THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLR SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.10136 OF 2015

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

This Writ Petition is preferred against the order passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.No.1685 of 2015 dated 24.03.2015 dismissing the interlocutory application filed by the petitioner. In the O.A. filed by him before the Tribunal, the petitioner herein requested the Tribunal to quash the charge sheet dated 03.03.2015 issued against him by the second respondent under Rule 20 of the A.P.C.S. (CC&A) Rules, 1991. By way of interim relief, he requested the Tribunal to suspend the charge sheet dated 03.03.2015 issued by the second respondent initiating disciplinary proceedings against him under Rule 20 of the Rules.

Sri T.Koteswara Rao, learned counsel for the petitioner, would rely on the judgments of the Supreme Court, in **State of Punjab v. V.K.Khanna** and **Union of India v. Upendra Singh**, in support of his submission that the Tribunal is entitled to interfere, the disciplinary proceedings can be interdicted, and the charge sheet set aside, if the charges framed do not disclose any misconduct or other irregularity, or the charges framed are contrary to law, or where the disciplinary proceedings are initiated malafide; the charge memo impugned before the Tribunal, does not disclose commission of any offence warranting disciplinary action being taken; the charge memo does not disclose any misconduct having been committed; consequently the Tribunal ought to have granted interim stay of continuation of the departmental enquiry; and the action of the Tribunal, in refusing to stay disciplinary proceedings, necessitates interference in proceedings under Article 226 of the Constitution of India.

In **Upendra Singh**[2], the Supreme Court observed as under.

"……In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal

has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in *H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal* v. *Gopi Nath & Sons (1992 Supp (2) SCC 312)*. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

***Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is ununderstandable how can that be done by the tribunal at the stage of framing of charges*?** In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of [image] imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate...." (emphasis supplied).

A perusal of the charge memo, impugned before the Tribunal, disclose that the allegations levelled against the petitioner herein are (1) while working as SDPO, Gudivada, he had developed nexus with the organizers of gambling, with the mediation of the Head Constable, for illegal gratification of money; he had allowed social evils like gambling, single number lottery, prostitution, 'gutka'; and he had also failed to take stringent action against anti social elements involved in circulation of fake currency at various places in the sub-division; (2) the suspected accused Md.Shafi and Naragam Veera Naga Malleswara Rao were let off without arrest and legal action, by collecting a bribe of Rs.25,000/- each from them through CCS Staff, Gudivada; and (3) while functioning in the aforesaid office, he had exhibited slack supervision in Crime No.189 of 2014 under Sections 419, 420, 468, 120-B read with Section 34 IPC and Sections 43, 45, 46(d) of the IT Act (fake Aadhar cards) of Tudivada II Town Police Station. The details of the incidents, on which the articles of charge are based, are also referred to in the statement of imputation in support of Articles of charge. It cannot, therefore, be said that the charges framed against the petitioner do not disclose any misconduct or other irregularities, or that the charges framed are contrary to law.

In **V.K.Khanna[1]**, the Supreme Court observed as under.

> **"…..While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of a charge sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified interfering at the earliest stage to as to avoid the harassment and humiliation of a public official.** It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affectation of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings…." (emphasis supplied).

While initiation of disciplinary proceedings, which are tainted with malice, may necessitate interference, the fact remains that, though allegations of malice are made, the petitioner has not even impleaded the person, against whom malice is alleged, as a respondent *eo-nominee* either in the O.A. or in the Writ Petition filed before this Court. As held by the Supreme Court, in **State of Bihar v. P.P.Sharma**, it is only if the person, against whom allegations of malafides or bias are made, is arrayed as a respondent-*eo-nominee*, and is given an opportunity of being heard, would the question of examining the plea of malice arise. In the absence of the person, against whom malice is alleged, being arrayed as a respondent-*eo-nominee* it would be wholly inappropriate either for the Tribunal or for this Court to examine the plea of malice or bias.

It is no doubt true that the order of the Tribunal is bereft of reasons and the Tribunal should, even while refusing to grant an interim order, assign reasons even if it be brief. However, the facts of the present case show that exercise of discretion by the Tribunal, in refusing to grant an interim order, is justified. The jurisdiction, which this Court exercises under Article 226 of the Constitution of India, is discretionary, and a writ is not issued as a matter of course or for the mere asking. The facts of the present case, as noted hereinabove, justify refusal by the Tribunal to grant interim relief. We see no reason, therefore, to interfere with the discretion exercised by the Tribunal.

Sri T.Koteswara Rao, learned counsel for the petitioner, would seek a direction to the Tribunal to dispose of the O.A. within a specified time-frame. We have no reason to doubt that, if any such request is made before it, the Tribunal shall dispose of the O.A. with utmost expedition.

The Writ Petition fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(M.SATYANARAYANA MURTHY, J)

9th April 2015

RRB