

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No.21171 of 2015

ORDER: (Per Hon'ble Sri Justice Nooty Ramamohana Rao)

The petitioner while working as an Assistant Controller, Legal Metrology Department, has been placed under suspension by the 1st respondent, State Government, through their orders contained in G.O.Rt.No.46 Consumer Affairs, Food and Civil Supplies (CS.I-LM) Department dated 08.04.2015 and it is this order which is challenged by him before the Andhra Pradesh Administrative Tribunal by instituting O.A.No.2027 of 2015. He prayed for suspension of the operation of the said order as an interim measure, but, it was declined by the Tribunal. Hence, this writ petition.

Sri J.Sudheer, learned counsel for the petitioner would submit that the petitioner has maintained a clean record of service from the time he was recruited as an Inspector on 03.03.1986 and hence, the State Government should have been very slow in trying to place the petitioner under suspension. It is further submitted that the petitioner was promoted as District Inspector in August 1998 and as Assistant Controller in June 2010. From 07.09.2011 onwards the petitioner has been attached to function as a Member of the Flying Squad constituted at the Head Office. As a part of discharging the duties, the petitioner has raided several petroleum outlets and upon noticing irregularities, several proceedings have been initiated against them majority of which have resulted in compounding the offence committed by the dealer resulting in collection of enormous fine amounts. Since the petitioner is not yielding to the pressure sought to be brought to bear upon him, it can only be expected that several complaints are liable to be made against him. Hence, without keeping the interest of the State/Department in view the impugned order has been passed by the State Government placing the petitioner under suspension. It is therefore urged that the order of suspension acquires punitive characteristic without following the necessary procedure. It is further urged that for extraneous reasons and considerations the petitioner has been placed under suspension.

The learned Government Pleader on the other hand would urge that it is part

of the duty of an Assistant Controller to undertake surprise checks on various dealers for purposes of determining the extent to which the provisions of the Legal Metrology Act and the Rules made thereunder are faithfully complied with and wherever an infraction is noticed such a dealer has got to be proceeded against in accordance with law. Therefore, the learned Government Pleader would urge that the petitioner herein is not proceeded against for the duties performed and discharged by him, but for the abuse and misuse of the power and authority vested in him. In the guise of carrying on functions, the petitioner is not supposed to harass dealers for purpose of ensuring that one would surrender to the dictates of the petitioner and if he does not, such dealers will be subjected to hostility. The learned Government Pleader would further urge that any complaint of misuse or abuse and harassment of the dealers comes to the notice of the Government, particularly, when serious allegations of misconduct are attributed suggesting lack of integrity and honesty on the part of the petitioner, the State Government cannot be a mute spectator and is bound to react and take action in the matter.

The learned Government Pleader would further urge that when serious allegations have surfaced against the petitioner, the State Government has got the same referred to Anti Corruption Bureau (ACB) for conducting a preliminary enquiry and after conducting necessary preliminary enquiries, a report was submitted setting out that there was material to investigate at least 11 out of 13 allegations that have surfaced against the petitioner. In view of this gravity of situation, the order of suspension has been issued by the State Government.

Sri Gangaram and Sri Srinivasulu, learned counsel for some private parties, who have moved applications seeking their impleadment in this case are also heard in detail.

The purpose of placing a public servant under suspension is essentially a part of disciplinary control exercised by the competent authority over such public servant. The public servant in the matter of discharge of his duties and functions has to not only regulate his affairs by good conscience, but also by the code of conduct and discipline prescribed. Even if a person is discharging his duties bonafide, but if the same is causing an undue interference of the rights of third parties, the same might end up as a case of misconduct. When legislature makes an enactment, it is intended to achieve a particular specified objective. For securing the achievement of such an objective, a fair and reasonable procedure is bound to be provided either by

the statute itself or by the subordinate legislations made thereunder. For purpose of discharging various functions under an enactment, wherever there is a structured hierarchy of public service available, depending upon the rank and status of the public servant concerned, appropriate functions are entrusted to be discharged by that particular public servant. Illustratively, an inspection may be carried out by one agency, while the assessment with regard to any infractions noticed thereof might be carried out by some other agency, while to hear an appeal there against an altogether third agency may be chosen and for purpose of satisfying about the regularity of the action taken, a fourth and superior agency can be chosen as a revisional authority. Each of these public servants is required to discharge their duties and functions strictly within the four corners of law and the authority conferred upon them and while discharging such functions one must necessarily act with good faith. Conducting a raid after raid over one particular establishment in spite of not noticing any legal infractions, would certainly take the shape of harassment. But, however, where the inspections or surprise checks carried out yield a positive result, the same cannot be viewed as an act of vengeance or hardship or harassment on part of the law enforcing agencies, by the dealer concerned.

Law enforcing agencies in general and Tax Collectors in particular suffer a kind of prejudice and hostile attitude adopted against them by many. It is more likely that the discharge of functions by such public servants could be perceived as acts of causing hardship or victimisation. At the same time, the conduct of the public servant also needs be watched as some of them intend to exercise their functions in such a manner that they would likely to strike terror or panic amongst the targeted group so that, targeted group will succumb to their unjust or illegal demands later on. Seeking gratification for discharge of public/official functions can never be viewed with any sympathy. It is one of the grossest derelictions of duty apart being also misconduct. Any such tendencies either exhibited or likely to be exhibited are required to be handled firmly and with an iron hand. It is one of the fundamental obligations of good governance that misconduct exhibited by public servant seeking private gratification for discharging official functions cannot be taken too kindly by the Government and it is to be dealt with very sternly.

The petitioner has claimed that he has maintained a clean record of service for the past over 29 years and that he is also due for retirement shortly by the end of February 2016 on attaining the age of superannuation of 58 years. It is his claim that

as a member of the Flying Squad he has undertaken inspection of various commercial establishments such as petroleum outlets/dealers and detected several irregularities resulting in short delivery of the commodities by such dealers. Along with the paper book a list of 238 such instances that took place between 05.01.2012 to 04.06.2014 in a span of 2 ½ years has been furnished by the petitioner. In several cases, the offences have been compounded by collection of fine amounts ranging from Rs.7,000/- to Rs.70,000/-. There was no serious dispute with regard to this data furnished by the writ petitioner on the part of the State Government. Majority of these cases, nearly 200, have ended up in compounding the offence and imposition of fine amount. Whereas the other balance cases have resulted in prosecution being launched, either upon the dealer preferring the same or because a second or repeated offence by the same dealer cannot be compounded. All these petroleum filling stations, which have been raided have one common feature i.e., they were noticed delivering short material to the consumer. Thus, it is alleged that the dealers are the ones who are delivering short to the consumer though he is charged for the entire quantity agreed to be purchased by the consumer. Imagine if a petroleum outlet were to deliver 10 ml short for every litre of petroleum sold by it, would it be very difficult for one to imagine as to the quantum of unauthorised money earned by such dealer at the end of each month. Would it be difficult for one to visualise as to how an association of such petroleum outlets/dealers would complain against the inspecting team without in any manner explaining as to how the individual outlets are justified in delivering short the goods contracted to be sold. This is how the economy of the State is also getting impacted by the improper standards or measures adopted by the traders generally. Therefore, in matters of this nature, much can be said on both sides, but, it would be appropriate that the competent authority has to necessarily balance the interests of all concerned sectors and stakeholders. In the process, the trading community has necessarily got to be assured that there will be no harassment by the hounding of such establishment for unjust and invalid reasons. At the same time, the honest public servant has got to be encouraged to discharge his functions very effectively and fearlessly for which the legislature has created the mechanism. If an honest public servant is harassed or hounded, it will be the enforcement of law which gets abandoned or adversely gets impacted. that is not the purpose or objective that should be pursued by the executive, who has been trusted by the legislature for discharging the functions of law enforcement. In the instant case, this striking of balance between the competing

stakeholders has not been appropriately done by the State Government, we feel.

The assertion of the petitioner that he has a clean record of service throughout has been hotly contested by the State Government by asserting that at least on 2 different occasions in the past he had been imposed with punishments. It is true that the petitioner appears to have been punished once with a censure and 2nd time with a punishment of stoppage of annual grade increment for a period of one year without cumulative effect, through the punishment order contained in proceedings No.1241/VI/1998 dated 16.11.2000 passed by the Controller of Legal Metrology, Hyderabad, which has recorded the following:

“The charged officer, Sri K.Bhaskar, joined the Department in 1986 as Inspector, Legal Metrology and was promoted to the rank of District Inspector, Legal Metrology in 1997. During the 14 years of service in the Department, he was punished only once with a censure for not wearing the Uniform at the time of surprise inspections and he has not committed any serious irregularities. He maintained fairly satisfactory record of service by taking seven(7) certificates of appreciation letters and cash awards from the department for his outstanding performance during the years 1990 to 1998.

I have gone through the record keeping in view of the objections raised by the charged officer and there is no material to substantiate the objections. Further I observed that the above said allegations were committed by the charged officer during his tenure as I/c Inspector, Legal Metrology, Nagar Kurnool only.

Considering the ground realities and nature of duties as Inspector, Legal Metrology and District Inspector, Legal Metrology and also satisfactory record of service of the charged officer, I am therefore of the opinion that the punishment of stoppage of Annual Grade Increment for a period of one year without cumulative effect will meet the ends of justice, and the matter was referred to the Vigilance Commissioner for their concurrence in terms of Government instructions in force. Thereupon the Government has informed in 8th reference that the Vigilance Commissioner has accorded their concurrence on the said proposed punishment.”

From a perusal of the above proceedings, which has been enclosed to the counter affidavit filed by the State Government it emerges that he was punished with a censure in the year 1997 for not wearing the uniform at the time of undertaking surprise inspection, but not for any serious irregularity committed by him. Even so far as the 2nd occasion, the Controller of Legal Metrology, going by the ground realities

and the nature of duties performed by the petitioner, has only found the irregularities committed by him in allowing nearly fee of Rs.3,569/- collected towards verification and stamping work on 27.01.1998 to be kept in the office almarah instead of securing it by depositing into the Government treasury, he has been penalised with stoppage of annual grade increment. Viewed in the correct perspective, therefore, the assertion of the petitioner that he has maintained a good and decent record of service all through appears to be a well taken ground.

When the State Government has approached by the dealers or manufacturers of the Legal Metrology equipment complaining of harassment at the hands of the petitioner and demands of illegal gratification by him, the State Government is bound to view the same with grave concern. Month after month when the state Government has been tendering pay and allowance to discharge the duties, a public servant is not supposed to take or resort to demanding illegal gratification, as an inspiration for rendering service to the State. There is nothing wrong in the complaints received against the petitioner being referred to ACB. There is also nothing wrong in ACB carrying out discrete and preliminary enquiries into those allegations. There may not be anything improper for the ACB to have filed a report with the State Government that at least 11 out of 13 allegations made against the petitioner have some basis or the other, but what is not justifiable on the part of the State Government is this: while passing the impugned order placing the petitioner under suspension, the State Government has chosen to describe the event in the following words in Para 2:

“And whereas, the report of the Inspector of Police, CIU, Anti-Corruption Bureau, Hyderabad indicates that 11 out of 13 allegations were proved in the regular enquiry.”

The expressions “were proved in the regular enquiry” are certainly objectionable, as they convey the meaning as if there is regular enquiry conducted into the allegations duly providing a fair chance and opportunity to the petitioner to participate therein and contradict the statements made by anyone. Whereas the petitioner has been consistently asserting that he has never been asked to participate in any such enquiry undertaken by the ACB. Possibly, this assertion of the petitioner could be true, for, the ACB is not an agency which has been entrusted

with the task of conducting disciplinary enquiries. It merely conducts a preliminary enquiry called as discrete enquiry whenever allegations of corruption surfaced against a public servant. A discrete enquiry is vastly distinct and different in content, context and scope with that of the regular enquiry. The discrete enquiries are always conducted behind the back of the individual, as a part of exercise of collecting material against the public servant. Therefore, the expressions used by the State Government in the impugned order reflect some kind of non-serious approach adopted by the State Government on the subject.

The exercise of placing an employee under suspension is certainly not punitive in nature and character, so long as it is primarily intended to prevent such a public servant from gaining access any further to the official record so that all temptations to fill up the gaps or tinker/tamper with the official record can be curbed. Simultaneously, some persons may be apprehensive to speak against the individual while he was holding a position of influence and hence, they may not be willing to come forward openly and disclose the information possessed by them about the conduct of public servant or the methods adopted by him for achieving the objective other than the lawful one. Further, the colleagues and certainly the subordinates, might consider it as embarrassing or apprehensive about talking of the methods and manner in which the officer carries out his work, while he was working along with them. Hence, placing such a public servant under suspension will provide the necessary freedom and atmosphere where people can come freely and openly and furnish the necessary inputs for taking suitable action against an erring public servant. But, however, should the period of suspension, resorted to either pending enquiry or criminal trial, result unduly prolonging itself? Can a transfer to a non-substantive post in the service itself would do?. While it is true that a measure of interim suspension would only keep the contract of service in suspended animation duly preserving it as a whole. But, at the same time, the public servant is denied by virtue of provisions contained in the fundamental rules not to receive the whole of his salary and allowances during the period of such suspension. At any rate at the initial stages such reduced payment of wages - come to be known as subsistence allowance - which presently stands at 50% during the first phase of six months while it can be enhanced to 75% for the subsequent period, if the public servant has not contributed in any manner to the delay in finalising the proceedings initiated against

him. A reduced earning capacity certainly impairs the quality of living of the public servant as well as his dependants. After all, his monthly expenditure does not correspondingly fall down to 50% or 75% of what it used to be earlier merely because the public servant is not required to come to office day in and day out. More than the financial impact on the public servant, the impact of the suspension of an honest servant on the morale of the cadre is something which one has got to bear in mind. If at the end of long drawn disciplinary proceedings if one gets exonerated and consequently may even claim the differential amount of wages and subsistence allowance liable to be paid to him, even in such circumstances, the impact of the order of suspension on the morale of the public servant concerned and the entire class of public servants is certainly of a measurable extent. In this context, the counter affidavit sworn to by the Secretary to Government also makes a reading particularly Paras 11 and 15 where expression such as “found guilty” and “established/proven allegations” are used. They tend to disclose some kind of firm opinion arrived at by the Secretary to the Government even before a detailed enquiry is conducted in the matter. The present was not the stage at which any such indication/suggestion should have been left behind.

I am thoroughly conscious about the legal principle on the subject which has been spelt out by the Supreme Court in **S.Govind Menon Vs. Union of India**, while dealing with the functions of the first member of Board of Revenue, as ex-officio Commissioner of Hindu Religious and Charitable Endowments. The functions discharged by him under Section 29 of the concerned enactment are held still liable to be examined by the State Government for the element of misconduct contained therein, in the following words of the Supreme Court:

“The charge is therefore one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions of s. 29 and the Rules thereunder in sanctioning the leases. On behalf of the respondents it was argued both by Mr. Sarjoo Prasad and Mr. Bindra that the Commissioner was not discharging quasi-judicial functions in sanctioning leases under s. 29 of the Act, but we shall proceed on the assumption that the Commissioner was performing quasi judicial functions in granting leases under s. 29 of the Act. Even upon that assumption we are satisfied that the Government was entitled to institute disciplinary proceedings if there was prima facie material for showing recklessness or misconduct on the part of the appellant in the discharge of his official duty.”

Now the 2 proposed party respondents have brought forth certain allegations which are certainly having serious content. They bring out as to how the petitioner has abused and misused his functions and authority to discharge them. Therefore, dealing with him firmly by the State Government may not be perceived or viewed as contrary to larger public interest. In a country where carrying on of trade or profession is an assured fundamental right, any unlawful or mischievous elements of interference is likely to be viewed seriously by one and all, particularly, the State Government is bound to come to the rescue of such tradesman, they must be allowed necessary protection from undue and unwarranted interference by the law enforcing agencies while simultaneously inspections by the law enforcing agencies may not be viewed as unwarranted. But, however, one too many of such inspections is also bound to be viewed as an act of positive hardship to such tradesman. But, however, the two implead applications cannot be ordered for the reason that they are moved by third parties. They can only lodge a complaint with the State Government. Once the State Government initiates the necessary action, their role thereafter gets confined to supplying the necessary material available with them in support of the allegations made by them and beyond that they cannot have any role to monitor as to how the disciplinary control over the petitioner is exercised. Hence, we are of the opinion that the two applications cannot be entertained. We are also supported in this view by the caution administered in such matters in **Gurpal Singh Vs. State of Punjab and others**.

Finally, what can be really understood from the attitude adopted by the State government? They had material available with them in the form of a preliminary enquiry report from the ACB by the time the order placing the writ petitioner under suspension has been passed. Six months time has already elapsed but so far the State Government has not made up its mind as to whether any disciplinary proceedings should be initiated against the petitioner or he shall be subjected to criminal prosecution, should there be sufficient material to do so. While it is true that the State Government or any of its officers are not having the only duty of carrying on

with the disciplinary control exercise of their public servants and in fact, they have far more important and overweighing obligations in rendering good quality service to the citizens of the State. But, nonetheless, not to take the matter any further for a period of six months is not justifiable. We are conscious that contrary to that of the scheme of Cr.P.C. where every police station has been armed with the investigation agency as part of its duty towards law and order apart from having specialised wings of investigation also, each department of the State Government may not have an exclusive cell to deal with the disciplinary proceedings against the public servants. With limited number of public servants available and also in view of limited financial resources normally allocated towards salaries and allowances to the public servants, and also going by the priority of the State towards welfare measures and good governance measures, but, nonetheless, six months period cannot be treated as a too shorter a period, for not to have initiated disciplinary proceedings against a servant who is placed under suspension. It is all the more so, if the public servant concerned has only few months of service left for his eventual retirement. There cannot be exhaustive list of circumstance in which an order of suspension must necessarily be reviewed resulting in reinstatement of public servant. It all depends upon the grave-men of the charges levelled. Imagine a case where a public servant is caught accepting illegal gratification for discharging official duties, there is no way that such a servant should be considered for reinstatement before the disciplinary proceedings could be concluded. But, at the same time, every effort must be made to conclude the disciplinary proceedings also in quick time. Let us say not exceeding one year at any rate not beyond the second year, otherwise, the exercise of power of placing public servant under suspension would itself amount to misuse of power, as prolonged suspension takes the punitive form. One cannot place public servant under suspension and forget about the rest of the obligations that were to follow later on. Every effort has got to be made keeping the urgency to dispose of such cases in quick time in mind.

Keeping the aforementioned factors in mind, we consider that it would be appropriate to direct the State Government to review the order of suspension passed against the writ petitioner in proceedings contained in G.O.Rt.No.46 dated 08.04.2015 and in case the State Government comes to a conclusion that the petitioner is no way responsible for delay for initiating further proceedings in the

matter, his reinstatement, back to duty with liberty to utilise his services at any other different place or office where he will not be in a position to wield influence over the complainants, may be explored

Accordingly, the writ petition stands disposed of.

Consequently, miscellaneous petitions, if any, pending shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

05.10.2015

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