

Court No. - 8

Case :- WRIT - A No. - 4329 of 2022

Petitioner :- Desh Deepak Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home And Vigilance Deptt. Govt. Of U.P. Lko. And 3 Others

Counsel for Petitioner :- Anurag Tripathi, Anand Mani Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Anand Mani Tripathi, assisted by Sr Utsav Mishra, learned counsel for the petitioner and Sri Rajiv Singh Chauhan, learned Additional Chief Standing Counsel.

2. The present writ petition under Article 226 of the Constitution of India has been filed seeking quashing of the order passed by the State Government regarding open inquiry no.214 of 2017 with respect to the petitioner after summoning the original record.

3. The petitioner was initially appointed on the post of Naib Tehsildar after having got selected and, thereafter, promoted to the post of Tehsildar and, further promotion was made to the post of Sub-Divisional Magistrate, on which post he is presently working. The disciplinary proceedings were intimated against the petitioner while issuing charge sheet dated 23.11.2015 for three charges. The English translation of the charge sheet would read as under:-

(i) The petitioner had acquired the land from the farmers of Tehsil Dhanaura, District Amroha for constitution of the Central Gang Canal by mutual consent. The rates were of circle rate. The District Magistrate after inquiry, sent a report to the Commissioner, Moradabad Division on 17.11.2011 in respect of 22 cases where the land of the villagers was declared

as non-agricultural from agricultural under Section 143 of the U.P.Z.A. & L.R. Act and, on that ground higher compensation was paid for the land acquired for construction of the Central Ganga Canal, which has resulted into huge loss to the Government exchequer.

(ii) Before changing the nature of land from agricultural to non-agricultural in respect of 22 cases under Section 143 of the U.P.Z.A. & L.R. Act, the then Sub-Divisional Magistrate had asked the petitioner to go and make spot inspection before giving the compensation. The said direction was not followed by the petitioner. After the order under Section 143 of the U.P.Z.A. & L.R. Act, it was found that the nature of the land was not changed and in fact the crop was standing on the land and, thereafter, the said land was again declared as agricultural land under Section 144 of the U.P.Z.A. & L.R. Act.

(iii) The petitioner was posted from 18.11.2009 to 5.8.2011 as Tehsildar Dhanaura. The petitioner did not perform his duties and functions in accordance with law and because of his acts, there was loss to the Government exchequer and loss of reputation of the Revenue Department and unnecessary dispute arose because of the change of the land.

4. After inquiry, the punishment order was passed by the Commissioner, Board of Revenue and vide order dated 2.5.2019, the petitioner's increment for a period of one year was withheld. The vigilance inquiry has also been ordered in the matter.

5. Learned counsel for the petitioner submits that on the same allegations and same facts, the vigilance inquiry has been ordered. If the facts are same, the vigilance inquiry ought not to have been initiated. In the alternate, it is submitted that before initiating the vigilance inquiry, the report of the departmental

proceedings and the order passed in it, should be taken into consideration.

6. Sri Rajiv Singh Chauhan, learned Additional Chief Standing Counsel has submitted that the vigilance inquiry is governed under the provisions of the Uttar Pradesh Vigilance Establishment Act, 1965. The scope of vigilance inquiry and the departmental inquiry are different. The Government is not barred from initiating the vigilance and criminal inquiry/investigation in respect of the corruption of a Government servant while discharging the official function. He further submits that the Government has ordered for vigilance inquiry vide order dated 28.12.2017 in respect of the acquisition of the land from the farmers after changing its nature from agricultural to non-agricultural under Section 143 of the U.P.Z.A. & L.R. Act as for the illegal and mala fide acts, the Government had to pay Rs.4,94,92,260/- excess amount than the prevalent rate for agricultural land and thus, the said amount of around Rs.5 Crores was loss to the Government exchequer which resulted as a result of *mala fide* and illegal action of the petitioner for extraneous consideration and, therefore, the State Government had directed the vigilance inquiry. He has also submitted that in pursuance to the recommendation of the Vigilance Department, an FIR has been registered at Case Crime No.0011 of 2022, dated 18.8.2022 at Police Station Vigilance Department, Vibhuti Khand, Gomti Nagar, Lucknow under Sections 420, 467, 468, 471, 120-B and Section 7 of Prevention of Corruption Act. The Vigilance Department of the Government is seized investigation of the allegations contained in the FIR.

7. While granting the interim order on 21.7.2022, this Court itself gave liberty that the vigilance inquiry may go on, but no departmental proceedings should be initiated on the basis of

which the petitioner has already been punished.

8. The functions and powers of the said Vigilance Department have been defined in the Rules framed under the Uttar Pradesh Vigilance Establishment Act, which would read as under:-

“2. Functions.—The Vigilance Establishment shall perform the following functions:

(a) Keep the Government informed of all the cases of corruption, bribery, misconduct, misbehaviour and other malpractice involving public servants that come to its notice;

(b) Collect intelligence on its own initiative or on the orders of Government in the Vigilance Department relating to corruption of any individual public servant or public servants belonging to a department, Class or category;

(c) Make enquiries, secret or open, and investigations into cases of corruption, bribery, misconduct, misbehaviour or other malpractices, that may be referred to it from time to time by the Government in the Vigilance Department. This condition shall not apply to trap cases against non-gazetted government servants and public servants of similar rank covered by order no. UPA-7/65-Order/76 (Fifth), dated August 16, 1976;

Provided that

(1) the Vigilance Establishment is as before authorised to take up enquiry without prior permission of Government against a non gazetted government servant, whose conduct may be involved with the conduct of a gazetted officer, against whom an enquiry had already been authorised by Government, but

(2) for taking up an independent enquiry or investigation against non gazetted official, prior orders of Government shall be obtained by the Vigilance Establishment.

3 (1) In the cases under the Prevention of Corruption Act, 1947 the Vigilance Establishment shall make only regular investigation in accordance with the provisions of the Act.

(2) If during the course of enquiry, officers of the Vigilance Establishment receive any information against a Government servant, whose conduct they have not been asked to enquire into the director of Vigilance shall without delay forward such information to Government in the Vigilance Department for orders.

(3) The Vigilance Establishment is also authorised to make investigation against non-officials and private concerns found involved in the corruption of public servants whose cases may be entrusted to it for enquiry/investigation.

(4) If during the course of an enquiry against a public servant, officers of the Vigilance Establishment receive any information or any other instance of corruption or misconduct of that servant which is not covered by the orders already given to them, the Director of Vigilance/the Officer in charge of the sector office shall immediately send such information to Government in the Vigilance Department for further instructions. An

officer of the Vigilance Establishment may, if he considers that the evidence in respect of corruption or misconduct referred to above may be lost or tampered with, if immediate action were not taken, take such action as he may consider necessary, pending receipt of orders of Government, but shall for with report the action so taken to Government in the Vigilance Department.

4. Procedure for dealing with complaints.-

(1) The complaints received by the Vigilance Establishment other than those mentioned in sub-para (2) below, shall be forwarded, with or without comments to Government in the Vigilance Department for orders.

(2) No action shall be taken on complaints of the following nature and they shall be deposited, unless for any special reasons the Director of Vigilance decides to forward the same to Government :

(i) Anonymous and pseudonymous complaints ;

(ii) Printed handouts, pamphlets etc., copies of which have been sent to several officers of Government; and

(iii) complaints which are, prima facie, frivolous.

5. Submission of reports. -

(1) In all cases in which the Vigilance Establishment is asked to make the enquiry or investigation, it will furnish to Government in the Vigilance Department reports at such intervals as may be specified by the Government, on the progress of the enquiry or investigation.

(2) When the enquiry or investigation is completed the Establishment shall submit to Government in the Vigilance Department a detail report embodying its conclusions and -

(a) if the case is found fit for disciplinary proceedings draft charges should also be sent with the report. Each charge should be accompanied with an abstract of evidence propose to be tendered and brief facts of the case ;

(b)(i) if the case is to be referred to court of law, the Establishment shall submit to Government in the Vigilance Department, its detailed report together with two copies of the charge-sheet and other relevant material for orders. In no case shall the charge-sheet be submitted by the Establishment direct to the court.

(ii) the charge-sheet shall be filed in the court by the Vigilance Establishment only after direction of the State Government under sub-para (1) of para 6 and previous sanction of the appropriate authority as required by section 107 of the Code of Criminal Procedure, or section 6 of the Prevention of Corruption Act, 1947, or by any other provision of any law for the time being in force requiring such previous sanction.

6. Government in the Vigilance Department after examining the detailed report may decide that any of the following actions may be taken :

(1) It may be forwarded to Court with charge-sheet for prosecution ;

(2) It may be referred to the Administrative Tribunal for disciplinary proceedings ;

(3) It may be referred for departmental action to the Administrative

Department concerned ;

(4) It may be closed.

7.”

9. The open vigilance inquiry has been conducted after following the due procedure provided in the notification dated 29.8.1977, and after completion of the inquiry, the report has been sent to the State Government. After sanction by the State Government, the FIR has been lodged against the petitioner and others. Therefore, I do not find any ground to quash the vigilance inquiry or the report submitted by the Vigilance Department after conclusion of the inquiry inasmuch as the scope of the vigilance/criminal proceedings and the departmental proceedings is different. There may be some overlapping, but that does not mean that two proceedings cannot be taken simultaneously for the misconduct of a Government employee. However, as the departmental proceedings have got completed, the Vigilance Department may take into consideration the report of the departmental inquiry as well as punishment awarded against the petitioner.

10. With the aforesaid observation and direction, the present writ petition stands ***disposed of.***

Order Date :- 29.5.2023

Rao/-