

(2015) 01 KAR CK 0379
In the Karnataka High Court
Case No : Writ Petition No. 16557/2012 (S-DE)

R. Srinivasan

APPELLANT

Vs

The Additional Registrar Enquiries-3 and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Bangalore Water Supply and Sewerage Act, 1964 — Section 125
Constitution of India, 1950 — Article 14, 19, 21, 226
Karnataka Lokayukta Act, 1984 — Section 7
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 01 KAR CK 0379

Hon'ble Judges : P.B. Bajanthri, J.

Bench : Single Bench

Advocate : Mallikarjun C. Basareddy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.B. Bajanthri, J.—Though this matter is listed for preliminary hearing in Group "B", the same is taken up for final disposal.

2. The petitioner was initially selected and appointed to the post of Assistant Engineer in the Bangalore Water Supply and Sewerage Board (hereinafter referred to as "Board" in short). He has earned promotion to the cadre of Assistant Executive Engineer. While he was working as an Asst. Executive Engineer, on 19.3.2002 based on the complaint by one Sri P.M. Bheemaiah, to the Karnataka Lokayuktha Police, his office was raided and found illegal gratification amount of Rs. 30,000/- and it was recovered from his Office which was alleged to have been paid by one Sri P.M. Bheemaiah-complainant. Based on the said allegations office of the Karnataka Lokayuktha proceeded with both criminal and disciplinary action.

3. In this writ petition the petitioner has questioned the initiation of departmental enquiry namely issuance of articles of charge dated 5.5.2012 vide Annexure-A issued by the first respondent herein. The charge is extracted herein:-

"CHARGE:

"That you, Sri R. Srinivasan (here in after referred to as Delinquent Government Official-1, in short DGO-1), while working as Assistant Executive Engineer, No. C-2, Sub-Dn. Bangalore Water Supply Sewage Board, High Grounds, Bangalore and you Sri S. Nanjundappa (here in after referred to as Delinquent Government Official-2, in short DGO-2) while working as Artisan (Valveman) in No. C-2 Sub-Dn Bangalore Water Supply Sewage Board, High Grounds, Bangalore in furtherance of conspiracy amongst both of you, you DGO-2 demanded and accepted a bribe a sum of Rs. 30,000/- on 19/3/2002 from the complainant Sri T.M. Bheemaiah, who has been running Bar and Restaurant at Building No. 53, St. John Church Road, Opp. Coals Park, HOPCOMS, Bangalore in the name and style as Mr. Shakti Bar and Restaurant and the that you DGO-1 demanded and received the bribe amount of Rs. 30,000/- from DGO-2 which he had received from the complainant, so as to show an official favour by restoring water facility which was disconnected to the Bar and Restaurant and thereby failed to maintain absolute integrity and devotion to duty and also did an act which is unbecoming of a Government servant and thereby you have committed misconduct as provided under Rule 3(1)(i) to (iii) of KCS (Conduct) Rules 1966."

4. Arising out of the aforesaid alleged charge, the Office of the Karnataka Lokayuktha initiated parallel proceedings namely criminal and disciplinary proceedings. In the criminal proceedings, FIR was lodged in Crime No. 8/2002 for the offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Thereafter charge sheet was filed and the case was registered as Special C.C. No. 133/2003, on the file of the Special Judge, Lokayuktha, Bangalore, for the aforesaid offences punishable under the Prevention of Corruption Act. Aggrieved by the filing of charge sheet in C.C. No. 133/2003 the petitioner filed a writ petition before this Court in W.P. No. 50413/04 seeking quashing of the entire criminal proceedings initiated against him in Special C.C. No. 133/2003 on the file of the learned Special Judge. During the pendency of the aforesaid writ petition the learned Special Judge discharged the petitioner in C.C. No. 133/2003 and consequently W.P. 50413/04 was disposed of.

5. In the disciplinary proceedings, the second respondent entrusted the matter to the Office of the Karnataka Lokayuktha under Rule 14-A of the KCS (CCA) Rules, 1957. The petitioner aggrieved by the action of the office of the Karnataka Lokayuktha vide file No. LOK/ARE-3/ENQ-1/2004-05 relating to nomination of respondent No. 1-Additional Registrar of Enquiries-III as Enquiry Officer to frame charges and to conduct departmental enquiry against the petitioner and another in W.P. 15372/07 (GM-KLA). The said writ petition was disposed of by quashing the action of the Karnataka Lokayuktha in nominating the respondent - herein on 24.2.2010 in view of the earlier judgment passed in Prof. S.N. Hegde Vs. The Lokayukta and Others, . The issue involved in the aforesaid writ petition is relating to scope of Section 7 of the Karnataka Lokayuktha Act, 1984. While

allowing the writ petition of the petitioner, liberty was reserved, if the law so permits, to the respondent to initiate fresh proceedings in accordance with law vide Annexure-E to the writ petition. In pursuance of the aforesaid judgment, the respondent No. 2 and office of the Karnataka Lokayuktha took a fresh decision and nominated the first respondent as an Enquiring Officer vide Order No. LOK/INQ/14-A/147/2012 dated 10.4.2012 in pursuance of the second respondent order dated 18.7.2011 vide Annexure-G issued by the second respondent. Consequently, the first respondent issued articles of charge dated 5.5.2012. The petitioner is aggrieved by the initiation of enquiry (issuance of articles of charge).

6. In support of the petition i.e. for quashing initiation of enquiry dated 5.5.2012 vide Annexure-A it is contended by the petitioner that it has been issued by malice on the part of one Sri B. Narayanappa, Deputy Superintendent of Police, Lokayuktha and contrary to the facts and circumstances of the case. It is further contended that the enquiry proceedings are violative of the rights guaranteed to the petitioner under Articles 14, 19 and 21 of the Constitution of India and misuse and abuse of powers conferred under the provisions of the Lokayuktha Act. It was also contended that the second respondent in his individual capacity vide Annexure-G entrusted the disciplinary proceedings to the Office of the Karnataka Lokayuktha which is contrary to provision of Sub-Section (2) of Section 125 of the Bangalore Water Supply and Sewerage Act, 1964, It was contended that entrustment of enquiry to the office of the Karnataka Lokayuktha by the second respondent was without placing the matter before the Board as required under the law, consequently, permission given by the Chairman of the Board is improper.

7. The petitioner also contended that earlier the sanction order dated 18.7.2011 passed by the Chairman, BWSSB Board for holding enquiry in his individual capacity was the subject-matter in W.P. No. 15372/2007 disposed of on 24.2.2010 wherein the order of sanction passed by the second respondent has been held as void ab-initio. Thus, the second respondent has disobeyed the mandate issued by this Court while granting permission to prosecute the petitioner and for having violated the order of this Court passed in W.P. 15372/07 the second respondent is liable for punishment under the provisions of the Contempt of Court Act. It was also contended by the petitioner that he had been discharged in Special C.C. No. 133/2003 dated 1.6.2005 by the learned Special Judge, Bangalore Urban District, Bangalore, on the ground that the permission granted by the Chairman of the Board vide order dated 5.2.2003 was not in accordance with law. Therefore, it is contended that enquiry cannot be initiated against the petitioner. The petitioner questions the impugned initiation of enquiry dated 5.5.2012 vide Annexure-A even on the merits of the case by contending that it is with a malice intention of one Sri Narayanappa, the then Dy. Superintendent of Police, Karnataka Lokayuktha etc.

8. The respondents have not filed their statement of objections.

9. Heard the learned counsel for the parties and perused the records.

10. It is true that earlier entrustment of disciplinary proceedings was the subject-matter before this Court in W.P. 1572/2007 and the same was allowed while interpreting Section 7 of the Karnataka Lokayuktha Act on 24.2.2010. However, it is to be noted that liberty has been reserved to the respondents and the Office of the Karnataka Lokayuktha in the said matter. Thus, the Office of the Karnataka Lokayuktha processed proceedings afresh and sought necessary entrustment of disciplinary proceedings to the Board and in turn the Board entrusted the disciplinary proceedings to the Office of the Karnataka Lokayuktha vide order dated 18.7.2011. Thereafter, the first respondent has been nominated as an Inquiry Officer vide order dated 10.4.2012 by the Hon'ble Upalokayutha-I, Bangalore. In pursuance of the same, the first respondent initiated disciplinary proceedings against the petitioner and another on 5.5.2012 (Annexure-A). Insofar as challenge to initiation of enquiry (Articles of charge) the Apex Court time and again has held that it can be questioned only on two grounds namely, if the initiation of enquiry is by an incompetent authority and the second ground is if there is a mala fide action in initiation of enquiry. In the present case, the author of the Annexure-A dated 5.5.2012 is the first respondent-Additional Registrar of Enquiries-3. He has only acted in pursuance of the order of the second respondent-Board dated 18.7.2011 vide Annexure-G read with nomination of the first respondent as an Inquiry Officer by the Hon'ble Upalokayutha-I, Bangalore. Firstly, it is to be noted that the first respondent is the competent authority to frame articles of charge. Secondly, no mala fide is urged against the first respondent. Even the petitioner has failed to implead the first respondent by name so as to allege mala fide. It is to be noted that the petitioner has failed to question the notification bearing No. BWSSB/C/281/2/2002/1645/2011-12 dated 18.7.2011 which has been issued in pursuance of the fresh action taken by the Office of the Karnataka Lokayuktha which has been communicated to the second respondent-Board vide D.O. No. COMPT/UPLOK/BCD/164/2003/DRE-5 DATED 24.5.2011. In other words, the petitioner has failed to question the validity of the fresh action of the Office of the Karnataka Lokayuktha in seeking entrustment of disciplinary proceedings to the second respondent and consequential entrustment of disciplinary proceedings to the Office of the Karnataka Lokayuktha vide Annexure-G dated 18.7.2011. Since the prayer of the petitioner is challenge to Annexure-A i.e. framing of article of charge and seeking explanation of the petitioner, at the first instance, the petitioner was required to give his explanation to the articles of charge dated 5.5.2012. Without submission of his explanation he has rushed to this Court and obtained an interim order on 30.5.2012. However, the interim order was dissolved on 18.9.2013.

11. The petitioner was subjected to parallel proceedings. In the criminal proceedings he has been discharged. Merely because he had been discharged in criminal proceedings that does not prevent initiation of disciplinary proceedings. Therefore, the contention of the petitioner that he has been discharged in a criminal proceedings consequently, the initiation of enquiry is illegal and contrary

to the order of this Court passed in W.P. 15372/2007 cannot be accepted. Insofar as challenge to the initiation of enquiry on merits is concerned, it is premature. The petitioner has to face disciplinary proceedings and he has to adduce evidence in the enquiry. This Court cannot appreciate anything on merits at this stage. Therefore, the contention of the petitioner on merits is concerned, the same is rejected. The petitioner pointed out that the second respondent in his individual capacity has taken the action. However, at the same time, he has not questioned the action of the second respondent vide Annexure-G dated 18.7.2011. Therefore, any contention against the notification dated 18.7.2011 vide Annexure-G is concerned, in the absence of challenge to the same, the contention of the petitioner cannot be accepted.

12. The Apex Court in the case of Union of India and another vs. Ashok Kacker which is reported in 1995 Supplementary (1) SCC 180 has held as follows:-

"4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him." 13. In Samar Bahadur Singh Vs. State of U.P. and Others, , the Apex Court has held as follows:-

"11. Acquittal in the criminal case shall have no bearing or relevance to the facts of the departmental proceedings as the standard of proof in both the cases are totally different. In a criminal case, the prosecution has to prove the criminal case beyond all reasonable doubt whereas in a departmental proceedings, the department has to prove only preponderance of probabilities. In the present case, we find that the department has been able to prove the case on the standard of preponderance of probabilities. Therefore, the submissions of the counsel appearing for the appellant are found to be without any merit." 14. In Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, , the Apex Court has held as follows:-

"14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does

not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

15. In K. Venkateshwarlu Vs. The State of Andhra Pradesh, the Apex Court has held as follows:-

"13. In R.P. Kapur Vs. Union of India (UOI) and Another, the Constitution Bench of this court has held that if the trial of a criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, but even in case of acquittal departmental proceedings may follow, when the acquittal is other than honorable. We are not aware whether any disciplinary proceedings are pending against the appellant. But, if they are, the concerned authority shall proceed with them independently, uninfluenced by this judgment and in accordance with law." 16. In yet another judgment of the Apex Court which is reported in The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha, it is held that interference insofar as initiation of disciplinary proceedings is incorrect unless the proceedings are without authority and against the constitutional provision.

17. Having regard to the facts and circumstances read with decisions of the Apex Court I find that there is no violation of any constitutional provision and first respondent is competent authority to frame charges in the present case. Therefore, I am not inclined to interfere with the initiation of disciplinary proceedings vide Annexure-A dated 5.5.2012 issued by the first respondent.

18. Accordingly, the writ petition is dismissed with no order as to costs.