
(2016) 10 MP CK 0029
In the Madhya Pradesh High Court
Case No : W.P. No. 11736 of 2015

R.D. Barve

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 20-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 MPLJ 388

Hon'ble Judges : Sujoy Paul, J.

Bench : Single Bench

Advocate : Shri Manish Tiwari, Learned Counsel, for the Petitioner; Shri Girish Kekre, Learned Government Advocate, for the Respondent No. 1 and 4/State; Shri Pushpendra Yadav, Learned Counsel, for the Respondent No. 2

Final Decision : Allowed

Judgement

Sujoy Paul, J. - The petitioner was served with a charge-sheet which was followed by a full fledged disciplinary proceeding. The Managing Director/ Disciplinary Authority inflicted the punishment of dismissal from service with recovery of certain amount by passing the order dated 29-11-2014 (Annexure P/13). The petitioner feeling aggrieved by this order, preferred an appeal on 07-01-2015 before the Appellate Authority (Board of Directors). In turn, petitioner's appeal was considered in the Board's 91st meeting held on 08-04-2015. The Board decided to reject the appeal of the petitioner which was communicated by letter dated 14-05-2015.

2. Shri Manish Tiwari, learned counsel for the petitioner advanced singular contention. He submits that the punishment order was passed by Managing Director. The said authority was also member of the Board of Directors and was party to the decision taken by the Board by which the petitioner's appeal was rejected. It is submitted that no one can be a judge in his own cause. The Managing Director could not have taken decision while sitting in the Board in an appeal against the order passed by himself on 29-11-2014. It is submitted that

the participation in decision making at appellate stage by Disciplinary Authority/ Managing Director has vitiated the appellate decision and consequential communication. It runs contrary to the principles of natural justice and judgment of Supreme Court in A.K. Kraipak and others v. Union of India and others AIR 1970 SC 150.

3. Shri Pushpendra Yadav, learned counsel for the Corporation supported the impugned order. He submits that the Board of Directors is consisting of 14 nominated and 3 elected persons. The Chairman and Managing Director are the essential members of the Board. Reliance is placed on Clause 32 (3) of By-laws wherein it is mentioned that Corum of Board of Directors will include the Chairman and Managing Director. Thus, Shri Yadav urged that Managing Director is inseparable and essential part of the Board of Directors and therefore the contention of the petitioner cannot be accepted. He further submits that the petitioner has not chosen to challenge By-laws and in view of Clause 32 (3), no fault can be found in the participation of Managing Director in the said meeting. He supported the impugned order.

4. No other point is pressed by the parties.

5. I have heard the parties at length and perused the record.

6. Before dealing with rival contentions, I deem it proper quote Clause 32 (3) and 32 (6) of the By-laws which reads as under:-

"3- lapkyd e.My dh cSBd dh x.kiwfrZ e; v/;{k ,oa izca/k lapkyd ds pkj gksxhA

6- izR;sd lapkyd dks dsoy ,d er nsus dk vf/kdkj gksxk ijUrQ lapkyd e.My dh ,slh cSBd esa ftlesa fd mlls O;fDrxr :i ls lacaf/kr :fp okys ;k ml lfevr ftdk og izfrfuf/k gS ls lacaf/kr fdlh izdj.k ij fopkj fd;k tkuk gks rks ,slh cSBd esa og mifLFkr u jg ldsxk vkSj ,slh cSBd esa u er gh ns ldsxkA"

(Emphasis supplied)

7. The contention of Shri Yadav is that Corum of Board of Directors is complete when Chairman and Managing Director are present in the meeting. The contention of Shri Yadav is analogous to the doctrine of necessity. He submits that when Managing Director is an essential part of the Corum, it cannot be accepted that his presence in the decision making process will vitiate the proceedings.

8. During the course of arguments, on a specific query from the Bench, learned counsel for the parties fairly submit that Managing Director is also one of the Directors, although nominated by the concerned persons. Clause 32 (6) makes it clear that in the meeting, every Director has a right to cast his single vote but in any meeting where any subject in which any Director has any personal interest, he shall not be entitled to remain present and cast his vote. The similar question is cropped up and travelled to Supreme Court in (2002) 2 SCC 290 (Amar Nath Chowdhury v. Braithwaite and Co. Ltd. and others). In the said case, the

punishment was imposed by Chairman-cum-Managing Director of the employer-company. The said authority participated in the meeting of Board of Directors. In the said meeting of Board of Directors, the appeal of the employee was considered and rejected. The Apex Court opined as under:-

"K acted as the disciplinary authority as well as the Appellate Authority when he presided over and participated in the deliberations of the meeting of the Board while deciding the appeal of the appellant. Such a dual function, unless permitted by an Act of legislation or statutory provision, would be contrary to rule against bias. Therefore, in the present case, fair play demanded that K ought not to have participated in the deliberations of the meeting of the Board when the Board heard and decided the appeal of the appellant."

(Emphasis supplied)

9. The argument of Shri Yadav at the first blush appears to be attractive that in view of requirement of By-laws 32 (3), the Managing Director is inseparable and essential part of the Board of Directors. However, a conjoint reading of Clause 32 (3) and 32 (6) makes it clear that even if he is inseparable and essential part of Board meeting, he cannot cast his vote in the decision making process if relevant item of discussion is related with his personal interest. Thus, the doctrine of necessity cannot be pressed into service in the present case because in all fairness, the Managing Director could have recused himself during deliberations on the appeal preferred by the petitioner against the punishment order passed by the Managing Director. This is settled principle that justice is not only to be done but it should also appear to be done. In the present case, the Managing Director was admittedly part of decision making where his own order was called in question. In my view, as per Clause 32 (6) he should not have become party to the decision in which petitioner's appeal was rejected. His participation has vitiated the entire decision relating to appeal of the petitioner. As per harmonious interpretation of Clause 32 (3) and (6) will make it obligatory for the Managing Director not to participate in deliberations in the meeting of the Board when the appeal against the punishment order passed by him is being considered by the Board. In *A.K. Kraipak* (supra), the Apex Court disapproved the inclusion of Acting Inspector General of Forest as a member of Selection Board as he was one of the persons to be considered for selection. The Apex Court held that it will be against all canons of justice to make a man judge in his own cause.

10. Resultantly, the appellate order dated 08-04-2015 is set aside. The matter is remitted back before the Appellate Authority/Board to decide the appeal of the petitioner afresh by taking into account the findings given herein above. The Appellate Authority shall take a decision afresh on the said appeal in accordance with law.

11. The petition is allowed to the extent indicated above. No cost.