
(2003) 07 AHC CK 0238
In the Allahabad High Court
Case No : C.M.W.P. No. 27753 of 2003

U.S. Sinha

APPELLANT

Vs

State of U. P. and Others

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

General Clauses Act, 1897 — Article 21

Citation : (2003) 6 AWC 5448

Hon'ble Judges : D.P. Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : A.P. Sahi, R.N. Singh and G.K. Singh, for the Appellant; V.C. Misra, A.K. Shukla, S.P. Gupta and V. Swarup, Addl. A. G. and S.C., for the Respondent

Final Decision : Dismissed

Judgement

[Paras 13 and 14] [Para 20] [Para 33] B.S. Chauhan, J.—The present case depicts a sorry state of Government's mind and approach. It is revealed from the facts available that what a shabby manner the State is running its administration. The officers of the State instead of resolving the problems and performing their duties, have tried to make the situation more complex for extraneous considerations. They had been ex facie exhibiting malice and partisanship. It is a case of tug of war between two officials of a distinguished medical college of the State. The State administration apparently is divided into two lobbies, each taking positive sides with the errant teacher and staff member. Nobody appears to take any interest towards the ailing patients who rush to such colleges for the amelioration of their medical crisis.

2. The writ petition has been filed by the officiating Principal of Motilal Nehru Medical College, Allahabad, challenging the suspension order dated 24.6.2003 on various grounds, including mala fides against Respondent Nos. 5 and 7, and raising the grievance for handing over charge to Respondent No. 6, who is not the senior-most Professor in the Medical College as Respondent No. 1 ignored the legitimate claims/ expectations of Professors promoted under Personal Promotion

Scheme or Career Advancement Scheme, who according to the Petitioner, are also eligible and entitled to officiate as Principal.

3. Facts and circumstances giving rise to this case are that vide order dated 29.7.2000, the Petitioner was required to discharge duties of Principal, and for that, he was not conferred any financial benefit. It was only an honorarium, an stop-gap arrangement. However, litigation started by one Professor S.K. Jain, who claimed that as the College had been handed over to the Society, he was to retire at the age of 60 and not 58, and he succeeded in procuring an order from Department in April, 2001. Being aggrieved and dissatisfied, Petitioner filed a writ petition and obtained an interim order from this Court. Ultimately, the writ petition was allowed and in pursuance thereof, Petitioner continued to officiate as Principal. Petitioner was put under suspension vide order dated 13.6.2001. He preferred Writ Petition No. 23556 of 2001. Said order of suspension dated 13.6.2001 was stayed vide order dated 2.7.2001, observing that very serious allegations of mala fides have been raised, and prima facie, there was some substance in those allegations. Subsequently, the order dated 14.8.2001, was passed withdrawing the financial and administrative powers of the Petitioner. Being aggrieved, Petitioner preferred another Writ Petition No. 31167 of 2001, in which operation of the order dated 14.8.2001 was stayed on 21.8.2001.

4. The *causa dramatis* interceded here. Complaints and counter complaints started between the Petitioner and Respondent No. 5. Regular enquiry in pursuance of the charge-sheet dated 30.6.2001 was completed by the Enquiry Officer and he submitted the enquiry report on 14.9.2001. The Disciplinary Authority considered the report and accepted the same. A copy of the said enquiry report was furnished to the Petitioner, along with show cause notice for imposing the punishment and for filing the explanation to the said enquiry report, on 26.12.2001. Petitioner submitted his reply to the said show cause notice on 31.8.2002. The Disciplinary Authority did not consider it proper to pass any final order and conclude the enquiry, though charges against the Petitioner had been very serious and grave in nature and the Enquiry Officer found some of them proved and one or two serious charges partially proved.

5. A new twist was added to this scenario. A preliminary enquiry was conducted in a most unusual manner unwarranted in law against Respondent No. 5. Allegations made against the Respondent No. 5 were held to be not proved, only on the basis of his own evidence. He was pronounced innocent. The enquiry officer made allegations against the Petitioner and advised the Government to hold a regular enquiry against him. Here lies the fallacy. Another preliminary enquiry was held against the Petitioner on complaints filed by some persons and the report thereof was submitted on 17.10.2002 recommending a regular enquiry against him. Respondent No. 1 constituted a Committee of three officials, headed by the Divisional Commissioner, Allahabad, vide order dated 2.12.2002 for holding another preliminary enquiry against the Petitioner. Report thereof was submitted by the said Committee on 1st February, 2002, recommending for

holding a regular enquiry against him.

6. After considering the entire material, the Disciplinary Authority did not conclude the enquiry conducted by Shri Farooqui but decided to hold the enquiry afresh on all the charges including those duly proved in the earlier enquiry along with additional charges dealt with in two subsequent preliminary enquiries held against the Petitioner and one against the Respondent No. 5. Thus, came to be passed the impugned suspension order. Hence this petition.

7. Shri R.N. Singh, learned Counsel appearing for the Petitioner has submitted that impugned suspension order has been passed on mala fides and without application of mind without considering that operation of the earlier suspension order, based on mostly the same charges, had been stayed by this Court; the Authority did not consider it proper to make an application before this Court to vacate/vary/modify the said interim order, and thus, circumvented the interim order passed by this Court earlier on 2.7.2001; Respondent Nos. 5 and 7 have malice against the Petitioner, and became instrumental for getting him suspended. Thus, the suspension order is liable to be quashed.

8. On the contrary, Shri V.C. Misra, senior advocate, Shri Vinod Swarup, Additional Advocate General, appearing for all the Respondents except No. 7, opposed the averments advanced on behalf of the Petitioner submitting that this was not a fit case for interference by this Court.

9. We have considered the rival submissions made by learned Counsel for the parties and examined the record, very closely including the one produced suo motu by Sri Swaroop.

10. The scope of interference by the Court in suspension matters has been examined by the Hon'ble Supreme Court in a catena of cases, particularly in State of Madhya Pradesh and Others Vs. Shardul Singh, ; P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, ; Inspector General of Police and Anr. v. Thavasiappan 1992 (2) SCC 145 ; Director General, E.S.I. and another Vs. T. Abdul Razak, etc., ; Vithaldas and others v. Ramchandra and others, 1995 Suppl. (3) SCC 374; Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others, ; The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, ; U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan, ; State of Rajasthan Vs. B.K. Meena and others, and Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan, , and observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the Court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon him by the provisions of Article 21 of the General Clauses Act, 1897, and while exercising such a power, the Authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned.

11. In *State of Orissa Vs. Bimal Kumar Mohanty*, , the Hon''ble Supreme Court observed as under:

...when an appointing authority or the Disciplinary Authority seeks to suspend the employee.....the order of suspension would be passed taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law should be laid down in that behalf..... In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the enquiry or investigation to win over the other witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry, etc. But as authority earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuation of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fide, arbitrarily or for ulterior purpose. The suspension must be a step in add to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuation in office while facing departmental inquiry or a trial of a criminal charge.

12. In *Allahabad Bank and Anr. v. Deepak Kumar Bhola* 1997 (3) AWC 1429 : 1997 SCC 897, the Hon''ble Supreme Court held that in case involving serious charges, suspension order should not generally be interfered. However, the decision of the competent authority should be based on material collected during investigation/enquiry.

13. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground. Suspension should be made only in a case where there is a strong prima facie case against the employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, where the contents of strong prima facie case against him, if proved, would ordinarily result in his dismissal or removal from service. The authority should also consider taking into account all the available material as to whether in a given case, it is advisable to permit him to continue not to perform his duties in the office or his retention in office is

likely to hamper or frustrate the inquiry.

14. If the Court, after considering the evidence on record, comes to the conclusion that it is not such a case, which may justify the Authority to keep the employee under suspension for a prolonged period, the Court may interfere. However, suspension may not be revoked in a case where there is an apprehension of tampering with the evidence in a domestic enquiry/ criminal prosecution or retention of the employee in the office is considered to be injurious to public interest.

15. We are of the considered opinion after perusing the record and on submissions made by the learned Additional Advocate General that undoubtedly, Petitioner has not been dealt with in accordance with law and allegations of mala fide made by the Petitioner are not without substance. But whatever may be the magnitude of mala fides, ill-will or motivation, if in addition thereto, there is some substance in the complaints/ allegations, the Court should keep its hands off. (Vide State of Bihar v. J.A.C. Saldanna AIR 1980 SC 379; Sheonandan Paswan Vs. State of Bihar and Others, and State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. AIR 1992 SC 604.

16. In view of this peculiar factual situation, we did not consider it necessary to examine the allegations of mala fide against Respondent No. 7.

17. In the regular enquiry held against the Petitioner, many of the charges of serious gravity stood proved fully and some partially. Though the disciplinary authority did not finalise the enquiry, but it is evident from the said report that allegations against him are not without substance.

18. We are unable to comprehend what impelled the State to dilate the action on the said enquiry report. We visualize it to be for pulling of string from some quarter in favour of the Petitioner or another party. Nepotism and parochial interests carry so much weight as to paralyse the administration of the medical college to its total disruption and peril.

19. Thus, for this reason, we are not inclined to interfere with the impugned suspension order.

20. Though there is no occasion for us to proceed further, but the facts situation involved in this case compel us to speak before parting with the case. Petitioner had been officiating as Principal for the last three years. The State Government failed for one reason or the other to appoint a regular Principal in the Medical College and allowed running of its affair by a stop-gap arrangement, which cannot be a sign of governance at all, what to talk of good governance.

21. Once the enquiry report, after a full throat enquiry, had been submitted by the Enquiry Officer Shri Farooqui, there was no justification for the State Government not to conclude the enquiry, and to initiate a fresh enquiry on the same charges when most of the charges stood proved against the Petitioner and disciplinary authority had nothing to do except to pass a final order as all the

other legal requirements stood complied with. The issue of holding the fresh enquiry has been subject-matter of judicial scrutiny time and again.

22. De novo enquiry should generally be directed, if the authority is satisfied that enquiry stood vitiated for non-compliance of the principles of natural justice or for some other statutory requirement, or evidence could not be properly recorded. For directing enquiry afresh on the same charge, authority is required to record reasons, otherwise it may become a tool for harassment of the delinquent, in the hands of such authority and in that case, it would amount to a mala fide colourable exercise of power. (Vide *State of Assam and Anr. v. J.N. Roy Biswas* AIR 1975 SC 2227; *State of Punjab v. Kashmir Singh* 1997 SCC 88; *Keshab Chand Sharma v. State of Assam and Ors.* AIR 1962 Gau 17; *Mohd. Abdul Alim v. Director Training Institute, (CST & MP) Survey of India Lab & IC* 1682; and *Dinesh Chandra Sarkar v. State of West Bengal and Ors.* 1989 LabIC 329.

23. A Constitution Bench of Supreme Court in *K.R. Deb Vs. The Collector of Central Excise, Shillong*, held that in absence of any statutory rule holding a de novo enquiry is not permissible. In case disciplinary authority is of the opinion that there has been some defect in the enquiry conducted by an Enquiry Officer, it may direct the said officer to conduct further enquiries in respect of that matter. But it can neither change the Enquiry Officer nor it can ask to hold the enquiry de novo on the same charges. In the said case the Apex Court interpreted the provisions of Central Civil Services (Classification, Control & Appeal) Rules, 1957.

24. In *Union of India and Others Vs. P. Thayagarajan*, the Hon'ble Supreme Court while interpreting the provisions of Central Reserve Police Force Rules, 1955, considered the aspect of de novo enquiry and observed that if a Disciplinary Authority comes to the conclusion that while holding the enquiry there has been a fundamental procedural defect in taking evidence, it may order a fresh enquiry.

25. Therefore, in view of the aforesaid settled legal propositions, the disciplinary authority was under an obligation to record the reasons as to why instead of concluding the enquiry, a de novo enquiry was required and whether enquiry had suffered from some procedural defect or has been conducted in violation of some statutory provisions. It appears that authority has not considered this aspect at all though it was necessary to do so when charges of grave nature were found proved against the Petitioner and all other formalities except taking a decision for imposing the punishment stood completed.

26. For holding preliminary enquiry against Respondent No. 5, Shri Lav Verma was appointed as an Enquiry Officer. In his report, referred to above, it has been specifically mentioned by him that there was too much politics and two officers had been in direct confrontation and were in the habit of making allegations and counter allegations against each other. It spoiled the atmosphere of the

institution. He submitted the report not only observing that prima facie, allegations had no substance but also gave a finding that charges were not proved against him and he was not guilty (Nirdosh). This enquiry was only an eye wash, as became apparent from the manner of its conduct. The finding of not guilty in favour of Respondent No. 5, was recorded on mere denial of the allegations by the said delinquent though in law it is not even necessary to give opportunity of hearing to the delinquent while holding the preliminary enquiry for the reason that the purpose of holding preliminary enquiry is to find out whether there is any substance in the allegations for holding regular enquiry. Report itself is indicative of total lack of knowledge of the procedure on the part of the Enquiry Officer, and if it is not so then it speaks in volumes of the administrative corruptibility. The Enquiry Officer instead of trying to collect evidence to verify the correctness of charges, by adopting this novel method how percolated greater interest in hushing it up. The mala fide of the administration is clear as a crystal. Unwarranted and uncalled for remarks were made against the Petitioner pronouncing him guilty though it was not object of the said preliminary enquiry. The precipitate partisanship is accountable from the very manner in which the preliminary enquiry was manipulated. The statement of the delinquent at this stage has no legal sanctity. Purpose of holding the preliminary enquiry is not to punish the delinquent on the said report nor he can be punished on the basis of such a report, rather its purpose is to find out as to whether the circumstances and allegations require to hold a regular enquiry (Vide Amalendu Ghosh Vs. District Traffic Superintendent North Eastern Railway, Katihar, ; Champaklal Chimanlal Shah Vs. The Union of India (UOI), ; The Government of India, Ministry of Home Affairs and Others Vs. Tarak Nath Ghosh, and Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others,

27. The apathy and the antagonism of the enquiry against the Petitioner does not end here. Sri Lav Verma recommended that the services of the Respondent No. 5 were required in the Medical College, Allahabad and allegations against the present Petitioner stood proved. We fail to understand as to how Shri Lav Verma dared to record such findings against the Petitioner and who authorised and inspired him to give an advice to the Government as to whether the services of Respondent No. 5 were required in the Medical College, Allahabad. Though the terms of reference of the said enquiry are not before us, however, it appears that he exceeded the terms of reference clearly and abused the authority so conferred by introducing scurrilous remarks against Dr. Sinha, the Petitioner in his report. It could not be called bona fide by any means. The Disciplinary Authority has taken this report also into consideration against the Petitioner without realising that such a role has never been assigned to Sri Lav Verma as he was appointed Enquiry Officer only against Respondent No. 5 and the remarks so made by him against the Petitioner, may be for some extraneous consideration. We have no compunction in observing that this enquiry by Sri Lav Verma was held in a most unlawful manner. The pernicious intention is not simply discernible but is writ large at the face of it. In such an atmosphere, people attached feel

suffocation as it not only breeds frustration but corruption also. Eligible and suitable candidates feeling hapless commit suicide out of frustration, while those who can lick the boots of the bosses succeed in their mission. It goes in a deeper mileage of the administration. (Vide *Km. Poonam Srivastava v. U.P. Industrial Co-operative Association, Kanpur* and Ors. 1997 (1) AWC 246 : (1996) 3 UPLBEC 1821).

28. Another Enquiry Committee was set up by the disciplinary authority appointing the Divisional Commissioner, Allahabad, as its Chairman. The preliminary enquiry report submitted by the said Committee is against the Petitioner. But, contents of the covering letter sent by the Divisional Commissioner to the disciplinary authority is not merely astonishing but shocking also as he doubted the integrity of one of the members of the Enquiry Committee and made remark that he was in collusion with the Petitioner. This was a three member committee. If he was of such an opinion he ought to have reported to the Disciplinary Authority in advance before the conclusion of the enquiry. His failure to act in a legal manner thus exposes a particular frame of mind of the State's governance in this matter. If such a letter was received by the disciplinary authority, it became his solemn duty to examine as to whether such a report was worth acceptance. Thus, the final direction by the competent authority suffers from serious vices.

29. The Respondent No. 6 has been made the officiating Principal of the college and there is nothing on record produced by the learned Additional Advocate General Shri Vinod Swarup to show as to whether the competent authority has applied its mind to the statutory requirement and as to whether the Professors appointed under the Personal Promotion Scheme or Career Advancement Scheme are also eligible for promotion or officiation on this post as it is submitted in the petition that he is not the senior most Professor if other category of Professors are also taken into consideration.

30. The record makes it clear that orders have been passed by the authorities concerned arbitrarily without keeping in mind the statutory requirement.

31. Power vested by the State in a Public Authority should be viewed as in trust coupled with duty to be exercised in larger public and social interest. Power is to be exercised strictly adhering to the statutory provisions and fact-situation of a case. "Public authorities cannot play fast and loose with the powers vested in them". Decision taken in arbitrary manner contradicts the principle of legitimate expectation. Authority is under legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood conferred. In this context, "in good faith" means "for legitimate reasons". It must be exercised bona fide for the purpose and for none other. (Vide *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, ; *Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis*, ; *State of Punjab and Another Vs. Gurdial Singh and Others*, ; *Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal*, and *Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal*,

32. In fact, the Petitioner has challenged the impugned suspension order dated 24.6.2003, by which the disciplinary authority has passed the order of suspension and is attached in the Directorate of Medical Education and Training, Lucknow. However, there is another order of the same date, i.e., 24.6.2003, therein while issuing a direction for appointing the Respondent No. 6 as an officiating Principal, it has been directed that Dr. Sinha will continue to work on his substantive post of Professor, Forensic Medicine in the same Medical College. The orders have been signed by the same officer but gives a contrary impression. This shows not proper application of mind by the authority concerned.

33. To sum up, prima facie, we are of the considered opinion that the attitude of the Authorities against the Petitioner has been vindictive. Allegations of mala fide are prima facie preponderous. Authorities holding preliminary enquiry had not been fair to him and we have no hesitation to hold that they were biased and had acted for extraneous considerations, and it is a fit case where the suspension order ought to have been quashed. But considering the gravity of the charges, and particularly, in view of the fact that some of the charges of grave nature stood proved in a regular enquiry report which had been accepted though the disciplinary authority for the reasons best known to him did not consider it proper to conclude the enquiry by passing an order in accordance with law. In a larger public interest, we are not inclined to interfere with the impugned suspension order. But the Court being custodian of law cannot remain a silent spectator and close its eyes where the mismanagement by the so-called administration, is stinking of malignancy and its officers shamelessly side with one of the parties in a tug of war which spoiled the educational system irretrievably of the Medical College and the students and patients to suffer vicariously for no fault of theirs. This type of a situation if allowed to prevail, just as in the present case, it is bound to contaminate and pollute the otherwise ought to be homogeneine environment of such institutions. These institutions were created to impart medical education and not dirty politics. The ethics behind the medical profession is sanguine. It is lost completely to wilderness in such an atmosphere and climate. Apart from, it causes frustration amongst the deserving teachers who are devoted to their obligation very seriously. It will deter them from discharging their duties with sincerity and devotion. Groupism amongst would raise its ugly head. As the necessary parties, particularly, those who held preliminary enquiry in such an arbitrary and illegal manner, are not before us, we are not in a position to speak against them as it would violate the principles of natural justice. The observation made hereinabove are based prima facie on an examination of the record submitted by Shri Vinod Swarup, learned Additional Advocate General to the Court. We do not desire to direct any harsh measures ourselves against any errant officer who held both the preliminary enquiries ourselves. We instead seriously advise the learned Chief Secretary of the State of Uttar Pradesh to examine the reports submitted in this case himself and to consider as to whether the affairs of the State can be run in such a casual and lacklustre manner. Has the Government of this State decided to play with the life

of the youth of this nation who are trying to become medicos to serve the masses, the manner in which the matter has been dealt with is most deplorable. We take serious notice of it. The learned Chief Secretary is requested to review the whole issue after going through the record including the so called preliminary reports and order to hold de novo enquiry on the allegations on which regular enquiry had been completed. The Government is directed to take the necessary steps to fill up the vacancies lying unfilled in legal manner immediately. Such stop-gap arrangements must come to an end forthwith in all the Medical Colleges of the State.

34. With these observations, petition stands dismissed.