
(2006) 10 DEL CK 0046
In the Delhi High Court
Case No : LPA No. 1700 of 2005

S.K. Mutreja

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-10-2006

Acts Referred:

Citation : (2007) 136 DLT 273 : (2006) 92 DRJ 55

Hon'ble Judges : Mukul Mudgal, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Pradeep Gupta, for the Appellant; Sanjay Katyal, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This letters patent appeal is directed against the impugned judgment dated 19.5.2005 passed by a learned Single Judge of this Court, dismissing the appellant's Writ Petition (Civil) No. 5895 of 2005. The said writ petition sought the quashing of an order dated 1.4.2005 passed by the Government of India, Ministry of defense, Department of defense Production, Respondent No. 1 herein, whereby Cmde. R.B. Prabhavalkar, Respondent No. 5 herein was appointed as Director (Operations) of the Goa Shipyard Limited (GSL) for a period of 5 years. The appellant who was at the time of filing the writ petition a Chief General Manager, claimed that he should have been appointed to the said post as he was at the top of the merit list prepared by the Public Enterprises Selection Board (PESB).

2. This is the second round of litigation. Earlier, when an order dated 22.9.2004 was passed by Respondent No. 1 appointing Respondent No. 5 as Director (Operations) GSL, the appellant filed Writ Petition (Civil) No. 15851 of 2004 in this Court, challenging the said order of appointment. That writ petition came to be disposed of by an order dated 19.1.2005 passed a learned Single Judge setting aside the appointment order dated 22.9.2004 with directions for reprocessing of the case.

3. The brief facts leading to the filing of this appeal are that the appellant who retired as a Commander after serving the Indian Navy for 20 years joined GSL as a Manager (Ship Building) and at the time of filing the writ petition was working as Chief General Manager (Operations). It may be noted here that during the pendency of these proceedings the appellant has on 18.6.2005 resigned from his post.

4. In May 2003, the process of selection to the post of Director Operations in GSL was initiated. The selection was made by the PESB on 18.9.2003. The PESB recommended the following two candidates in the order of merit:

(i) Commander S.K. Mutreja - Chief General Manager (Operations)

(ii) Cmde. R.B. Prabhavalkar - General Manager, Naval Dockyard, Mumbai.

5. As required by the procedure prescribed, the Central Vigilance Commission (CVC) was requested to accord clearance to the said two candidates and thereafter a reference was made to the Department of Personnel and Training (DOPT) for obtaining the approval of the competent authority. This reference was made on 12.12.2003. The DOPT conveyed its decision on 20.9.2004 approving the appointment of Respondent No. 5. Consequently, orders were issued on 22.9.2004 appointing Respondent No. 5 as Director (Operations).

6. As noticed by the learned Single Judge in the order dated 19.1.2005 in the earlier round of litigation, the appellant's name figured in the agreed lists in the year 1997, in List A in the year 1998-99 and in 2000. He was under surveillance for these years. His name was again figured in List C in the year 2001 and the CBI had also recommended initiation of major penalty in a case relating to placement of an order. Later, the CVC after discussing the CBI and the Department advised initiation of disciplinary proceedings for a minor penalty. However, the Chairman-cum-Managing Director, GSL took the view that since it was a case of breach of procedure in placement of orders urgently required to be executed, the initiation of disciplinary proceedings would adversely affect the morale of senior officers. It was, Therefore, felt that an oral caution was sufficient. This was accepted and acted upon by the CVC.

7. At this juncture, a reference may be made to an Office Memorandum (OM) dated 5.5.1966 issued by the Government of India, Ministry of Home Affairs containing instructions in respect of preparation of lists, scrutiny and checks, and maintenance of records in respect of the officers of the various departments of government and public sector undertakings. The relevant portion of the said OM pertaining to agreed lists reads as under:

Agreed Lists Of Suspected Officers.

6. Agreed lists will be prepared of officers of gazetted status against whose honesty or integrity there are complaints, doubts or suspicious after consultations between the officers of the departments concerned and of the CBI except in regard to Port Trusts, Public Sector Undertakings and Union Territories

these lists will be settled by discussion in Delhi between the Head of the Department concerned and the Addl. I.G.P. and the D.I.G. (Spl) of the CBI. The agreed lists relating to port Trusts, Public Sector Undertakings and Union Territories will be settled by mutual discussion between the Head of the Port Trust or the Public Sector Undertakings or the Chief Secretary of the Union Territory concerned and the D.I.G. of Police CBI and the S.P. of the local Branch of the CBI. To, achieve the best result, it is important that there should be free and frank exchange of information during these discussions.

7. The following action will be taken in respect of officers on these agreed lists by the Departments or the Undertakings and by the C.B.I.:

(i) Closer and more frequent scrutiny and inspection of their work and performance by the Departments concerned, particularly in spheres where there is scope for discretion or for showing favors.

(ii) Quiet check about their reputation both by the Department and the C.B.I.

(iii) Unobtrusive watch of their contacts style of living etc., by the C.B.I.

(iv) Secret inquiry by the C.B.I. about their assets and financial resources. The Departments will make available their property returns and other relevant records to the C.B.I.

(v) Collection of information by the C.B.I. of specific instances of bribery and corruption practices.

8. If those secret checks and enquiries reveal positive material, open enquiries will be started by the C.B.I. and further action taken in the light of the results of that enquiry. It may be emphasized that no adverse or punitive action is contemplated against any officer on these lists unless these checks, verifications or enquiries bring forth adequate material to reasonably conclude that he is lacking in integrity. Those agreed lists will remain in force for one year from the date of preparation. At the end of this period, the list will be reviewed and the names of those officers against whom there is not sufficient evidence to proceed against will be deleted from the list.

8. This was continued by another Office Memorandum dated 28.10.1969 and it was further clarified that the list would be termed as "List of Public Servants of Gazetted Status of Doubtful Integrity" and that "it will include names of those officers only who, after enquiry or during the course of enquiry, have been found to be lacking in integrity." Para 7 of this OM stated that "when the name of an officer has been entered in the list for good and adequate reasons, it will not be removed until a period of three years has elapsed." Para 11 clarified that "the lists cannot be and are not meant to be fully exhaustive and these will not fetter the discretion of the Government in any way.

9. As far as the appellant herein was concerned, it was noted in the judgment dated 19.1.2005 of the learned Single Judge, after perusal of the records, as

under:

despite the adverse remarks and the factum of the petitioner having been kept under close watch and surveillance in different lists as noted earlier, his appointment was recommended for approval up to the Prime Minister's level when the matter was directed to be reprocessed after new Government was to take over. The view taken was, being first in the panel, though petitioner had been kept under surveillance by CBI, it could not be held against him as it did not lead to any case or action.

The learned Single Judge was of the view that the Appointments Committee of the Cabinet (ACC) was not correctly apprised that the appellant did not figure in the "Doubtful Integrity Case List" and that "it is not for this Court to speculate, especially in view of the facts as noted, whether Appointment Committee of the Cabinet would have taken the same decision if the factual position of petitioner's name not being under doubtful integrity list was correctly given." Thereafter the learned Single Judge, by the said order dated 19.1.2005, while setting aside the order dated 22.9.2004 appointing Respondent No. 5 directed that the case be reprocessed "correcting the error with regard to the petitioner not falling in the list of "doubtful integrity category" and reporting the factual position of his being kept under surveillance on the basis of agreed lists A, and lists B and C along with relevant facts.

10. Pursuant to the above directions, the process of selection was again undertaken and an order dated 1.4.2005 was passed by Respondent No. 1 appointing Respondent No. 5 herein as Director (Operations) GSL for a period of 5 years. This order was again challenged by the appellant in Writ Petition (Civil) No. 5895 of 2005. While dismissing the said writ petition by the impugned judgment dated 19.5.2005, the learned Single Judge observed as under:

The original records have been produced, and their perusal the consultation and concurrence of the defense Minister is obvious from the records. The Appointments Committee of the Cabinet has unanimously approved the appointment of Respondent No. 5 who was at Serial No. 2 in the panel recommended by the PESB as Director (Operations), Goa Shipyard Ltd., obviously concurring with the opinion that appointments to such important assignments should be of persons with excellent unimpeachable reputation. The Appointments Committee of the Cabinet was fully aware of the Orders passed by Hon"ble Mr. Justice Manmohan Sarin, which on a holistic reading do not assist the Petitioner so far as his suitability for the post is concerned. The gravamen of the Judgment is that the decision for the appointment to the said post must be taken keeping in perspective the fact that the Petitioner had been placed in the "Agreed List" and not in the "Doubtful Integrity List". These directions in the previous writ petition has been followed in letter and spirit. The contention that the Petitioner's previous record should not be looked into at all is untenable on the grounds of res judicata. The service record of Respondent No. 4 is unblemished and untarnished.

11. Mr. Pradeep Gupta, the learned Advocate for the appellant relies on the decisions in Dr. A.K. Doshi Vs. Union of India, , State of Rajasthan Vs. Aruna Devi and Others, , Life Insurance Corporation of India and another Vs. Gangadhar Vishwanath Ranade (Dead) by LRs., and Waris Rashid Kidwai v. Union of India 1998 III AD (Delhi) 113 and submits that the Cabinet Secretary had no role to play in the matter and ought not to have put up the file to the ACC without adding his own comments. In any event, none of the positive materials in the appellant's favor was put forward before the ACC. Also, there was no consultation among the members of the ACC before the decision was taken. He further submits that as long as no action was taken by the CBI on the basis of the appellant's name figuring in the agreed lists, that factor could not come in the way of his selection. In any event on the date of the selection in 2003, the appellant's name did not figure in any of the agreed lists. He submits that the appointment of Respondent No. 5 is in the teeth of the judgment dated 19.1.2005 passed by the learned Single Judge, in the first round allowing his writ petition.

12. Mr. Sanjay Katyal, the learned Advocate appearing for the Union of India submits that this being a selection to a high-level post, only persons of impeccable integrity are to be appointed. The scope of judicial review in proceedings under Article 226 is confined to examining the reasonableness and fairness of the decision making process and not the decision itself. In that view of the matter no interference was called for with the impugned order of the learned Single Judge which has been passed after the Court perused the records and satisfied itself that no illegality had been committed.

13. We have also perused the original records in the case. We are satisfied that the mandamus issued in the earlier order dated 19.1.2005 by the learned Single Judge in the first round has been duly complied with by Respondent No. 1. All the available materials concerning the appellant have indeed been considered. Having perused the judgments in Dr. A.K. Doshi , N.P. Dhamania, Gajender Vishwanath and Waris Rashid Kidwai we are of the view that the law laid down therein has not been deviated from. After the judgment dated 19.1.2005 of the learned Single Judge, which has been accepted by the appellant, it is no longer open to him to contend that the fact of his name having figured in the agreed lists ought not to have been taken into account by the ACC. We are unable to countenance the submission that this would not be a relevant material for consideration to the appointment to the post of Director (Operations) GSL. Our jurisdiction is confined to examining if the procedure in making the selection suffers from any unreasonableness or arbitrariness. We are unable to find any factor that can be said to have vitiated the decision making process in the instant case. There is nothing in the record which shows that there was no effective consultation among the members of the ACC or that their decision was influenced by any extraneous factors or materials. In the circumstances, the decision of the ACC to select Respondent No. 5 and not the appellant is not justiciable. There are no grounds for interfering with the impugned judgment of

the learned Single Judge with whom we are in complete agreement.

14. In that view of the matter, we find no merit in this appeal and it is accordingly dismissed with no order as to costs.