

(2005) 07 AHC CK 0179

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44939 of 2005

Prem Kumar Joshi posted as full term member and Chhatra Pal Singh Sisodia APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Constitution of India, 1950 — Article 142
Consumer Protection Act, 1986 — Section 10
Consumer Protection Rules, 1987 — Rule 10, 10(4), 3(5), 6(5), 9

Citation : (2005) 3 AWC 2871 : (2005) 3 ESC 2123

Hon'ble Judges : Dilip Gupta, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : Manu Saxena, for the Appellant; Sudhir Agrawal, Addl. A.G. and C.S. Singh, Addl. C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the order dated 25.5.2005 (Ann. 1 & 2), by which both the petitioners have been restrained from working as a Member and President of the District Consumer Forum, Meerut (hereinafter called the Forum), respectively, and from exercising any other administrative power. The records have also been directed to be sealed and recommendation has been made to the State Government by the President of the State Consumer Dispute Redressal Commission (hereinafter called the Commission) for suspension of the petitioners along with one other member of the Forum.

2. The facts and circumstances giving rise to this case are that on receiving certain complaint against the petitioners and one other officer, namely, Smt. Kusum Tandon, President and Members of the Forum, the Chairman of the Commission passed an order restraining them from performing any function, and certain record was directed to be sealed, and further recommendations have

been made to the State Government to put them under suspension Hence this petition.

3. Shri Manu Saxena, learned counsel appearing for the petitioners has , submitted that law does not empower the President of the Commission to pass an order restraining the petitioners from exercising their judicial, financial or administrative powers, as it amounts to suspension prior to passing the order of suspension by the State Government More so, sealing the record is also unwarranted unjustified and an act in exercise of the powers conferred, arbitrarily. Thus, in such a fact situation, the impugned order passed by the President of the Commission be quashed and State Government be restrained from passing the order of suspension. It is further submitted by Shri Manu Saxena that even if there is an error in the judicial order which can be rectified in appeal and revision, the question of dealing with the officer or holding an enquiry on such charges, is not permissible.

4. Shri Sudhir Agrawal, learned Additional Advocate General appearing on behalf of the State has submitted that considering the gravity of allegations in the complaint against the petitioners, which was found by the President of the Commission to be true, the impugned orders restraining them from exercising their powers were justified, otherwise they would have played havoc. Sealing of the record was considered to be necessary so that the petitioners may not tamper with the evidence, and it is not open to the petitioners at this stage to seek a direction restraining the State Government from passing an order of suspension, for the reason that such a relief cannot be claimed at this stage as the State Government has not yet considered the recommendations made by the President of the Commission and seeking such a relief would be premature. It has been further submitted by Shri Agrawal that correction of a judicial error in appeal/revision is something different and it shall not prevent the employer from initiating disciplinary proceedings against a quasi-judicial officer if the order passed by him reflects on his integrity. Thus, petition is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. The order impugned was passed against three officers of the Forum. Smt Kusum Tandon did not approach this Court The petitioner No. 2 who was the President of the Forum stood retired on 11th July, 2005. Thus, we have to consider only the case of petitioner No. 1.

7. It is settled legal proposition that even if a judicial error in a judgment or order passed by a judicial or quasi-judicial officer can be corrected in appeal or revision that does not bar the competent authority to initiate the disciplinary proceedings if the order reflects on his integrity or there is prima facie case to show that the order has been passed for extraneous consideration. In this respect reference may be given to the judgments of the Apex Court in Management Utkal Machinery Ltd. Vs. Workmen, Miss Shanti Patnaik, ; Govinda

Menon Vs. Union of India (UOI), ; Union of India (UOI) and Others Vs. J. Ahmed, ; Union of India and others Vs. A.N. Saxena, ; State of Punjab and Others Vs. Ram Singh Ex. Constable, ; Union of India and Others Vs. K.K. Dhawan, ; and Union of India (UOI) and Others Vs. Upendra Singh,

8. In Government of Tamil Nadu Vs. K.N. Ramamurthy, , the Hon"ble Supreme Court held that exercise of judicial or quasi judicial power negligently having adverse affect on the party or the State certainly amounts to misconduct.

9. In M.H. Devendrappa Vs. The Karnataka State Small Industries Development Corporation, , the Hon"ble Supreme Court has ruled that any action of an employee which Is detrimental to the prestige of the institution or employment, would amount to misconduct.

10. In Union Bank of India Vs. Vishwa Mohan, , the Hon"ble Supreme Court held that misconduct includes not working with diligence by an employee.

11. In State Bank of India and others Vs. T.J. Paul, the Supreme Court held that even in a case where the allegations of mala fide and corrupt practice have neither been alleged nor revealed while issuing the charge -sheet, the delinquent employee may be held guilty of misconduct, in case the officer acts without restraints jeopardising the interest and rights of other party.

12. In Government of A.P. Vs. P. Posetty, , the Hon"ble Supreme Court held that sense of propriety and acting in derogation to the prestige of the institution and placing his official position under any kind of embarrassment may amount to misconduct as the same may ultimately lead that the delinquent had behaved in a manner which is unbecoming of an employee/Government servant

13. We find no force in the submissions made by the (learned counsel for the petitioners that if the judicial order can be corrected in an appeal or revision, initiation of disciplinary proceeding is not warranted, as the Hon"ble Apex Court has consistently held that in exceptional circumstances even if such an order can be corrected by an appellate or revisional court, disciplinary proceeding can certainly be held against the judicial officer, and thus, the submission made by Shri Manu Saxena, learned counsel for the petitioners is not worth acceptance.

14. The issue regarding the competence of the President of the Commission for passing such orders has been considered by this Court in R.K. Kulshrestha v. State of U.P. and Ors (2004) 3 UPLBEC 2440 , wherein placing reliance upon a similar case in Varinder Pal Kashyapa Vs. State Consumer Disputes Redressal Commission, Punjab and Another, and examining the statutory provisions of the Consumer Protection Act, 1986 (hereinafter called the Act) and Consumer Protection Rules 1987 (hereinafter called the Rules), the Court came to the following conclusion.

"The power of appointment of the President of the District Forum is only with the State Government, and hence only the State Government can suspend or order an inquiry against the President of the District Forum. Unless there is

amendment in Section 10 of the Consumer Protection Act the respondent No. 3 cannot rely on a mere G.O. to assume to himself the power of suspending or ordering an inquiry against the President of the District Forum. It is well settled that a G.O. cannot override the statute."

15. Much reliance has been placed by Shri Manu Saxena, learned counsel for the petitioners on the aforesaid judgment of the Court But the judgment has lost its rigor in view of the amendment made by the State by introducing the U.P. Consumer Protection (7th Amendment) Rules, 2005 which came into force on 14.2.2005. After the amendment, relevant rules in this respect read as under:-

"(1) The President of the State Commission may himself enquire the complaints received against the full time President of the District Forum or may nominate a member of the State Commission or the registrar thereof.

(2) Enquiries on complaints received against the Members of the District Forum shall be conducted by the President of the State Commission or by a Member of the State Commission or by the Registrar of the State Commission or by the full time President of the District Forum concerned as nominated by the President of the State Commission.

(3) Enquiries on complaints received against a Member of the State Commission shall be conducted by any sitting judge of High Court nominated by the State Government in consultation with the Chief Justice of the High Court of the State

(4) Enquiries on complaints received against a part time President of the district Forum who is a sitting District Judge or an Additional District Judge shall be held by the High Court on the recommendation of the President of the State Commission.

(5) Enquiries on complaints received against the President of the State Commission shall be held by a sitting or retired Chief Justice of any High Court in consultation with the Chief Justice of the High Court of the State.

(6) On the basis of enquiries, under Sub-rule (1), (2), (3) or (4), if the officer is found guilty, then after recommendation of the President of the State Commission, or in the case of President of State Commission, after due examination and consideration of the enquiry report and recommendations of enquiry officer, the State Government may issue orders for removing the guilty officer, under sub-rule (5) of Rule 3 or sub-rule (5) of Rule 6, as the case may be.

10. Procedure for Enquiry For enquiry under Rule 9 the following procedure shall be followed, namely:-

(1) After a complaint is received a copy of the complaint shall be sent to the complainant by registered post or personally and the complainant shall be directed to submit the complaint on an affidavit or provide evidence about the allegations contained in the complaint If no affidavit or evidence is provided as stated above by the complainant, then the President of the State Commission

may ignore the complaint and consign it to records.

(2) On submission of affidavit or statement to the effect that evidence, if any, shall be furnished by the complainant, then the President or Member against whom allegations have been in the complaint, shall be provided with a copy of the complaint and its reply/explanation shall have to be furnished by the delinquent within 15 days.

(3) On submission of reply/explanation by the delinquent President or Member within the time allowed, the President of the State Commission shall take appropriate decision as to whether the inquiry is to be proceeded with or is to be consigned to records. In case the President of the State Commission decides to initiate enquiry proceedings against delinquent President or the Member of the District Forum or the Member of the State Commission, as the case may be, the suspension of the delinquent Member or the President may be recommended by the President of State Commission. The State Government shall thereupon take appropriate action. In the event of suspension of President or Member being proceeded with, as the case may be, only 50% of the honorarium/salary shall be payable to him."

16. Sub-rule (4) of Rule 10 further empowers the President of the Commission to hold enquiry himself or to appoint enquiry officer and the President or the Enquiry Officer so appointed, would frame charge-sheet. The Rule further provides that the charge-sheet shall be forwarded to the delinquent officer who shall file his reply, and after holding the inquiry in accordance with law the President of the Commission shall take the decision as to whether the charges stood proved against the delinquent or not. In case the allegations stood proved, the show cause notice shall be given to the delinquent along with the copy of the report and he would be entitled to make the representation to the same, and consequently, the President shall recommend to the State Government to remove or dismiss the delinquent officer. On receiving such a recommendation the State Government shall issue appropriate order accordingly.

17. Thus, the combined reading of the rules makes it crystal clear that the appointing authority of the President and Member of the Forum is the State Government. Therefore, the order of punishment can be passed only by the State Government. The Rule further makes it clear that suspension order can be passed only by the State Government if so recommended by the President of the State Commission. The inquiry of course can be conducted by the President himself or by the Enquiry Officer appointed by him.

18. The case is required to be examined in the light of the aforesaid legal propositions. It is evident that the State Government has not yet passed suspension order because of the interim order passed by this Court on 9.6.2005. We are not in a position to accept the submissions of Shri Manu Saxena, learned counsel for the petitioners that as the provisions of Rules 9 and 10 of the Rules have not been complied with, the State Government be restrained from passing

the suspension order, for the reason that it is premature at this stage. The State Government has to pass an order after being satisfied that all the formalities have been complied with by the President of the Commission before making the recommendations and unless the State Government passes an order of suspension, such a plea cannot be entertained. Therefore, we restrain ourselves from entering into this issue.

19. So far as the order of sealing of the record is concerned, we are of the considered opinion that if tampering with the evidence is apprehended, such an order may be necessary. Thus, it does not require any interference at all. Such an order would come within the administrative control of the President of the State Commission.

20. So far as the order of restraining the petitioner No. 1 from exercising his judicial/administrative or financial power is concerned/ it is difficult to hold that such an order could be passed in exercise of administrative control of the President of the Commission. Passing such an order would amount to suspension. Such an order could have been passed only by the State Government.

21. It is settled proposition of law that what cannot be done "per directum is not permissible to be done per obliquum", meaning thereby, whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud."

22. In Jagir Singh Vs. Ranbir Singh and Another, , the Apex Court has observed that an authority cannot be permitted to evade a law by "shift or contrivance." While deciding the said case, the Hon"ble Supreme Court placed reliance on the judgment in Fox v. Bishop of Chester (1824) 2 BC 635, wherein it has been observed as under: -

"To carry out effectually the object of a statute, it must be considered as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined."

23. Law prohibits to do something indirectly which is prohibited to be done directly. Similar view has been reiterated by the Apex Court in M.C. Mehta v. Kamal Nath and Ors. AIR 2000 SC 1997, wherein it has been held that even the Supreme Court cannot achieve something indirectly which cannot be achieved directly by resorting to the provisions of Article 142 of the Constitution, which empowers the Court to pass any order in a case in order to do "complete justice."

24. A Division Bench of this Court in Naumi Ram Vs. Dy. Collector and Others, considered a case of stoping the supply to the licensee of the fair price shop without passing the order of suspension merely on the allegation in a complaint. The Court held as under:-

"We are of the view that it is obligatory on the respondent authorities to follow

the procedure prescribed by the law and there is no power conferred on the authority to stop the supply on the basis of mere allegation or complaint and to take such action without affording an opportunity to the writ petitioner.

We however observe that it shall be open to the respondent authorities to take appropriate action in accordance with law."

25. In the instant case as stopping the petitioner No. 1 from working may amount to suspension and that power has not been exercised by the competent authority, i.e., the State Government, Order to that extent is liable to be quashed. But it does not preclude the State Government from passing an appropriate order in accordance with law.

26. The Hon'ble Supreme Court in Common Cause a Common Cause, A Registered Society Vs. Union of India (UOI) and Others, has issued certain directions for making the amendment in the Act and the Rules to confer the power of superintendence of State and National Commission. In view thereof certain amendments have been made. In V.P. Kashyap (Supra) the Punjab & Haryana High Court has held that preventing the President or Member of the Forum by the President of the State Commission is permissible in exercise of its powers of superintendence. With all due respects and humility at our command we do not agree with this proposition for the reason that the Commission cannot be permitted to usurp the powers conferred upon the disciplinary authority, i.e., the State Government. Power of administrative control cannot be stretched to the extent that it may make the State Government, the disciplinary authority, a redundant employer. Putting the seal on the Record Room so that the evidence against the petitioners may not be tampered with, may fall within the ambit of administrative control. Power of restraining them from working, which would have the effect of suspension, is not permissible.

27. In view of the above, petition succeeds and is allowed to the extent the President of the Commission cannot pass an order restraining the petitioners from exercising their judicial and other powers. As the petitioner No. 2 has already retired, we quash the order dated 25.5.2005 (Ann.2) only to that extent in respect of the petitioner No. 1. There is no justification for interfering with the order of sealing of the record. So far as the suspension is concerned, the matter is still pending before the State Government and it will not be proper for us to make any comment on it as it is open to the State Government to pass an order in accordance with law.

28. Interim order passed earlier stands vacated.

29. No costs.