



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/275/2014

SHRI RAJESH NAYAM
SIPI VILLAGE, PO/PS DAPORIJO, DIST. UPPER SUBANSIRI, AP

-Versus-

1. The State of Arunachal Pradesh represented through the Commissioner Home, Govt. of Arunachal Pradesh, Itanagar.
2. The Inspector General of Police (W) Arunachal Pradesh, Itanagar.
3. The Deputy Inspector General of Police, Govt. of Arunachal Pradesh, Itanagar.
4. The Superintendent of Police, Upper Subansiri District, Daporijo, Arunachal Pradesh.
5. The Enquiry Officer/ Deputy Superintendent of Police of Daporijo, Upper Subansiri District, Arunachal Pradesh.

..... *Respondents*

By Advocates:

For the petitioner: Mr. Muk Pertin, Sr. Adv.

Mr. T. Leriak

Mr. K. Dabi

Mr. C. Gongo

Mr. L. Perme

Mr. W. Sawin

Mr. P. G. Tamin

For the respondents: Mr. Subu Tapin, Sr. Govt. Adv.

:::BEFORE:::

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 25.07.2024

Date of Judgment : 25.07.2024

Judgment & order(Oral)

Heard Mr. Muk Pertin, learned senior counsel, assisted by Ms. T. Y. Bhutia, learned counsel, on behalf of the petitioner. Also heard Mr. Subu Tapin, learned Senior Government Advocate, appearing on behalf of all the respondents.

2. By way of instituting the present proceeding, the petitioner has assailed the order, dated 18.11.2011, passed by his disciplinary authority imposing upon him, a penalty of dismissal from service on conclusion of a disciplinary proceeding initiated against him. The petitioner has also assailed the connected Inquiry Report, dated 11.10.2011, as well as the order, dated 30.11.2012, passed by the appellate authority and the order, dated 22.07.2014, passed by the reviewing authority, with a further prayer for his reinstatement in service.

3. The facts requisite for considering the issue arising in the present proceeding is noticed as under:

The petitioner on 12.06.2009, was attached to the Daporijo Police Station as a Constable in Arunachal Pradesh Police. On the said date; an incident had occasioned wherein,

the patrolling party had brought one girl and one boy from Tadak Dullom Bridge, Daporijo, to the Police Station. As the petitioner had reached the Police Station, he found the door of the I.O.'s room closed and he was, in the meantime, called by one Shri Taje Leya four or five times and on responding to the said call, he entered into the room of the I.O.'s room and he found the boy and the girl in an inappropriate position. On seeing the couple in an inappropriate position, the petitioner got annoyed with the act they were so doing and asked them to stop doing such act. However, when the couple did not stop, the petitioner tried to beat them with a lathi, but, in the meantime, an ASI called upon one of the Sentry and commanded him to snatch the lathi from the petitioner.

The incident so occasioning in the Police Station, was brought to the notice of the Superintendent of Police, Daporijo, and an inquiry came to be so instituted and a Sub-Inspector posted in the Daporijo Police Station came to be suspended. Thereafter, on 16.03.2011, for the incident that had occasioned on 12.06.2009, an First Information Report(FIR) came to be lodged and the same was registered as Daporijo Police Station Case No. 20/2011 under Sections 357/342/292(A)/294/34 of the Indian Penal Code read with Section 4 of the IRWP Act. The petitioner was arrested in connection with the said Daporijo Police Station Case No. 20/2011 on 17.03.2011.

The petitioner continued to remain under detention till

14.12.2011 when he was enlarged on bail.

It is the projection made in the writ petition that an inquiry was instituted into the matter and on conclusion of the inquiry; the Officer submitted his report before the Superintendent of Police, Daporijo and on the basis of the Inquiry Report, without following the mandated procedure; the petitioner was vide order, dated 18.11.2011, imposed with the penalty of dismissal from service.

The petitioner contends that he had preferred an appeal on 02.12.2011, which on not being considered, led the petitioner to approach this Court by way of instituting a writ petition being WP(c)378(AP)2012. This Court vide order, dated 18.10.2012, was pleased to dispose of the said writ petition directing disposal of the appeal as preferred by the petitioner within the time-frame so prescribed, therein. Thereafter, the appellate authority, vide order, dated 30.11.2012, on consideration of the matter, proceeded to reject the appeal so preferred by the petitioner.

Being aggrieved; the petitioner again approached this Court by way of instituting WP(c)440(AP)2012 before this Court, and therein, by raising a categorical contention to the effect that no memorandum of charge was issued to him and no opportunity was given to him to submit his written reply and further that in the inquiry, while the witnesses were examined behind his back; he was also denied an opportunity

to cross-examine such witnesses. The said contention of the petitioner was disputed by the learned counsel appearing for the State respondents. This Court, on examination of the relevant records, pertaining to the disciplinary proceeding initiated against the petitioner, found that the inquiry, in question, was so conducted in the presence of the petitioner. This Court proceeded further to hold that the petitioner at the relevant point of time, was in judicial custody. Having noticed the said position; this Court proceeded to dismiss the said writ petition with liberty to the petitioner to file a review before the appropriate authority. Accordingly, a review petition was filed by the petitioner on 05.05.2014.

4. In the above background, the petitioner has instituted the present proceeding presenting a challenge to the orders passed by the disciplinary authority as well as the appellate authority and the reviewing authority.

5. Mr. Pertin, learned senior counsel, appearing on behalf of the petitioner; after taking this Court through the materials available on record, has advanced the following submissions:

(i). The petitioner, herein, was not furnished with a copy of the memorandum of charge and accordingly, he was unaware as to the nature of allegations levelled against him. It was contended that the petitioner was also deprived in preferring an effective written statement in the matter.

- (ii). The petitioner at the time when the disciplinary proceeding were stated to have been so instituted against him, being under judicial custody; the said proceeding would be of no consequence and the same would required to be declared as null and void. Accordingly, the penalty as imposed upon the petitioner would also call for an interference.
- (iii). It has been submitted that in the inquiry; the witnesses were so examined behind the back of the petitioner and accordingly, he was denied an opportunity of cross-examining such witnesses. The learned senior counsel by referring to the findings as recorded in the Inquiry Report by the Inquiry Officer, has contended that the same being so recorded without giving an opportunity of hearing to the petitioner to defend the allegations that may have been levelled against him in the said proceeding, would be of no consequence and the same would also require an interference from this Court.
- (iv). It has been submitted that the inquiry being vitiated on account of the fact that the petitioner was not given a due opportunity to have his say in the matter and also to defend the allegations that may have been levelled against him therein, the reliance placed on the said Inquiry Report by the disciplinary authority and proceeding to issue the order, dated 18.11.2011, imposing the penalty of dismissal from service upon the petitioner, would also be not sustainable and would be

required to be interfered with by this Court.

(v). It has also been submitted that although both in the appeal as well as in the review petition filed by the petitioner in the matter; all requisite grounds including the grounds as urged and recorded hereinabove, were so advanced before the respondent authorities, however, both the appellate authority as well as the reviewing authority failed to appreciate the contentions and accordingly, the appeal and the review petition filed by the petitioner, came to be rejected.

(vi). It has also been submitted that the inquiry was proceeded by the Inquiry Officer in absence of appointment of a Presenting Officer and accordingly, the Inquiry Officer acted as a prosecutor as well as the judge in the matter which was contended to be impermissible. In the same tone, it was further urged that the petitioner being not given a Defence Assistant; the defence of the petitioner stood prejudiced and accordingly, on the said counts also, it was contended that the inquiry would call for an interference by this Court.

(vii). In support of his contentions, the learned senior counsel has placed reliance on the following decisions of the Hon'ble Supreme Court as well as of this Court:

(a). **2001(1) GLT 621** [Baharul Islam(CT) v. Union of India & ors.], to contend that appointment of a

Presenting Officer and also giving an opportunity to defence to appoint a defence assistant of his choice, is a mandatory requirement and in the absence of such steps being taken; the inquiry would stand vitiated.

(b). 2011(1) GLT 287 [Salam Kesho Singh v. State of Manipur & ors.], has been pressed to emphasize that the Inquiry Officer cannot assume the role of a judge as well as that of a prosecutor. Further to bring home the point that in the absence of a Presenting Officer, the inquiry as conducted by the Inquiry Officer; would stand vitiated.

(c). (2008) 3 SCC 279 [New India Assurance Company Ltd. v. Nusli Neville Wadia & anr.] to contend that the right of cross-examination of the witnesses being a part of the principle of natural justice, should be held to be an indefeasible right.

6. Per contra, Mr. Tapin, learned Senior Government Advocate, has advanced the following submissions:

(i). By referring to the affidavit filed in the matter by the Respondents No. 1, 2 & 3, he has submitted that the petitioner has resorted to misrepresentation and suppression of material facts in-as-much as the contention of the petitioner that a Show Cause Notice

was not served on him and/or that he had not filed a reply thereto, is contrary to the position emanating from the records and is accordingly, clearly perverse.

- (ii). He has submitted that the petitioner was issued with a Show Cause Notice, dated 28.03.2011, and thereafter, he had submitted his written statement there against on 15.04.2011, and accordingly, he has submitted that the petitioner not having approached this Court with clean hands, the writ petition does not deserve a consideration on merit.
- (iii). He has also submitted that in the inquiry; the witnesses deposing had so deposed in the presence of the petitioner and the petitioner had cross-examined them. In this connection, he has placed reliance on the statements of the witnesses as recorded in the inquiry, wherein, the Inquiry Officer had also recorded the cross-examinations as done by the petitioner, herein. The learned Senior Government Advocate has further highlighted that in the statements of the witnesses so recorded; the signature of the petitioner, herein, duly appears. Accordingly, he has submitted that the petitioner has further suppressed material facts with regard to the manner in which the inquiry was so conducted and accordingly, he should be non-suited on the ground of suppression of material facts.

(iv). He has further submitted that the plea of the petitioner that he was not furnished with an Inquiry Report is again perverse in-as-much as the Inquiry Report, in question, was furnished to the petitioner on 13.10.2011 and he had received the same.

(v). He has, accordingly, submitted that the procedure mandated to be followed in an inquiry proceeding, having been duly followed in the matter; this Court would not sit over the findings of the Inquiry Officer, as well as the disciplinary authority in the matter, as an appellate authority and would be pleased not to re-appreciate the evidences coming on record in the matter.

7. I have heard the learned counsels appearing for the parties and also given due consideration to the materials placed on record.

8. At the outset, it is to be noted that it is the specific case of the petitioner in the writ petition that in the disciplinary proceeding so instituted against him, he was not furnished with the copy of the memorandum of charge, and accordingly, he, in addition to being unaware of the charge levelled against him; was also denied of the opportunity to prefer a written statement in the matter. The said position has been found to be totally perverse on perusal of the contentions in the affidavit filed by the respondents in the matter. It is seen that

the memorandum of charge/Show Cause Notice was duly received by the petitioner and he had submitted his written statement thereon, on 15.04.2011. It is not understood as to why the petitioner had proceeded to suppress the said fact in the present proceeding. The said position having been noted, the contentions of the petitioner with regard to the manner in which the inquiry was conducted against him, is now required to be considered.

9. The petitioner, in the writ petition, as well as in the appeal memo, dated 02.12.2011, has made categorical statements to the effect that the witnesses deposing in the matter, were not allowed to be cross-examined by the petitioner in the inquiry. However, on perusal of the statements of the prosecution witnesses deposing in the inquiry as available in the affidavit filed by the Respondents No. 1, 2 & 3; it is seen that the deposition of such witnesses were recorded in the presence of the petitioner, in-as-much as, the signature of the petitioner is very much available in the statements as recorded of each of the witnesses so deposing.

10. The statements as recorded of the witnesses also reveals that the petitioner had cross-examined the witnesses and wherever such witnesses were not so cross-examined by the petitioner, the Inquiry Officer had made an endorsement to that effect. However, in all the depositions recorded of the witnesses, signature of the petitioner duly appears. Accordingly, the contention of the petitioner that the witnesses were not examined in his presence and/or that he was denied

an opportunity to cross-examine the witnesses, are clearly not established from the perusal of the statements of the witnesses deposing in the inquiry. Accordingly, the contentions raised by the petitioner with regard to the manner in which the inquiry was so conducted against him, is also to be held to be perverse.

11. This brings the Court to examine the contention of the petitioner that he was not furnished with a copy of the Inquiry Report. Categorical statements in this connection was made both in the writ petition as well as in the appeal so preferred in the matter by the petitioner. However, in the affidavit so filed by the State respondents; it was categorically contended by relying on the notings in this connection available, that the Inquiry Report was served upon the petitioner on 13.10.2011. However, this fact was also suppressed by the petitioner in the present proceeding.

12. At this stage, it is to be noted that the petitioner, herein, had not filed any reply to the affidavit-in-opposition as filed by the respondents in the matter, disputing the contentions as made, therein.

13. In view of the above conclusions drawn by this Court pertaining to the manner in which the proceedings were initiated and conducted against the petitioner; this Court is of the considered view that the petitioner had resorted to suppression of facts and misrepresentation before this Court in

the present proceeding and accordingly, the petitioner, herein, would not be entitled to any relief in exercise of the extraordinary powers vested under the provisions of Article 226 of the Constitution of India.

14. This Court for the conclusions as drawn by it to the effect that the petitioner is guilty of suppression of relevant facts and of misrepresentation, disentitling him to any relief in the matter; draws support for such conclusions from the following decisions of the Hon'ble Supreme Court:

(i). In the case of **Udyami Evam Khadi Gramodyog Welfare Sanstha & anr. v. State of Uttar Pradesh & ors.**[reported in (2008) 1 SCC 560]

“16. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In Advocate General, State of Bihar v. M.P. Khair Industries this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt.”

(ii). In the case of **S. P. Chengalvaraya Naidu v. Jagannath** [reported in (1994) 1 SCC 1], the following conclusion is required to be noted:

“6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total

decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(iii). The Hon'ble Supreme Court in the case of **K. D. Sharma v. Steel Authority of India & ors.** [reported in **(2008) 12 SCC 481**], concluded as follows:

"34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs. in the following words: (KB p. 514)

"... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - it says facts, not law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."

(emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead

the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In Kensington Income Tax Commrs. Viscount Reading, C.J. observed: (KB pp. 495-96)

"... Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."

(emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in Kensington Income Tax Commrs. is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material, facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but

states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”

15. Mr. Pertin, learned senior counsel appearing for the petitioner, has also made a feeble attempt to raise a contention to the effect that the period when the petitioner was issued with the Show Cause Notice, as well as when the inquiry was so held against him; he continued to remain under detention and accordingly, the inquiry so held, and the consequential steps taken in pursuance thereof, stands vitiated.

16. This Court has perused the pleadings brought on record by the petitioner and this Court nowhere finds that the petitioner had raised, at any point of time, any contention to the effect that he being under detention, was not in a position to defend his case, rather, the petitioner in the present writ proceeding as well as in the appeal so preferred in the matter before the departmental appellate authority; had only resorted to misrepresentation and suppression of material facts as indicated hereinabove. Situated thus, the petitioner in the considered view of this Court, is not entitled to any relief in the matter.

17. In view of the conclusions reached by this Court hereinabove, more particularly, the conclusion that the

petitioner has resorted to misrepresentation and suppression of material facts in the present proceeding; the decisions as relied upon by the learned standing counsel for the petitioner, would not advance the case of the petitioner.

18. In view of the above position; the order of the disciplinary authority imposing the penalty of removal from service as well as the orders passed in the matter by the appellate authority and the reviewing authority, would not call for any interference from this Court and the writ petition being held to be devoid of merit, accordingly, stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant