenda note before the purchase Sub-Committee (constituted by the Board) for its discussion in the meeting held on 1-11-2001. The purchase Sub-Committee comprised of 7 members, of which 5 members i.e., the Managing Director, Joint Secretary (Finance and Planning), Regional Manager, National Seeds Corporation, Grower Director Sri G. Sarvanaidu and Assistant Director, Industries participated in the deliberations of the Purchase Sub-Committee held on 1-11-2001, The Committee noted that out of 5 tenders received 3 tenders filed by M/s. Kushal Laminators (Rs.14.50/bags), M/s. K.L. Jute Products (Rs.14.50/bags) and M/s. Sumangal Polymers (Rs.14.36/bags), all from Kolkotta failed on technical grounds as the samples submitted by them did not satisfy the specifications as per the test reports. The tenders of M/s. Poly Jute Laminators (Rs. 16.01/bags) and M/s. Sri Hanuman Jute and Laminators Industries (Rs.15.99/bags) of Kolkota satisfied the tender specifications but were not accompanied by EMD payments (Rs.4 lakhs). As such the Purchase Sub-Committee in its minutes of meeting dated 1-11-2001 recommended for the cancellation of tenders in respect of this item of purchase. The Office of APSSDC then circulated a file to the Managing Director for orders as to whether in view of the cancellation of original tenders a fresh tender notice should be published in the newspapers in Andhra Pradesh and Kolkotta inviting fresh tenders. There upon the Managing Director has suggested (20-12-2001) that the matter be placed before the ensuing Board Meeting proposed to be held on 22.12.2001. Accordingly, the said item was placed before the Board in its meeting held on 22.12.2001 as additional Agenda item No. 4. The Board considered the agenda item and decided to authorize the Managing Director to purchase the required number of DWT bags of 30 Kg. capacity directly from the manufacturers on need basis. Thereupon the Managing Director, APSSDC has addressed a letter dated 24-1-2002 vide his Letter No. SSDC/ Mktg./ Pur/DWT/Canvass bags/ 2001-02, to the Chairman of East India Commercial Company, Sri Krishna Jute Mills, Eluru, requesting the Company to quote its lowest rate per bag as per specifications, terms and conditions and destination for supply of 6,60,000 DWT bags. M/s East India Company submitted its quotations on 5-2-2002 for supply of bags at the rate of Rs. 18/- per bag.

A Committee deputed by the Managing Director has visited East India Commercial Company on 11-2-2002, examined the samples of bags and negotiated with the Company regarding rates of purchase and brought down the price from Rs. 18/- (quoted) to Rs. 17.50 per bag. The Committee also submitted a note which was placed as an Agenda item for the Purchase Sub-Committee held on 15-2-2002. The Purchase Subcommittee decided to purchase 6,72,000 bags from M/s. East India Commercial Company Limited, Eluru @ Rs.

17.50 per bag and also recommended to authorize the Managing Director to pay Rs. 58.80 lakhs as 50% advance to the suppliers, as demanded by them in the quotation. Accordingly, an agreement with the suppliers was signed on 15-2-2002 and orders were placed with them on 16.2.2002 for supply of 6,72,000 bags and also an advance of Rs. 58.80 lakhs paid by Demand Draft on 17.2.2002.

The Managing Director, Sri K.V. Ramana has misused the authorization of the Board to purchase the required number of DWT canvass bags of 30 Kg. capacity directly from manufacturers. The Managing Director, instead of issuing a re-tender notice for supply of bags from manufacturers, has obtained a quotation from a single manufacturer and purchased bags from him. Thus, the action of the Managing Director is against purchases procedure. The Managing Director, as a responsible official of the Government and the Corporation, should not have requested the Board to deviate from the normal purchases procedure prescribed for the Government Departments/ Government Corporations. In fact the Managing Director himself took the initiative to request the Board to authorize him for such direct purchases from manufacturers.

Further, a huge sum of Rs. 58.80 lakhs and another sum of Rs. 10.80 lakhs was advanced to the suppliers by the Managing Director, Sri K.V. Ramana. It was highly risky and against financial propriety to make such an advance from out of public funds, especially without obtaining a performance guarantee of a Nationalised Bank from the supplier. The action of Sri K.V. Ramana in giving the advance amount of Rs. 58.80 lakhs is highly improper when tenders were rejected on the technical grounds of non-submission of EMD amount of Rs. 4.00 lakhs only in October, 2001.

Hence, Sri. K.V. Ramana the then Managing Director, APSSDC Limited is liable for disciplinary proceedings for committing irregularities in purchase of bags from and payment of advances to M/s East India Commercial Company Limited, Eluru."

3. While assailing the validity of the suspension order large number of grounds were taken in the Original Application. However, there is no necessity for us to refer to and consider all those grounds in dealing with the present writ petition. Sri Ravindranath Reddy, learned Counsel for the petitioner would urge the grounds taken vide paragraph 6(P), 6(Q), 6(R), 6(S) and 6(T) in the Original Application. These grounds read as follows:

"6(P) The applicant submits that there is no prima facie case or material before the respondent to arrive at a satisfaction that the disciplinary proceedings can be contemplated, There should be some material to arrive at such satisfaction that the applicant has committed a lapse.

6(Q) The applicant submits that the Courts have laid down the Law that the suspension based on a report which does not contain the imputation of improper motive or misconduct as understood in the disciplinary proceedings, is a legally mala fide action in the absence of valid consideration. In the present case no

such imputation of improper motive or misconduct has been alleged against the applicant in both reports. On the contrary they have given clean chits to the applicant. Hence, the impugned action of the respondent is liable to be set aside on this ground alone.

6(R) The applicant submits that by the time the impugned order of suspension was passed the applicant was already under transfer dated 14-11-2002 repatriating him to his parent department. This fact was not at all taken into consideration while passing the impugned orders of suspension and this establishes the fact of non-application of mind by the respondent. Hence, the Impugned action is violative of principles of natural justice and void ab-initio.

6(S) The applicant submits that a delinquent is placed under suspension in order to avoid tampering with records and in view of his transfer to parent department there is no probability for such tampering. Hence, placing the applicant under suspension is contrary to law.

6(T) The applicant submits that the respondent has not applied his mind independently and it was initiated under pressure and extraneous reasons. In fact, it was resorted to ward off the pressure in the Assembly on the Government though the said pressure was exerted on misplaced and wrong understanding of the entire issue. Instead of withstanding the said pressure and clarifying the truth have succumbed to the pressure and made the applicant scapegoat because all the actions taken by him was through PSC and the Board and he has no independent role to play. Thus, the impugned orders are violative of principles of natural justice as they have been resorted to for extraneous reasons and under pressure and in total lack of application of mind."

4. The learned Tribunal having noticed the opposition set out against the Original Application in the counter filed by the respondent thought it inappropriate to interfere with the suspension order. In the result, the O.A. was dismissed by the order impugned in this writ petition. Hence, this writ petition.

5. Sri Ravindranath Reddy, learned Counsel for the petitioner with his usual persuasiveness and vehemence would attack the suspension order mainly on two grounds. According to the learned Counsel there is absolutely no prima facie evidence to support the allegations/charges levelled against the petitioner/delinquent. The learned Counsel would also attack the impugned suspension order by maintaining that the suspension order is nothing but the outcome of the pressure exercised by the Andhra Pradesh State Assembly on the Executive Government. The learned Counsel would highlight that the Government left to itself did not want the petitioner/ delinquent to be kept under suspension pending departmental enquiry and that exactly the reason why the Government reverted the petitioner/ delinquent from the deputationist post to his parent department. In addition to these basic grounds urged before us, the learned Counsel would also maintain that since the petitioner has been reverted to the Revenue Department there is no scope for the delinquent to tamper the records

which have bearing in the enquiry and the ultimate decision that may be taken by the disciplinary authority after conducting the enquiry. The learned Counsel also submitted that the power vested with the disciplinary authority to place an employee under suspension in contemplation or pending departmental enquiry is not some kind of unfettered power which can be exercised at the fancy or at the sweet discretion of the disciplinary authority and that power is required to be exercised in the public interest judiciously and fairly. In conclusion, the learned Counsel would maintain that this is an eminently fit case where the learned Tribunal ought to have quashed the suspension order and, therefore this Court should step in under Article 226 of the Constitution and grant the relief to the petitioner.

6. Before dealing with the contentions of the learned Counsel for the petitioner, it may be profitable to remind ourselves about the parameters of judicial review governing suspension orders. The power of placing an employee/delinquent under suspension in contemplation or pending departmental enquiry is a concomitant power of the disciplinary authority to punish an erring official. Undoubtedly, this power is also subject to judicial review under Article 226 of the Constitution. There is no power in our law which can be called unlimited or unfettered. As rightly maintained by the learned Counsel for the petitioner that every public power is limited and it should be exercised in the public interest fairly and reasonably and if the Court finds that a disciplinary authority has exercised or abused that power, including the discretionary power, the Court would definitely step in and correct the errors and wrongful actions. We have carefully perused the charges as well as the statement of imputations issued to the delinquent-petitioner. We have also carefully perused the counter-affidavit filed by the disciplinary authority before the Tribunal. We have also perused the preliminary enquiry report submitted by Mr. Ashutosh Ghosh. We do not think it appropriate for us to refer to these pleadings and the findings because we are not called upon to review any findings recorded by the Enquiry Officer or the disciplinary authority by way of judicial review. This is not a stage where the Court shall express any opinion on the allegations levelled against the petitioner/delinquent and take up review of the matter on merits. It is repeatedly said and reiterated by the Constitutional Courts that while reviewing the suspension orders and the validity of the charges framed against a delinquent employee, the Court should not go into the question of truth or otherwise of the allegations or the charges. The only thing to be seen at that stage is whether if the charges levelled against the petitioner/ delinquent, if true, would tantamount to a misconduct within the meaning of that term under the Certified Standing Orders or the concerned Service Conduct Regulations. Truth or otherwise of the allegations has to be established and proved in the enquiry after giving a fair opportunity to both the parties to lead evidence and contradict each other's evidence. That stage has not yet reached in this case. Further, it needs to be noticed that charge memo is already filed. The petitioner has not yet filed his reply to the charge memo. Therefore, the judgment of the Apex Court U.P. Rajya

Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, would be of no help to the petitioner at this stage. In the very same judgment cited by the learned Counsel for the petitioner, the Apex Court has opined that in the case of charge of defalcation of money or embezzlement of funds it is not advisable to keep an employee in the office pending enquiry. Of course, in this case, defalcation is not the precise charge. But, undoubtedly the charge is the irregularities committed by the petitioner in managing the public monies thereby causing loss to the State Exchequer, Further, in the same judgment, dealing with the scope of judicial review, it is held that Court should not interfere with the suspension orders unless they are passed mala fide, and without there being a prima facie evidence on record connecting the delinquent with the misconduct, or without authority. If the allegations set out in the charge memo and the counter and prima facie findings recorded in the Preliminary Enquiry Report could be proved in the enquiry by adducing substantial legal evidence by the disciplinary authority, at this stage it could not be said that there is no prima facie material to initiate the disciplinary proceedings against the petitioner/delinquent.

7, The merits and probabilities of the charge should not be gone into by the Court while deciding the legality of suspension order. In Union of India (UOI) and Others Vs. Upendra Singh, , the Court held that examination of the correctness of the charges particularly at the stage of framing charges is beyond the jurisdiction of the Administrative Tribunals as well as High Courts. Further, in Dy. Inspector General of Police Vs. K.S. Swaminathan, , the Court emphasized that the only thing to be seen by the Court at the stage of framing the charge is whether the statement of facts and material in support thereof supplied to the delinquent employee would disclose the alleged misconduct.

8. After having perused the statement of imputations and the charges, we are satisfied that if the charges are proved they would amount to a misconduct on the part of the petitioner/delinquent. Therefore, no ground is made out for this Court to step in and interfere with the discretionary order made by the learned Tribunal.

9. In the result, the writ petition is dismissed. The petitioner is granted finally two weeks time to file his reply to the charge memo, if not already filed. The disciplinary authority is directed to conduct and complete the departmental enquiry initiated against the petitioner/delinquent with due diligence, at any rate, within a period of four months from the date of receipt of a copy of this order. No costs.