(2015) 03 KAR CK 0040

In the Karnataka High Court

Case No : W.A. No. 3085 of 2009 (S-DE)

Niyaz Ahmed Shariff APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 16-03-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 03 KAR CK 0040

Hon'ble Judges : G. Narendra, J.;N.K. Patil, J.

Bench : Division Bench

Advocate : Vijay Kumar for B.B. Bajantri, for the Appellant; Omkumar, AGA, Advocates for the Respondent

Final Decision : Allowed

Judgement

G. Narendra, J.—The above writ appeal is preferred by the appellant aggrieved by the order of the learned Single Judge dated 22nd June 2009 rendered in W.P. No. 13668/2008 wherein the learned Single Judge was pleased to reject the writ petition and further granted eight weeks time to file objections to the second show cause notice issued by the respondents which would propose to review the earlier final order imposing penalty, that is, withholding four increments with cumulative effect and alter the same to one of dismissal from service.

2. The brief facts of the case are as follows:

"The appellant was employed as Branch Officer of the Karnataka Silk Marketing Board. In the course of discharge of his duties, the appellant was required to release raw materials to various dealers. The respondents issued a show-cause notice with five articles of charges dated 13.07.2000. The issuance of show cause notice was preceded by the suspension of the appellant by order dated 14.06.2000. The appellant caused reply to the show cause notice on 10.08.2000." 3. Thereafter, a retired District and Sessions Judge came to be appointed as Enquiry Officer to enquire into the same and submit a report.

Pursuant to the enquiry, the Enquiry Officer submitted a report holding that the appellant is guilty of all the five charges levelled against him. Pursuant to the enquiry, the Disciplinary Authority issued a 2nd show cause notice dated 24.05.2006 to which the appellant replied on 06.07.2006. After consideration of the reply, the Managing Director of the Board, who is the Disciplinary Authority passed an order dated 24.08.2007 and imposed penalty with-holding four annual increments with cumulative effect.

4. As the matter stood thus, it is the case of the appellant that the Chairman of the Board by a letter dated 13.09.2007 directed that the order dated 24.08.2007 passed by the Managing Director be kept in abeyance. It is not disclosed as to under which provision of law the Chairman directed the order (imposing penalty on the appellant after the same has been communicated to the employee) to be kept in abeyance. It is also not disclosed even now before this Court as to what was the reason that provoked the Chairman to issue the letter dated 13.09.2007 which is the precursor to the impugned order proposing imposition penalty of dismissal. The Secretary to Government, Department of Commerce and Industries, Vikas Soudha, Bengaluru by letter dated 23.07.2008 intimated the Managing Director - respondent Board that the Government is of the opinion that the punishment imposed on the appellant is on the lower side and that the Managing Director has not followed the Circular dated 14.09.2001 while imposing the punishment.

5. The Government further directed the Board to take steps to recover the dues from the appellant. Pursuant to the opinion rendered by the State Government, the Board issued the second show cause notice dated 24.09.2009 calling upon the appellant to show cause as to why enhanced penalty (commensurate with the misconduct alleged against him under Show Cause notice dated 13.07.2000) should not be enhanced and as to why the arrears of dues towards the loss suffered by the Board as a result of misconduct could not be recovered from him.

6. Aggrieved by this second show cause notice, the appellant is impugning the proceeding seeking to enhance the penalty already suffered by him and has approached this Court under Article 226 of the Constitution.

7. A preliminary point is raised by the appellant, contending that Annexure ''L'' the impugned show cause notice which has manifested itself on account of direction issued by the State Government amounts to a review of the order dated 24.08.2007, which in turn has resulted in culmination of disciplinary proceedings pursuant to the show cause notice dated 13.07.2000. It was specifically contended that the respondents are not vested with the power of review under the Regulations and that neither the Board nor the State Government can review an order, especially orders arising out of disciplinary proceedings. That being the case, the impugned show cause notice at Annexure ''L'' is wholly without jurisdiction.

8. It is further contended that the respondents if aggrieved, ought to have

preferred an appeal as provided under the Regulations (Karnataka Silk Marketing Board Limited (Staff) Regulations).

9. It is pointed out that Regulation 75 provides for the procedure for imposing penalties on the employees. Apart from the above preliminary point of the lack of power of review and consequential lack of jurisdiction, the matter has been argued on merits as well.

10. Per contra, the respondents would seek to resist the same on the premise that the Chairman and Managing Director who is the Disciplinary Authority has not imposed punishment which is commensurate with the misconduct. The direction by the Government to the Board to review the punishment, is sought to be supported on the premise that the Government has every power to direct the Board to set right any illegal orders passed by the Disciplinary Authority. It has been further contended that the writ petition preferred against a show cause notice is not maintainable. The learned Single Judge was pleased to entertain the writ petition and was pleased to hold that in terms of Article 18 of the Memorandum and Article of Association the State Government is empowered to issue directives from time to time notwithstanding anything contained in the Articles of Association. In that view of the matter, the learned Single Judge was pleased to uphold the validity of Annexure ''K'' on the premise that the letter is clearly a directive to the respondents - Board in consonance with Article 18. It is within the jurisdiction of the State Government to issue directive.

11. It is contended that the regulations do not empower the respondents with the power to review the order of the Disciplinary Authority. That the State Government does not have the competence to issue directions in the nature as set out in Annexure ''K''. In the same vein, the learned Single Judge was pleased to observe that the Regulations do not empower the power to review the order of the Disciplinary Authority but further proceeds to hold that the Article empowers the State Government to issue directives.

12. Whereas in para 14 the learned Single Judge has observed that "the Company in question is a Government Company. In a given case, if the top functionary of the company passes an illegal or an erroneous order prejudicial to the interest of the company, the Regulations do not empower the Board to review the said order". But the learned Single Judge has proceeded to hold that the Articles of Association has empowered the Governor to issue such directives. The basis of interpretation for the learned Single Judge is the expression "business of the company" employed in Article 18 and has held that it should not be understood in a narrow sense in order to restrict it to a activity of commercial nature alone. He proceeds further and holds that the word ''business'' has a wide import and has no definite technical meaning but with reference to the object and intent of the Act in which it occurs. Hence, the learned Single Judge proceeds to hold that if the Company is not managed properly, the Governor has the power to direct the Board to set right the Management of the Company. Therefore, the direction issued by the State Government vide Annexure ''K'' is

referable to Article 18 of the Articles of Association. Proceeding further, the learned Single Judge has held that in obedience of the said directions, the Board has issued the second show cause notice and hence, the learned Single Judge concluded that Annexures ''K'' and ''L'' the second show cause notice, being the direction to the Government to review the earlier order imposing penalty and consequently the second show cause notice are within the jurisdiction of respondents and sustainable in law.

13. The learned Counsel for the appellant would reiterate that in the absence of any express power of review, it is manifest that the State Government, cannot review its previous order and in this regard the learned Counsel for the appellant has relied upon a decision reported in Harbhajan Singh Vs. Karam Singh and Others, , Tikaram Vs. Mundikota Shikshan Prasarak Mandal and Others, and Committee of Management and Another Vs. Vice Chancellor and Others, .

14. The appellant''s Counsel submit that the case lies in a very narrow compass and that the appellant had been discriminated against while implementing the Government Policy of one time settlement to a defaulter to Karnataka Silk Marketing Board. The appellant''s Counsel would submit that the case of the respondents against the appellant is that while he was working as a Branch Manager had cause loss by granting excess credit i.e. over and above the sanctioned limits to one Samjulla Khan, M/s. KSR and Company and M/s. Paragon Silk Industries. He further submits that these excess credits were granted on the basis of the directions issued by the Head Office. The appellant''s Counsel draws our attention to Annexures N, P, Q, R and S. Annexure ''N'' is a Circular regarding credit policy, Annexure ''P'' is Official Memorandum issued by the respondents imposing certain conditions while extending credit facilities, Annexure ''Q'' is a letter of the General Manager (Marketing) to the appellant with regard to the representation of M/s. Paragon Silk Industries to the then Managing Director, Annexures ''R'' and ''S'' are the correspondences addressed to the then Managing Director requesting for AD HOC credit limits and that the Managing Director recommended the same. These documents clearly support the assertion of the appellant and there is no specific denial by the respondents. In the light of the documents, we are constrained to accept the contention of the appellant that he is not wholly guilty of the charges of unilaterally granting excess credits over the limits and the assertion that the same is on the direction of the Head Office assumes credence.

15. That apart, the attitude of the respondents has been astounding. It is not known for what or why the respondents have consistently sought to deny the benefit under the proceedings of the Government order dated 19.03.2013 whereby defaulters of the Karnataka Silk Marketing Board, were given an opportunity to settle the dues under a one time settlement scheme. It is an undisputed fact that out of the three defaulting clients, two of them have cleared the dues in their entirety. Only with regard to the third defaulter i.e. M/s. Paragon Silks, the appellant was unable to resolve the issue in view of the fact

that the Company has gone defunct and only due to the effort of the appellant the brother of the Proprietor of the Paragon Silks has come forward to clear the dues, by availing the one time settlement offered pursuant to the notification issued by the State Government.

16. It is relevant to state that during the pendency of this writ appeal, the said amount has been tendered before the Court on 25.09.2014 and this Hon''ble Court vide order dated 25.09.2014 was pleased to direct the respondents to receive the amount and take a decision in the case, in the light of the Government Order dated 24.07.2009 i.e. to extend the same benefits as has been extended to another defaulter Sri. K. Krishnaraju. Contrary to the direction issued by this Court, the Board by its Regulation dated 21.10.2014 was pleased to refuse the waiver of interest on the funds due from this defaulter alone. The reasoning trotted out by the Board is that in the case of Krishnaraju, the Board has twice rejected the proposal of waiver of interest and reviewed their order of rejection after the intervention of the Government and in view of the Government Order dated 02.09.2009 and that in case of M/s. Paragon Silks, no such Government Order is received by them. Thus, what could be made out is that, the case of Knshnaraju was considered because he was able to secure favourable orders from the Government. But in the instant case of the appellant, it is rejected as the said party is unable to secure favourable orders from the Government and other reasons trotted out is that condonation of such defaults would have an adverse bearing on the attitude of the employees and that other customers would make an example of this in future and fourthly, it is said that in view of the deteriorating the financial position of the company, having accumulated loss causes by 31.00 crores, any waiver of the interest will adversely affect the morale of the company employees. These reasons have to be tested in the background of the policy of the Government offering one time settlement to defaulters and also in the face of undisputed records whereby the State Government while implementing the one time settlement scheme has proceeded to close claims even as late as 2013-14. The appellant has furnished copies of the same. In respect of one H.M. Malladevaru, the interest of Rs. 19,39,751/- has been waived. Not only that, even the legal expenses of Rs. 73,078/- has been waived. It is also stated in the Affidavit that the said Malladevaru is a relative of one of the official of the Government. The appellant has also produced Annexure ''QQ'' which is a statement of One Time Settlement proposal accepted during the period 2006-07 and 2007-08. The One Time Settlement proposal of H.M. Malladevaru is also produced.

17. The appellant would also place on record an order of this Court in the case of one M.R. Srinivasa whereby the direction of this Court to waive the interest and accept the principal amount has been accepted by the respondents. The decision has been acted upon by the Board and the Board has found fit to accept the order dated 27.04.2012 in W.P. No. 47272/2011 and copy of the same is produced as Annexure ''SS''. Hence, in the light of these averments and documents, we are constrained to conclude that the prosecution of the appellant

borders on the realm of persecution. The reasons set out by the Board for rejecting one time settlement proposal is wholly unsustainable and the action of respondent - Board appears to be deliberate and motivated. The attitude of the respondents and its actions do not appear to be above board. The respondent as a model employer ought to have voluntarily placed all these records i.e. Annexures ''PP'', ''QQ'' before this Court. But having failed to do so there is no explanation as to why they have avoided placing the records before this Court. The respondent is not a private entity but a State Government undertaking and hence, is required to maintain the highest standard and also act as a model employer. In our estimation, the respondent - Board has fallen short of the standards, expected of a Public Sector Unit and model employer. In this background, we are constrained to hold that the resolution of the Board dated 21.10.2014 is arbitrary and discriminatory.

18. The next issue is whether the power of review is vested in the respondents. The undisputed position is, even as per the learned Single Judge, no power of review is vested in the Board and the said finding has not been appealed against and we are also in concurrence with the finding that no power of review is vested in the Board either under the Regulations or the Articles of Association.

19. That being so, the next question that falls for our consideration is whether Article 18 of the Articles of Memorandum of Association empowers the Government to review or order a review of a proceeding which is quasi-judicial in nature. It can also be alternatively looked from the stand point as to whether Article 18 has an over-riding effect over the specific appeal provisions provided under the Regulations 77 of the Karnataka Silk Marketing Board Limited (Staff) Regulations. In our considered view, the interpretation placed by the learned Single Judge in para 14 is partially correct. The import and impact of Article 18 can only be restricted to an illegal or erroneous order pertaining to the business of the Company and more particularly with regard to issues relating to finance and related aspects. Article 18 cannot be construed in the manner so as to be used as a review provision which enables the State Government to vary and alter even quasi-judicial decisions rendered by the Board or its nominees. It is a settled issue that power of review is a special power and authority can exercise it only if it is specifically invested with such power under the statute. The interpretation placed by the learned Single Judge so as to enable the State Government to review quasi-judicial proceedings of the Board is incorrect and is liable to be interfered with.

20. The learned Single Judge having held that no power of review is vested in the Authority under the Regulations and order imposing penalty on the appellant being a proceeding under the Regulations, the learned Single Judge erred in holding that it is within the competence of State Government to review or direct the Board to review its orders or quasi-judicial proceedings. Even if for a moment, the reasoning of the learned Single Judge that Article 18 confers power of review in the State Government is accepted. With regard to the "business of

the Company" it cannot be stretched to an extent to bring quasi-judicial proceedings within its ambit.

21. The next question that arises is whether the State Government could have exercised that power of review vested in it to direct the 2nd respondent - Board to review its own order. Admittedly, the power of review cannot be delegated nor is it delegated the power as succinctly held by learned Single Judge in the commencement of para 15:

"The Regulations do not empower the Board to review the order of the disciplinary authority." The learned Single Judge having held that the Regulations do not empower the respondent with the power to review the order of the Disciplinary Authority, erred in condoning the same merely because it is on a direction issued by the State Government. As stated supra, we are constrained to hold that even Article 18 of the Memorandum of Articles of Association, the 2nd respondent Company does not vest a power of review even in the State Government i.e. to review a quasi-judicial proceedings of the Board. We are convinced to arrive at this conclusion in the light of the Staff Regulations and more specifically in the light of Chapter 6 of the Staff Regulations, which deals with classification and Discipline and Appeal Rules. Regulation 71 provides for penalties both miner and manor, Regulation 72 provides for various Acts and Omissions which constitute misconduct, Regulation 73 provides for suspension, Regulation 74 provides for Procedure for imposing minor penalties and Regulation 75 provides the Procedure for imposing major penalties. More importantly, the Regulations 77 and 78. Regulations 77 and 78 which provide for Right of Appeal and Period of Limitation for appeals. Thus, the Regulations are a self-contained code applying in full force to all departmental/disciplinary proceedings giving no scope for any interpretation otherwise and one does not need to seek any external aid of the Memorandum of Articles of Association for dealing with the situations pertaining to disciplinary proceedings.

22. A right of appeal having been specifically provided and no right of review being reserved in the authority, the learned Single Judge erred in giving such a interpretation to Article 18 of the Memorandum of Articles of Association so as to read it as having invested in the respondents the non-existence power of review. The appellant has relied upon a judgment rendered by the Hon''ble Apex Court reported in Harbhajan Singh Vs. Karam Singh and Others, wherein it has been held that in the reserve provision in granting express power of review to the State Government with regard to the order made under Section 42 of the Act. In the absence of any such express power, it is manifest that Director cannot review his previous order. It is settled down that no appeal lies unless the statute vests such right of appeal in an aggrieved person. Similarly so, the power to review must also be conferred on the Authority specifically by the Statute.

23. It is undisputed that the appellant had already been charged, show cause notice issued, enquiry conducted and punishment imposed. It is settled law that no person can be punished twice for the same offence and the attempt under

Annexure ''L'' virtually amounts to the same. Annexure ''L'' is bad on several counts. Firstly, there cannot be a second show cause notice on the same set of facts nor there can be a show cause notice on the ground of inadequacy of penalty imposed. Neither the Regulations nor Articles of Association vested the Original Authority with the power to enhance the penalty already imposed and that could be done only by the Appellate Authority. The order not having been appealed against and much water having flown, we do not even deem it proper to grant liberty or leave to the respondents to prefer an appeal on the quantum of the penalty imposed.

24. In view of the above facts and circumstances of the case and the discussions, we are of the considered view that Annexures ''K'' and ''L'' to the writ petition are manifestly without jurisdiction and accordingly, the same are hereby quashed as being illegal and without the sanction of law.

25. In the above circumstances, the writ appeal is allowed. The order passed by the learned Single Judge dated 22.06.2009 in W.P. No. 13668/2008 is hereby set aside and consequently the orders passed by the respondents - Authority vide Annexures ''K'' and ''L'' to the writ petition are quashed and the respondents/ Authority are directed to settle the pensionary benefits of the appellant as expeditiously as possible at any rate within a period of three months from the date of receipt of copy of this Judgment.