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

+ **W.P.(C) 3640/2019 & CM No.16653-16654/2019**

KULAMANI BISWAL

..... Petitioner

Through: Mr Ashok Kumar Singh, Sr.
Advocate with Mr Neeraj
Lalwani and Mr Ashutosh
Ranjan, Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr Arun Bhardwaj, CGSC for
R-1.
Mr Puneet Taneja and Ms
Laxmi Kumari Advocates for
R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.04.2019

VIBHU BAKHRU, J

1. Issue notice. The learned counsel appearing for the respondents accept notice.

2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 26.03.2019 passed by respondent no.1 (Union of India) rejecting the petitioner's application seeking permission to work as a "legal and regulatory consultant/advisor/partner/director in various companies /firms for remuneration."

3. The petitioner was employed as a Director (Finance) with respondent no.2 (hereafter 'NTPC'). There were certain allegations in regard to corruption against the petitioner, and an FIR in this regard was also filed under Section 11, 12 of the Prevention of Corruption Act, 1988 read with Section 120-B of IPC. The petitioner was suspended from services on 16.12.2017. However, he was reinstated pursuant to an order passed by this Court on 31.10.2018 in a writ petition (being W.P.(C) 6859/2018) preferred by the petitioner. The petitioner claims that he re-joined services with NTPC on 31.10.2018. However, his term came to an end on 08.12.2018 and the same was not extended.

4. The petitioner holds a LLB degree and proposes to work as an independent legal consultant/legal practitioner.

5. There are certain restrictions on the petitioner taking up employment after retirement/resignation from services of NTPC.

6. Before proceeding further, it would be relevant to refer to the operative part of the impugned communication, which reads as under:-

“16. Thus, in view of the above, the request of Shri Kulamani Biswal made vide letters dtd. 08.01.2019 and 05.02.2019 seeking permission in terms of the clause 1.17 of the terms and conditions of his appointment issued vide letter dtd. 31.01.2016, to work as an Independent Legal professional and render services as legal and regulatory consultant/advisor/partner/director in

various companies/firms for remuneration, is refused in terms of Para 5(d) of the DPE's O.M. No.2(22)/99-GM-GL-91 dtd.15.05.2008.”

7. It is the petitioner's case that although there are certain restrictions on his taking up employment within a period of one year of his retirement/resignation, there is no restriction for the petitioner to work as an independent professional and, therefore, the impugned order indicating that the petitioner is not entitled to do so is erroneous.

8. The impugned order indicates that the same has been passed pursuant to the Office Memorandum (OM) dated 15.05.2008 whereby Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises had directed inclusion of a restrictive clause in CDA Rules/Service Rules of Public Enterprises. The relevant clause restricting the petitioner from taking up employment after retirement/resignation, as referred to in the said OM, is set out below:-

“No functional Director of the company including the Chief Executive who has retired/resigned from the service of the company, after such retirement/resignation, shall accept any appointment or post, whether advisory or administrative, in any firm or company, whether Indian or foreign, with which the company has or had business relations, within one year from the date of retirement without prior approval of the Government. The term retirement includes resignation; but not the cases of those whose term of appointment was not extended by Government

for reasons other than proven misconduct. The term ‘business relations’ includes official dealings as well.”

9. Paragraph 5 of the said OM sets out the relevant aspects required to be considered by the Administrative Ministry/Department while granting permission as contemplated under the aforementioned clauses. Paragraph 5 of the said OM is set out below:-

“5. The administrative Ministry/Department may grant permission keeping in view of the following aspects:-

- (a) The official concerned has had no official dealings with the prospective employers in the preceding five years.
- (b) Whether the ex-functional Directors or ex-chief executives has been privy to sensitive or strategic information in the last years of his service which is directly related to the areas of interest or work of the organization which he proposes to join or the areas in which he proposes to practice/consult.
- (c) Whether there is conflict of interest between the policies of the office(s) he has held in the last 5 years and the interest represented or work undertaken by the organization he proposes to join. Such conflict of interest, however, should not be interpreted narrowly to mean normal economic competition with Government or its enterprises.
- (d) Whether the service record of the ex-functional Director or ex-chief executive

is clear, particularly with respect to integrity and dealings with Government as well as with CPSEs/non-Government organizations.

(e) Applicant's commercial duties will not involve liaison or contact with the Government Departments/PSEs.

(f) The employer of the applicant should not get an unfair advantage due to previous official positions/experience/knowledge of the incumbent and

(g) The present emoluments and pecuniary benefits should not be far in excess of those currently prevalent in the industry. The words "far in excess" should not be narrowly interpreted to cover increases in such benefits that may be result of buoyancy in the industry or in the economy as a whole."

10. It is apparent from the reading of the impugned order that the permission sought by the petitioner has been rejected in view of clause (d) of paragraph 5 of the aforesaid OM, which requires the concerned Ministry/Department to examine the service record of the ex-functional Director of ex-chief executive.

11. In view of the above, the respondents cannot be faulted in denying the permission as sought by the petitioner. However, a plain reading of the restrictive clause (as quoted above) indicates that an ex employee is not restricted in any manner from carrying on

professional practice. The only restriction that is imposed is that such employee “*shall not accept any appointment or post, whether advisory or administrative in any firm or company*” with which the NTPC has or has had business relations. Further, this restriction is also only applicable for a period of one year post retirement/resignation.

12. In view of the above, the petitioner is disentitled to take up any post or appointment either in an advisory or in any administrative capacity, with any entity with which NTPC had dealings. There is no restriction for the petitioner to take up employment in any capacity or to render services to any entity or person with which/whom NTPC has had no dealings or has had no dealings in the past.

13. In the aforesaid view, the impugned order to the extent it prohibits the petitioner from carrying an independent legal professional work and render services in various companies/firms for remuneration, must be read in its context and in conjunction with the relevant provisions. In other words, the petitioner cannot carry on legal professional work and render services as a legal or regulatory consultant/advisor/partner/director in any company with which NTPC has or has had business relations. The petitioner is not curtailed in any manner from otherwise carrying on professional work and rendering services to any other entity.

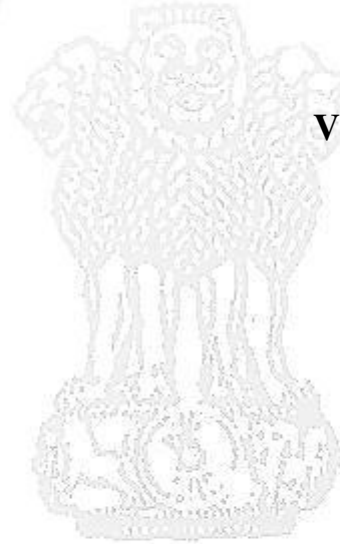
14. The present petition is disposed of in view of the aforesaid clarification.

15. It is, however, further clarified that this order has been passed in reference to the restrictive clause of employment as quoted above. In the event, the petitioner has furnished any bond or if there are any other restrictive covenants in his contract employment, this order would not be construed as absolving the petitioner from the obligations under the said contract/bond.

16. All pending applications are disposed of.

APRIL 10, 2019
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VIBHU BAKHRU, J



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