

(2011) 06 MAD CK 0336

In the Madras High Court

Case No : Writ Petition No. 43406 of 2006 and O.A. No. 4569 of 2000

S. Shanmugavelayutham

APPELLANT

Vs

The Special Commissioner and Commissioner of Revenue-
Administration, The Revenue Divisional Officer and The
Tribunal for Disciplinary Proceedings (Constituted by
Commissioner for Disciplinary Proceedings)

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Constitution of India, 1950 — Article 136, 14

Prevention of Corruption Act, 1988 — Section 11, 12, 13(1), 14, 20

Citation : (2011) 06 MAD CK 0336

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K.N. Natarajan, for the Appellant; R. Murali, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner, who was the Village Administrative Office of Thayilpathy village, Sattur Taluk, has filed the O.A. No. 4569 of 2000, challenging an order of the first Respondent, i.e., Special Commissioner and Commissioner for Revenue Administration, dated 5.6.2000, wherein and by which he was ordered to be removed from service. The O.A was admitted by the Tribunal on 25.7.2000 and an interim stay was granted. Subsequently, the interim stay came to be extended without prescribing any outer time limit by a further order dated 11.8.2000. Though the Respondent has filed M.A. No. 6784 of 2000, seeking to vacate the interim order, the Tribunal did not take up the said issue for reasons best known to it. Thereafter, the Respondents have filed a reply affidavit dated 7.8.2000. In view of the abolition of the Tribunal, the matter stood transferred to this Court and renumbered as W.P. No. 43406 of 2006.

2. Heard both sides. The facts leading to filing of the case are as follows:

The Petitioner was working as a Village Administrative Officer o Thayilpathy

village. On a complaint made against him, an investigation was conducted by the Vigilance and Anti Corruption Police. This was on account of charges of corruption made against him. The matter was referred to the State Government. The Government upon examination of the report had referred the matter for decision by the disciplinary Tribunal. The case was sent to the Tribunal for disciplinary proceedings at Tirunelveli. It was taken on file as T.D.P. No. 18/1997. Before the Tribunal, on the side of the department, though originally 32 witnesses were cited, 26 were examined. Out of balance 6, 5 died during trial and the presence of one witness was dispensed with. On the side of the prosecution, 13 documents were also marked as exhibits. The Petitioner did not file any document or examine any witness on his side. He had filed only a defence statement at the end of the trial. On the basis of the evidence both oral and documentary, the Commissioner held that the charges 1,2,3 and 8 were proved and that charges 4,5,6 and 7 were not proved vide his report, dated 15.7.1999. Thereafter, a show cause notice was given to the Petitioner. After perusing the records, by the impugned order dated 5.6.2000, the Petitioner was ordered to be removed from service. Though an appeal was provided to the Government against the said order, the Petitioner moved the Tribunal dispensing with the requirement of availing alternate remedy.

3. The contention raised by the Petitioner was that the Tribunal had overlooked the evidence. The first charge was not proved as the VAO cannot issue the sketch for the house and therefore, the question of taking bribe will not arise. With reference to the second charge, beneficiary had deposed that he had received death certificate only through third parties and not directly from the VAO. The third charge was with reference to the house tax. The same was not proved as it related to alteration of tax register. But there was no evidence to show that alteration was done by him. With reference to the eighth charge, P.W.26's evidence that he did not know anything about the bribe made to the Petitioner for getting solvency certificate was not appreciated. It was further claimed that the VAO is the head of the village. But accusing him for taking Rs. 20/- as bribe is unbelievable. Without prejudice to the above, it was stated that the charges were minor and it does not warrant for any capital punishment of removal.

4. The learned Counsel for the Petitioner Mr. K.N. Natarajan had strenuously contended that since the Petitioner had the benefit of the interim order in continuing in service, this Court should not disturb his continuance by upholding the order of removal.

5. Taking the last contention as first, it must be noted that the interim order will ensure to the benefit of the person only till the final orders are passed and that the interim order itself cannot become final. A Division bench judgment of this Court in C. Kamatchi Ammal Vs. Kattabomman Transport Corporation Ltd. and Others, has held that interlocutory orders made in the course of proceedings will necessarily lapse with the decision of the suit unless the suit is one for

permanent injunction and the interim injunction is made permanent as a part of the decretal order made by the court.

6. The Bombay High Court vide its decision reported in *Ramesh Akre and Ors. v. Smt. Mangalabai Pralhad Akre and Ors.* reported in AIR 2002 Bom 487 has held as follows:

21. Similarly, it is also not necessary that suit should be disposed of only on merits in order to bring an end to interim order. What is contemplated in law is that such interim order would continue to operate till suit is disposed of one way or the other and would come to an end on the day suit is disposed of. Whether suit is disposed of for want of prosecution or on merits is not the criteria to decide existence of interim orders. These orders by their very nature are temporary and remain in force only during the pendency of the suit and come to an end when the suit is disposed of one way or the other.

7. The learned Counsel also referred to a judgment of the Supreme Court in *Nand Kishore Prasad Vs. State of Bihar and Others*, and referred to the following passage found in paragraph 19, which reads as follows:

19. Before dealing with the contentions canvassed, we may remind ourselves of the principles, in point, crystallised by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in *Union of India v. H.C. Goel* "the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules". Relying the above passage, he contended that the intention of the court is that no innocent person should be punished.

8. The learned Counsel further relied on a judgment of the Supreme Court in *Ranjit Thakur Vs. Union of India (UOI) and Others*, and referred to the following passages found in paragraphs 25 to 27, which reads as follows:

25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an

outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. In *Council of Civil Service Unions v. Minister for the Civil Service*, Lord Diplock said:

Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call illegality, the second "irrationality" and the third "procedural impropriety."

That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognised in the administrative law of several of our fellow members of the European Economic Community;....

26. In *Bhagat Ram v. State of Himachal Pradesh*, this Court held: [SCC p. 453, SCC (L&S) p. 353, para 15]

It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

The point to note, and emphasise is that all powers have legal limits.

27. In the present case the punishment is so strikingly disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.

The learned Counsel contended that should the court hold him guilty of charge, it should be interfered with the question of proportionality of punishment.

9. With the very same effect, the learned Counsel also referred to a judgment of the Supreme Court in *Union of India and another Vs. G. Ganayutham (Dead) by LRs.*, and referred to the following passages found in paragraphs 33 and 34 for the very same proposition, which reads as follows:

33. In *Ranjit Thakur*² this Court interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. In other words, this Court felt that, on facts, *Wednesbury* and *CCSU* tests were satisfied. In another case, in *B.C. Chaturvedi v. Union of India*, a three-Judge Bench said the same thing as follows: (SCC p.762, para 18)

18. ... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to

reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

Similar view was taken in *Indian Oil Corpn. Ltd. v. Ashok Kumar Arora*, that the Court will not intervene unless the punishment is wholly disproportionate.

34. In such a situation, unless the court/tribunal opines in its secondary role, that the administrator was, on the material before him, irrational according to *Wednesbury*⁸ or *CCSU*⁹ norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi* case²² that the Court might "to shorten litigation" think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority. (In *B.C. Chaturvedi*²² and other cases referred to therein it has however been made clear that the power of this Court under Article 136 is different.) For the reasons given above, the case cited for the Respondent, namely, *State of Maharashtra v. M.H. Mazumdar*, cannot be of any help.

10. The learned Counsel also referred to a judgment of the Supreme Court in *Union of India (UOI) thr. Inspector, CBI Vs. Purnandu Biswas*, . That case related to criminal trial and relating to corruption charge. The Supreme Court held that unless there is demand for gratification, the same cannot be held to be corrupt charge. The Supreme Court interpreting Section 20 of the Prevention of Corruption Act, in paragraphs 35 and 36 held as follows:

35. The learned Additional Solicitor General submitted that the onus of proof was upon the Respondent to explain as to how he came in possession of the amount.

Section 20 of the Prevention of Corruption Act, 1988 reads as under:

20. Presumption where public servant accepts gratification other than legal remuneration. (1) Where, in any trial of an offence punishable u/s 7 or Section 11 or Clause (a) or Clause (b) of Sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable u/s 12 or under Clause (b) of Section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that

valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said Sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

36. In this case demand of illegal gratification by the Respondent has not been proved. Furthermore, Section 20 of the Act is not attracted as the Respondent had been charged for commission of an offence u/s 13(1)(d) read with Section 13(2) of the Act.

11. The learned Counsel also referred to the evidence recorded in exten so to show that majority of the persons who gave evidence belonged to one rival caste and that they are also inter-related. Therefore, he contended that such an evidence cannot be accepted as in the village there are people who grain the axes for settling personal scores. The learned Counsel also referred to a publication by the Revenue Department labeling as Citizens" Charter. In that he wanted to show that the issuance of certificates including legal heir ship certificate, sketch and other things do not come within his purview. Therefore, he could not have demanded and accepted any amount for issuing a certificate for which he had no control.

12. However, a careful perusal of the evidence produced clearly show that the witnesses have spoken clearly against the Petitioner. It is immaterial whether the amount passed on was only a small amount in relation to corruption charges. The Petitioner has clearly abused his official position and demanded bribe and accepted it from various persons in order to oblige them for doing several things. It is also immaterial whether he was in a position to fulfill the promise made by him. Because in any village, the VAO is the sole person who is in touch with revenue department. In general, the rural people believe him to perform multifarious task. Therefore, it is axiomatic that he could have promised many things and collected money towards performing such helps to the villagers. If the theory of witnesses belong to one community and he belongs to other community is accepted, then no action can be taken against any officials in the village. The Petitioner is unable to prove before this Court that there was any personal animosity between the witnesses and him. Merely because they belonged to one community or they are inter-related cannot be a ground to invalidate the lawful action taken by the Respondents. The Commissioner for Disciplinary Proceedings had carefully shifted the materials and found the Petitioner guilty of only four charges. In respect of other charges, he had found him innocence by giving benefit of doubt. Even that was done only by making certain witnesses hostile. The Petitioner cannot be said to be having any previous enmity with the Commissioner. Even the disciplinary authority had independently gone into the evidence recorded against the Petitioner and found him guilty of

those charges. Even on the question of proportionality of punishment, when the case of corruption is proved against the Government servant, the court cannot interfere on the ground that the punishment imposed was disproportionate. The Government servant is expected to show utmost devotion in duty for all times and he has to maintain absolute integrity. Under such circumstances, the question of proportionality will not arise even if the amount of bribe taken cannot be construed to be a great sum.

13. Under these circumstances, this Court has no hesitation to dismiss the writ petition. Accordingly, the writ petition will stand dismissed. However there will be no order as to costs.