

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

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Decided On: 16.11.2015

FAO(OS) No.507/2009

RAM AVTAR SHARMA

..... Appellant

Through: Mr. Mr. Rajesh Tyagi, Advocate.

Versus

MAHARAJA AGRASEN COLLEGE

..... Respondent

Through: Mr. Raman Kapur, Sr. Adv. with Mr. Manish Kumar, Mr. Amit Kumar and Mr. Piyush Kaushik and Mr. Mohit Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S. RAVINDRA BHAT, J (ORAL)

1. This is an appeal under Section 37 directed against the judgment of a learned single judge who rejected the Petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act"). The appellant had impugned the award of an Arbitral Tribunal.

2. The relevant facts are that the appellant was, at the relevant time, Principal of Maharaja Agrasen College, Delhi ("the College"). The Governing Body of the College noticed irregularities and alleged misconduct on his part; a charge-sheet on 23 counts was served upon him. An Inquiry was initiated against him; a retired judge of this Court was designated as Inquiry Officer. The Report submitted by the said Judge held that 22 out of 23 charges against the appellant were not established. On the 23rd charge (which had 177 sub-heads) the College had, during proceedings pressed only 69 charges. Of these 69 charges,

the Enquiry Officer found that 28 charges were not proved. Of the remainder 41, the Enquiry Officer found as under:

1) 17 charges were found proved to the extent that Open Tender Inquiry was essential to make those purchases referred to in these charges or to have the civil works executed, as referred to in these charges - but they were not advertised. In fact, with respect to Charge 3.5.4, it is noted that there was no open tender inquiry and also the limited quotations called were only a showpiece.●

2) 9 cases were found proved to the extent that the purchases were made or civil works ordered, without calling for any quotation whatsoever.●

3) In 15 cases of purchases / orders for civil works quotations were called but not considered at all. Purchases were made or civil work were executed before the quotations were opened for consideration. The Inquiry Authority noticed- "*Quotations were introduced as a showpiece or hoax as a cover up*".

3. The Appellant was removed from service. The petitioner assailed his removal from service by the Management Committee on the basis of Inquiry Report. Under Ordinance XII of University Calendar the Chancellor constituted a Tribunal/Appeal Committee. Before the Appeal Committee, the appellant urged various pleas. This Committee upheld the report and findings of the inquiry and also the determination of the Management Committee, including the punishment.

4. In the above background, the appellant moved this court under Section 34 of the Act, alleging that the award of the Tribunal was

patently illegal on no less than 24 counts. The learned single judge, in para 4 of the impugned judgment noticed these. The learned single judge dismissed the appellant's Petition as meritless.

5. The appellant argues that the impugned judgment is in error of law inasmuch the single judge committed a fundamental fallacy in overlooking two salient aspects: one, that the college had a Purchase Committee whose duty it was to observe due procedure in the purchases made for the college. The Appellant Principal could not be saddled with sole responsibility for acts of that Committee. The Purchase Committee had to issue "Urgency Certificate" and not the Principal-contrary to the conclusions of the Inquiry Officer and the Appeal Committee. Two, there was no mention of General Financial Rules in Charge No.3; resultantly the Inquiry Authority could not have held, that sub-heads of Charge no.3 of 41 were proved. It was urged, in this respect that reliance on Circular No. F-DE-27(45)96-97/CB/Edn./1438-49 dated 06.06.1997 issued by Government of NCT of Delhi placing responsibilities on the college Principal of strictly observing codal formalities, abiding of provisions of the General Financial Rules as the term and condition of the grant and the direction/advice of the Delhi Government regarding utilizing the grant was wrongly relied upon by the Appeal Committee to the prejudice of the appellant. There was no legal sanction of such a circular. Since, it was not held that the appellant had acted for personal gains or caused financial loss to the institution, non-observance of Financial Rules cannot be construed as misconduct.

6. It was also argued that the appellant could if at all, have been dealt under Ordinance XVIII, applicable to the College (affiliated to the University of Delhi) which provided "*colleges other than those maintained by Government of India*", as the College was not maintained by Government of India. Ordinance XII could not therefore apply. No power of suspension or termination vested in the Governing Body of College under Ordinance XVIII.

7. This court notices at the outset that the learned single judge noticed that Charge No.3.3.3 was regarding construction of class room by M/s Bhardwaj and Associates on a price of ₹ 1,18,108/-. The petitioner was charged that no quotations were called for, the Building Committee was not involved in ordering this work to the firm and there was no approval of the Governing Body of the College. The Inquiry Committee held that the said charge was proved against the Petitioner as the requirement for calling up for tender/quotations even by way of limited inquiry was not called for by the petitioner. Likewise, Charge No.3.3.7 related to electrical work carried out by M/s Bhardwaj and Associates for ₹16,335/-. The charge, i.e that no quotations were invited for this work, the Purchase Committee was also not involved and the work was done without the approval of the Governing Body. The Contractor had no experience nor was the verification of the work done. This charge was also established as quotation should have been invited and the same should have been routed through the Purchase Committee. Charge Nos. 3.4.1 related to procurement and 3.4.2 related to award of work without open

tendering, again to M/s Bhardwaj Associates. Charge No.3.4.4 related to College repairs. It was alleged that two out of three quotations received were not genuine and Building Committee was not consulted. It was found that bills were of earlier date than the recommendation of the name of the Contractor and opening of quotations. This clearly showed that procedure for considering quotation was not followed and the petitioner was responsible for infraction of procedure. Similarly, Charge No.3.4.5 related to purchase of computers. It was charged that the Purchase Committee was not involved and two out of three quotations were not genuine. Procedural irregularity was established in the purchase and the petitioner was under a duty to have known that quotations were not given any consideration and the supply order was given without following the purchase procedure.

8. As to charge No.3.4.10 it was held that it related to construction work in the College. The allegation was that the Purchase Committee was not involved and two out of three quotations were not genuine. It was held that the work was done without quotations and the payments were clubbed with other bills. Not calling quotations was a violation of prescribed procedure in the General Financial Rules. This charge was established to such extent. Charge No. 3.4.15 pertained to purchase of books from Printmen; the Purchase Committee was not involved and two out of three quotations were not genuine. The Inquiry Authority held that this charge was established and that there was clear infraction of prescribed financial procedure in purchasing books. Likewise, Charge No.3.5.1 related to purchase of computers

and other parts from M/s COMCAT. It was held that the petitioner sanctioned the bills without recommendation by Bursar. The responsibility of the petitioner for violation of GFR about these purchases was established. The other charges proved also showed similar infractions of varying gravity.

9. The Single Judge was of the view that the complaint of non-supply of Fact Finding Committee Report was not material in the case since all the ELFA reports forming the basis of the Fact Finding Committee Report had been provided to the appellant. He was not able to show that the Fact Finding Report was relied upon in proving any of the charges established. The charges were proved on the basis of other documentation and admissions and not on the basis of said Report. The Single Judge had approved the view of the Appellate body which stated that being a College appointed teacher the appellant was governed by Ordinance XII, which deals with College Appointed Teachers and states that the teacher includes a Principal of (a college). Ordinance XII (3) refers to retirement age of a person appointed permanently as a Principal of the College. Clause 6 refers both to “Principal” and “Teacher” placed under suspension and Clause 9 referred to Arbitration of an Appeal Committee in respect of dispute in connection with termination of services of College Appointed Teachers (including Principal). The Appeal Committee before whom the petitioner had appealed was itself constituted under Clause 9 of Ordinance XII. Therefore, the Single Judge held that provision to be applicable.

10. The Appeal Committee had found that there was overlapping between the provisions of Ordinances XII and XVIII; it concluded that the real issue was not applicability of Ordinance XII or Ordinance XVIII but whether the penalty imposed on the appellant (petitioner herein) was excessive and whether there were options available to the Governing Body to consider imposition of other penalties. It held that Ordinance XII applied to the appellant since it governed college appointed teachers including a Principal and the petitioner was one such Principal. The Committee found that not a single open tender was invited despite there being no certificate of urgency issued by the petitioner, who was Principal of the College authorized to issue such certificate under the rules. The Delhi Government by Circular no F-DE-27(45)/96-97/CB/Edn./1438-49 dated 6.6.1997 issued by the Directorate of Higher Education College Branch Government of National Capital Territory, Delhi had informed the Principals including appellant that the General Financial Rules had to be observed. The Governing Body had no power to amend the purchase procedure as prescribed by Delhi Government since Delhi Government was the fund provider. A copy of the circular of Delhi Government regarding compliance of financial rules was specifically endorsed to the appellant. The college, was 100% Delhi Government aided/sponsored college at the time when appellant was the Principal.

11. The appellant had argued that the inquiry conducted against him did not specify under which Rules the inquiry was conducted, and he was governed only by the Service Contract and Delhi University

Rules; the General Financial Rules was not part of his service conditions and holding him guilty of violation of such Rules did not amount to misconduct. He relied upon *Rajeshwar Singh v Union of India & Ors* 1990(1) SLR 24 where the Court had held that the holding of inquiry under CCS (CCA) Rules, 1965 against the appellant, who was governed by CISF Rules was violative of principles of natural justice and finding based on such inquiry and punishment imposed was illegal. The learned single judge held that this judgment did not help the appellant. He observed that:

“10. It is settled law that mere wrong nomenclature of the Rules or the Act would not vitiate an order or an inquiry. What is to be seen is - whether the wrong nomenclature of the Act or the Rules caused any prejudice to the person concerned. In the present case, the inquiry against the petitioner was not held in respect of violation of CCS(CCA) Rules rather CCS(CCA) Rules procedure was followed to ensure that a fair inquiry was conducted against the petitioner. The inquiry was in fact conducted against the petitioner for violation of codal formalities and not following the General Financial Rules in purchases made for the College over the years. The petitioner being the Principal was considered responsible for following the procedure for making the purchases as laid down under the relevant Rules and this violation was sought to be proved before the Inquiry Authority on the basis of documents and evidence. Mere stating of CCS(CCA) Rules under no circumstances could have prejudiced the petitioner, who was only to show that he acted in accordance with the Rules.

11. The contention of petitioner that General Financial Rules were not part of the service conditions of the petitioner and the petitioner was governed only by his service contract is again a fallacious argument. The service contract of the petitioner did

not enunciate that while performing his different duties as Principal, no Rules shall be followed. Any employee/Executive Officer/Principal or Administrative Officer appointed at a post, apart from being governed by his service contract, is also bound to follow the rules and regulations of the business which he is supposed to conduct. If a Principal is head of the college, he is bound by the different rules and regulations meant for administration of the college. These rules and regulations can be different for different nature of job. If he is involved in purchases, he is bound by the rules and regulations of General Financial Rules and codal formalities as enunciated by the Delhi Government for purchase of the material. He cannot take a plea that since these General Financial Rules were not part of his service contract he was not bound by the General Financial Rules. If this argument is allowed to prevail perhaps no employee can be booked for misconduct or violation of rules because the appointment letters which are issued to the employees only provide his service conditions specific to the job. The appointment letters do not give the rules applicable in respect of each administrative responsibility which a person has to discharge. A person may then even take a plea that in his service conditions it is not written that he would be bound by [Indian Penal Code \(IPC\)](#) or other penal laws and may say that he was at liberty to be corrupt and tyrannical and was at liberty to inflict injuries on students because it was not part of his service conditions that he was bound by [IPC](#). I, therefore, consider that this argument that he was not bound by the General Financial Rules or he was not bound to observe codal formalities for making purchases or that Delhi Government had no authority to prescribe that the grant given by Delhi Government shall be used in accordance with General Financial Rules is a fallacious argument and has to be turned down.”

The learned single judge repelled the appellant's submission that the charges framed against him were vague. His reliance again, on the judgment in *State of Punjab & Ors. v. Ram Singh, Ex. Constable* AIR

1992 SC 2188 with respect to the issue that the charges were not defined as misconduct too, was rejected. Finally, the impugned judgment rejected the submission that the appellant was not motivated by any ill intention:

“17. I consider that this argument must fail. Wrongful intention of a person has always to be inferred from the acts of the person and not from the words of the person. The Inquiry Authority had not gone into allegation of misappropriation of funds or purchases having been made at higher rates or the goods of being inferior quality or whether the goods were purchased in the best interest of the college or not because there were no charges framed against the petitioner on these counts. The Inquiry Authority had gone into only those charges which were framed against the petitioner. The charges against the petitioner were in respect of the petitioner acting in contravention of the General Financial Rules in the matter of awarding works and goods purchased for the College and these charges have been proved. The wrongful intention of the petitioner can be inferred from the very fact that the petitioner despite being the last signatory on all approvals did not deliberately put dates under his signatures so as to keep the date of approval of the purchases as vague. I, therefore consider that this argument of the petitioner must fail.

18. It is settled law that the scope of judicial review is very limited. This Court cannot act as a court of appeal against the order of the Tribunal/Appeal Committee. All the arguments of the petitioner are in the nature of appeal against the order of the Appeal Committee and I consider that this Court cannot re-write the award passed by the Appeal Committee after reconsidering the entire material. Suffice it to say that in this case the principles of natural justice were meticulously followed, the Inquiry was conducted in a total impartial manner, the Inquiry Authority and the Appeal Committee acted

in a total impartial and fair manner. The petitioner was given ample opportunity to present his case and defend himself.

19. The argument of the petitioner is that the punishment of removal given to him was totally disproportionate to the charges proved against him. The charges proved against him were of technical breach of the General Financial Rules and the punishment of his removal was a very harsh punishment.

20. The post of Principal is a post of trust. Principal being head of the Institution is supposed to act in a fair responsible and trustworthy manner and if the trust of the Governing Body evaporates in the Principal because of the acts and deeds of the Principal and the Governing Body has removed the Principal after conducting an inquiry and following due process, the Court cannot sit in judgment over the punishment awarded to the Principal and cannot thrust the services of the Principal on the Governing Body. In Dr. S.B. Dutt v. University of Delhi 1959 SCR 1236, the High Court had set aside an award of the Arbitrator observing that the award declaring that Mr. Dutt was still a professor in University of Delhi was contrary to law since no Court could or would have given him such relief. The High Court felt that this declaration amounted to a specific enforcement of a contract of personal service which was forbidden by Section 21 of the Specific Relief Act and therefore disclosed an error on the face of the award. This judgment of the High Court was challenged before the Supreme Court and Supreme Court upheld the order of High Court observing that it was in the entire agreement with the view expressed of the High Court and the contract of personal service cannot be specifically enforced in Section 21 Clause (b) of Specific Relief Act.”

12. The facts discussed would show that the appellant's explanation for the omissions he was charged with, were not accepted by the Inquiry authority, a former judge of this Court. The charge sheet had listed 23 counts; 22 were not pressed. The lone charge

pressed had 177 counts of which only 69 were pressed. This showed that the disciplinary authority was objective at the outset. Of the charges pressed, 28 were held not proved. 41 of the remainder were held to have been proved – though not all, fully. No *mala fides* or ill motive clearly could be ascribed to the authorities. This led to the penalty of removal; the Appellate Committee set up to consider the appellant's plea held that there were no infirmities with the findings of the Inquiry authority and the penalty was not excessive. The Committee went into all the questions and concurred with the action taken against the appellant. He felt aggrieved and approached the Court under Section 34.

13. Now, the jurisdiction of the Court under Section 34 is extremely circumscribed: it is only those Arbitral Tribunal awards which are patently illegal that are vulnerable to interference¹. It is not error in appreciation of evidence, or even erroneous interpretation of the law or applicable rules, which clothes courts with jurisdiction to interfere with awards, but such determinations that would be so unreasonable as to shock the court, or lead it to conclude that no reasonable man, placed in like circumstances, would have arrived at such decision.² If the arbitrator commits an error in the construction of the contract, that

¹*Oil and Natural Gas Commission vs Saw Pipes*, (2003) 5 SCC 705.

²*Ref Sumitomo Heavy Industries v ONGC Ltd* 2010 (11) SCC 296; *Kwality Manufacturing Corporation v Central Warehousing Corporation* 2009 (5) SCC (Civ) 406.

is an error within his jurisdiction³. In *Mc Dermott International*(see fn 3 *supra*), the Supreme Court clarified the Court’s inherent limitation by reason of Section 34 in such matters:

“112. It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. (See Pure Helium India (P) Ltd. v. ONGC [(2003) 8 SCC 593] and D.D. Sharma v. Union of India [(2004) 5 SCC 325]).

113. Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.”

“Patently illegal” according to several Supreme Court decisions, is one which on the face of it, is patently in violation of statutory

³Ref *MSK Projects (I) (JV) Ltd* (supra); *G. Ramachandra Reddy v Union of India* 2009 (6) SCC 414; *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181; *Renusagar Power Co. Ltd. v. General Electric Co.* 1984 (4) SCC 679.

provisions and cannot be said to be in public interest and award is likely to adversely affect the administration of justice.

14. This Court is of the opinion that the concurrent findings of the Tribunal/Appeal committee endorsed by the single judge leaves it with no elbow room, so to speak, to re-appreciate factual findings. Nor are the findings challenged suggestive of anything that would render them susceptible of judicial interference. As far as the normative aspects, i.e applicability of the General Financial Rules, and the Ordinance go, the findings of the learned single judge are in accord with established principles; no exception can be taken to his robust reasoning that mere citation of a wrong provision would not render an otherwise valid action illegal and that the Financial Rules were known by the appellant to be applicable, since at the relevant time, his college was a 100% government aided institution.

15. In view of the above discussion, this Court is of the opinion that there is no infirmity with the impugned judgment and order of the learned single judge. The appeal is accordingly dismissed, without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

NOVEMBER 16, 2015