

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WV.MP.No.996 of 2017

in/and

WRIT PETITION No.5745 of 2017

COMMON ORDER :

Heard Sri Anand Kumar Kapoor, Counsel for petitioner and Sri Abinand Kumar Shavili, Counsel appearing for respondents 1 and 2.

2. Parties hereinafter will be referred as they are arrayed in the Writ Petition.

3 The Writ Petition has been filed by the petitioner assailing the proceedings dt.13.02.2017 issued by the 2nd respondent and to declare the same as illegal, *non-est*, without any authority of law, as a fraud on power and as an action in contravention of articles 14, 19 and 21 of the Constitution of India.

4. Petitioner was employed as Senior Consultant Grade-I in the 1st respondent-Company, which is a Government Company.

5. A show cause notice dt.04.08.2016 was issued to the petitioner by the 1st respondent seeking his explanation as to why disciplinary proceedings should not be initiated against him for certain alleged misconduct mentioned therein.

6. Petitioner replied to the same on 16.08.2016 denying the charges.

7. On 23.08.2016 petitioner was suspended pending enquiry and a charge sheet dt.11.01.2017 was issued to him.

8. Thereupon, 2nd respondent issued impugned proceedings dt.13.02.2017 appointing one D.Ravi Shankar Rao, Advocate as an 'Independent Arbitrator' for conduct of the enquiry. It is also mentioned therein that the petitioner should appear on 18.02.2017 at 10.30 a.m., at the registered office of the 1st respondent-Company, in person, to answer the charges, that he should produce all the witnesses and all the documents upon which, petitioner intends to rely in support of his defense. It is further stated that if he fails to attend the enquiry proceedings on the appointed date, time and place, it will be open to the Enquiry Officer to proceed ex-parte without further notice.

9. Assailing the same, this Writ Petition is filed.

10. On 17.02.2017 this Court granted interim stay of enquiry, before the 3rd respondent, in W.P.No.5745 of 2017 and the same was extended from time to time.

11. To vacate the said order, W.V.MP.No.996 of 2017 is filed by respondents 1 and 2.

12. Counsel for petitioner contends that the contents of the said notice discloses that the Arbitrator had abdicated his responsibility in favour of the 2nd respondent by allowing the 2nd respondent to fix time and place of the enquiry as well as directing the petitioner to produce evidence and what should be done, in case petitioner did not do so. He therefore contends that the 3rd respondent, who is appointed as an Independent Arbitrator, cannot be said to be 'independent' for conduct of the Disciplinary Enquiry, and that the petitioner has a reasonable apprehension of bias in favour of 1st respondent by the Arbitrator.

13. Counter affidavit is filed on behalf of respondents 1 and 2 taking the plea that the petitioner himself requested for appointment of an Independent Arbitrator invoking the procedure under 5.2 of the APITCO Staff Rules, 2015 and when such Independent Arbitrator i.e., 3rd respondent is appointed, petitioner cannot now shirk from participating in the proceedings before the 3rd respondent on the pretext that the 3rd respondent would not act independently. It is contended that the 3rd respondent is a practicing Advocate and would act as an Independent Arbitrator.

14. I have noted the submission of both sides.

15. The principal contention of the counsel for petitioner is that the 3rd respondent would not act as an Independent Arbitrator since the impugned notice dt.13.02.2017 issued by

the 2nd respondent fixes time, place and date of enquiry, which is the primary duty of the 3rd respondent. According to the counsel for petitioner, mentioning of these details as well as the direction to the petitioner to appear before the said Enquiry Officer and to produce evidence before the 3rd respondent itself indicates that the Independent Arbitrator had abdicated his duties in favour of the 2nd respondent.

16. It is true that the 2nd respondent, who is the Company Secretary and who is said to be a member of the Disciplinary Committee of the 1st respondent, not being the Enquiry Officer, had no jurisdiction to fix the time, place and date on which the disciplinary proceedings will be conducted by the Independent Arbitrator or to give any direction to the petitioner to participate in the said enquiry by producing evidence and mentioning consequences of the petitioner's failure to do so. This is primarily and solely the responsibility of the Independent Arbitrator/Enquiry Officer and the 2nd respondent clearly exceeded his jurisdiction in making statements regarding time, place and date of enquiry etc., in the impugned notice.

17. However, merely because the 2nd respondent mentioned these facts in the impugned notice dt.13.02.2017, no conclusion can be drawn that the 3rd respondent would not act as an Independent Arbitrator. Admittedly, 3rd respondent was appointed on 13.02.2017 under the impugned notice and

the petitioner had approached this Court on 17.02.2017 and obtained stay of proceedings before the 3rd respondent. So, the 3rd respondent had really no opportunity to do anything at all. It might have been different if the 3rd respondent had an opportunity to do some action or inaction in the enquiry proceedings from which an inference about his independence could have been drawn, but admittedly he had no opportunity to do anything before this Court stayed the domestic enquiry.

18. Though counsel for petitioner contended that there is no evidence of his independence, I am of the opinion that it is for the petitioner to establish evidence of non-independence and the burden cannot be shifted to the respondents to prove the independence of the 3rd respondent. Admittedly, the 3rd respondent is an advocate and it is not the contention of the petitioner that he is an employee of the respondents.

19. Therefore, to the extent the 2nd respondent mentioned in the impugned notice dt.13.02.2017 the details about time, place and date of enquiry and directed the petitioner to appear before the 3rd respondent and lead evidence and mentioned the consequences of the petitioner's failure to do so, the said notice dt.13.02.2017 is set aside. However to the extent, the 3rd respondent was appointed as an Independent Arbitrator at request of the petitioner by the 2nd respondent, it cannot be found fault with.

20. Therefore, W.V.MP. is allowed and the order dt.17.02.2017 in W.P.No.5745 of 2017, which was extended from time to time, is vacated. The 3rd respondent shall issue notice to the petitioner about the time, place and date of Disciplinary Enquiry within a period of four (04) weeks from the date of receipt of a copy of the order; and the petitioner shall participate in said the enquiry and lead whatever evidence he wishes to adduce in support of his defense. Thereafter, the Enquiry Officer/3rd respondent shall submit his report in the matter in accordance with law and in strict compliance with the principles of natural justice.

21. The Writ Petition is disposed of with the above directions. There shall be no order as to costs.

22. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

28th July, 2017

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