

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2556 of 2014

- S.K.Sonwani S/o Lae M.R.Sonwani Aged About 58 Years R/o D-78 Guru Ghasi Das Colony, New Rajendra Nagar, Raipur, Distt Raipur, Chhattisgar

---- Petitioner

Versus

1. State Of Chhattisgarh, S/o Through Its Secretary, Women And Child Welfare Department, Mantralaya, Mahanadi Bhawan, Goverdhan Of Chhattisgarh, Raipur, Chhattisgarh
2. Enquiry Officer, Mr. Amit Aggarwal, Mahanadi Bhawan, New Raipur, Chhattisgarh
3. Chhattisgarh State Industrial Development Corporation Limited, Through Its Managing Director, Firs Floor, Udyog Bhawan, Ring Road, Telibandha, Raipur, Chhattisgarh

---- Respondents

For Petitioner	: Shri Chetan Sharma, Senior Advocate with Shri Alok Singh and Ms Ruchi Nagar, Advocates
For Respondent/State	: Shri JK Gilda, Advocate General with Shri UNS Deo, Government Advocate
For Respondent- 3	: Shri Kashif Shakeel, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice Sharad Kumar Gupta

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

11.09.2017

1) Heard the learned Senior counsel for the petitioner, the learned Advocate General, assisted by the learned Government Advocate and the learned counsel appearing for the Corporation, respondent- 3.

2) A Writ Petition was instituted before this Court by a person pleading, among other things, that certain supplies of medicines ought to have been accepted by the Corporation. That led to Ex.P/6 judgment. This Court held that there could be no direction to take delivery of the medicines

since their shelf life had run out. This Court further noted that there is an arbitration clause governing the parties. This Court also appears to have taken the view that there was mismanagement of the entire episode by those in governance. The submissions made at the Bar were also treated to take such view. Therefore, the Chief Secretary of the Government of State of Chhattisgarh was directed to hold a comprehensive enquiry. It was further directed that if the resultant conclusions of the Chief Secretary were to indict any particular officer or officers, it was left to the wisdom of governance to decide whether the officers concerned should be prosecuted or disciplinary proceedings were to be initiated against them. Whether any particular person should be proceeded for recovery of funds negligently lost, if ultimately the arbitration was to result in an award against the interest of Corporation or the State, was also left open.

3) This Writ Petition is by one of the persons who has incurred some adverse remarks or findings by the Chief Secretary in the report which is Ex.P/1. The said enquiry was carried out by an officer designated by the Chief Secretary for that purpose.

4) Hearing the learned Senior Counsel for the petitioner and the learned Advocate General, as also the learned counsel for the Corporation, we see, first and foremost, that Annexure P/6 judgment was issued by this Court without hearing any of the employees. The person, who instituted that Writ Petition, the State Government and the Corporation were the only parties. This obviously means that if some event were to happen as a consequence of Annexure P/6 judgment, those persons who were not parties to that judgment would well be within their

limits to contend as to the efficacy and applicability of that judgment and the binding nature of the directions contained therein. That position, notwithstanding, we also see that any report that would have been generated as a result of that judgment, cannot *eo instanti and ipso facto* result in an adverse decision against any particular officer, since an employee of the Corporation or the Government could be visited in such matters only in accordance with law; in terms of the relevant service rules or the penal provisions or the civil law relating to compensation and damages, in cases of negligence and neglect of officials.

5) We may however sound that in the case in hand we see a very curious situation; may be one which had escaped the notice, even of the Government advocates who had settled the papers which are contained and placed on record as the reply on behalf of the first respondent State. One Mr Sajid Memon is one whose name finds reflected in para- 42 of Annexure P/6 judgment. He is even stated to be one, who had given a false affidavit, if he were to read the contents of that paragraph of Annexure P/6 as binding on the said person. Unfortunately, it is that very person, who has sworn to an affidavit supporting the return filed by the State Government in this case. The various canons of justice persuade us to use the best tool in the circumstances; softness even in peril. We, therefore, dissuade ourselves from expressing anything against the said situation though at least that person in his individual capacity, ought to have been alert to ensure that he does not vouchsafe the pleadings on behalf of the State in a matter in which he, definitely, would have a personal interest; that too after being at least superficially indicted through paragraph 42 of Annexure P/6; even if that were to be treated as not

finally binding on him, it having been rendered without notice. Needless to say he was also one of the persons, who was required to be extended opportunity of hearing in the enquiry that the Chief Secretary was to carry out in terms of the directions in Annexure P/6 judgment.

6) Having assessed the entire facts and factors and the contents of Ex.P/1 and the jurisprudential quality and the statutory and other situations in which it is placed, this Writ Petition is ordered directing that the said enquiry report shall not be put against the interest of the petitioner in any proceeding except after affording him an opportunity of hearing before any such authority regarding the correctness, or otherwise, of the contents of that report as would be relevant for any such judicial, quasi-judicial, departmental or other proceedings.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge