
(1987) 01 CAL CK 0009
In the Calcutta High Court

Prasanta Chandra Sen

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-01-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 67 CompCas 87

Hon'ble Judges : Umesh Chandra Banerjee, J

Bench : Single Bench

Advocate : Bhaskar Gupta and Samir Chakraborty, for the Appellant; Sanjoy Bhattacharya and Chandrima Bhattacharya, for the Respondent

Final Decision : Allowed

Judgement

Umesh Chandra Banerjee, J.—These two writ petitions by the selfsame writ petitioner pose certain interesting questions of law as regards the pleasure theory of the President of the Union of India under the Constitution, as also the jurisdiction of the writ court to intervene at the initial stage of a departmental proceeding.

2. Before advertng to the contentions raised, a brief reference to facts ought to be made at this juncture. The petitioner was appointed as the chairman and managing director of Burn Standard Co. Ltd. by an order dated January 11, 1982, by the President of India in exercise of the powers under Article 83 of the articles of association of the company for a period of two years at the first instance with immediate effect. Subsequently, by an order dated January 25, 1984, the two year-term was extended by a further period of three years and up to January 21, 1987. Under the above noted memorandum, the President was also pleased to allow the petitioner to hold the current charge of the post of chairman and managing director of Bharat Brakes and Bulbs Ltd. with effect from November 9, 1983, and until further orders. The terms and conditions of the petitioner's appointment as appears from a memorandum dated August 31, 1982, read as follows :

"(i) Sri Sen's appointment as chairman and managing director in Burn Standard Co. Ltd. will be initially for a period of two years from the date he took over the charge of his present assignment, i. e., January 22, 1982.

(ii) Sri Sen's appointment as chairman and managing director in Burn Standard Co. Ltd. will be terminable by either side on three months' notice or with salary in lieu thereof without assigning any reason ;

(iii) Sri Sen will be allowed a pay of Rs. 3,500 p. m. in the scale of Rs. 3,000-125-3,500 with effect from the date of his appointment as chairman and managing director of Burn Standard Co, Ltd., i.e., January 22, 1982."

3. By a letter dated July 18, 1986, the petitioner, however, submitted his resignation as chairman and managing director of Burn Standard Co. Ltd., Bharat Brakes and Bulbs Ltd. as also Braithwaite Burn and Jessop Co. Ltd. The petitioner, while submitting his resignation, intimated to the Secretary, Ministry of Industry, Department of Public Enterprises, that his outstanding leave may be taken as adjusted for the purpose of notice in terms of Clause (iii) of the terms and conditions on which he had joined as chairman and managing director. The language of the letter of resignation is of some consequence and as such, the relevant extract of the same is set out hereinbelow for proper appreciation :

"In the circumstances, it is very difficult for me to continue working in Burn Standard Co. Ltd. and I would like to leave immediately but can stay on till 31st July, 1986.

Therefore, I hereby submit my resignation as chairman and managing director of Burn Standard Co. Ltd., Bharat Brakes and Bulbs Ltd. and Braithwaite Burn and Jessop Co. Ltd."

4. On the last day of his office, viz., July 31, 1986, the Director of the Department of Public Enterprises, Ministry of Industry, Government of India, intimated to the petitioner about the non-acceptance of the resignations. Another memorandum bearing the same date was also served on the petitioner, wherein it has been stated that since disciplinary proceedings are contemplated against the petitioner, the President has placed the petitioner under suspension with immediate effect, i.e., July 31, 1986.

5. These two orders, viz., the orders of non-acceptance of the resignations as well as the order of suspension have been challenged by the petitioner in the first writ petition as being totally mala fide.

6. Subsequent to the filing of the aforesaid writ petition, the petitioner was served with a charge-sheet dated August 22, 1986, and the petitioner has also filed a writ petition, inter alia, contending that the charge-sheet has been issued with the mala fide intent of harassing the petitioner without any basis as the charges by themselves do not justify its issuance. At this juncture, the articles of charges framed against the petitioner ought also to be noticed which read as follows :

"Article I. -- That while working as chairman and managing director, Burn Standard Co. Ltd., Shri P.C. Sen (now under suspension) acted in a manner highly unbecoming to a person in his position inasmuch as he exercised financial powers in excess of his competence and in gross violation of the applicable rules, regulations and other standing instructions.

Article II. --Shri P.C. Sen had sought Central Government's sanction for the company's proposal for setting up facilities for manufacture of offshore platforms and its allied components at Jellingham, District Midnapore, West Bengal, proposing a capital outlay to the tune of Rs. 8.44 crores and the needful sanction in this regard for the same amount (Rs. 8.44 crores) was duly conveyed to the company. The actual expenditure incurred/committed till March 31, 1986, had run to the tune of Rs. 22.30 crores. As the excess expenditure incurred/committed was without the prior approval of the board and the Government, the same amounts to an act of misconduct on the part of the said Shri Sen in terms of Rule 5(9) of the Conduct, Discipline and Appeal Rules, 1976, of Burn Standard Co. Ltd.

Article III.--That said Shri Sen had wilfully misrepresented the facts and misled the board and the Government while stating that the change of site for the offshore project from Nazirganj Works, Howrah Works and Foreshore Road to Jellingham would not disturb the overall outlay as cleared by the Government. Implementation of the project has, however, reflected that an additional amount to the tune of Rs. 3.19 crores has been incurred for just the change of site. Shri P.C. Sen, has thus, committed misconduct, by violating Rule 5(9) and Rule 5(20) of the Conduct, Discipline and Appeal Rules, 1976, of Burn Standard Co. Ltd.

Article IV. -- Shri. P.C. Sen after submitting his resignation letter, managed to get transferred to Texmaco, a private company, an order for supply of 72 numbers, of BOM wagons, which otherwise were to be manufactured and supplied by the Burn Standard Co. Ltd. for the defence authorities, Shri P.C. Sen has thus helped a private sector at the cost of the public sector. This amounts to acting in a manner prejudicial to the interests of the company as provided in Rule 5(5) of the Conduct, Discipline and Appeal Rules, 1976, of Burn Standard Co. Ltd."

7. Since the issues are common in both these writ petitions, the same were heard analogously and been disposed of by one judgment and order.

8. Mr. Bhaskar Gupta, appearing in support of the petition, first contended that by reason of the specific terms and conditions of service regulating the service of the petitioner as managing director of Burn Standard Co. Ltd., the letter of resignation, as noted above, is absolute and the question of any option not to accept the same does not and cannot arise. Mr. Sanjoy Bhattacharya, appearing for the respondents, on the other hand, submitted that by reason of the provisions as contained in Article 88(4), the question of the petitioner's resigning from the office does not arise. The letter dated July 18, 1986, can, on proper construction at best, be termed to be an offer to resign and not a letter of

resignation. Mr. Bhattacharya, further submitted that Article 88(4) of the articles of association had overriding effect over all other aspects of the matter.

9. While it is true that the importance and the applicability of the provisions of the articles of association cannot be undermined by any stretch, the issue arises whether the article supports the contention of Mr. Bhattacharya that Article 88(4) is a complete bar as against the contention as raised by the writ petitioner, and on this score, the provisions of the articles of association ought to be considered in their proper perspective. Article 88(5) provides that the directors shall hold office at the pleasure of the President and on such terms and conditions as the President may determine from time to time.

10. Article 88(5) provides that the President shall have the right to remove or dismiss at his pleasure, the chairman, managing director and other directors for any reason whatsoever and shall have the right to fill in the vacancies in the office of the chairman, managing director or the directors caused by the removal, dismissal, resignation, death or otherwise.

11. Article 90(1)(i) provides that the office of a director shall ipso facto become vacant if a director by notice in writing to the company resigns his office.

12. Whereas the petitioner contended that the articles, if read together and harmoniously, would leave no manner of doubt that the pleasure of the President is in regard to the removal or dismissal from office since the expression "hold office" means and implies that the concerned officer can be removed at any time by the President at his pleasure, the respondents, on the other hand, contended that the inclusion of Article 88(2) unmistakably suggests otherwise.

13. Article 88(2) is set out hereunder :

"88(2). The chairman or the board of directors and the directors representing the Government of India shall be appointed by the President ; other directors shall be appointed by the President in consultation with the chairman. The tenure of office of such director shall be as specified in the terms of their appointment."

14. It was contended that if the interpretation of the petitioner be deemed to be correct, then and in that event, article 88(2) would have been sufficient and there was no necessity of having Article 88(4) in the articles of association of the company, more so by reason of the provisions of Section 88(5). As such, it was contended, the expression "shall hold office" means and implies both removal as well as resignation and it is up to the President to accept the same or not to accept the same. I am, however, unable to accept the contention raised on behalf of the respondents that article 88(4) is an absolute power vested in the President of the Indian Union as regards the non-acceptance of the resignation of the chairman or managing director or other directors. The letter of appointment and the conditions of service prescribe that the petitioner's appointment as chairman and managing director will be terminable by either side on three months' notice or with salary in lieu thereof without assigning any reason. Does that mean that

this particular term or the conditions of service is a meaningless jargon or it would have some effect or a binding effect between the parties ?

15. Article 88(4) read with Article 88(5), in my view, unmistakably suggests that the President's power is restricted to removal or dismissal : "Shall hold office" cannot but mean shall continue to remain in office and the position has been clarified by insertion of Article 88(5) wherein specific instances have been given as regards the President's power to remove or dismiss the concerned person. Sub-articles (4) and (5) of Article 88 ought to be read together and harmoniously and not independent of each other. On a proper construction of the articles, it cannot embrace "resignation" within the concept of the President's pleasure. A contra view would be a violent departure from the well-settled principles of interpretation. This construction moreover would give effect to the condition of service as noted above its full play. Otherwise, the same would have to be read as a mere useless condition of service which ought not to be readily inferred by the law courts while interpreting the conditions of service vis-a-vis the articles of association. The power of the President is not undermined by this interpretation but, on the contrary, the articles would be given full play and not a restricted play, which the courts ought to avoid while interpreting such instruments.

16. As regards the other contention of Mr. Bhattacharya that the letter of resignation cannot and ought not to be termed to be a letter of resignation in terms of Article 90(1) of the articles and at best it is an offer to resign and not a resignation letter, Mr. Gupta contended that there cannot be any specific form of the notice. As long as the intent is clear, unambiguous and categorical, there would be no difficulty in that direction. I am inclined to accept the contention of Mr. Gupta. Had there been a requirement at all to that effect in the statute itself, the position might have been different. In no uncertain terms, the petitioner intimated his intention that he can stay up to July 31, and not beyond that and considering the language used, the question of the letter being an offer to resign does not and cannot arise. There was a clear unequivocal expression of the petitioner.

17. Reliance was placed by Mr. Bhattacharya in regard to the pleasure theory on the decision of the Supreme Court in the case of *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . In that decision, the Supreme Court, after dealing with the various aspects of the matter in regard to Articles 309, 310 and 311, observed (at page 761) :

"The discussion yields the following results : (1) In India, every person who is a member of a public service described in Article 310 of the Constitution holds office during the pleasure of the President or the Governor, as the case may be, subject to the express provisions therein. (2) The power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate officer and can be exercised by him, only in the manner prescribed by the Constitution. (3) This tenure is subject to the limitations or qualifications mentioned in Article 311 of the Constitution. (4)

Parliament or the Legislatures of States cannot make a law abrogating or modifying this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Article 310, as qualified by Article 311. (5) Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action without affecting the powers of the President, or the Governor under Article 310 of the Constitution read with Article 311 thereof. (6) Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of "reasonable opportunity", embodied in Article 311 of the Constitution ; but the said law would be subject to judicial review, (7) If a statute could be made by Legislatures within the foregoing permissible limits, the rules made by an authority in exercise of the power conferred thereunder would likewise be efficacious within the said limits."

18. In my view, however, the above noted decision does not lend any assistance to Mr. Bhattacharya's contention. Similar is the position in regard to the decision of this court in the case of Superintendent now designated as the General Manager, Metal and Steel Factory and Others Vs. Suklal Morar, .

19. In view of the aforesaid, it can safely be concluded that the pleasure of the President, as embodied in Article 88(4) of the articles of association, cannot and ought not to be given a wider meaning than is intended, as would appear upon a harmonious construction of the provisions of Sub-articles (4) and (5) of Article 88. Can it be said that since a government official has been appointed by the President of the Indian Union, he is not even free to resign from the office ? In my view, that would be putting a much wider meaning and restriction than is intended by the articles of association which the law courts ought always avoid.

20. Judging the matter from the other perspective, the concept of bonded labour can no longer be invoked thanks to the progress of society wherein the feudal concept has made a quiet departure. Simply because a person has entered into an agreement, assuming the contention of the respondents to be correct, he would be deprived of his right to resign. In my view, the same would be in the facts and circumstances of the matter under consideration, contrary to all known principles of law.

21. Turning thus unto the next issue, viz., the suspension and the charge-sheet, it will have to be seen whether the charge-sheet itself disclosed even prima facie, some involvement of the petitioner. The order of suspension, is co-related with the charge-sheet since it has been stated that the order of suspension has been issued by reason of the fact that a disciplinary proceeding is contemplated and the charge-sheet immediately followed thereafter. It is, therefore, to be seen whether the charge-sheet by itself can be termed to be so as to prima facie establish the petitioner's involvement in the matter in issue. In order to appreciate the contentions raised in this direction, the statements of imputation of misconduct in support of the articles of charge framed against the petitioner are set out hereunder :

"Article I. -- The chairman and managing director of a company can incur expenditure in excess of the sanctioned amount to the extent of 10% in the interest of expeditious completion of the project. Even this excess expenditure is to be brought to the notice of the board at the earliest. Excess expenditure of more than 10% has administrative ministry. Even the administrative ministry is not competent to incur excess expenditure of more than 20%. In spite of these instructions, Shri P. C. Sen incurred excess expenditure to the extent of 37.8% in the first instance and thereafter he went on incurring excess expenditure and made firm commitments to the extent of 300% of the sanctioned amount. Thus, he violated all norms of financial discipline and thereby committed misconduct as per Rule 5(9) of the Conduct, Discipline and Appeal Rules, 1976, of Burn Standard Co. Ltd.

Articles II and III. -- Shri P.C. Sen had given a proposal to Government that facilities for manufacture of offshore platforms to the extent of 7,500 TPA could be set up with a capital investment of Rs. 8.44 crores. He subsequently informed Government that there would be no extra investment on account of change of site. Thereafter, he informed the Government that the estimates were being exceeded and that also not by small amounts but substantially. Thus, he wilfully misled the board of directors and the Government. This wilful misleading of the board of directors and the administrative ministry amounts to an act of major misdemeanour on the part of Shri P.C. Sen in terms of Rule 5(9) and Rule 5(20) of the Conduct, Discipline and Appeal Rules, 1976, of Burn Standard Co. Ltd.

Article IV.--The Railway Board (on behalf of the Defence Authorities) had placed an order for 222 numbers of BOM wagons and the same was divided between Texmaco (100 wagons) and Burn Standard Co. Ltd. (122 wagons). The company without any valid resort has gone ahead and written to the Ministry of Railways for transfer of 72 numbers of BOM wagons to Texmaco, a private company, out of the share of Burn Standard Co. Ltd. The Railways have since accepted the request of the company and transferred 72 numbers of BOM wagons to Texmaco. This act of Shri. P.C. Sen has prejudicially affected the interest of the company and helped the private sector. Shri P.C. Sen, has, thus, acted in a manner prejudicial to the interests of the company, in violation of Rule 5(5) of the Conduct, Discipline and Appeal Rules, 1976, of Burn Standard Co. Ltd."

22. From the narration above, it appears that the petitioner has been charged under Rule 5(5), 5(9) and 5(20) of the Burn Standard Company Limited Conduct, Discipline and Appeal Rules, 1976. The above-noted rules are also set out hereinbelow for proper appreciation :

"Rule 5 : Misconduct. -- Without prejudice to the generality of the term "misconduct", the following acts of omission and commission shall be treated as "misconduct".....

(5) Acting in a manner prejudicial to the interest of the the company.

(9) Neglect of work or negligence in the performance of duty including

malingering or slowing down of work

(20) Commission of any act subversive of discipline or of good behavior"

23. Let us, therefore, consider as to whether from the charges read with the imputations, it can be said that the petitioner was acting in a manner prejudicial to the interests of the company or there is any neglect of work or the act of the petitioner can be termed to be subversive of discipline or of good behaviour.

24. As regards the first article of charges, it has been stated that the petitioner has exercised financial powers in excess of his competence and in gross violation of the applicable rules, regulations and other standing instructions. The imputations in that regard record that the petitioner has violated all norms of financial discipline and thereby committed misconduct as per Rule 5(9) of the Rules of 1976. Rule 5(9), as noted above, deals with neglect of work in the performance of duty. It does not at all deal with exercise of financial powers in excess of the employee's competence. Neglect of work or negligence in the performance of duty cannot by any stretch be equated with that of excess of financial power. Rule 5(9) is specific as regards the nature of misconduct. It is to be noted that the imputations would have to be read along with the article of charge and not de hors the same. As such, in my view, the facts disclosed in the imputations by themselves do not bring home the charge of misconduct under Rule 5(9).

25. As regards Articles 2 and 3, the imputations, as noted above, provide that there was a wilful misleading of the board of directors as regards the change of site which as per the imputations amounts to a misdemeanour on the part of the petitioner in terms of Rule 5(9) and Rule 5(20) of the Rules of 1976. As noted above, Rule 5(9) deals with the neglect of work and Rule 5(20) deals with, the commission of any act subversive of discipline or of good behaviour. In my view, the conduct alleged does not amount to wilful misleading of the board of directors." Neglect of work or slowing down the work or commission of any acts subversive of discipline or of good behaviour, does not go hand in hand with wilful misleading of the board of directors in the matter of extra investment for change of site of the offshore platforms. I will deal with Article 4 of the charge subsequently, since that is a matter which is completely different in nature.

26. The view expressed above would have been sufficient to deal with Articles 1, 2 and 3 of the charges read with the imputations, but judicial decorum prompts a detailed discussion on the subject since elaborate submissions have been made in that direction by both the parties.

27. Before doing so, however, it would be worth while to record the case made out by the respondent-authority in the counter-affidavit. The respondents state :

"I say that the purported memorandum of charges have been issued in due and bona fide exercise of the powers vested in the respondent as respondents Nos. 1 and 2 were prima facie satisfied that the omissions and commissions on the part

of the petitioner amount to a misdemeanour and/ or misconduct warranting an enquiry to bring home the truth."

28. The respondents further go to say:

"I further say that the minutes of the relevant board meetings and other documents as collectively marked "H" could be considered only by the enquiring authority. I crave leave to refer to the same for its true term, scope and effect. I further say that the annexure "H" prima facie reveals gross irregularities committed by the petitioner to which I crave leave to refer at the time of hearing of the petition."

29. The issue, therefore, arises as to whether there was proper intimation of the extra expenditure required for the purpose or not. The statement of imputations in support of the charge-sheet go to show that there was in fact intimation to that effect. The statement of imputations in Articles 2 and 3 categorically show that the petitioner informed the Government that there would be no extra investment on account of the change of site. Thereafter, the petitioner informed the Government that the estimates were being exceeded. If there was proper information at this stage of estimates, and if the Central Government had not taken any step for stoppage of work, can it be said that the conduct was such so as to be termed to be a wilful misleading of the situation ? In my view, the answer ought to be in the negative. It is to be noted and as appears from the minutes of the 47th board meeting, being agenda that in view of the urgency and in order to expedite completion of the project and to maintain the delivery commitments to the ONGC, it was felt that the work at site should start immediately even without waiting for a detailed project report prepared by the consultants. Since preparation of such a project report takes about 8 to 9 months and since at that stage there was hardly that much time available and since it was felt that the preliminary work like preparation of specifications, tendering, etc., should be taken up so that immediately on receipt of approval from the PIB, the work can proceed on top-most priority. The PIB clearance was accorded on December 6, 1984, for a sanction cost of Rs. 8.44 crores and in the investment proposal it had been categorically mentioned that if and when the need for expanding the facilities arises, proposal for further investment would be put up. The 47th board meeting further records :

"After considering the capital outlay mentioned in para 21.1 and 21.2, it became apparent that the project could not remain viable at 7,500 TPA (equivalent to 2 platforms) and the minimum requirement was a capacity of 10,500 TPA (equivalent to 3 platforms). Certain common expenses regardless of yard capacity were considerably higher and some of these were not included in the original project report. It was, therefore, felt that the work should not be stopped after reaching the expenditure of Rs. 8.44 crores as this would have brought the project to a halt at a stage when not a single platform could be fabricated.

Break in activity at this stage in addition to interest on idle capital would have

adversely affected the momentum of project construction and tarnished the company's image before the ONGC who are quite impressed with the potential of BSCL's yard. Therefore, the company had perforce to continue with the work so that the yard along with its infrastructure is completed for fabrication of 3 platforms (10,500 TPA)--a level (up to March 31, 1986) of Rs. 18.61 crores was incurred with a further commitment of Rs. 3.68 crores.

22.0 The company, therefore, proposed to construct a yard at an expenditure up to Rs. 2,480.39 lakhs for 10,500 TPA including the sanctioned amount of Rs. 844 lakhs for 7,500 TPA.

23.0 The expenses, therefore, would be as under :

Description	Original estimate in Rs. lakhs for 7,500 TPA	Rs. in lakhs for 10,500 TPA	Remarks
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(a) Preliminary and land development expenses	39	36.21	
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(b) Hard standing areas --	123.46	not foreseen earlier	
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(c) Infrastructure --	22.45	not foreseen earlier	
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(d) Utilities--water supply, generating set, etc. --	147.56	not foreseen earlier	
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(e) Civil works and non-residential buildings	203	337.71 for 10,500 TPA	
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(f) Cost of water-proof basin, bulk head and extra dredging --	1,010.00	not foreseen earlier	
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(g) Plant and equipment	570	737.88 for 10,500 TPA	
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(h) Labour and officer accommodation --	33.12	not foreseen earlier	
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(i) Collaboration fees	32		
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	32.12	not foreseen earlier	
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	844		
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24.0 It may be added here that the subsequent order for four platforms (para 12.0 referred to above) was placed with BSCL by ONGC on the strict understanding that BSCL will promptly implement the development of the yard. The ONGC/EIL representatives who came to inspect the readiness of the yard and the status position of the order, appreciated the progress made. This fact has also been corroborated by the foreign collaborator.

25.0 Having regard to the facts mentioned above, the company proposes to continue the Jellingham Project beyond sanction of Rs. 844 lakhs accorded by the Government and to implement the project up to the capacity of 10,500 TPA at a cost of Rs. 2,480.39 lakhs for a capacity of 7,500 TPA. The additional expense is, therefore, Rs. 1,639.39 lakhs"

30. Article 2 of the charges records that the excess expenditure incurred/

committed was without the prior approval of the board and the Government. The facts, however, go to show the contrary. The board of Burn Standard Co. have been kept informed at all stages and on the basis of the documents disclosed, it can never be said that the board was not informed of such a change.

31. Incidentally, once before, the conduct of Shri P.C. Sen was enquired into by the Vigilance Commission through the intervention of the Department of Public Enterprises, Government of India and the Central Vigilance Commission reported as follows :

"The Commission fully agrees with the Department of Heavy Industry that there is no case against any of the officers. Rather Shri Sen had acted most prudently under the circumstances and within the constraints of the legal format of the contract. Shri Sen in fact deserves commendation for having increased the contract terms in favour of Burn Standard Company. While advising closure of the case, the commission would also suggest that the Department may duly inform Shri Sen about this, so that the morale of such good officers do not suffer due to false complaints."

32. Mr. Bhattacharya submitted that these comments were not in pursuance of the charges levelled against the petitioner at this stage, but the same relates to a different issue. Giving full credence to Mr. Bhattacharya's statements, the fact remains that up to December, 1985, the Vigilance Commission was of the view that the morale of an officer like that of the petitioner ought not to suffer by reason of false complaints : what are the acts of commission and omission ? As per the charge-sheet, there is an unauthorised expenditure or commitment to that effect. The board has reproduced in detail whatever has been happening. Proper information have also been given to all concerned under the law. Can it then be said that this has led to a wilful misleading of the Government or the company : can it also be said that there is any financial loss to the Government ? The charge-sheet is delightfully silent on that score. Had there been a charge to the effect of personal gain and personal motive resulting in financial loss to the company, the issue would have been a completely different one. The charges mainly state wilful misleading of the company. Such an effect to mislead the company when the 47th board meeting categorically records what has transpired in the meantime cannot be, in my view, termed to be a wilful misleading of the company.

33. The petitioner, as appears from record, joined the service of the Indian Railways in the year 1949 and gradually rose up to the rank of Deputy Chief Mechanical Engineer in the Eastern Railway. In 1970, the petitioner resigned from the Indian Railways and thereafter served various organisations--both in the private sector as well as in the public sector and during this period, the petitioner was acting as the managing director of Wasting House Saxby Farmer Ltd., Britannia Engineering Co. Ltd., Durgapur Chemicals Ltd., East India Plastics (India) Ltd. and American Refrigeration Co. Ltd. There were no complaints from anyone of these organisations --even in the public sector. The Vigilance

Commission's reports also clear him against a complaint and his efficiency was once again decided and integrity certified. In the face of these facts, can it be said that the petitioner is guilty of misconduct warranting investigation of his conduct ? In my view, the facts as corroborated by records do not lend support to such a contention.

34. Turning now to the last contention as regards the last article of charge in the charge-sheet, it was submitted on behalf of the petitioner that the action of the petitioner in this regard was in the best interest of the company and to benefit the company. As such, the question of acting prejudicially to the interest of the company does not and cannot arise. In this context, the petitioner specifically relied upon the correspondence exchanged between the company and the Ministry of Transport, Department of Railways. By a letter dated January 3, 1986, it has been recorded as follows :

"We were advised that we have already represented to the Railway Board our letter dated 21st September, 1985, highlighting certain specific points for the Railway Board's favourable consideration in view of the urgency of the requirements of these wagons. We took up the work in hand immediately on receipt of the order with the expectation that our representation made earlier would receive the Railway Board's favourable consideration at the earliest.

It may kindly be observed from the representation made by us that there is a wide difference between bought out price as stipulated in the Railway Board's contract and the actual basic component cost per wagon

Unfortunately, inspite of our taking up the matter repeatedly, no relief has come so far from the Railway Board in this regard Moreover, we had represented in our earlier letter that considering the total quantity of steel involved, the basic fabrication cost allowed by the Railway Board is very much on the lower side compared to those allowed by the Railway Board for BOM wagons.

However, since we have already started manufacture of these wagons, we find that considering the amount of work involved, particularly the welding and massive jigs and fixtures required for this type of wagon and the quantity on order being relatively small with hardly any prospect of getting repeat orders, there is wide difference between the price offered by the Railway Board and the actual cost being incurred by us."

35. Subsequently, on March 11, 1986, the company informed as under :

"In view of these multifarious constraints, we feel that it will not be possible for us to deliver 122 wagons in time. Being advanced requirement we understand the implication of the delay in manufacture and would, therefore, request you to consider transferring 62 wagons (8-wheeler units) to be re-allocated for manufacture to some other wagon-builders;"

36. On March 31, 1986, the Government of India, Ministry of Transport, Department of Railways, informed the company to the following effect :

"You have requested for diversion of 62 wagons to some other wagon builder due to certain difficulties in your factory. This request has been considered and accepted as a special case without prejudice to our rights under the contract. The above mentioned order is being amended accordingly. The manufacture of 62 wagons cancelled from your order will now be allocated to Texmaco."

37. Eventually, on July 28, 1986, the request was made to transfer 72 numbers of wagons to Texmaco. It is this letter which has been taken into consideration while issuing the charge-sheet against the petitioner that the petitioner has managed to get a transfer to Texmaco of the order for supply of 72 numbers of BOM wagons which is prejudicial to the interest of the company as provided in Rule 5(5).

38. From the above reproduction of the correspondence, it is apparent and clear that by reason of lack of any repeat order, the manufacture of BOM wagons has been turned out to be a non-profitable one and at a definite disadvantage to the company. The costing allowed by the Railway Board has been on the lower side and had there been a mass production, probably this could have been slightly more profitable but not otherwise. The Railway Board has accepted the proposal and turned on to allocate the same quantity to Texmaco. The charge-sheet proceeds on the basis as if the petitioner procured the order for Texmaco which cannot be, in my view, substantiated from the records. In that view of the matter, I am of the view that the conduct of the petitioner cannot be termed to be such as to attribute prejudice to the interest of the company. As such, the question of committing misconduct within the meaning of Rule 5(5) of the Conduct, Discipline and Appeal Rules, 1976, does not and cannot arise.

39. Mr. Bhattacharya strenuously contended that it is for the enquiring authority rather than the High Court to go into the issues raised therein. I am, however, unable to accept the contention. If on the fact of the charge, it seems to be a mere absurdity and a predominant feature in harassment, the writ court will not permit a harassing enquiry. To step and to quash a harassing enquiry would be a plain exercise of judicial power under article 226 of the Constitution. Justice is to be administered on the basis of the facts as appears from records and if the court finds that the facts not only depict a harassing attitude but a definite attempt to humiliate and to lower the prestige and dignity of the concerned officer, the court will not refuse the relief to the person who seeks such a relief. The petitioner had been working as a managing director and chairman of the company since his appointment. There is no whisper at any point of time about lack of integrity. On the contrary, the Vigilance Commission records its appreciation so as not to affect the morale of the concerned officer.

40. In the result, the two writ petitions filed by the writ petitioner -- one against the order of suspension and the other against the charge-sheet being utterly mala fide succeed. The order of suspension is set aside and quashed. The impugned orders --both dated July 31, 1986, are set aside so also the charge-sheet.

41. There will, however, be no order as to costs.