
(2019) 09 DEL CK 0341

In the Delhi High Court

Case No : Civil Writ Petition No. 634 Of 2017

North Delhi Municipal Corporation

APPELLANT

Vs

Vinod Bansal

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 9 AD(Delhi) 447

Hon'ble Judges : G.S. Sistani, J; Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Kartik Jindal, M.K. Bhardwaj, Shubham Gairola

Final Decision : Dismissed

Judgement

G.S. Sistani, J

The petitioner is aggrieved by order dated 06.05.2016 passed by the Central Administrative Tribunal ('Tribunal') by which the OA filed by the respondent herein stands allowed.

2. Before considering the submissions made by counsel for the parties, we deem it appropriate to note some necessary facts which gave rise to the filing of the OA. At the relevant time the respondent was working as a Junior Engineer (JE) in the erstwhile Municipal Corporation of Delhi. In October 2007, he was posted in the Building Department, City Zone, where he was placed in-charge of the Maliwara area w.e.f 24.10.2007.

3. It is the case of the respondent that he noticed certain unauthorized construction being carried-out at property bearing No. 1419, Gali Kishan Dutt, Maliwara, Delhi. The respondent visited the said property on 30.10.2007 alongwith the vigilance team, when it was confirmed that unauthorized construction was being carried-out.

4. It also transpires that the owner of the said property had earlier filed suit No.

3010/2007 for restraining the petitioner/MCD from interfering with the renovation work in the said property. The vigilance team and the respondent reached a conclusion that under the scope of renovation, the property owner was carrying-out unauthorized construction. Consequently, the property was sealed on 16.11.2007 by the MCD.

5. An appeal was filed by the owner before the Appellate Tribunal MCD challenging the sealing action which was allowed and the property was de-sealed on 04.02.2008. The said property was re-sealed again on 18.02.2008, after it was noticed that the owner was trying to develop the property into a commercial complex. The owner yet again approached the ATMCD ; and by order dated 22.08.2008, the property was ordered to be de-sealed.

6. Subsequently, charge-sheet dated 16.03.2009 was issued to the respondent by the petitioner. Reply to the charge-sheet was filed. Not satisfied with the reply, Disciplinary Enquiry was initiated ; an Enquiry Officer was appointed ; and the respondent participated in the enquiry. Thereupon, the respondent was found guilty.

7. Accordingly, acting on the report of the Enquiry Officer, the Disciplinary Authority imposed the penalty of reduction in pay in the present time scale of pay, by two stages, for a period of two years with cumulative effect on the respondent.

8. An appeal was filed before the Departmental Appellate Authority, being the Lieutenant Governor of Delhi, who rejected the appeal vide order dated 19.10.2013 which led to the filing of the OA, in which the following reliefs were sought :

"(i) To quash and set-aside the impugned Order dated 17.08.2011/01.09.2011, 19.10.2013/06.12.2013.

(b) To declare the proceedings as initiated vide charge memo dated 16.03.2009 as illegal and unjustified and released all consequential benefits to the applicant from due date. Pecuniary loss may be compensated with 12% interest per annum of the amount.

(iii) To pass such other and further orders which their lordships of this Hon^{ble} Tribunal deem fit and proper in the existing facts and circumstances of the case."

9. Learned counsel for the petitioner has supported the findings of the Enquiry Officer and the order of the Disciplinary Authority. He submits that the Enquiry Officer has given a firm finding as regards negligence on the part of the respondent in not taking any action for 14 days after de-sealing the property, since by reason thereof the owner had got time to carry-out the unauthorized construction. Counsel for the petitioner is however unaware as to the present status of the property in question.

10. Mr. M.K. Bhardwaj, learned counsel for the respondent submits that there is

no infirmity in the order passed by the Tribunal. He further submits that the Tribunal has taken into consideration that the respondent was posted at the Building Department, City Zone and was incharge of the Maliwara area only for a period of four months i.e. between 24.10.2007 to 18.02.2008; and that, during this period, show cause notice was issued to the owner on 08.11.2007 ; a sealing order was passed ; and on 16.11.2007 the property was sealed. Counsel further highlights that it is the owner who approached the ATMCD and the property was de-sealed on 04.02.2008 under orders of the ATMCD ; and the owner carried-out unauthorized construction, against which show cause notice was again issued on 05.03.2008 and a demolition order was passed. Counsel submits that the respondent acted in a vigilant manner and was not only responsible for issuance of show cause notice but also for the property being sealed ; and thus he cannot be blamed if the owner of the property acted in a brazen manner in violation of the orders so passed. It is submitted that if the respondent was negligent in any manner, he would not have issued show cause notice or got the property sealed. Relying upon in the case of Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Limited (2014) 11 SCC 85, he further submits that the scope of interference in these proceedings is limited. Relevant paras of the said judgment are as under:

"19. In *Heinz India (P) Ltd. v. State of U.P.* [(2012) 5 SCC 443 : (2012) 3 SCC (Civ) 184 : (2013) 3 SCC (Cri) 198] , this Court, on the issue of the power of the High Court for judicial review under Article 226, held as under: (SCC pp. 467-68, para 60)

"60. The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of "judicial review? one is instantly reminded of the classic and oft-quoted passage from *Council of Civil Service Unions v. Minister for Civil Service* [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , where Lord Diplock summed up the permissible grounds of judicial review thus: (AC pp. 410 D, F-H and 411 A-B)

"... Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". ...

By "illegality" as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State is exercisable.

By "irrationality" I mean what can by now be succinctly referred to as

"Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system. ...

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an Administrative Tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

20. Further, in *Devinder Singh v. Municipal Council, Sanaur* [(2011) 6 SCC 584 : (2011) 2 SCC (L&S) 153] , it was held that: (SCC pp. 593-94, paras 20-22)

"20. ... A careful analysis thereof reveals that the High Court neither found any jurisdictional infirmity in the award of the Labour Court nor it came to the conclusion that the same was vitiated by an error of law apparent on the face of the record. Notwithstanding this, the High Court set aside the direction given by the Labour Court for reinstatement of the appellant by assuming that his initial appointment/engagement was contrary to law and that it would not be in public interest to approve the award of reinstatement after long lapse of time. In our view, the approach adopted by the High Court in dealing with the award of the Labour Court was ex facie erroneous and contrary to the law laid down in *Syed Yakoob v. K.S. Radhakrishnan* [AIR 1964 SC 477] , *Sawarn Singh v. State of Punjab* [(1976) 2 SCC 868] , *P.G.I. of Medical Education & Research v. Raj Kumar* [(2001) 2 SCC 54 : 2001 SCC (L&S) 365], *Surya Dev Rai v. Ram Chander Rai* [(2003) 6 SCC 675] and *Shalini Shyam Shetty v. Rajendra Shankar Patil* [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338] .

21. In *Syed Yakoob v. K.S. Radhakrishnan* [AIR 1964 SC 477] this Court identified the limitations of certiorari jurisdiction of the High Court under Article 226 of the Constitution in the following words: (AIR pp. 479-80, para 7)

"7. The question about the limits of the jurisdiction of the High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance,

it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised....?

22. In the second judgment, *Sawarn Singh v. State of Punjab* [(1976) 2 SCC 868] , this Court reiterated the limitations of certiorari jurisdiction indicated in *Syed Yakoob v. K.S. Radhakrishnan* [AIR 1964 SC 477] and observed: (*Sawarn Singh* case [(1976) 2 SCC 868] , SCC p. 872, para 13)

"13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice.?"

21. The judgments mentioned above can be read with the judgment of this Court in *Harjinder Singh* case [*Harjinder Singh v. Punjab State Warehousing Corpn.*, (2010) 3 SCC 192 : (2010) 1 SCC (L&S) 1146] , the relevant paragraph of which reads as under: (SCC p. 205, para 21)

"21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the

present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues. More than 41 years ago, Gajendragadkar, J. opined that:

"10. ... The concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of welfare State.

(State of Mysore v. Workers of Gold Mines,[AIR 1958 SC 923])"

11. Having considered the submissions made, we find no infirmity in the view taken by the Tribunal, especially since out of the four charges, three charges have in any case not been proved. As far as fourth charge is concerned, it is evident that the respondent was posted in the concerned area only for a period of four months and during that period, it is clear that he took action against the owner and not only stopped the work but even sealed the property.

12. In view of the above, we find no merit in the present writ petition ; and the same is accordingly dismissed.