

(2012) 09 AP CK 0022

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29413 of 2010

Sri K.B. Sankara Kumar

APPELLANT

Vs

A.P. Industrial Infrastructure Corporation Ltd Parishrama
Bhavan and 2 Others

RESPONDENT

Date of Decision : 05-09-2012

Acts Referred:

Suits Valuation Act, 1887 — Section 11

Citation : (2013) 2 ALD 389 : (2013) 4 ALT 111

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : G. Maloji Rao, for the Appellant; B.P. Mohan, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao

1. This writ petition is instituted seeking a writ of mandamus for declaring the orders contained in Lr No. 14349/Vig/A3/2006, dated 22.4.2010 of the 2nd respondent - Government of Andhra Pradesh and the consequential proceedings bearing No. 24431/PW/APIIC dated 5.11.2010 of the 1st respondent - APIIC Limited deciding to revert the petitioner from the post of Deputy Zonal Manager (DZM) - Asset Management (AM) to the next lower post of Manager (AM) illegal and contrary to APIIC Articles of Association, APIIC Staff Regulations and APIIC CDA Rules. The petitioner while was working as Manager (AM) at Visakhapatnam Zonal Office with the 1st respondent corporation, was promoted to the next higher post of DZM (AM) and was posted to Patancheru Zone through proceedings dated 7.6.2010 of the Executive Director of the 1st respondent corporation. Pursuant to the said orders, the petitioner joined and was serving as such from 9.6.2010 onwards. He was also placed on probation for a period of six months within a continuous period of one year from the date of joining and that he would be completing the said six months tenure by 8.12.2010. The 3rd respondent while working as a Manager at Moulali Zone of the 1st respondent

corporation, was placed under suspension from service on 11.9.2006 pending enquiry in to certain grave irregularities committed by him. After conducting an enquiry, the charges were held as established by the Enquiry Officer. The Vice-Chairman and Managing Director of the 1st respondent corporation accepted the Enquiry Report and awarded the punishment of reduction to a lower post on permanent basis on the respondent No. 3. Consequently, the 3rd respondent has been reverted. Accordingly, the 3rd respondent came to be posted as Assistant Manager (Asset Management) falling within Vijayawada Zone on 13.03.2008. The 3rd respondent approached this court and instituted WP No. 7432 of 2008 challenging the said order of punishment. An interlocutory order was passed by this court on 13.3.2008 in WPMP No. 9776 of 2008 in the aforementioned writ petition staying the operation of the order passed on 13.3.2008 reverting the 3rd respondent to the lower post. Consequently, the 3rd respondent continued to function as Manager (Asset Management) at Vijayawada. However, during the pendency of WP No. 7432 of 2008, the 3rd respondent seems to have taken up the matter with the 2nd respondent - State Government for recalling the order of punishment imposed on him by the Vice Chairman and Managing Director of the 1st respondent corporation. The State Government intervened in the matter and passed orders on 22.4.2010 setting aside the order of punishment imposed by the Vice Chairman and Managing Director of the 1st respondent corporation on the 3rd respondent on 13.3.2008. Hence, the 3rd respondent seems to have withdrawn WP No. 9776 of 2008. Accepting view of the orders passed by the State Government on 22.4.2010, the 1st respondent corporation has drawn a show-cause notice through its proceedings dated 5.11.2010 calling upon the writ petitioner to show-cause as to why he be not continued in service as Manager (Asset Management) inasmuch as the case of the 3rd respondent is required to be considered for promotion as DZM (AM). Challenging this show-cause notice dated 5.11.2010 and the orders of the State Government dated 22.4.2010, this writ petition is instituted.

2. Heard Sri G. Maloji Rao, learned counsel for the writ petitioner and Sri B.P. Mohan, learned standing counsel for the first respondent/Corporation and Sri J. Prabhakar, learned counsel for the third respondent.

3. The principal objection raised on behalf of the respondents 1 & 3 is this. The writ petitioner lacks the necessary locus to mount a challenge to an order passed by the State Government on 22.04.2010 concerning the disciplinary action initiated by the first respondent/Corporation against the third respondent. Insofar as such proceedings are concerned, the writ petitioner is a third party. Consequently, he has no role to play and he cannot be called as an "aggrieved person" in respect of any such action taken by the first respondent/Corporation against the third respondent or for that matter, any order passed by the State Government in respect of such an action either in favour or against the third respondent. Further, the writ petitioner has solicited for a Writ of Mandamus. His principal attack in this writ petition is against a show cause notice issued on behalf of the first respondent/Corporation on 05.11.2010 requiring him to show

cause as to why he shall not, in effect, be reverted from the post of Deputy Zonal Manager. A Writ of Mandamus would lie for purposes of enforcing a legal right available to an individual or alternatively to forbear the respondents from breaching a legal right or provision. This apart, the notice drawn on behalf of the first respondent/Corporation by the Executive Director dated 05.11.2010 is a show cause notice. If the petitioner is promoted to the post of Deputy Zonal Manager and from which post he is sought to be reverted before any rights have crystallized in his favour, the Corporation is obliged to adhere to the principles of natural justice and in that process, the impugned show cause notice dated 05.11.2010 is issued.

4. Normally, this Court will not be inclined to interfere with a show cause notice unless it is demonstrated that the said show cause notice is drawn by an incompetent authority. In the instant case, it was not even suggested that the first respondent/Corporation has no authority of any manner to deal with the reversion of a Deputy Zonal Manager in its service. It, therefore, emerges that the impugned show cause notice dated 05.11.2010 cannot be described as drawn by an incompetent agency or authority. Further, it is a fundamental principle of law that, any decision, whether it is administrative or quasi judicial is taken by any public authority or state, which decision is likely to impact a third party with adverse civil or evil consequences, such a third party should be put on notice and be provided a fair and reasonable opportunity of entering upon his defense. Therefore, the show cause notice dated 05.11.2010 has been drawn in strict conformity of the principles of natural justice. Inasmuch as the first respondent/Corporation is an undertaking of State Government of Andhra Pradesh, it's share capital was substantially subscribed by the State of Andhra Pradesh and even the remaining two nominal shareholders are none other than the public servants of the State of Andhra Pradesh who are in-charge of the Department of Industries and entrusted with the task of Industrial Infrastructural Development in the State. The first respondent/Corporation is a fully owned Corporation of the State of Andhra Pradesh and thus answers the description "State" for purposes of Article 12. Hence it is legitimate of it to have drawn a show cause notice. I, therefore, hold that the show cause notice dated 05.11.2010 does not call for or warrant any interference.

5. Further, there is no legal right, guaranteed or otherwise to the writ petitioner, which is sought to be infringed in the process. In the absence of a legal right and in the absence of failure to adhere to principle of natural justice or any statutory provision or apparent breach of any other statutory provision, a Writ of Mandamus, as prayed for cannot be issued. Even for this reason, in my opinion, the writ petition must fail.

6. There is another dimension to the entire controversy. The third respondent has been penalized by imposing a punishment by the first respondent / Corporation. He has been reverted on a permanent basis by an order passed on 13.03.2008. The first respondent/Corporation has framed Conduct, Discipline and

Appeal Regulations (henceforth referred to as CDA Regulations), exercising the power available under Article 78 of the Articles of Association of the first respondent. The employees of the first respondent/Corporation are dealt with by these regulations. Regulation 27 of the CDA Regulations has listed out various punishments that can be imposed for good and sufficient reasons on the employees. They are classified as minor penalties and major penalties. Amongst those listed as major penalties, the following will be of relevance to our inquiry and it reads as under:

(e) Reduction to a lower post or grade or to a lower stage in the incremental scale (timescale).

7. Undoubtedly, reduction to a lower post or grade is what is understood in common parlance as reversion. But however, there is a distinction, in principle between a reversion per se and a reversion for ever. There could not have been a permanent reversion imposed on an employee for proven misconduct. It is therefore, adopted by all liberal and progressive employers to specify the period for which the order of reversion is to be suffered by the employee concerned. That is the reason why orders of reversion are passed invariably specifying as to the period for which they would be in operation, let us say three years or five years, as the case may be. Unless there is a provision for permanently reverting an employee, imposition of such a permanent reversion is frowned upon by the Courts as an excessive, if not abusive, use of the disciplinary control, by the competent authority. In the instant case, the third respondent has been imposed one such punishment. Perhaps, he may have secured adequate relief at the hands of the appellate authority namely, the Board of Directors of the first respondent/Corporation. But however, he seems to have approached the State Government, as the first respondent is a State owned Corporation. The State Government in its public enterprises department, provided the necessary relief to the third respondent through their orders dated 22.04.2010. The first respondent/Corporation has preferred to comply with the said directives of the second respondent/State. The petitioner raises objection for that course of action.

8. While every employee is bound to maintain the requisite standard of discipline and conduct himself in a befitting manner, not only towards his employer but also with the other employees and also with those with whom he would come in contact as a part of discharge of his duties or even otherwise. Similarly, every employer is required to meet an even handed treatment and disposition in the matter of control of their cadres. Breach of discipline cannot be suffered or tolerated. Apart from being contagious, it is incompatible with the work culture of every public organization. While trying to deal with the erring employees, the employer or the disciplinary authority as the case may be, is also required to exercise necessary dispassion and objectivity. He should be alive to circumstances prevailing. The discretion vested in the employer or the disciplinary authority to impose the penalties listed out in Regulation 27 of the CDA Regulations is to be exercised on sound lines. It cannot be made to depend

upon the whim, fancy or the pleasure or even the lack of them. But these are all areas of concern for the employer or the disciplinary authority on one hand and the individual employee on the other. There is no role for a third party to seek intervention in such matters. However, with a view to secure better and congenial working atmosphere, a collective bargaining or collective approach is allowed and permitted. If the employer happens to be an industrial concern, organization of workmen into trade unions, is one such facility that is provided. Similarly, even in non-industrial employment sector, formation of employees associations are sometimes permitted. It is considered that, allowing negotiations to take place between an employer and an organization representing the interests of the employees would go a long way and facilitate proper working conditions and atmosphere to prevail at the work place. The perceived instances of injustice by the employees can be sorted out by a collective indulgence and thought process. A representative body would be able to highlight the grievances or hardships faced by the employees in a more dispassionate and objective manner than what an individual employee would have normally done. This apart, the individual employee would not suffer from an apprehension or fear at the back of his mind that he would be isolated and made to face further hardships either by the employer or by the disciplinary authority. These are the reasons why a collective corrective mechanism for sub-serving the interests of both the employer and employee is contemplated and put in place. It is a well recognized fact that, where better conditions of service prevail and where proper and congenial working atmosphere prevails, the output and outturn of the employees would be that much more better, thus contributing to the usefulness and productivity of the organization as a whole. But even in those areas, no third party can interfere and suggest to the employer or disciplinary authority to impose a specific punishment against a particular employee or impose a heavier punishment either. At best, a collective body of employees can appeal for justice and good sense to prevail on the employer or the disciplinary authority so that an excessively harsh or disproportionate punishment is not imposed. Imposition of excessive or harsh punishments are not only indicative of unfair treatment of the employees, but also would lead to grave and great discontent in the minds of the other employees. Therefore, while I can concede, in principle, some role for a collective body of employees to intervene and negotiate in the matter of imposition for a particular punishment imposed or proposed to be imposed by the employer or disciplinary authority against another employee, but however, even such a collective body cannot dictate terms to the employer or disciplinary authority and insist that a specific punishment, alone should be imposed and no other punishment, however just, it might be imposed.

9. If it were not to be otherwise, it will not be hard for one to visualize the adverse effect flowing from such a situation. If a disciplinary authority imposes a punishment, let us say stoppage of two increments for a proven misconduct on an employee, it does not lie in the mouth of a third party, who could be a junior or a senior employee to come forward and suggest that a graver punishment, let

us say reversion ought to have been imposed on the erring employee. If the imposition of punishments is made justiciable at the hands of third parties, it will lead to discordant results. All employees who are likely to stand to benefit or gain if a heavier punishment is imposed upon any particular employee, would queue up and sue the organization for its failure to impose a much harsher or graver punishment against a particular employee. In such an event, the organization would be flooded with the prospects of multiple litigation and it would be forced to defend its action on every such occasion when a punishment is imposed. It is therefore very thoughtfully held that, in the matter of imposition of a punishment against an erring employee, the same is not justiciable at the hands of an unconcerned third party thereto. (For instance, if the right to sue services, the legal representatives of a deceased employee are not treated as third parties vis-a-vis the surviving right.) It is in that context, a third party cannot be described as an aggrieved person. Unless one is an aggrieved person, he does not have the legitimacy to mount a challenge and that too before a constitutional Court to the orders passed, which apparently might be favourable to one particular employee.

10. When confronted with this situation, Sri G. Maloji Rao has submitted that the Corporation, even though a State owned Corporation and even though the State Government is the competent authority to appoint the Managing Director to the said Corporation, in terms of Article 81 of the Articles of Association of the first respondent, but nonetheless, in terms of Article 78 of the same Articles, the general powers of the company are vested with the Board. It is specified therein that, the business of the Company (first respondent) shall be managed by the Board and in accordance with such regulations made by it. Therefore, Sri G. Maloji Rao would submit that, when once in terms of CDA Regulations 27, the third respondent is appropriately penalized by the competent authority acting, on behalf of the first respondent/ Corporation, the State Government could not have passed any orders on 22.04.2010 as the CDA Regulations have not provided for any appeal or revisional or reviewing powers in the hands of the said State Government. He would in support of the above plea rely upon the Judgment rendered by the Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, wherein, in paragraph 6 the Supreme Court has crystallized the following principle of law:

(6) The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, & that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under

consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was "coram non judice", and that its judgment and decree would be nullities..

and would submit that the State Government lacks power and jurisdiction and hence the order passed by it on 22.04.2010 should be treated as a nullity.

11. I am not in a position to agree with the submissions made by the learned counsel. It is a very well settled principle of law that, whenever a Court or a Tribunal, which lacks jurisdiction, passes an order, the same is liable to be treated as a nullity and such an objection can be taken or entertained at any stage of the proceedings. But however, there is an element of distinction between an administrative order and an order passed as a part of quasi judicial exercise by determining the rights and obligations of the parties. For purposes of passing an administrative order, what is paramount is availability of power of general superintendence. If a Corporation is owned by the State, it can, in general terms guide the said Corporation enabling it to discharge it's functions more effectively and usefully. That is a matter between the Corporation and the State. Third parties, so long as their rights or obligations are not at stake, in that process, have no say in the matter. In the instant case, whether the State Government is thoroughly justified in reversing an order passed by the competent disciplinary authority of the first respondent/Corporation who imposed the punishment of reversion on a permanent basis on the third respondent, is a matter falling in the exclusive domain of relationship between the first respondent/Corporation on the one hand and the second respondent/State on the other. So long as the order of the second respondent/State Government is not actuated by malice, the third party surveillance thereon, particularly not connected to public interest, in my opinion is totally uncalled for. Further, if one is aggrieved of such an order, it is the Corporation. There is no element of public interest component involved in the presence case. In view of my finding that the writ petitioner is not answering the description of an aggrieved person in the matter of imposition of punishment by the first respondent/Corporation on the third respondent, I must, as a corollary, hold that the petitioner also lacks the necessary competence to challenge the order passed by the State Government on 22.04.2010 restoring the third respondent back as a Manager.

12. Sri B.P. Mohan, learned standing counsel has placed reliance upon the Judgment rendered by the Supreme Court in Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., in support of his contention that the writ petitioner cannot answer the description of an aggrieved person and consequently cannot maintain this writ petition. It will be appropriate to notice that, a Bench comprising of three learned Judges of the Supreme Court had occasion to consider the entire matter, in view of certain observations made by Hon"ble Sri Justice K. Ramaswamy in an earlier Judgment rendered in R.K. Jain Vs. Union of India and Others, , that, in service jurisprudence, it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of

the offending action and that a third party has no locus-standi to canvass the legality or correctness of the action, but however proceeded to observe that, only public law declaration would be made at the behest of the petitioner, a public spirited person. It is this later observation, in my humble opinion that has called for revisiting the legal principles on the subject in Dr. Duryodhan Sahu's case. It would be appropriate to notice that the Supreme Court in the process has approvingly quoted the principle enunciated by it earlier in Thammanna Vs. K. Veera Reddy and Others, and Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, . For all the aforementioned reasons, I do not find this writ petition as maintainable and consequently it is dismissed, but however, the parties will bear their respective costs.