

(2011) 02 DEL CK 0319

In the Delhi High Court

Case No : RA No"s. 1 of 2007 and 41 of 2007 in Writ Petition (C) 6391 of 2003

Wing Commander Dr. Sushil Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 151

Citation : (2011) 02 DEL CK 0319

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

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Jayant Bhushan Manish and C.P. Tyagi for R-2 (ICHR), for the Respondent

Judgement

P.K. Bhasin, J.—These two review applications have been filed in a disposed of writ petition. Review Application No. 1/2007 was filed by the Petitioner who had filed the writ petition(hereinafter to be referred to as "the writ Petitioner") for quashing the order of his suspension dated 30.05.2003 as well as the charge-sheet dated 28.08.2003 given to him by the Indian Council of Historical Research ("ICHR" in short) where he was working as a Director. Review Application No. 41/2007 was filed on behalf of ICHR which was arrayed as Respondent No. 2 in the writ petition. Both had sought review of the judgment dated 20th December, 2006 whereby the writ petition was allowed and the impugned suspension order as well as the charge-sheet were quashed by this Court.

2. The writ Petitioner had challenged his suspension as well as issuance of charge-sheet issued to him for as many as nineteen acts of misconduct allegedly committed by him primarily on the ground that it had been done by the then Chairman of ICHR with mala fide intentions since the writ Petitioner had exposed certain financial irregularities committed by him which had resulted in his indictment in the statutory audit report of the Comptroller and Auditor General of India.

3. The writ petition was opposed on behalf of the Respondents but, as noticed

already, the writ petition was allowed by this Court and the suspension order as well as the charge-sheet issued to the writ Petitioner were quashed on the ground that the same were issued mala fide by the then Chairman of ICHR. However, while allowing the writ petition this Court had also permitted the ICHR headed by the new Chairman who had taken over by that time to make a fresh objective assessment of the allegations against the writ Petitioner and also to issue fresh charge-sheet, if required.

4. After disposal of the writ petition, the writ Petitioner filed review application alleging that even though his petition had been allowed and it had been held that his suspension and the charge-sheeted given to him were vitiated since the same had been issued with mala fide intentions by the part of the then Chairman but towards the end of the judgment in para No. 21 one observation appeared to have been made inadvertently by the Court which showed that the Court had also come to the conclusion that the writ Petitioner had committed at least some acts of misconduct out of total 19 charges included in the charge-sheet. That observation though appeared to have been made inadvertently and which was apparent on the face of record but that error required to be corrected since the Respondents were taking undue advantage of those observations and were using the same against the writ Petitioner as if this Court had found him guilty of some misconduct.

5. Before the review application filed by the writ Petitioner could be disposed of ICHR also came out with a review application claiming that even though the writ petition was allowed partly and ICHR was given the liberty to give a fresh charge-sheet to the writ Petitioner but at the same time it had also been observed by this Court that out of 19 charges only a few could be shown to be of any worth and also that some complaints had become stale. These observations, according to ICHR, were made inadvertently and that was evident from the fact that the Court had also observed while quashing the earlier charge-sheet that the writ Petitioner should not be allowed to go scot-free for certain acts committed by him and that the charge-sheet was being quashed on the ground of it having been issued mala fide by the then Chairman and the new Chairman was permitted to take a fresh look into the matter and, if required, to give a fresh charge-sheet also to the writ Petitioner.

6. During the course of hearing on these review applications the following observations in para Nos. 9, 12, 20 and 21 of the judgment sought to be reviewed:

9. The question here is not whether M.G.S. Narayanan was guilty of any financial irregularity. Nor is it the question as to whether the Petitioner and M.G.S. Naryanan were correct in their respective stand over various issues in the ICHE which led to bickering between them. The questions are,(i) whether the order of suspension and memorandum of charges were the result of a mala fide intention....

12. ...As already mentioned above, for some of the charges there are some strong documentary evidence ... but out of 19 charges only a few could be shown to be of any worth....

13 It is to be noted that all these alleged misconducts had been committed in the earlier years, mostly upto 2001...The alleged misconducts of the Petitioner which were being over-looked hithertofore were picked up for serving him with an order of suspension and later with the charge-sheet.

20. ...Some of the complaints may have some substance but the fact remains that those alleged misconduct with some substance had become stale...Thus, the impugned action of suspension as well as impugned memorandum of charges are vitiated by malafides and cannot be allowed to stand.

21. Nonetheless, it cannot be overlooked that the Petitioner did commit certain misconducts which could attract disciplinary action. It would not be proper to let the Petitioner go scot free because the action taken has to be quashed for reasons of mala fides as detailed above. The equities can be balanced by providing the Respondents No. 1 and 2 one more opportunity to objectively examine the allegations of misconduct of the Petitioner and to take appropriate action required, if any, in doing so the Respondents No. 1 and 2 should also call for the comments of the Petitioner and conduct a preliminary fact finding inquiry before embarking upon any full-fledged disciplinary proceeding.

7. The contention of the Petitioner, who argued in person, was that there was an inadvertent error in the judgment rendered by the learned predecessor Judge and that error was apparent on the face of the record inasmuch as while in para No. 13 of the judgment the learned Judge had referred to the acts of misconduct attributed to the writ Petitioner in the charge-sheet as "alleged misconducts" but at the end of the judgment in para No. 21(the underlined portion) it came to be observed that the writ Petitioner had committed certain misconducts for which he could not be allowed to go scot free. The said observation in para No. 21 of the judgment, according to the writ Petitioner, appeared to have been made inadvertently and that inadvertent error was required to be corrected since the Respondents were considering this observation to be the finding of the Court and was evident from the fact that immediately after the disposal of the writ petition ICHR had issued an Office Order to the effect that this Court had held the writ Petitioner guilty of certain misconducts.

8. On the other hand, Shri Jayant Bhushan, learned senior counsel for ICHR had contended that if at all this Court decides to make any correction/modification or give any clarification in respect of the observations in para No. 21 of the judgment then similar correction/modification should be made or clarification given in respect of the observations made in para No. 20(extracted already) also.

9. After having gone through the writ pleadings, judgment dated 20th December, 2006 and also having given thoughtful consideration to the submissions made at the bar I am of the view that both these review applications though shown to

have been filed under the provisions of Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, *stricto sensu*, none of them falls within the ambit of these provisions relating to review of judgments and orders by Courts. However, both the parties have also invoked the inherent powers of the Court u/s 151 of the CPC and in my view there are good reasons to exercise that inherent power in this Court by giving some clarification in respect of the judgment dated 20th December, 2006 rendered by the learned predecessor Judge. It appears to me and as was clear to ICHR also, as stated by the learned senior counsel, that this Court never intended to give any final view on the merits of any of the charges levelled against the writ Petitioner while disposing of his petition. That is evident from the fact that ICHR's new Chairman was given the liberty to have a fresh look into the charges and to proceed objectively and, if required, he was also permitted to give a fresh charge-sheet to the writ Petitioner. The observations made by the learned predecessor Judge in paras No. 12, 20 and 21, which have been extracted already, however, can be understood by anyone to be the final findings of the Court. Normally, whenever any matter is disposed of by the Courts without expressing final opinion in respect of the points in controversy between the contesting parties a clarificatory observation in the end is also made that nothing expressed by the Court would be considered as a final expression of opinion on the merits of the case. That clarificatory observation, however, appears to have been not made inadvertently by the learned predecessor Judge while disposing of the writ petition. In the facts and circumstances, I am therefore of the view that this is a case where this Court should use its inherent power to do justice between the parties by giving the aforesaid clarification now so that none entertains an impression that this Court had expressed finally in favour of any of the parties to the writ petition.

10. These applications are accordingly disposed of by clarifying that none of the observations made in the judgment dated 20th December, 2006 was a final expression of opinion of the Court on the merits of any of the allegations levelled against the writ Petitioner in the charge-sheet given to him.