

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18-06-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.14590 of 2018

And

W.M.P.Nos.17229 and 17230 of 2018

T.Paul Premkumar

.. Petitioner

Versus

1.Government of India,
Represented by its Secretary,
Department of Fertilizers,
Ministry of Chemicals and Fertilizers,
Shastri Bhavan,
New Delhi - 110 001.

2.Chairman and Managing Director,
Madras Fertilizers Limited,
Manali,
Chennai-600 068.

.. Respondents

PRAYER: Writ petition is are filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order No.CMD/1.020/2018 dated 16.5.2018 issued by the second respondent to quash the same and to direct the second respondent to release all terminal benefits.

For Petitioner : Mr.E.Venugopal

For Respondent-1 : Mr.A.Kumara Guru,
Senior Central Government Standing
Counsel.

ORDER

A charge memo dated 16.5.2018, issued by the second respondent, is under challenge in this writ petition.

2. The writ petitioner joined in the second respondent-Company as Accounts Assistant on 21.3.1985. The petitioner is a

qualified Cost Accountant and accordingly, he was further elevated to the post of Accounts Assistant and finally to the rank of General Manager.

3. The learned counsel, appearing on behalf of the writ petitioner, made a submission that the respondents have adopted a discriminative approach in respect of initiation of disciplinary proceedings. The learned counsel for the writ petitioner mainly contended that some other similarly placed members of the Tender Committee were exonerated from the allegations. Thus, the initiation of the disciplinary proceedings against the writ petitioner is to be set aside. In other words, the charges framed against the writ petitioner are baseless and not supported with any concrete documents. The writ petitioner had followed the proceedings as per the Rules in force and made his recommendations. Thus, there was no irregularity, as such, in respect of the actions of the writ petitioner and even otherwise, some other similarly placed Committee Members were exonerated and the writ petitioner also to be treated on par with other members and exonerated from the allegations and the charges.

4. The learned counsel for the writ petitioner further contended that the salary due to the writ petitioner for the month of May 2018 has not been disbursed. This Court is of an opinion that if the writ petitioner had already served, he is certainly entitled for the salary as per the Rules in force and this Court expects that the respondents will take action for the payment of salary due to the writ petitioner without any further delay.

5. In respect of the challenge of the charge memo, the Memorandum of Charges on 16.5.2018, Annexure-I contains the Statement of Articles of charge framed against the writ petitioner, which reads as under:-

"Article of Charge 1: It is alleged that as a TEC member for Commercial, CO had recommended to reject the delayed bid of M/s.Manoir Industries, France, based on a GOI manual, while there is provision to accept delayed bids as per Clause 10.1.0 of Manual on Contracting and Procurement System (MOCPS), though it would have been in the interest of MFL to open the same for more competition.

Article of Charge 2: It is alleged that as a TEC member for Commercial CO had committed serious irregularity by recommending acceptance of the revised price bid of M/s.Schmidt+Clemens. This directly

reduced the tendering exercise to one on nomination basis in a non-competitive environment and a violation of procedure.

Article of Charge 3: The rate quoted by M/s.Schmidt+Clemens for 130 Nos of tube sets and 64 Nos., of Grids in the unopened price bid (First price bid) was USD 13,33,500.00 which is equivalent to Rs.6.93 crores whereas the rate quoted in the revised bid was Euro 14,81,706 which is equivalent to Rs.12.59 crores (Euro Exchange Rate Rs.85.40). It is alleged that as a TEC member of F&A, CO had recommended to award the contract to M/s.Schmidt+Clemens, thereby causing a financial loss of more than Rs.5 crores to MFL.

Article of Charge 4: It is alleged that in the TCR dated 07.11.2013, CO, as TEC member had compared Reformer tubes of two different technologies, viz., EBW technology (2010 procurement) and TIG welding (current procurement) and justified the rate of Tubes with TIG welding technology, which is inappropriate and against the financial interests of the organisation.

Article of Charge 5: In the TCR dated 07.11.2013, it is alleged that as TEC member, CO had compared the rates of M/s.Manoir Industries (who were given a short delivery period) with that of M/s.Schmidt+Clemens (given a longer delivery schedule), which is inappropriate and against the financial interests of the organisation.

Article of Charge 6: Rates of Reformer tubes of two different suppliers, having different weights, were compared by the TEC of which CO was a member and on that basis the offer of M/s.Schmidt+Clemens was projected favourably, despite the significantly higher cost.

Article of Charge 7: It is alleged that as JGM-CA, though CO raised queries on the issue of having an approved agency for freight, he failed to question non-compliance of Government policy on shipping arrangement and did not ensure proper justification of reasonableness for the sea freight of Rs.79,56,703/- paid. CO mechanically accepted the clarification of

DGM - MM and recommended for concurrence of Sea Freight payment."

Annexure-II to the charge memo enumerates the Statement of Imputation of misconduct or mis-behaviour in support of the articles of charge framed against the writ petitioner. Annexure III provides the list of documents relied upon by the Company for the purpose of establishing the memorandum of charges framed against the writ petitioner. Annexure-IV denotes the list of witnesses and no witness has been cited for examination.

6. On a perusal of the entire charge memo, this Court is of an opinion that there is no infirmity, as such, in respect of the memorandum of charges issued against the writ petitioner.

7. The learned counsel, appearing on behalf of the writ petitioner, mainly contended that the writ petitioner alone has been discriminated and other members of the Committee have been exonerated. Thus the similar treatment has not been extended to the writ petitioner also. This Court is of an opinion that the allegations set out in the charge memo are certainly serious. There is a huge amount of financial loss to the State Exchequer. Thus, an enquiry in respect of these allegations are certainly imminent.

8. At this point of time, this Court cannot come to the conclusion that the writ petitioner is innocent of the allegations or otherwise. All these factors are to be probed and an enquiry is to be conducted and only after submission of the final report, the authorities competent will be in a position to come to a conclusion. At this stage, this Court cannot adjudicate the facts and the circumstances in respect of the allegations set out against the writ petitioner. It is left open to the writ petitioner to submit his explanations/objections on the charge memo and prove his innocence or otherwise before the Enquiry Officer to be appointed by the Disciplinary Authority concerned.

9. No writ can be entertained against the charge memo in a routine manner. Judicial review against the memorandum of charges under Article 226 of the Constitution of India, is certainly limited. The power of judicial review in respect of the charge memo has to be exercised cautiously and sparingly only on exceptional circumstances. No writ can be entertained unless the writ petitioner is able to establish that the charge memo has been issued by an incompetent authority having no jurisdiction or if the allegation of mala fides are raised or if the same is in violation of any Statutory Rules in force. Even, in case of raising the allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as

party respondent in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ proceedings can be entertained in a routine and casual manner.

10. The public servants are bound to serve honestly and maintain integrity in all respects at all levels. If at all, a charge memo has been issued, it is for them to defend their case in the manner known to law. Thus, the writ proceedings are entertained in each and every circumstances and at each and every stage, the disciplinary proceedings initiated will not only be paralysed and it will be prolonged unnecessarily without any valid reason. This Court is of the firm opinion that the disciplinary proceedings against the public servants are to be conducted and concluded within a reasonable period of time and prolonging the disciplinary proceedings will cause prejudice to the employees also. Thus, the competent authorities, in this regard, must be vigilant in respect of conclusion of the disciplinary proceedings at the earliest possible and within the reasonable period of time.

11. The delinquent officials are also bound to co-operate with the enquiry proceedings to avoid any further delay. Such writ petitions are filed then and there at the intermittent stage with an idea to prolong and protract the disciplinary proceedings. Such an attitude should also be deprecated. This Court is of an opinion that the employees who approached the Court at every stage during the disciplinary proceedings, are having an idea to prolong the matter in order to escape from the clutches of law. Such an attitude can never be encouraged by the Courts by entertaining the writ petition. The Constitutional Courts must also be cautious while entertaining such writ petitions and the same shall be dealt with in accordance with law without any further lapse of time.

12. In the present case on hand, the allegations set out are certainly very serious and the disciplinary authorities are bound to conduct an enquiry without any further delay and the writ petitioner is also bound to submit his explanations/objections on the allegations set out and defend his case and by availing the opportunities to be provided by the competent authorities during the course of disciplinary proceedings.

13. The Honourable Supreme Court of India in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357 and the paragraph 6 which is extracted hereunder:

"6. 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, Kamal v. Gopi Nath & Sons. 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 authorized 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."

14. In the case of Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [Civil Appeal No.2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

15. In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

16. This Court is of a strong opinion that the institutional respects are also to be followed while dealing with such writ petitions. The statutory authorities are the public authorities and they must be allowed to exercise their powers in the manner known to law. Only if such powers are exercised arbitrarily or in violation of the statutory provisions, then alone the Courts can interfere during the intermittent period. In all other circumstances, the actions initiated by the competent officials must be allowed to be concluded in all respects and the same should reach its logical conclusion. Intermittent intervention in such matters during the interregnum period is certainly not preferable. This being the principles to be followed, this Court is of an opinion that the writ petitioner has failed to establish any acceptable ground for the purpose of entertaining the writ petition challenging the charge memo. It is left open to the writ petitioner to submit his explanations/objections, if any, on the allegations set out in the charge memo and defend his case by availing the opportunities to be provided under the procedures. The competent officials are also bound to provide reasonable opportunity to the writ petitioner to defend his case in accordance with law.

17. The learned counsel for the writ petitioner made a submission that the last date for submission of the defence statement expires today i.e., on 18.6.2018. Thus, the request is made to extend the time for submitting the explanations/objections on the charge memo. In view of the fact that the submission made is reasonable, this Court is inclined

to grant time. Accordingly, the respondents are directed to entertain the explanations/objections, if any, submitted by the writ petitioner, on or before 30.6.2018.

18. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Secretary,
Government of India,
Department of Fertilizers,
Ministry of Chemicals and Fertilizers,
Shastri Bhavan,
New Delhi - 110 001.

2.Chairman and Managing Director,
Madras Fertilizers Limited,
Manali,
Chennai-600 068.

+lcc to Mr.Kumaraguru, Advocate, sr.38006
+lcc to Mr.Vennugopal, Advocate, Sr.38081

GSP (22/06/2018)

W.P.No.14590 of 2018

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