

(1994) 03 PAT CK 0017

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2936 of 1989

Narendra Kumar Singh

APPELLANT

Vs

National Co-operative Consumers" Federation of India
Limited and Others

RESPONDENT

Date of Decision : 09-03-1994

Acts Referred:

Citation : (1994) 03 PAT CK 0017

Final Decision : Allowed

Judgement

S.N. Jha, J.—The Petitioner seeks quashing of the orders as contained in Annexures 5 and 13. By the former, the Managing Director of the National Co-operative Consumers" Federation of India Ltd. ("the Federation" in short) acting as the Disciplinary authority directed a fresh enquiry in respect of the charges; by the latter, he passed the order of dismissal of the Petitioner from service. The facts of the case, shortly stated, are these.

2. The Petitioner, erstwhile Secretary of the Bihar Stale Religious Trust Beard, joined the Federation on deputation on 14.4.83 where he was absorbed later on 20.6.83. During his tenure as Manager at Nagpur, a departmental proceeding was initiated on 11.10.85. As per the memo of charges, the Petitioner was said to have (a) suppressed material facts about his post, status and pay in his parent office and submitted misleading information to secure appointment in the Federation. (b) mismanaged the affairs of the Srinagar Branch resulting in heavy losses to the organisation, and (c) kept confiscated goods and furniture for his personal use amounting to gross mis conduct. It is not necessary to refer to the case of the parties as regards the aforesaid charges. It may, however, be stated that charge No. 3 aforesaid, to wit, keeping confiscated goods etc. for personal use has not been found to be proved and the dismissal order is based on only the other two charges. The Petitioner filed his show cause. One Sri D.C. Kapoor, Chief Marketing, Officer of the Federation was appointed as Enquiry Officer on 13.11.85. The enquiry commenced on 19.11.85 and was concluded on 29.4.86.

The Enquiry Officer submitted his report on 9.1.87. As per his findings none of the charges was proved against the Petitioner. As no action was being taken on the report, the Petitioner moved the Nagpur Bench of the Bombay High Court in writ Application No. 2365 of 1987 on 12.11.87. During pendency of the said writ petition on 18.1.88 the Managing Director passed an order stating that the relevant documents had not been properly examined by the Enquiry Officer meaning thereby Sri D.C. Kapoor and, thus, disagreeing with the findings he directed a fresh enquiry to be held by Sri K.S. Mathew. This is one of the orders, copy marked Annexure-5, which is under challenge in this writ petition. The Petitioner challenged the appointment of Sri K.S. Mathew as being violative of the Service Regulations. Sri Mathew, however, proceeded with the enquiry and took evidence and ultimately submitted his report on 23.6.88 on the basis of which the order of dismissal was passed on 29.12.88. This is the other order, marked Annexure-13, which is under challenge in the writ petition.

3. Mr. Vijayeshwar Narain Sinha raised three contentions, (a) The order of the Managing Director, appointing Sri K.S. Mathew as Enquiry Officer was ultra vires Rule 65 of the Service Regulations which provides that the enquiry shall be held by an employee of the Federation. Sri Mathew not being an employee of the Federation was not competent to hold enquiry and, therefore, the entire enquiry proceeding was without jurisdiction rendering the order of dismissal based on his enquiry report illegal, (b) The appointing authority of the Petitioner being the executive committee, the Managing Director, a subordinate authority, was not competent to pass any order of punishment against the Petitioner, and (c) Sri Mathew was actuated by mala fide inasmuch as he did not grant adequate opportunity to the Petitioner to defend himself in the enquiry proceeding.

4. Before I take up the contentions raised on behalf of the Petitioner, I shall dispose of the preliminary objection regarding maintainability of the writ petition. On behalf of the Respondents it has been contended that no part of cause of action having arisen within the territorial jurisdiction of this Court the instant writ petition is not maintainable. Reliance in support of the contention has been placed on *State of Rajasthan and Others Vs. Swaika Properties and Another*, . Counsel for the Petitioner submitted in this connection that as the order of dismissal was served upon the Petitioner at Patna, consequence of the order must be deemed to have fallen at Patna i.e. within the territorial jurisdiction of this Court and, therefore, the writ petition is maintainable. He placed reliance on *Nand Kishore Singh Vs. Union of India (UOI) and Others*, , and *Ex-Major Ganesh Prasad Sinha v. The Union of India and Ors.* 1993 (1) PLJR 85.

5. In *M/s. Swaika Properties (supra)* the Court was considering the question of territorial jurisdiction in an entirely different context. The matter had arisen out of acquisition of land in the State of Rajasthan. The notice of acquisition was served on the persons concerned at Calcutta. Dealing with the question, their Lordships observed:

The notification dated February 8, 1984 issued by the State Government u/s

52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the Respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur u/s 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government u/s 52(1) of the Act. (emphasis added)

Right to post is different in nature from right to land. As regards acquisition of land or other immovable property, as observed by their Lordships in the case cited above, the acquisition becomes effective and the land vests in the State no sooner the notification is published in the official gazette, no matter where the owner of the land or the property lives. The disciplinary proceedings, however, stand on different footing. The employer employee relationship continues to subsist during the pendency of the proceeding and the severance of the relationship takes effect only after the order is served on the person. In other words, even after the order of dismissal is passed in a disciplinary proceeding, the order does not take effect until and unless it is served on the person concerned unlike the acquisition of immovable property. A Division Bench of this Court in *Nand Kishore Singh* (supra) had the occasion to consider this very question, the answer came in the following words:

In our opinion in view of the discussions made above and the authorities cited at the Bar, the service of notice might also constitute the accrual of the part of the cause of action in a given case where the effect of the order or to quote the language of the Bombay High Court where the consequence of the order are to fall.

It is, thus, obvious that in the case of dismissal or orders of the like nature the consequence of the order is not complete until it is served and, therefore, the part of cause of action within the meaning of Clause (2) of Article 226 of the Constitution must be deemed to have arisen also at the place where the consequence ensues and the order takes effect by reason of service of the order. In my opinion, therefore, the instant case is covered by the ratio laid down in *Nand Kishore Singh* (supra) which was followed in *Ex-Major Ganesh Prasad Sinha v. The Union of India and Ors.* (supra). The decision in *M/s. Swaika Property* (supra) is of no avail to the Respondents.

6. On behalf of the Respondents, however, it was submitted that the headquarters of the Petitioner had been fixed at Nagpur as per the order dated 20.3.85, Annexure-1, and he was not supposed to leave the headquarters without obtaining the previous permission of the Managing Director. It is said that no such permission was taken by the Petitioner and, accordingly, contended that merely because the Petitioner chose to stay at Patna during the pendency of the proceeding necessitating service of notice, as and when required, including copy of the dismissal order on him, it would not create jurisdiction at Patna. It was contended that no delinquent can be permitted to stay at a place of his

choice during the departmental proceeding.

7. The stand of the Respondents is specious no doubt. However, it would appear that no objection was taken by the Respondents at any stage about the Petitioner's stay at Patna even if it is assumed that he had not taken any permission to leave the headquarters as per the order dated 20.3.85. It is important to mention here that the Petitioner continued to get subsistence allowance during the relevant period. In my view, if the Petitioner's stay at Patna was not in conformity with the order dated 20.3.85 it was open to the Federation to ask the Petitioner to report at Nagpur, the place of headquarters and stay there and/or to stop the payment of subsistence allowance. The Federation accepted the Petitioner's stay at Patna as a fact without any demur and, therefore, must be deemed to have acquiesced in it. I, accordingly, hold that by reason of service of copy of the dismissal order at Patna, which aspect is not in dispute, part of cause of action must be deemed to have arisen within the territorial jurisdiction of this Court and, therefore, the present writ petition is maintainable.

8. Another objection taken by the Respondents as regards maintainability is that the Petitioner has approached this Court without exhausting the alternative remedy of appeal. This point is being noticed only to be rejected. It is well settled that existence of alternative remedy does not bar or exclude the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. A limitation of the sort is in the nature of self-imposed restriction which the High Court should not apply after the writ petition has been admitted to hearing: Reference in this connection may be made to *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, .

9. Now, I shall consider the contentions raised on behalf of the Petitioner in *seriatim*. It is said that in terms of the Service Regulations it is only an employee of the Federation who can hold enquiry. An outsider cannot. It may be recalled that the previous Enquiry Officer, namely, Sri D.C. Kapoor was. admittedly an employee of the Federation, while Sri K.S. Mathew was not. The relevant provisions laying down procedure for holding a departmental enquiry and imposition of major penalty are contained in Rule 65, Clause (xix) whereof deals specifically with the stage where the disciplinary authority upon receipt of enquiry report deems further enquiry necessary and remits the matter for the purpose. The relevant part of Clause (xix) reads as follows:

(a) The disciplinary authority, if it is not itself the inquiring authority, may for reasons to be recorded by it in writing remit the case to the inquiring authority for fresh or further inquiry and report and the inquiring authority shall thereupon proceed to hold the further enquiry according to the provision of Rule 65 as far as may be. (emphasis added)

Who shall be the inquiring authority is provided in Clause (ii) and Clause (iv) of the said rule. They read as hereunder:

(ii) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation or misconduct or misbehaviour against an employee, it may itself enquire into, or appoint any employee of the Federation (hereinafter called the inquiring authority) to inquire into the truth thereof.

(iv) On receipt of the written statement of the employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or by any other employee of the Federation appointed as an Inquiring Authority under Sub-clause (ii).

A bare perusal of the provisions of the aforesaid Regulation leaves no room for doubt that the enquiry has to be held by "any employee of the Federation". According to the Respondents, however, the rule in question had been amended with effect from 14.7.86 and as per the amended rule an outsider "also was competent to hold enquiry". Reference in this connection was made to Annexure-C to the counter affidavit, which is the office order dated 26.11.87 stating that "the competent authority has added the word "or an outsider" after the word "Federation" in Rule 65(ii) and "or an outsider" after the word "Federation" in Rule 65(iv) w.e.f. 14.7.86, the date on which it was approved by the then President".

10. The Petitioner has filed a rejoinder enclosing notings from the file as Annexure-16 to point out that no doubt there was a proposal to amend the said rule of the Service Regulation but as would appear from the noting itself even according to the Managing Director this was to be placed before the Board of Directors under Clause 27(xviii) of the Bye-laws. It was pointed out that Sri T.P. Singh, who had purported to agree with the then Managing Director as the President of the Federation had ceased to hold the office of the President as on 14.7.86 which would be evident from the answer given by the Minister Incharge on the floor of the Rajya Sabha vide Annexure-17. According to the Petitioner, in any view, the proposed amendment was never approved by the Board of Director or after its supersession on 15.10.87 by the Administrator.

11. Counsel for the Respondents refuted the stand that Sri. T.P. Singh had ceased to be President of Federation on 14.7.86 and submitted that in terms of Clause 33(d) of the Bye-laws the President of Federation is competent to exercise all the powers of the Board of Directors in an emergent situation. Clause 33(d) of the Bye-laws, in my view, does not help the Respondents at all. The clause, no doubt, empowers the President to exercise all the powers of Board of Directors "in situation of emergency" but I have grave doubts as to whether the situation envisaged therein was in existence. Even if it were so, counsel for the Federation was not able to show that it was ever placed "in the next meeting of the Board of Directors" as mandated by Clause 33(d). No doubt, the Board of Directors was superseded but that was much later than the date of proposal and its alleged acceptance by the President on 14.7.86. It is beyond my comprehension that no meeting of the Board of Directors would have been held for next 15 months

before the Board went in supersession on 15.10.87. Even assuming that to be so, in my opinion, the Respondents were still obliged to show that after supersession came into effect the Federation granted its post facto approval to the proposed amendment.

12. Counsel for the Respondents submitted that the validity of the amended rule is not under challenge. It was pointed out that the Petitioner has made the averments as aforementioned only in his rejoinder and nothing of the kind was stated in the main writ petition. I do not find any substance in the submissions. The Petitioner does not seek any declaration regarding invalidity of the so called amended rule. He simply wants to dislodge the defence of the Respondents. In my opinion, it was for the Respondents to show that Annexure-C is a legally enforceable document since it is they who seek to rely on the "amended" rule in order to sustain the enquiry held by Sri K.S. Mathew. I do not find any substance in the other argument of the counsel for the Respondents that an inference should be drawn that the official business must have been transacted in the regular course. As the Respondents have failed to show that the amendment was ever approved either by the Board of Directors or after its supersession by the Administrator, Annexure-C can be of no avail to them. In terms of Rule 65(xix) (a) read with Rule 65(ii) and (iv), as it stood earlier and continued to stand till the dates on which the impugned orders came to be passed, Sri K.S. Mathew, a retired Deputy Secretary to the Government of India and an "outsider" to the Federation, was not competent to hold the enquiry. The conclusion that would, thus, irresistibly follow is that not only the enquiry proceedings before Sri K.S. Mathew but also the report submitted by him was without jurisdiction. The dismissal order passed on such a report has, thus, necessarily to be held as void and illegal.

13. In view of my finding on the first point it is not necessary to go into the other contentions. However, in deference to the counsel for the parties, I shall briefly deal with them too. According to the Petitioner, his appointing authority was the Executive Committee. The Managing Director of the Federation being a subordinate authority was, therefore, not competent to pass the impugned orders as the disciplinary authority. It was contended that the Executive Committee being itself a delegatee further delegation in favour of any authority could not be made and, in any view, in absence of any proof showing that such delegation had been made the Managing Director could not have acted as disciplinary authority. On behalf of the Respondents reliance was placed on Clause 30(xiv) of the Bye-laws and it was submitted that the Executive Committee is the delegatee of the Board of Directors. By virtue of the aforesaid clause the Executive Committee may be vested with any other power delegated by the Board of Directors from time to time. Reference was then made to Clause 27(xix) of the Bye-laws which empowers the Board to make further delegation in favour of Managing Director. Reference was also made to Sub-section (3) of Section 48 of the Multi-State Co-operative Societies Act, 1984, which provides that the Administrator, after supersession of the Board, shall subject to the

control of the Central Registrar and to such instructions as he may from time to time give, have the power to exercise all or any of the functions of the Board or of any officer of Multi-State Cooperative Society and take all such actions as may be required in the interests of the society. It was accordingly contended that the provisions of the bye-laws and the Act as aforesaid read together make it clear that the Administrator after supersession of the Board of Directors is competent to exercise all or any of the powers of the Board including the power of delegation as conferred upon it under Clause 27(xix) of the bye-laws. In paragraph 18 of the counter affidavit specific plea has been made that the then Administrator had delegated the power of the appointing authority to the Managing Director in respect of officers, inter alia, Additional Managing Director, Chief Consultant and officers of the rank of Assistant Manager-I and the Chief Manager and Regional Managers. The Managing Director, therefore, cannot be said to be devoid of authority in exercising powers of the Disciplinary Authority and, therefore, so far as this aspect of the matter is concerned, the order cannot be said to be erroneous.

14. I do not also find any substance in the submissions regarding mala fide against Sri K.S. Mathew. It may be stated that the allegation of mala fide has been made against the Managing Director, who has passed the impugned order. No doubt, in appropriate cases, mala fide on the part of the Enquiry Officer, may vitiate the entire proceedings and therefore, the ultimate order of punishment. However, it should be kept in mind that the Petitioner has not alleged any personal mala fide even against Sri Mathew. Mala fide is alleged on the ground that the Petitioner was denied adequate opportunity to defend himself. In this connection it is said that Mathew had fixed 1.3.88 and 2.3.88 as the dates of hearing in the enquiry proceeding although the Petitioner was in personal difficulty and had communicated his inability telegraphically on 27.2.88. It is not known as to whether the telegram had reached the Enquiry Officer in time. However, from perusal of Annexure-7 it appears that the witnesses examined on 2.3.88 in absence of the Petitioner namely, Sri Ramesh Sabharwal and Sri S.L. Kappor were formal witnesses and they merely tendered certain documents. It is not in dispute that copies of documents produced by the aforesaid two witnesses were later made available to the Petitioner. So far as the other witness Sri G.R. Shaikh is concerned it is obvious from Annexure-8 that he was sufficiently cross-examined by the Petitioner. The fact, that Sri Mathew exonerated the Petitioner of one of the charges goes a long way to demolish the allegation of mala fide. I, therefore, reject the submission of the Petitioner on this score.

15. However, in view of my favourable finding on the first point which goes to the root of the matter it is plain that the impugned orders have to be set aside. In the result, this application is allowed. The impugned orders dated 18.1.88 and 29.12.88, Annexure 5 and 13 respectively, are set aside but in the circumstances of the case with liberty to disciplinary authority to proceed afresh in the matter in accordance with law. There will be no order as to costs.

16. Before I part with this case, I would like to make it clear that this writ petition has been decided on the assumption that the orders having been passed by the Managing Director of the Federation in state of supersession the writ petition is maintainable in view of the decision in Nand Kishore Rai v. The State of Bihar 1988 PLJR 1065. The question whether the Federation is a State within meaning of Article 12 or not has not been gone into.