
(2013) 03 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10058 of 2010

Suraj Pal Balmiki

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Arms Act, 1959 — Section 5(2)(A)
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 420, 466, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d)(2)

Citation : (2013) 2 WLN 500

Hon'ble Judges : P.K. Lohra, J

Bench : Single Bench

Advocate : C.S. Kotwani, for the Appellant; I.S. Pareek, Addl. Govt. Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

P.K. Lohra, J.—The petitioner has laid this writ petition under Article 226 of the Constitution of India with twin prayers of besetting the impugned order whereby sanction for prosecution was granted against him vide order dt. 12.10.2010 (Annex.8) and the order of suspension dt. 13th of July 2007 (Annex.3). The facts apposite to decide the lis involved in the matter are that at the inception of his service career the petitioner was appointed as Class IV employee in the office of District Collector, Sri Ganganagar w.e.f. 01.04.1983. While serving in the Office of the first respondent, numerous First Information Reports were lodged unearthing arms scandal in the office of District Collector, Sri Ganganagar. Precisely, in all these First Information Reports, the then Addl. District Magistrate/Collector, Sri Ganganagar, Shri Lal Chand Ojha was named as principal accused. In one of the FIRs lodged in this connection, petitioner was not named as one of the accused, was numbered as FIR No. 220 of 2007 and offences under Secs. 420, 467, 468, 471, 474 and 466 of the Indian Penal Code were attributed to all the accused persons. During the course of investigation, the name of the

petitioner was also included in the charge-sheet and after submission of the charge-sheet, the petitioner was detained in the custody for 48 hours. As a consequence of the detention of the petitioner for 48 hours, on 13.07.2007 an order of suspension was issued against the petitioner. Considering the gravity and magnitude of the offences and the scam of illegal arms licenses issued to certain unscrupulous and anti-social elements, the Anti-Corruption Bureau of the State became vigilant and the matter was thoroughly investigated. During investigation, FIR under Sec. 13(1)(d)(2) of the Prevention of Corruption Act, 1988 read with Section 5(2)(A) & (B) of the Arms Act, 1959 was registered. In the said FIR also, Lal Chand Ojha was named as an accused. As a matter of fact, in the said FIR bearing No. 184 of 2008, there was no occasion to include the name of the petitioner inasmuch as he had no role to play in issuance of any kind of arm license. The petitioner has further alleged in the writ petition that the FIR No. 184 of 2008 was having no nexus whatsoever with the petitioner but he was tempted by the immediate officers higher in hierarchy to ventilate his grievances against the same with a view to dissuade the competent authority for grant of sanction for prosecution. In compliance thereof, the petitioner submitted a detailed representation (Annex.5). Besides that, against FIR No. 220 of 2007, the petitioner made a representation on 22.09.2010 (Annex.6) for revocation of his suspension order. However, the representations submitted by the petitioners were not paid any heed and a sanction to prosecute the petitioner was issued by the competent authority (respondent No. 1) on 11.08.2010 (Annex.7). While attacking the sanction for prosecution, the petitioner has pleaded in the writ petition that the same has been issued by the competent authority without application of mind and discarding the requisite materials on record. That apart, the petitioner has also questioned his prolonged suspension, which is continuing since 2007. On behalf of the respondents, detailed reply to the writ petition has been filed. The respondents have averred in the reply that the sanction for prosecution has been issued against petitioner by the competent authority with due application of mind and therefore there is no infirmity much less legal infirmity in the order granting sanction for prosecution. On behalf of the respondents, it is also urged that the petitioner is well within his rights to question the validity of the sanction before the Special Judge, conducting the trial after submission of charge-sheet.

2. In the return, the respondents have also narrated the checkered history of the scam to establish proximity of the petitioner with the offence and his involvement in the criminal conspiracy. In totality, the maintainability of the writ petition itself was questioned by the respondents. The order of suspension issued against the petitioner was also stoutly defended by the respondents by highlighting his dubious conduct. As per the version of the respondents, keeping in view the seriousness of the offences and the magnitude of the scam, which was unearthed in the Collectorate of Sri Ganganagar, issuance of order was imminent and as such the same cannot be faulted in any manner whatsoever.

3. I have heard learned counsel for the rival parties.

4. Mr. C.S. Kotwani, learned counsel appearing for the petitioner, has very candidly conceded the prayer for quashment of the order granting sanction for prosecution in the present petition. Learned counsel for the petitioner has very frankly submitted that at this stage he is abandoning the prayer of besetting order dt. 12.10.2010 (Annex.8). While confining his arguments against the impugned order of suspension, the learned counsel for the petitioner has vehemently argued that the present case is a glaring example of abuse of powers by the competent authority inasmuch as the petitioner is under suspension for last about six years. According to the contention of the learned counsel for the petitioner, keeping an employee suspended for such a longer duration, that too when the employee is a Class IV Employee, is absolutely arbitrary and unreasonable. Substantiating his submissions against the prolonged suspension, the learned counsel for the petitioner has also invited attention of this Court towards a circular issued by the Department of Personnel, Government of Rajasthan dt. 07.07.2010. According to the submission of the learned counsel for the petitioner, in adherence of the said circular, the impugned order of suspension is liable to be reviewed by the duly constituted committee because since date of suspension more than three years have elapsed. For ready reference, complete text of the circular with specific emphasis on Clause III of the said circular is reproduced as infra:

5. Per contra, Mr. I.S. Pareek, Addl. Government Counsel, has submitted that there is no quarrel in the factual position that the said circular has been issued by the Department of Personnel & Administration, and in terms of the said circular the order of suspension issued against the petitioner can be reviewed. However, the learned counsel for the State has strenuously urged that considering the gravity and magnitude of the offences and the scam of illegal arm licenses, no indulgence can be granted to the petitioner for reviewing his order of suspension.

6. On close scrutiny of the arguments advanced at the Bar and examining the recitals contained in the Circular issued by the Government, referred to supra, I feel persuaded to grant indulgence to the petitioner for redressal of his grievances. It is not in dispute that the petitioner was a petty Class IV employee and prima facie his alleged role in the issuance of arm licenses and the so called criminal conspiracy cannot be equated with the other officials of the Collectorate, Sri Ganganagar, who were higher in the official hierarchy. Moreover, in the given circumstances, the action of the respondents appear to be too harsh to keep an incumbent, a Class IV employee, suspended for more than six years. After examining the circular of the State Government, referred to supra, in my considered opinion, there are laudable objects behind the said circular and it is intended by the State Government while issuing the said circular that the employees of the State Government are not to be kept under suspension for a prolonged duration. The very object of the said circular is to mitigate the hardship of an employee which he has suffered on account of his prolonged suspension. If the rigor of the circular is applied vis-?-vis the petitioner, then it

can be safely concluded that the afflictions of the petitioner against his prolonged suspension are genuine and continuing this suspension for further period is not at all in the interest of justice. This Court feels that prolong suspension of a Class IV employee for more than six years is likely to result in travesty of justice. Therefore, the case in hand is a fit case wherein circular of the State Government referred to above is to be pressed into service for rescinding the order of suspension.

7. Resultantly, the present petition is allowed in part, the order of suspension dt. 13.07.2007 (Annex.3) is hereby quashed and set aside and the respondents are directed to reinstate the petitioner in the services forthwith. It is clarified that for other grievances concerning the grant of sanction for prosecution, the petitioner shall remain at liberty to agitate the same before competent authority. There is no order as to costs.