
(2007) 09 DEL CK 0182

In the Delhi High Court

Case No : Writ Petition (C) No. 5023 of 1999 and Cont. Case (C) No. 627 of 2000

Prem Kumar

APPELLANT

Vs

Indian Road Construction Company Ltd. and Another

RESPONDENT

Date of Decision : 28-09-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 98 DRJ 546

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Maninder Acharya, for the Appellant; Arun Jamwal, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—By this common judgment, this Court proposes to dispose of both, the writ petition and the contempt petition. For the sake of convenience, facts of WP(C) No. 5023/1999 are taken note of.

2. The petitioner has filed the present petition, praying inter alia, amongst others, for issuance of writ of certiorari, for quashing the letters dated 16th April, 1999 and 29th June, 1999, issued by respondents, Indian Road Construction Corporation Ltd (hereinafter referred to as "the I.R.C.C.") calling upon the petitioner to pay a sum of Rs. 75,829.80 paise purportedly released as excess advance to the petitioner on account of foreign tour settlement claim towards Travel allowance/Dearness allowance, and for quashing a resolution passed by the Board of Directors of I.R.C.C.L. in their meeting held on 28th June, 1999, making the instructions issued by Department of Public Enterprises (for short "DPE") dated 20th September, 1995 enforceable from the date of issue of the Office Memorandum dated 11th October, 1995 by the Ministry of Surface Transport, Government of India (hereinafter referred to as `the MOST").

3. The undisputed facts of the case are that the petitioner was employed as

Manager (Mechanical) with the I.R.C.C., a company incorporated under the Companies Act, 1956. The I.R.C.C., who was in the business of carrying out construction activities, was working in the year 1978-79 on a project in Libya, which was finally handed over to its client in October 1993. In the meeting of the Board of Directors of the I.R.C.C. held on 4th August, 1977, the RBI rules/guidelines for payment of daily allowance to its employees who were traveling abroad were adopted. The aforesaid guidelines were revised by the RBI on 6th August, 1994 fixing the daily allowance of all the employees in PSUs who were traveling abroad.

4. In the year 1996, a Committee of three officers, namely, General Manager (Civil), Senior Manager (Equipment) and the petitioner were deputed by the I.R.C.C. for an official visit to Libya. The tour of the petitioner to Libya was duly approved by the Board of Directors in its meeting held on 17th July, 1996 wherein it was resolved that the petitioner being a junior ranking executive, would be paid travel allowance @ US \$175. Thereafter, the petitioner was sanctioned US \$ 3102 plus Rs. 1,915 totalling to Rs. 1,12,137/- in Indian currency to meet the expenditure on various heads, including transit visa, ship fare and daily allowance for expenses towards the stay of the petitioner, food, transportation etc. On his return from the tour, the petitioner submitted his daily allowance claim on 30th April, 1997, for adjustment of advance given to him as per the rules of the I.R.C.C.

5. After a gap of one and a half years, the respondent No. 2 issued a letter dated 13th October, 1998 to the petitioner raising a recovery of US \$ 237.23, equivalent to Rs. 10,082.30 paise against the petitioner in respect of his travel allowance/daily allowance for the aforesaid foreign tour undertaken in the year 1996. Upon receipt of the aforesaid intimation, the petitioner submitted his reply dated 30th August, 1998 pointing out certain calculation errors, on the basis of which the I.R.C.C. issued a letter dated 11th December, 1998 accepting the calculation errors and reducing the amount of recovery from the petitioner to US \$ 137.23, equivalent to Rs. 9,838/- in Indian currency, which was finally deducted from the salary of the petitioner.

6. It was contended by the counsel for the petitioner that after the aforesaid deduction was made from his salary, as far as the petitioner was concerned, the matter stood closed. However, to his utter shock and disbelief, the respondent No. 2 issued yet another letter dated 16th April, 1999 to the petitioner followed by letter dated 29th June, 1999, informing him that an excess advance of Rs. 79,835.80 paise was recoverable from him in respect of his visit to Libya and the petitioner was called upon to pay the said amount forthwith. While issuing the aforesaid letters, the respondent No. 2 relied upon the decisions taken by the Board of Directors of I.R.C.C. in its meetings held on 29th June, 1998 and 28th June, 1999 adopting the instructions issued by the DPE in its Office Memorandum dated 20th September, 1995, received by I.R.C.R. vide MOST's Office Memorandum dated 11th October, 1995, for implementation with immediate

effect.

7. Per contra, counsel for the respondents contended that the respondents were justified in issuing the impugned letters dated 16th April and 29th June, 1999 for making a recovery of Rs. 79,835.80 paise from the petitioner, as the I.R.C.C., which is under the administrative control of MOST, had decided to adopt and implement the Office Memorandum dated 29th September, 1995, issued by DPE and Office Memorandum dated 11th October, 1995 issued by the MOST, by which the rates for travel allowance in respect of foreign tours had been amended with effect from the date of issuance of the Office memorandum dated 11th October, 1995 by the MOST. It was stated that the Office Memorandum issued by the DPE directed that instructions for amendment in the rates of travel allowance payable in respect of foreign tours were to come into force immediately and that the said Memorandum be brought to the notice of all PSUs and autonomous organisations for adoption at the earliest by the respective Board of Directors/Trustees/Government bodies etc. like the I.R.C.C. He submitted that the aforesaid Office Memorandum dated 20th September, 1995 was reiterated in the Office Memorandum dated 11th October, 1995 issued on the same lines by the MOST to all PSUs/autonomous bodies etc. with directions to place the matter for formal adoption at the earliest, before the Board of Directors/Trustees/Governing Body of the concerned PSUs/autonomous bodies and accordingly, the Board of Directors of I.R.C.C. adopted the same by passing a resolution in its meeting held on 28th June, 1999, and made the instructions contained therein, enforceable from the date the MOST issued the Office Memorandum dated 11th October, 1995.

8. It is undisputed that the aforesaid Office Memorandum dated 20th September, 1995 issued by DPE was considered and adopted for the first time by the Board of Directors of respondent No. 1 in its meeting held on 17th June, 1998, with an observation that the instructions issued in the O.M's. dated 11th October, 1995 and 20th September, 1995 for recalling the daily excess allowance paid to the employees for their tours abroad may be adopted in the Corporation with immediate effect. The bone of contention between the petitioner and respondents is the manner in which the O.M's. dated 20th September and 11th October, 1995 issued by the DPE and the MOST respectively, were sought to be implemented by the respondents with retrospective effect from 11th October, 1995, vide resolution of the Board of Directors of I.R.C.C. passed on 28th June, 1999. Aggrieved by the action of the respondents in issuing the letters dated 16th April and 29th June, 1999 raising a demand of Rs. 75,829.80 paise on the petitioner by giving retrospective effect to the resolution passed by the Board of Directors of I.R.C.C. in its meeting held on 28th June, 1999, the petitioner has filed the present writ petition.

9. Counsel for the petitioner submitted that the aforesaid action of the respondents in passing the impugned resolution dated 28th June, 1999 whereunder the instructions contained in the aforesaid O.M. dated 20th

September, 1995 issued by DPE were sought to be implemented retrospectively, with effect from the date of issue of O.M. dated 11th October, 1995 circulated by the MOST, i.e. to settle the TA/DA bills of the petitioner relating to a foreign tour undertaken taken by him in the year 1996, is grossly illegal and arbitrary. She submitted that the said action was in violation of the settled law that no rule which impacts the right of a person adversely affected due to its retrospective operation could be formulated or withstand judicial scrutiny and that any rule which seeks to reverse from an anterior date, benefits which have been granted or availed of, is liable to be struck down as being violative of Articles 14 & 16 of the Constitution of India to the extent that it operates retrospectively. In this regard, counsel for the petitioner placed reliance on the following judgments:

(i) Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another,

(ii) Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others,

10. On the other hand, counsel for the respondents justified the decisions taken by the respondents and submitted that the I.R.C.C. being a subordinate public sector of the MOST, which is its administrative Ministry, could not disregard the directions issued in the O.M.'s. dated 20th September and 11th October, 1995 and thus its Board of Directors adopted the same on 26th August, 1998 and implemented the same on retrospective basis, from the date of issuance of the O.M. dated 11th October, 1995, irrespective of the fact that the foreign tour of the petitioner was undertaken in the year 1996. It was further stated that on 15th March, 1999, the Chief Vigilance Officer of the I.R.C.C. wrote a letter to the MOST on the said subject matter seeking clarifications regarding the date of applicability of the O.M.'s., to which the MOST responded by stating that the O.M. dated 11th October, 1995 had come into operation with immediate effect. Thus, the respondents were bound to make the O.M.'s operative from an anterior date.

11. Counsel for the respondents also submitted that one Sh. A. Sen, who was leading the team of the officers to Libya in the year 1996, which included the petitioner, played a fraud on I.R.C.C. and got pecuniary benefit of higher foreign exchange @ US \$ 250 per day for himself and US \$ 150 for the petitioner and the third member of the Committee which was not permissible to them and thus played a fraud on the I.R.C.C. He stated that the entire recovery of the foreign exchange was made by the I.R.C.C. from the said officer, Sh. A. Sen who was also proceeded against departmentally for the misconduct committed by him and for having overdrawn the foreign exchange, but as he took voluntary retirement on 30th June, 2000, he was let off only with a minor punishment. In the aforesaid background, it was argued that as fraud vitiates everything, the recoveries made by the respondents from the petitioner were justified and in line with the instructions contained in the O.M.'s. dated 20th September and 11th October, 1995. In support of his arguments, reference was made to the case entitled S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, . It was further urged that permitting the petitioner to retain the said

benefit of excess payment would only put a premium upon dishonesty, which is not permissible and is also detrimental to the exchequer. With reference to the judgments relied upon by the petitioner, it was argued on behalf of the respondents that they had no application to the facts of the case in hand and were distinguishable.

12. It is pertinent to note that the present writ petition was filed on 11th August, 1999 against the recovery of purported excess foreign exchange released to the petitioner. While issuing notice in the writ petition, on 19th August, 1999, an order was passed on an interim application for stay of the recovery proceedings, that there shall be no recovery of the amount from the salary of the petitioner. As on the date of filing of the writ petition, the respondents had already recovered an amount of Rs. 29,988/- from the salary of the petitioner up to June 1999, leaving a balance of Rs. 50,947/-. During the pendency of the present writ petition, the respondents floated a scheme of voluntary retirement under which the petitioner applied on 30th June, 2000. He was granted voluntary retirement with effect from 30th September, 2000. While granting him voluntary retirement and settling his dues, the respondents withheld the balance amount of Rs. 50,947/- payable to the petitioner under the scheme resulting in the petitioner filing a contempt petition against the respondents, being CONT.CAS (C) No. 627/2000, praying inter alias for initiating contempt proceedings against them for willful violation of the order dated 19th August, 1999. Vide order dated 4th August, 2005, the aforesaid contempt petition was directed to be listed for disposal along with the present petition.

13. I have heard the counsels for the parties and have also carefully perused the relevant documents placed on the record, including the O.M's. issued by the R.B.I., the DPE and the MOST as also the resolutions passed by the Board of Directors of the I.R.C.C.

14. It is apparent that the entire dispute between the parties arose only when the respondents issued the impugned letters dated 16th April and 29th July, 1999 calling upon the petitioner to re-pay the purported excess amount of Rs. 79,835.80 paise, in terms of the O.M. dated 20th September, 1995 issued by the DPE and the O.M. dated 11th October, 1995 issued by the MOST, adopted by the Board of Directors of the I.R.C.C., vide resolution dated 28.6.1999, but given retrospective operation.

15. Before proceeding to deal with the resolution passed by the Board of Directors of the I.R.C.C. adopting the aforesaid Office Memorandums, it will be appropriate to examine the said O.M's. Vide O.M. dated 20th September, 1995, the DPE decided that consolidated amounts allowed by RBI guidelines would cover room rent, taxi charges, entertainment, official telephone calls and other contingent expenditure and daily allowance and that employees of PSU's should render accounts on return from tour for all items other than daily allowance which covers food etc., as per the rates fixed by the Ministry of External Affairs for each country and that any surplus after calculation of the expenditure

incurred including the daily allowance for the tour as a whole shall be refunded to the PSUs. Instructions were issued for bringing the aforesaid guidelines to the notice of PSUs under the administrative control of various departments and for adoption thereof by the Board of Directors in other PSUs.

16. Following the aforesaid O.M. dated 20th September, 1995, the MOST issued an O.M. dated 11th October, 1995 stating inter alia that the aforesaid instructions issued by the DPE shall come into force with immediate effect. However, the PSUs/autonomous bodies were directed to place the matter for formal adoption before the concerned Board of Directors/Trustees/Governing body, as the case may be, at the earliest and report compliance to the concerned Ministry.

17. It is a matter of record that the aforesaid O.M's. dated 20th September, 1995 and 11th October, 1995 were approved and adopted by the Board of Directors of I.R.C.C. in its meetings held on 17th June, 1998 and 28th June, 1998 respectively, whereas the petitioner undertook the foreign tour in the year 1996. The grievance of the petitioner that the action of respondents in opening the case of the petitioner after a gap of about three years since the foreign tour was undertaken by him, and seeking to settle the TA/DA bills of the petitioner according to the Office Memorandums dated 20th September, 1995 and 11th October, 1995 by giving the same retrospective effect, is valid and justified. Facts reveal that the Office Memorandum dated 20th September, 1995 issued by the DPE was adopted by the Board of Directors of I.R.C.C. for the first time on 17th June, 1998. Similarly, Office Memorandum dated 11th October, 1995 issued by the MOST was adopted by the Board of Directors of the I.R.C.C. on 28th June, 1999, but the same was made enforceable from the date of issuance of the said Memorandum.

18. Fallacy lies in the attempt made on the part of respondents to make the application of the aforesaid Office Memorandums operative from an anterior date. Administrative instructions of such a nature cannot be permitted to have retrospective effect and any such attempt made on the part of the respondents which resulted in causing prejudice to the petitioner by visiting him with civil consequences in respect of benefits granted to him under the rules applicable in the year 1996, is not permissible. While it is settled law that the legislature is competent to legislate with retrospective effect and take away or impair any accrued or acquired right under the existing law, it has also been held that neither prospective nor retrospective laws can be made in such a manner as to contravene fundamental rights contained in Part III of the Constitution of India and while giving effect to such a legislation, the courts must take into account the accrued or acquired rights of parties. Reference in this regard may be made to the following judgments rendered by the Supreme Court:

- (i) State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others,
- (ii) Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others,

(iii) P.D. Aggarwal and Others Vs. State of U.P. and Others,

(iv) Union of India (UOI) and Others Vs. Tushar Ranjan Mohanty and Others,

(v) K. Ravindranath Pai and another Vs. State of Karnataka and another,

19. If such is the view taken by the Supreme Court in respect of legislative enactments and their retrospective operation, then administrative instructions issued by way of office memorandums rank way down in the ladder and cannot be treated on a different footing.

20. In this context, reliance has rightly been placed by the counsel for the petitioner on the judgment delivered by the Supreme Court in the case of Chairman, Railway Board (*supra*), wherein it has been held as under:

Para 20: It can, Therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being vocative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being vocative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

Para 24 : In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and vocative of the rights guaranteed under Articles 14 and 16 of the Constitution.

21. Useful reference in this regard may also be made to the judgment of the Supreme Court in the case of Ex-Major N.C. Singhal (*supra*), wherein it was held as below:

7. We think that the appellant's conditions of service were governed by para 13 of Army Instruction I/S of 1954 and his previous full pay commissioned service should be taken in the matter of "ante-date" for the purpose of his pay. The condition of service in this regard was not liable to be altered or modified to the prejudice of the appellant by a subsequent administrative instruction which was given retrospective effect from October 26, 1962.

22. As on the date when the petitioner undertook the foreign tour, he was granted TA/DA allowance in terms of the relevant rules applicable to the employees of the I.R.C.C. What is sought to be done by the respondents by

passing the impugned resolution dated 28.6.1998 is to alter from an anterior date, and take away the benefits that had already flown to the petitioner under the relevant Office Memorandum which was in force in the year 1996. The benefits having already been availed of by the petitioner under the then existing and applicable rules, the attempt on the part of the respondents to recover the purported excess amount paid to the petitioner on the plea of giving retrospective operation to the Office Memorandums dated 20th September and 11th October, 1995 by passing the impugned Resolution of the Board of Directors of the I.R.C.C. dated 28th June, 1998, is not only arbitrary and discriminatory in nature, but amounts to gross violation of the fundamental rights of the petitioner guaranteed under Articles 14 & 16 of the Constitution of India.

23. The argument advanced on behalf of the respondents that a fraud had been perpetrated on the respondents by Sh. A. Sen, the leader of the Committee, of which the petitioner was also a beneficiary, holds no water as the respondents have failed to demonstrate as to how the petitioner was a party to the alleged fraud stated to have been committed by the said Sh. A. Sen. On the contrary, the records of the respondents reflect that the CMD of the I.R.C.C. had granted his approval to release the foreign exchange in due course. Hence, the petitioner cannot be treated as tainted and nor can he be blamed for receiving the foreign exchange @ US \$ 150 as undisputedly, the said rate was sanctioned by the competent authority himself. That the respondents discovered that certain Office Memorandums had been issued by the Administrative Ministry as also by the DPE in the year 1995, cannot be a ground to foist a demand on the petitioner in the year 1999, for claiming amounts which were purportedly not admissible to him, on the strength of a resolution of the Board of Directors of the I.R.C.C., passed on 28.6.1998, but made operative from an anterior date. Nor can it be contended that any fraud had been played by the petitioner on the respondents, for the reason that even as per the respondents' own showing, at best it was Sh. A. Sen who had committed some irregularity which fact was also not established by the respondents and instead, they permitted the said officer to take voluntary retirement in terms of a scheme floated by it and let him off lightly by imposing a minor punishment upon him, while making recoveries of the purported overdrawn amount. Admittedly, no such proceedings were initiated by the respondents against the petitioner, nor was the petitioner alleged to be a party to the said fraud.

24. The petitioner was paid travel allowance as per the rules applicable to him in the year 1996 and no further amounts could have been recovered from him by giving retrospective effect to the resolution of the Board of Directors of I.R.C.C., dated 28th June, 1999. In fact, the respondent ought not to have re-opened the matter after December, 1998, when the respondent No. 2 made a deduction of Rs. 9,838/- from the salary of the petitioner on the ground of calculation error in making adjustments of advance released to him in the year 1996.

25. Thus it is held that the letters dated 16th April, 1999 and 29th June, 1999

issued by the respondents to the petitioner calling upon him to deposit an amount of Rs. 79,835.80 paise towards the purported excess amount recoverable from the petitioner are illegal, arbitrary and liable to be quashed, as the Resolution dated 28th June, 1999 passed by the Board of Directors of I.R.C.C. adopting the O.M. dated 20.9.1995 issued by the DPE and the O.M. dated 11.10.1995 issued by the MOST could not have been made operative from an anterior date, so as to saddle the petitioner with a demand which he was under no obligation to pay.

26. In view of the aforesaid position, the writ petition is allowed and the respondents are directed to refund the entire amount of Rs. 79,835.80 paise recovered from the salary of the petitioner as also withheld from the terminal benefits paid to the petitioner at the time of granting him voluntary retirement. The respondents are also directed to restitute the petitioner by paying him interest on the said amount @ 9% p.a. from the date the said amounts were recovered from the petitioner, till the date of payment, within a period of four weeks.

27. The writ petition is disposed of on the aforesaid terms with costs quantified at Rs. 5,000/-. Notice in the contempt petition is also discharged.