

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: August 31, 2015*  
*Judgment Delivered on: September 14, 2015*

+ **LPA 662/2009**

RAM KUMAR & ORS ..... Appellants  
Represented by: Mr.G.D.Gupta, Sr.Advocate  
instructed by Mr.Piyush  
Sharma, Advocate.  
versus

THE ADMINISTRATOR OF UNION  
TERRITORY OF DELHI ..... Respondent  
Represented by: None.

+ **LPA 663/2009**

SHRI NARENDER SINGH NAGAR ..... Appellants  
Represented by: Mr.G.D.Gupta, Sr.Advocate  
instructed by Mr.Piyush  
Sharma, Advocate.  
versus

THE ADMINISTRATOR OF UNION  
TERRITORY OF DELHI & ORS. .... Respondents  
Represented by: None.

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**  
**MUKTA GUPTA, J.**

1. Ram Kumar, Umed Singh, Attar Singh Rana and Jai Singh filed W.P.(C) No.311/1991 whereas Narender Nagar filed W.P.(C) No.313/1991 which were dismissed vide the impugned judgment dated May 21, 2008. Jai

Singh expired during the pendency of the writ petition and hence he was struck off from the memo of parties. Hence the present appeals by Ram Kumar, Umed Singh, Attar Singh Rana and Narender Nagar.

2. The case of the appellants in the writ petitions was that they were daily rated employees working with the Delhi State Industrial Development Corporation Ltd. (in short 'the DSIDC') and vide the office orders dated July 17, 1980, October 06, 1982 and December 30, 1985 Ram Kumar, Umed Singh and Attar Singh respectively were regularised as Junior Assistants whereas Narender Nagar was regularised vide the office order dated September 19, 1979 with the DSIDC. In June, 1985 the Mineral Division of the DSIDC was separated and incorporated as Delhi State Mineral Development Corporation Ltd. (in short 'the DSMDC'). Since the appellants were working in the mineral division they became employees of DSMDC. Applications were invited by the DSMDC for the post of Vigilance Inspectors from amongst the staff vide its circular dated July 10, 1989 prescribing the eligibility as graduate and having sound health and good physique. After the interview the appellants were appointed as Vigilance Inspectors purely on ad-hoc basis initially for a period of three months vide office order dated September 20, 1989. However vide office order dated February 06, 1990 the appellants were given notice that their services as Vigilance Inspectors stand terminated w.e.f the date of expiry of a period of one month from the date of the order and they were to be reverted back to their substantive posts as Assistant Grade-III which was the re-designation of the post of Junior Assistant on which they were initially regularised.

3. After the office order dated February 06, 1990 a fresh office order dated March 05, 1990 was circulated inviting applications for the post of Vigilance Inspectors again from amongst the officials working in the DSMDC. The eligibility requirement this time was (i) graduate holding the post of Assistant Grade-I or equivalent (ii) Assistant Grade II/III with at least five years experience.

4. The appellants again applied for the post of Vigilance Inspectors and upon interview were selected and joined their duties on September 27, 1990 on regular basis with a probation period of two years. Since despite no adverse remarks being communicated the appointment of the appellants to the post of Vigilance Inspector was sought to be set aside, the appellants filed the writ petitions as above.

5. In the writ petitions ad-interim injunction order was passed in favour of the appellants against the proposed action of reversion and directions were given to the respondents to decide the matter after issuing show cause notice to the appellants. The respondents reiterated their earlier order dated January 09, 1991 by a fresh order dated September 21, 1992 and rejected the representation of the appellants. Thus the grievances of the appellants in the writ petition were that having been selected twice for the post of Vigilance Inspector their services were terminated both times not on the ground that their work and performance were not satisfactory but for extraneous reasons. Vide the impugned order the learned Single Judge noted that the respondent was in the process of winding up and presently they were not conducting any business activity and its staff was being redeployed after the entire staff had been declared surplus. With the result Umed Singh and Attar Singh

were working in Delhi Tourism Development Corporation and Department of Education, GNCTD respectively whereas Ram Singh and Narender Nagar were still employees of DSMDC seeking redeployment.

6. On examination of the original records the learned Single Judge noted that in 1989 a proposal was mooted for having posts of Vigilance Inspectors and the Chairman-cum-Managing Director was authorised to create permanent posts carrying a time scale not exceeding ₹1,600/- pre revised/₹4,500/- revised with the eligibility criteria being graduate from recognised university and having sound, healthy and good physique. When the proposed recruitment rules were put up for approval before the competent authority changes were suggested with regard to experience with the words “from proper feeder channel”. Thus there was confusion whether the appointment to the said post was to be by direct selection or from amongst the employees working in DSMDC. Though the rules were approved by the Chairman-cum-Managing Director however, with the stipulation that due weightage would be given to the experience and the interviews of the Selection Committee shall be based on the above basis. When the list was placed before the Board of Directors of DSMDC on October 12, 1989 observations were made by the Commissioner (Industries) which have been reproduced in the impugned judgment. The then Chairman-cum-Managing Director instead of resolving the issue went ahead with the appointments which were cancelled on February 06, 1990 when the next Chairman-cum-Managing Director took over. The second Chairman-cum-Managing Director also without noting the objections raised by the Commissioner (Industries) went ahead with the selection and appointment

resulting in the appointment of appellants to the post of Vigilance Inspector.

7. The learned Single Judge noted the absurdity in the subsequent rules framed as well during the tenure of second Chairman-cum-Managing Director wherein officers of the level of Assistant Grade-II and Assistant Grade-III with five years experience were clubbed together and treated as same. However, since there were allegations of bias against the Selection Committee a detailed inquiry was held by the Commissioner (Industries) who noted that out of 10 posts, 5 persons were selected though graduates, 4 were from Assistant Grade-III while Umed Singh was the only one from Assistant Grade-II. Further neither their vigilance clearance was obtained nor were the ACRs considered by the Selection Committee and thus there were serious short comings. Further the recruitment rules had not been approved by the Board of Directors and no records of the Selection Committee were prepared.

8. During the course of hearing before the learned Single Judge the criteria on the basis of which the selection was made could not be disclosed and the selection was made entirely through interviews. Rejecting the contention of the appellants that their appointments were cancelled for no fault of theirs, the learned single judge noted that this was a case where the appellants were beneficiaries of wrong selection which was marred by favouritism and normal presumption and preponderance predicates that the appellants who had gained, were aware of the lapses in the selection. Thus the writ petitions were dismissed.

9. Before this Court the learned counsel for the appellant again urges the same plea that despite having been selected twice, for no fault of the

appellants their appointments were cancelled. There is no finding that the work and conduct of the appellants was not satisfactory, principles of natural justice were not complied with and even if, pursuant to the orders of the Court a post decisional hearing was granted the same cannot replace the compliance of a pre-decisional hearing. Reliance is placed on the decision reported as (2007) a SCC 331 Shekhar Gosh vs. Union of India.

10. It is further urged that since the appointments were through direct selection the ACRs were not required to be looked into unlike any promotion and that even as per the note of the Commissioner (Industries) 50% vacancies of the post of Vigilance Inspector could be filled from within the Corporation. Further, the circular dated March 05, 1990 was in conformity with the note of the Commissioner (Industries). Reliance is also placed on the decision reported as (1986) Suppl.SCC 740 Rajendra Prasad Mathur vs. Karnataka University and (1989) 1 SCC 399 Ashok Chandra Singhvi vs. University of Jodhpur & Ors.

11. Before dealing with the contentions of the appellants it would be relevant to reproduce the notes of Mr.R.Narayan Swami, the then Commissioner (Industries). After the minutes of the meeting dated October 12, 1989 were circulated vide his letter dated December 21, 1989 Mr.R.Narayan Swami in relation to the agenda item 14 relating to appointment of Vigilance Inspector noted that though cancellation of the first selection is not an issue because admittedly the appellants went for the second selection process however the entire record of the selection including copies of the minutes of the meeting of the Selection Committee were not brought before the Board except a brief summary being laid down. In

relation to the second selection the relevant extracts of the inquiry report of Mr.R.Narayan Swami are as under:

*“2.8 Appointment of S/Shri Attar Singh Rana, Umed Singh, Ram Kumar and Narinder Singh Nagar and Jal Singh as Vigilance Inspectors----. It has been alleged that these appointments had been made in violation of established norms/RRs. I had discussed this matter with the present CMD Shri Saxena and it is seen that 5 Vigilance Inspectors (those named above) had been appointed on 6.9.90. These posts which are in the pay scale of Rs.1400-2600 had been the subject matter of controversy last year during the time of Shri D C Sankhla and the appointments made at that time had been rescinded and fresh RRs were to be framed making provision for at least half the posts to be filled up through deputation. A circular had been issued on 5.3.90 during the time of Shri Virendra Singh inviting applications from DSMDC officials for the 50% posts to be filled up from departmental candidates. The qualifications prescribed were graduate holding (a) post of AG-I or equivalent and (b) AG-II or AG-III with at least 5 years experience. A letter had also been issued on 5.3.90 by General Manager to Secretary (Services) asking for sponsorship of candidates for appoint on deputation from Delhi Administration and a reminder to this had been sent to Deputy Secretary (Services) on 12.11.90. The Services Deptt. have now circulated the deputations posts on 20.11.90 among the various departments. It may be mentioned here that 10 posts have been created by Shri D.C.Sankhla on 15.7.89 on file and 5 of these have been filled and these are the subject matter of complaint. On going through the relevant files it is seen that 12 departmental candidates had applied and all of them had appeared for the interview, done by a selection committee comprising of General Manager, Divisional Manager Personnel, CAO and Asstt.Manager (Personnel) on 10.4.90. A panel of 5 officials had been formed and all 5 appointed. This had been approved on file by Shri Virendra Singh on 25.9.90. Now during the period between April and*

September a number of files had been called for from DSMDC by the office of the Commissioner of Industries in connection with various complaints from different quarters and this was one of the files called for. It has however been returned without any comments at that time as no action was taken towards appointment which was done subsequently. It is seen that all the 5 persons appointed barring Shri Narinder Singh Nagar, had figured in the earlier selection done in September '89 by Shri D.C.Sankhla. The September '89 list had these appointees and two of these viz. S/Shri Sudarshan Kumar and S.S.Tokas were not appointed this time. Also, of the two, only Shri Tokas had applied on this occasion. All 5 selection persons are graduates as required in the RRs and 4 of them S/Shri Attar Singh Rana, Jal Singh, Ram Kumar and Narinder Singh Nagar were AG-III while Shri Umed Singh was AG-II before selection to the post of Vigilance Inspector. During discussions with Shri Saxena, present CMD, he had pointed out that neither any vigilance clearance had been obtained in respect of these 5 persons, nor their ACRs consulted by the selection committee. The departmental candidates are to be picked through a process of selection. In my view (endorsed by Shri Saxena) selection means due consideration of merit which in case of departmental candidates should primarily be determined in consultation with ACRs. Other factors such as performance in interview physical fitness etc. would no doubt also receive due consideration. To completely ignore ACRs and not....I for any vigilance clearance, particularly when the designation involved is one of vigilance inspector, was in my opinion a serious shortcoming in the procedure followed. Also the RRs could at best permit officials of the level of AG-II or equivalent to apply for this post which is one level above at Rs.1400-2600. To also permit AG-IIIs, notwithstanding the 5 years experience criteria, was tantamount to allowing persons 2 level below to apply for this post. I feel this whole process of selection of Vigilance Inspectors has, from the beginning, been vitiated, and continues to be an exercise in

*procedural irregularity at the least.*

*3. We now have the total position indicated in the notes above. To my mind the appointment of all the persons mentioned above, barring Shri Kuljeet Singh, have ingredients of irregularity. The degree of irregularity, however, varies from case to case. It may not be possible to set aside all the appointments as this would lead to unnecessary litigation. However, the appointment of Vigilance Inspectors seems to be highly irregular and should be set aside and DSMDC asked to frame proper recruitment rules and only after examination whether there is any need for Vigilance Inspectors now that the mines are not in operation. Whenever the mines become operational, fresh RRs could be framed taking care to avoid the shortcomings pointed out above.*

*4. After CS has seen a suitable report will be sent to Smt.B.Sen, Joint Secretary, Deptt.of Personnel and instructions conveyed to the present CMD DSMDC to set aside the appointment of Vigilance Inspectors.”*

12. One of the major flaws pointed out for the second selection was that the levels of Assistant Grade-II and Assistant Grade-III which were in different pay scales were clubbed together. Further though the appellants appeared as departmental candidates their ACRs were not considered by the Selection Committee nor vigilance clearance sought for.

13. The contention of the learned counsel for the appellants that in a case of direct selection ACRs are not required to be considered deserves to be rejected. In the present case the selection was purely through interview and from amongst the departmental candidates thus it was essential to consider the ACRs and seek vigilance clearance to adjudge the suitability of the candidates.

14. Further there could be no appointment without the recruitment rules having been approved by the Board of Directors. It is well settled that nobody can claim a right on the fruits of a wrong action. An inference of the participation/connivance of the appellants is writ large from their repeated selections through irregular selection processes. The Full Bench of Lahore High Court in the decision reported as AIR 1932 Lahore 503 FB Qadir Bukhsh vs. Hakam held:

*Taking first the Punjab Chief Court and the Lahore High. Court, we find that the decisions are uniformly in favour of such a plea being allowed to be raised. The earliest case bearing on the point is Dasondhi v. Sardar Khan [1879] 114 P.R. 1879 where, if I may say with all respect, in an illuminating judgment Plowden, J., discussed the question in all its aspects with his characteristic lucidity, and showed that the same result is reached whether we apply the general rule, embodied in the first maxim or the exception described in the second. In that case, the plaintiff brought an action for possession of land on the basis of a registered deed of sale executed by the defendant in his favour. The defendant admitted execution but pleaded that the deed had been written fictitiously in order to defraud third parties who were then suing for the land. He was allowed. to raise this plea and lead evidence in support thereof, and it was found as a fact that, the sale was, to the common understanding of both parties, a fictitious transaction designed to defeat the claim of a third innocent party and that no consideration had passed, nor had possession been delivered. On this finding, it was held that the suit should be dismissed:*

*“both on the broad ground that no man ought to derive advantage from his own wrong, and in accordance with the rule contained in the maxim ex turpi causa non oritur actio that a Court of justice will not*

*interpose actively in favour of a man who is particeps criminis in an illegal or fraudulent transaction. Moreover, when it appears that both parties are equally offenders against the law, the maxim potior est conditio possidentis aut defendentis prevails, not because the defendant is more favoured, but because the plaintiff is not permitted to approach the altar of justice with unclean hands.”*

*The learned Judge further remarked:*

*It appears to me to be plain that the present demand is, as a matter of fact, founded upon a turpis causa, if the transaction be viewed as a whole. In form the action is to recover possession as owner of property, transferred by a valid instrument of sale. In reality it is a demand that effect be given to a sham instrument concocted for a fraudulent purpose, to which complete effect has not yet been given. The plaintiff in bringing the suit no doubt did not intend that the Court should see behind the deed of sale, but, as a matter of fact, the Court has got behind the deed, and is in possession of all the circumstances of the transaction. This being so, I think the Court is not precluded from holding, according to the truth, that the action is, in fact, though not in form, an action founded upon turpis causa and that the plaintiff cannot for that reason succeed.*

*The whole question has been discussed at length by Taylor in his Treatise on the Law of Evidence (11th Edn.) Vol. 1, pp. 97 and '98, Section 93, where the learned author has thus summed up the position so far as the law in England is concerned:*

*“Indeed the better opinion seems to be that where both parties to an indenture either know or have the means of knowing, that it was executed for an immoral purpose, or in contravention of a statute or of public policy, neither of them will be estopped from proving those facts which render the instrument void ab initio; for although a party will thus in certain cases, be*

*enabled to take advantage of his own wrong, yet this evil is of a trifling nature in comparison with the flagrant evasion of the law that would result from the adoption of an opposite rule. Although illegality is not pleaded by the defendant, nor sought to be relied upon by him by way of defence, yet the Court itself, upon the illegality appearing upon the evidence will take notice of it and will dismiss the action. Ex turpi causa non oritur actio. No polluted hand shall touch the pure fountain of justice.”*

15. As regards the contention of post decisional hearing not being akin to a pre-decisional hearing as held by the Supreme Court in Shekhar Ghosh (supra), the said post decisional hearing was not granted by the respondents suo-moto but pursuant to an order of this Court. The entire process of selection was cancelled for the reason that it was marred by irregularities and illegalities as noted above and not on account of individual fraud or manipulation. The appellants being the beneficiaries of an irregular and illegal process of selection cannot claim benefit thereof.

16. The decisions relied upon i.e. Rajender Prasad Mathur (supra) and Ashok Chandra Singhvi (supra) have no application to the facts of the present case. Rajender Prasad Mathur (supra) was case of a student who had pursued considerable length of time in the course and thus the Supreme Court held that his admission should not be disturbed even if the admission was irregular. In Ashok Chandra Singhvi (supra) again relating to the case of the admission to a course where the only drawback was filing the application after the last date, Supreme Court held that when the Dean and the Vice-Chancellor allowed the admission they were conscious of these facts and they had kept the old circular alive causing confusion, thus the

student could not be penalised.

17. Appeals are dismissed.

**(MUKTA GUPTA)**  
**JUDGE**

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**SEPTEMBER 14, 2015**  
**‘vn’**