

(2002) 12 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 8395, 9970, 9971, 10141, 10212, 10394, 10402, 10404, 10448, 10449, 10450, 10503, 10525, 10527, 10597, 10613 and 10615 of 2002

The Govt. of A.P. and Another

APPELLANT

Vs

Dr. B.V.N. Chowdary and Others

RESPONDENT

Date of Decision : 05-12-2002

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 8(1)
Constitution of India, 1950 — Article 14, 16, 21

Citation : (2003) 6 ALT 106

Hon'ble Judges : D.S.R. Varma, J; Bilal Nazki, J

Bench : Division Bench

Advocate : A.A.G, for the Appellant; Nuty Rama Mohan Rao and Jyothi Kiran for R1, for the Respondent

Judgement

Bilal Nazki, J.—In this batch of Writ petitions the Government of Andhra Pradesh challenged the orders passed by the Tribunal in various O.As. The judgment of Tribunal is common and the issues are same, therefore all the Writ petitions are being disposed of by this common judgment.

2. It appears that the respondents who moved the Tribunal as applicants were placed under suspension in terms of various orders and thereafter they filed the O.As before the Tribunal. The orders of suspension were passed by the Government in terms of sub-rule (1) of rule-8 of Andhra Pradesh Civil Services (CCA) Rules, 1991. It was contended before the Tribunal by the applicants in the O.As that the orders of suspension were violative of Article 14, 16, and 21 of the Constitution of India. The facts which are material are that, the Director General, Anti Corruption Bureau had reported that the District Medical and Health Officers and supporting staff of Vizianagaram, Visakhapatnam, Krishna, Ananthapur, Adilabad, Medak and Nizamabad districts had resorted to corrupt practices and abused their official position in connivance with suppliers of medical and Surgical

agencies and had misappropriated huge amounts of Government funds and caused unlawful gain to others and themselves. The ACB officials had, on receipt of information, conducted surprise checks of the stores of District Medical and Health officers. Criminal cases had been registered against the concerned officers. The investigation had further revealed that District Medical and Health Officers and their supporting staff had purchased medicines and surgical items from the non-existing firms and non-linkage firms, they had also received items from un-indented firms which were substandard in quality. In some cases without any indent from the Primary Health Centers huge quantities of items were ordered, bills were accepted at exorbitant rates. Purchases were made without approval from the District level committee or State level committee. After this material was placed before the Government they issued the suspension orders. One of the orders which are subject matter of Writ petition No. 8395/2002 is reproduced below as the sample order because all the orders are similar;

"GOVERNMENT OF ANDHRA PRADESH ABSTRACT

Public services - A.P. Health, Medical and Family Welfare Department- Dr. B.V.N. Chowdary, DM &HO, Anantapur - Suspension from service - orders - issued.

HEALTH, MEDICAL AND FAMILY WELFARE (VC.I) DEPT.,

G.O. Rt. No. 712 Date: 03.07.2001

ORDER:

Whereas it has come to the notice of the Government of Andhra Pradesh alleging that Dr. B.V.N. Chowdary, DM & HO Anantapur has purchased medicines / materials at exorbitant prices exceeding rate contract and accepted material from the firms other than which are intended to supply and caused wrongful loss to Government.

2. And whereas disciplinary proceedings against Dr. B.V.N. Chowdary, DM & HO Anantapur has been contemplated.

3. And whereas the Government of Andhra Pradesh after careful consideration of the available material and having due regard to the circumstances of the case are satisfied that it is necessary to place Dr. B.V. N. Chowdary, DM & HO Anantapur under suspension.

4. Now, therefore in exercise of the powers conferred by sub-Rule (1) of Rule 8 of Andhra Pradesh Civil Services (CCA) Rules, 1991, the Government of Andhra Pradesh hereby place the said Dr. B.V.N. Chowdary, DM & HO Anantapur under suspension from the date of communication of this order and he shall continue to be under suspension until the conclusion of the disciplinary proceedings / termination of all proceedings relating to the criminal charges.

5. It is further ordered that during the period this order remains in force, the Headquarters of Dr. B.V. N. Chowdary, DM & HO shall be Anantapur and the said Dr. B.V.N. Chowdary, DM & HO Anantapur shall not leave the headquarters

without obtaining the previous permission of the undersigned.

6. During the period of suspension, Dr. B.V.N. Chowdary, DM & HO Anantapur shall be paid subsistence allowance in accordance with the F.R.53.

7. The Director of Health, is requested to serve the order on Dr. B.V.N. Chowdary, DM & HO Anantapur and furnish the duplicate copy with the acknowledgement of the individual immediately to the Government.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDRHA PRADESH)

C. ARJUNA RAO

SPECIAL CHIEF SECRETARY TO GOVERNMENT"

3. The officials involved in various O.As were District Medical and Health Officers, Administrative Officers, Office Superintendents, Senior Assistants and Junior Assistants and Stores incharge. The case of the District Medical and Health Officers was that the authorities basing on certain frivolous and baseless information conducted searches in various offices of District Medical and Health Officers in September,2001. Even though the investigation did not reveal anything, as a face saving measure they recommended suspension and the Government placed them under suspension. The case of other applicants before the Tribunal was that they were not responsible for purchasing medicines and surgical material and it was beyond their capacity to have ordered purchase of medicines, therefore the suspension orders were bad. After giving the facts of each case with respect to each district the Tribunal stated;

"In view of the facts and circumstances of the case and the discussion referred to above, we are constrained to allow all the OAs setting aside all the GOs impugned therein which were issued suspending the applicants and also confirming the interim orders issued in favour of DM & HOs and dismissing all the VMAs with a liberty to the Government to fix the exact liability of each of them for the lapses, if any, that have been ultimately pointed by the ACB in its report, and with a liberty to recover the loss caused to the Government for the said lapses from them."

Now, the learned Additional Advocate General has contended before this Court that the Tribunal committed an error when it went into correctness or otherwise of the allegations against the officers. He contended that suspension was not punishment but there was prima face material in the form of report of Director, ACB on the basis of which the Government was satisfied that an enquiry was necessary in the matter. Therefore, in exercise of the powers under the A.P. Civil Services (CCA) Rules the orders of suspension were passed. He further contended that at the initial stage when the enquiry is contemplated it is not possible for anybody to go into the veracity of the allegations which the Tribunal has done. It is a matter which has to be enquired into and only after the enquiry is completed it would be known whether the allegations made against the officers were true or false. In any case, the Tribunal had no jurisdiction to go into the

merits of the allegations at this level. The learned Additional Advocate General took us to various paragraphs of the impugned judgment showing thereby that the Tribunal acted as an appellate authority over the whole investigation process and came to its own conclusions by evaluating the prima facie evidence against the officers. In this connection he pointed out to last paragraph on page 34 of the judgment which reads;

"In order to fix the responsibility the official respondents have not verified the nature and duties of concerned Officers. They have also not been stated in the counters filed by the official respondents. The learned G.P has produced the functional manual pertaining to Health Department of Andhra Pradesh. In that, the duties and responsibilities of DM& HOs have been stated as follows;

.....

....."

4. Then the Tribunal went on to see the duties and responsibilities in the Manual and assessed the charges in terms of each officer on the basis of this Manual. The Tribunal observed that, as per various duties and responsibilities that are shown in the functional manual, the DM & HO is not responsible for the stocks but he is only responsible for efficient management, and as per the duties and responsibilities the Pharmacy Supervisor has to inspect all the Medical institutions under the control of DM & HO and supervise the maintenance of Medical stores in all the institutions and scrutinize purchasing of indents by the incharge of Medical and Surgical stores on the rate contract and non-rate contract firms and watch whether the conditions of rate contract are being followed, to check on the adulterated drugs, to prevent the misbranded drugs into the Government institutions and also to prevent the wastage of drugs, to observe proper preservation of drugs and medicines and supervise proper distribution in most scientific manner etc. The Tribunal also observed that no action was taken against the Pharmacy supervisors in any district where raids were conducted. Thereafter it gave its conclusions as under;

"As per this it is evident that most of the orders have placed on M/s Gayatri Enterprises and it is the approved firm based on the rate contract approved. Some orders have been placed on the firms on which orders are being placed for the last several years. Some more orders have been placed on the new firms most probably due to non-availability of particular medicines or the said firms being quoted a lesser rate. There is no misappropriation. The officials may not be in a position to know whether the firms are bogus, non-linkage firms or non-rate contract firms. In case having knowledge about the same, orders are placed either to benefit those firms or to gain themselves then only some action can be taken. The ACB could not do any exercise so far even though more than one year time has lapsed. Most of the DM & HOs were posted only few months before the rates are fixed and they are not well acquainted and mostly depended on the earlier orders being placed and have approved in a routine manner. There is also

an allegation that even though the rate contract was Rs. 1200/- for instrument Stabilizers, the payment was made at Rs. 2800/- in Vizianagaram district and according to the applicants the rate contract was supplied by the Director itself. The learned Government Pleader disputed the said allegation. In case it is proved and if any of the subordinate in the office of DM & HO have manipulated some rates and placed orders at a high rate, action has to be taken against them after a thorough investigation by fixing responsibility on them. As there are no discrepancies in the stocks, the official respondents have to verify whether the indents have been placed contrary to the earlier precedents and overlooking the rate contract firms deliberately and intentionally. Even before conducting the said exercise, the official respondents have involved all the applicants herein who are no way concerned with the preparation of indents, purchase of medicines and maintenance of stocks, leaving the Pharmacy Supervisors and Pharmacists who are responsible for all these duties as per the functional manual. Some of the applicants have been transferred to other places and some of them are working in the promotional posts in some other Hospitals. Action was taken against the applicants in haste and without properly knowing the nature of duties and responsibilities and without fixing the responsibility for the lapses, if any. The applicants who are Administrative Officers, Superintendents, Senior Assistants-Store keepers and Junior Assistants-cum-store keepers have been unnecessarily placed under suspension without proper verification of nature of duties and responsibilities and without fixing their exact liability for the lapses, if any."

5. The learned Additional Advocate General submits that, in order to assail an order of suspension the petitioner must show that the order of suspension had been passed by an authority which had no power to do so or the order was malafide. Malafides were neither pleaded nor proved and it was not a case of lack of jurisdiction. The order of suspension had been passed on 3-7-2001 and the interim suspension was ordered on 6-7-2001 without even a notice to the other side and in December,2001 final order was passed by the Tribunal quashing the orders of suspension.

6. On the other hand, Mr. Nuty Rama Mohan Rao who appeared for respondents has argued the matter again on merits. In para-10 of the counter affidavit the respondents have dealt with various allegations leveled against them and have tried to give an answer to the allegations leveled against them. Mr. Ram Mohan Rao wanted this Court again to do the same job which was done by the Tribunal and to see whether the allegations leveled against the Officers were true or false. But, we are not going to do that exercise in view of the settled law that at the stage of departmental enquiry the things have yet to get concretized. There are as yet no charges proved against the concerned Officers. There is sufficient material to level allegations and the stage has yet to come when these allegations would be tested on the basis of evidence and that can happen in an enquiry.

7. There are many judgments cited at the Bar. All the judgments are not

necessary but we will refer to the judgment of Supreme Court in *State of Orissa v. Bimal Kumar Mohanty*¹. This was a case where the Officer involved worked as Manager of Orissa State Guest House at Bhubaneswar. The Government Audit department audited the accounts and noted serious financial irregularities, fabrication of records and vouchers and misappropriation to the tune of Rs. 163.59 lakhs. There was some other material against the officer concerned. The appointing authority considered the record and found necessary to take disciplinary proceedings for those financial irregularities and misappropriation. An order was passed directing an enquiry into the irregularities and the Officer concerned was placed under suspension. Anticipating the action, the officer tried to pre-empt it and filed O.A before the State Administrative Tribunal and prayed to quash the Government memorandum and also filed an application for ad-interim injunction. In the words of the Supreme Court, "Hardly the ink on the order of suspension dried on the paper, the Tribunal on the same day, namely March 17, 1993 directed not to suspend the respondent and also directed the standing counsel to obtain instructions of the need to suspend the respondent." Thereafter the Government received further information that the officer was in possession of disproportionate assets and Vigilance was ordered to conduct an investigation and a raid was conducted on the house of the Officer concerned. Accordingly a crime was also registered. The Government thereafter on September 28, 1993 suspended the officer concerned. The Officer avoided the receipt of the order, so it was sent to him by post. Thereafter it was served to him personally on 30th September, 1993. The Tribunal suspended the order on the same day i.e., 30th September, 1993 when it was served on the concerned Officer. Then, in para-4 the Supreme Court held;

"The contention of Shri G.L. Sanghi, learned senior counsel for the appellant is that under Rule 12 of Orissa Civil Services (Classification, Control and Appeal) Rules (for short the Rules), the appointing authority specifically empowered to suspend an employee pending disciplinary proceedings contemplated against him or pending or in respect of any criminal offence under investigation or trial. In this case, in view of the serious allegations found from the audit reports and the report of the vigilance authorities, the appointing authority, namely, the State Government found it expedient to suspend the respondent and the Tribunal was not justified in interfering with the orders when they had appraised the Tribunal of the seriousness of the allegations. Neither permission was granted nor matters were disposed of. On the other hand the tribunal appears to have found fault with the action taken by the appellant. On the facts and circumstances, the appointing authority is justified in suspending the respondent pending contemplated disciplinary proceedings as well as investigation by the vigilance department. Shri R.K. Garg, learned senior counsel appearing for the respondent has contended that the Tribunal has discretionary power to pass suspension of the suspension orders; when the Tribunal had entertained the application and directed the authorities not to take any action except with the leave of the Tribunal which was not obtained before passing of the suspension order on

September 28, 1993. The matters are pending consideration by the Tribunal. This Court would permit the Tribunal to exercise its discretionary powers and would not interdict the exercise of such discretionary powers while exercising the power under Article 136. ON the given facts, it is not a fit case warranting interference of this Court."

8. Then in para-6 the Supreme Court considered Rules relating to suspension which are paramateria with the Rules which apply to this case and then referred to Constitution Bench judgment in R.P. Kapur Vs. Union of India (UOI) and Another, . Their Lordships noted down the following principle from the Constitution Bench judgment;

" The general principle therefore is that an employer can suspend an employee pending an inquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in this statute or the rules framed there under providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental inquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental inquiry against him."

9. The Supreme Court also quoted many other judgments.

10. The learned Additional Advocate General also invited our attention to U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan². In this judgment the following principle was laid down by the Supreme Court;

"Ordinarily when there is an accusation of defalcation of monies the delinquent employees have to be kept away from the establishment till the charges are finally disposed of. Whether the charges are baseless, malicious or vindictive and are framed only to keep the individual concerned out of the employment is a different matter. But even in such a case, no conclusion can be arrived at without examining the entire record in question and hence it is always advisable to allow disciplinary proceedings to continue unhindered."

11. Applying these principles, we are constrained to say that the Tribunal manifestly misdirected itself by evaluating the prima facie evidence and coming to the conclusion that the respondents-applicants were not guilty. As a matter of fact, a finding about the guilty of the Officers concerned has been pronounced by

the Tribunal. By allowing the O.As and quashing the orders of suspension the Tribunal has not merely quashed the orders of suspension but has in effect given a finding about the guilt of the charged officers. For instance, at the cost of repetition, we may quote one of the findings of the Tribunal;

"Action was taken against the applicants in haste and without properly knowing the nature of duties and responsibilities and without fixing the responsibility for the lapses, if any. The applicants who are Administrative Officers, Superintendents, Senior Assistants-Store keepers and Junior Assistants-cum-Store keepers have been unnecessarily placed under suspension without proper verification of nature of duties and responsibilities and without fixing their exact liability for the lapses, if any."

12. Obviously, all these things have to be done during the enquiry. But, once there is a finding of the Tribunal, we do not understand, even if enquiry proceeds what action can be taken against the concerned officers in view of these findings of the Tribunal. Similarly with respect to the other Officers like DM & HO the Tribunal stated;

"There is no misappropriation. The officials may not be in a position to know whether the firms are bogus, non-linkage firms or non-rate contract firms. In case having knowledge about the same, orders are placed either to benefit those firms or to gain themselves then only some action can be taken. The ACB could not do any exercise so far even though more than one year time has lapsed. Most of the DM & HOs were posted only few months before the rates are fixed and they are not well acquainted and mostly depended on the earlier orders being placed and have approved in a routine manner."

Therefore, the Tribunal exonerated the District Medical & Health Officers, Administrative Officers, Superintendents, Senior Assistants- Store keepers and Junior Assistant-cum-store keepers. The whole exercise done by the ACB and the department came to a naught. The Tribunal took it upon itself to enquire about the correctness or otherwise of the allegations on the basis of the material that was available with it. It did not even give a chance to the Writ petitioners to place the record on file which they could do during an enquiry. This was, perhaps, an extreme case of exercising a power by the Tribunal which is not vested in it. For these reasons, the orders of the Tribunal cannot sustain.

13. All these Writ petitions are accordingly allowed. The impugned orders passed by the Tribunal are quashed. Proportionate costs are imposed on the respondents throughout.