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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2021

CORAM :

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P.No.26465 of 2010

AND

M.P.No.1 of 2011

T.R.Rajagopalan,
S/o.K.Ramaswami,
Plot No.31B,
Sankaran Street,
Madipakkam,
Chennai 600 009

...Petitioner

Vs

1.The Director General,
Bureau of Indian Standards,
Manak Bhavan,
No.9, B.S.Jaffar Marg.,
New Delhi 110 002.

2.The Inquiring Authority,
Deputy Director General (S)
Bureau of Indian Standards,
C.I.T.Campus,
Taramani, Chennai 600 113.

...Respondents

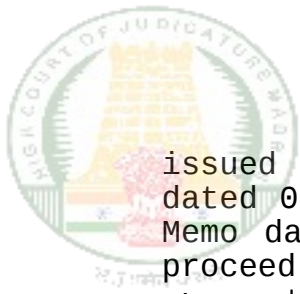
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the first respondent in its Memorandum No.Vig/SRO/2004-05/408/242 dated 4.6.2007, quash the same and in memorandum No.Vig/SRO/2004-05/408/423 dated 23.08.2010, quash the same in so far it permits enquiry to be conducted in respect of articles I & II of Memorandum No.Vig/SRO/2004-05/408/242 dated 4.6.2007.

For Petitioner : Mr.S.Karthik

For Respondents : Mr.T.S.Rajamohan

O R D E R

The present Writ Petition has been filed for a Writ of Certiorari seeking to call for the records on the file of the 1st respondent in connection with a Charge Memorandum dated 4.6.07



issued against him by the Director General in his proceedings dated 04.06.2007 levelling three Articles of Charges and another Memo dated 23.08.2010 issued by the same authority deciding to proceed with the first two Articles of charges while dropping the 3rd Article of the charges accepting the contention of the petitioner that the 3rd Article of the charge is time barred by limitation on the basis of his representation dated 6.3.10.

The Articles of Charges against the Petitioner are reproduced below for convenience :-

"ARTICLE-1

That the said Shri T.R. Rajagopalan, the then Scientist-E (Retired), Southern Region Office (SRO), Chennai, while functioning as the Scientist-E & Head, Mark Department, Chennai- (MDC-1), SRO, Chennai in the year 2003-04 had provided undue benefits to twelve BIS licensees for packaged drinking water operating under the jurisdiction of MDC-I by not imposing stop marking for the BIS licences held by the receipt of the independent test reports showing failure of samples in critical requirements thereby blatantly violating the provisions of Amendment No. 3, July 2003 to the Operating Manual for Product Certification, 1998 issued by the Central Marks Department of BIS vide circular dated 10-07-2003.

2.By his above act, Shri T.R. Rajagopalan, the then Scientist-E & Head (MD-), had unduly benefited the firm and thereby, displayed lack of devotion to duty and conduct unbecoming of a BIS employee in violation of Rule 3 (1) (ii) & (ii) of the CCS (Conduct) Rules, 1964.

ARTICLE - II

1. That the said Shri T.R. Rajagopalan, the then Scientist-E (Retired), Southern Region Office (SRO), Chennai, while functioning as the Scientist-E & Head, Marks Department, Chennai-1 (MDC-I), SRO. Chennai in the year 2002-04 had provided undue benefit to M/s Plus Mineral Waters (P) Ltd, (CM/L-6274370) a BIS licensee for use of the Standard Mark on Packaged Drinking Water as per IS 14543:1998, by not processing the licence for cancellation when they were found to be misusing the BIS Standard Mark by manufacturing and marketing packaged drinking water with the BIS Standard Mark under the brand and licence numbers of other BIS licensees. As per clause 5(5) (a) (iv) of the BIS (Certification) Regulations, 1988 and clause B-6 of Amendment No. 3 of the Enforcement Manual, 1994, the licence was required to be processed for cancellation, which was not ensured by Shri T.R.Rajagopalan.



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2. By the above act, Shri T.R.Rajagopalan, the then Scientist-E & Head (MDC-1) had unduly benefited the firm and thereby, displayed lack of devotion to duty and conduct unbecoming of a BIS employee in violation of Rule 3 (1) (ii) & (ii) of the CCS (Conduct) Rules, 1964."

2.The contentions of the petitioner are three folded, namely, that the sanction order of the President to proceed against the petitioner departmentally after retirement is not based on relevant materials and for the second Article of charge no material was placed before him. Secondly, the subject matter of the first Article of Charge, i.e., the Circular dated 10.07.03 was amended by an order dated 17.03.06 and hence the first Article of Charge ought not to have been issued. Thirdly he has contended that the third Article of charge is time barred.

3.A detailed Counter Affidavit has been filed on behalf of the respondents praying for the dismissal of the said writ petition on the sole ground that writ petition is not maintainable against a Charge Memo and it is for the delinquent to prove his innocence before the Enquiry Officer as the writ petitioner has got abundant opportunity in the name of enquiry to prove his innocence by rebutting the basis of the charges and also by independently producing his own evidences to prove his innocence. They have contended that the writ petitioner ought not to have chosen to file this writ petition before this court challenging the merits and demerits of the charge memo.

4.It is further contended by them that only on the ground of malafide intention or on the ground of violation of Rule or lack of jurisdiction, a charge memo can be interfered with and there is no such ground raised by the petitioner in his Affidavit filed in support of the writ petition. The limitation point raised by him on the basis of Rule 9(2)(b)(ii) of the CCS (Pension Rules) that the 3rd Article of Charges is barred by limitation was already considered by the department and the same was decided to be dropped as evidenced from another Memorandum dated 23.08.2010 challenged by the writ petitioner.

5.They have further contended that the contentions of the Writ Petitioner on the sanction accorded by the President in 2007 to conduct enquiry against the petitioner on Articles of charges framed against him cannot be questioned at all as it is only procedural in nature. The respondents have contended vehemently that it is not necessary to place all the materials before the President for taking a decision to issue a charge memo against a retired officer and it is enough for the President to take a decision on the available materials. They



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further contended that in the absence of any challenge to the sanction order, the validity of the Sanction Order sanctioning for enquiry against the petitioner cannot be probed into by this Court. In support of their contention they have cited the decision in the case of Prakash Singh Badal & Anr. v. State of Punjab & Others, reported in AIR 2007 SC 1274. Para 51, 52 and 53 for the proposition that the application of mind of the Sanctioning Authority depends upon the facts and circumstances of each case and there cannot be any generalized guideline in that regard.

Apart from the decision cited above, the respondents relied upon other decisions also in respect of the accord of sanction which are as follows:-

- (i).2007 (1) MLJ (Cr1) 1566, K.Karunakaran v. State of Kerala
- (ii).AIR 2007 SC 3039, B.S.Goraya v. U.T. of Chandigarh
- (iii).AIR 2007 SC 2618, Paul Verghese v. State of Kerala & Others
- (iv).(2004) 13 SCC 487, Shankerbhai Laljibhai Rot v. State of Gujarat
- (v).(1996) 2 SCC 21, State of Madhya Pradesh and Others v. Keshav
- (vi).AIR 1979 SC 49, Smt. S.R. Venkataraman v. Union of India

6.Heard Mr.Karthik, learned counsel appearing on behalf of the Petitioner and Mr.T.S.Rajamohan, learned counsel appearing on behalf of the respondents.

7.The petitioner has specifically pleaded in his representation dated 27.3.2009 addressed to the Disciplinary Authority at para 4 as follows:-

"4.The first article of charge alleges that I did not implement the July 2003 amendment to Certification Manual with regard to stop marking order to Licensees of packaged drinking water. At the outset, I would point out that the charge memo itself states that I made an endorsement on the amendment letter for its implementation by the group Leader. For the next one month or so, I had to be on leave to attend to my ailing son. The first step in taking action, pursuant to the amendment, involved defining the scope of critical requirements. This had to be done at the Branch level, in the absence of such a definition in the CMD amendment. The Group Leader put up a note to me as to what could be taken as critical requirement which if not complied with would necessitate action. I agreed. As action could not be initiated against Licensees for alleged violation of certain critical requirements, before deciding what constituted critical requirements, when the Group Leader spelt out the critical requirement, I approved them forthwith for implementation. I do remember that the local DDG



11.The respondents themselves have admitted that the above decisions regarding Sanction are under different contexts but the sanction dealt with therein is in pari-materia with the grant of sanction for prosecution under the Prevention of Corruption Act.

12.The petitioner after serving for more than 30 years in the Indian Standards Institution which was subsequently renamed as Bureau of Indian Standards proceeded on Voluntary Retirement with effect from 16.06.04. He has specifically taken a stand that he went on voluntary retirement with pain not for personal reasons but due to the denial of due promotion to him inspite of his meritorious service. After a lapse of nearly 3 years, Sanction Order was passed by the President to proceed against the petitioner by his order dated 8.1.07 not leaving the petitioner to lead atleast his retirement life peacefully. The contention of the respondents that the sanction warranted under different Acts and Rules has to be equated with the requirement of the sanction under the Prevention of Corruption Act is liable to be rejected in limine as the sanction under the Prevention of Corruption Act is more serious in nature as it not only casts a social stigma on the individual but also make him to undergo the ordeal of painful voyage in the departmental enquiry after his retirement.

13.As the Sanction under the Prevention of Corruption Act is more serious in nature putting a person to social stigma, I am of the strong view that the Sanctioning Authority is required to take note of each and every material placed against the petitioner to find out as to whether it is related to any procedural or substantial violation for personal gain of the individual concerned.

14.I repeatedly have gone through the 1st Article of charges and I find that the subject matter of the first article of the charges that the petitioner is accused of, is that he had not followed Circular No.3 of July 2003 to the Operating Manual for Product Certification 1998 issued by the Central Marks department of Bureau of Indian Standards.

15.Para 2 of the 1st Article of charge would clearly reveal that he had unduly benefited the firm and displayed lack of devotion to duty. There is not even a single line of accusation accusing the petitioner that he had benefited himself by not imposing Stop Marking for the BIS License held by the firm as per the above Circular dated 10.07.03.

16.It is trite law that neither the Enquiry Officer nor the Disciplinary Authority can travel beyond the scope of the charges framed against the delinquent as laid down by the



Hon'ble Apex Court in the case of M.V.Bijlani V. Union of India and Others reported in 2006 (5) SCC 88 and in the case of Roop Singh Negi vs. Punjab National Bank and others, reported in 2009 (2) SCC 570.

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17.A clear procedure is required to be followed by the department in the matter of disciplinary proceedings and it is very beautifully explained by the Hon'ble Apex Court in the above two cases and also in the case of Mathura Prasad vs. Union of India reported in (2007) 1 SCC 437.

18.It is held that the charges should not be vague and must be specific and a mere suspicion however strong cannot be a subject matter of enquiry.

19.It is also indicated that the authorities cannot take into consideration extraneous materials beyond the scope of the charges. When such is the Rule of law, it is unfortunate to note the contention of the respondents in their counter as well as in the written submission that it is not necessary to place the entire materials placed before the President at the time of granting sanction under Rule 9 of the CCS (Pension Rules) forgetting that they are required to be taken note of at least at the time of framing a charge memo and a Charge Memo cannot be issued without the sanction order.

20.It is pointed out by the petitioner in his Affidavit under ground No.(d) as follows:-

"D. It is submitted, without prejudice to ground B & C, the provision in the circular alleged to have been violated in Article 1 of the Charge Memorandum has been subsequently done away with in the revised operating Manual for product certification, 2004 by way of an amendment on 17.03.2006 by the Respondents. The apparent reason for the amendment was that by issuing stop marking immediately in case of food products requiring mandatory certification would lead to closure of the factory itself. Therefore, by the amendment brought about in 2006, a show cause notice would be issued in such cases before a decision to issue stop marking is made. In the above circumstances, there can be no allegation of misconduct leveled against the petitioner for violating the circular dated 10.7.2003 which has been subsequently superseded."

21.In the common Counter Affidavit filed on behalf of the respondents, the above specific averment regarding the subsequent amendment withdrawing the circular, which is the subject matter of the first Article of Charge Memo has not even been dealt with. There are two Common Counter Affidavits filed



on behalf of the respondents 1 and 2, one is dated 10.06.11 and another one is dated 22.06.11. In both the Counter Affidavits, the respondents have taken a stand as if this court has got no jurisdiction to find out the gross procedural violation causing substantial injustice to an individual and affecting his rights and interest adversely.

22.It is true that the jurisdiction of the Court under Art.226 of the Constitution of India to interfere with the disciplinary proceedings is limited in scope and that does not mean that the Courts under Art.226 of the Constitution of India should close its eyes and keep quiet even if gross injustice is brought to its notice because of the violation of the mandatory provisions of law and the procedure.

23.The respondents have misunderstood the settled law and forgotten conveniently that the decision making process of the authority concerned always can be examined and interfered with if the decision is not on the relevant materials or no materials at all. What is guaranteed after all to a citizen in this democratic country is fair, just, reasonable and equitable treatment before the eye of law. If that is denied, then the Court is not expected to close its eyes and permit continuous violation against him or her.

24.This Court is inclined to quote para 19 of the Judgment laid down by the Apex Court in Mathura Prasad -Vs- Union of India reported in (2007) 1 SCC 437 as it would teach the respondents the power of jurisdiction of this Court:-

"19.When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. It is now well settled that a judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review.

20.In S.N.Chandrashekar -Vs- State of Karnataka this Court held: (SCC pp.221-22, paras 34-36)

"34.The Authority, therefore, posed unto itself a wrong question. What , therefore, was necessary to be considered by BDA was whether the ingredients contained in Section 14-A of the Act were fulfilled and whether the requirements of the proviso appended



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thereto are satisfied. If the same had not been satisfied, the requirements of the law must be held to have not been satisfied. If there had been no proper application of mind as regards the requirements of law, the State and the Planning Authority must be held to have misdirected themselves in law which would vitiate the impugned judgment.

35. In Hindustan Petroleum Corpn. Ltd., Vs. Darius Shapur Chenai this Court referring to Cholan Roadway Ltd., Vs. G. Thirugnanasambandam held (SCCP.637, para 14)

'14. Even a judicial review on facts in certain situations may be available. In Cholan Roadways Ltd., V. G. Thirugnanasambandam this Court observed LSCC P.253, paras 34-35)

"34. It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer. In this case, furthermore, the misdirection in law committed by the Industrial Tribunal was apparent insofar as it did not apply the principle of *res ipsa loquitur* which was relevant for the purpose of this case and thus, failed to take into consideration an irrelevant fact not germane for determining the issue, namely, that the passengers of the bus were mandatorily required to be examined. The Industrial Tribunal further failed to apply the correct standard of proof in relation to a domestic enquiry, which is 'preponderance of probability' and applied the standard of proof required for a criminal trial. A case for judicial review was, thus clearly made out.

35. Errors of fact can also be a subject-matter of judicial review. (See E.V. Secy. of State for the Home Deptt. Reference in this connection may also be made to an interesting article by Paul P. Craig, Q.C. titled 'Judicial Review, Appeal and Factual Error' published in 2004 Public Law, P.788.'')

(See also Sonepat Coop. Sugar Mills Ltd., v. Ajit Singh, SCC paras 23 and 24.)

25. Contrary to the settled law on the disciplinary matter, the Respondents have chosen to file two common counter affidavits without meeting out the substantial violations pointed out by the petitioner. In the Counter Affidavits they do



repeatedly contend that this Court has no jurisdiction to interfere with their power and procedure.

26. At the commencement of para 9, the Vigilance Officer of the 2nd respondent has gone to the extent of saying that the petitioner had committed serious lapses, while he was in service and thus it is clear that they had decided to proceed against the petitioner with a closed and concluded mind.

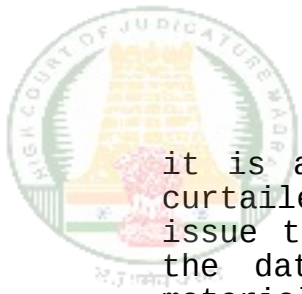
27. It is enough for this Court to stop with this to allow the writ petition on this ground itself as it is substantially established by the petitioner and undisputed by the respondents in their counter that there is no proper Sanction Order and the subject matter of the first Article of charges namely the circular of 2003, had already been withdrawn by subsequent amendment in 2006 and there is no allegation regarding corruption or personal gain against the petitioner.

28. As far as the 2nd Article of charge is concerned, again the petitioner contends that it was not even placed for sanction before the Sanctioning Authority, namely, the President.

In ground No.(e), the writ petitioner has pleaded as follows:-

"E. It is submitted, that as regards Article II of the Charge Memorandum, the same does not find the place in the sanction order issued by the Hon'ble President of India on 8.1.07. The sanction has been granted in respect of four imputations of misconduct, out of which the 1st and the 3rd imputations therein find a place in the impugned memorandum dated 4.6.07. However, the 2nd Article of Charge in the impugned memorandum does not find a place in the presidential sanction. The 2nd Article of Charge is that certain licensees were permitted resumption of marking in violation of guidelines. The charge mentioned in the President's sanction order is that no stop marking was issued. Both the imputations are totally different and therefore it cannot be said that 2nd Article of the charge memo has been validly initiated with the sanction of the Hon'ble President of India."

29. The respondents have not chosen to deal with this contention as they have taken a wrong decision to aver before this Court that this court has no jurisdiction to go into, even the decision making process of the respondents to issue a charge memo against the petitioner after the lapse of 3 years from the date of his retirement. This court always remembers that it cannot deal with the charges on merits and give a finding, as if



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it is an enquiry officer. But the power of this court is not curtailed in any manner to find out whether the decision to issue the charge memo that too after the lapse of 3 years from the date of retirement of the petitioner is based on some materials or not.

30. It is to be remembered that no disciplinary proceedings can be initiated against the petitioner after permitting him to go on voluntary retirement as early as in 2004 and the only way to proceed against him is under the CCS (Pension Rules) with the Sanction of the President. So it is clear that without the sanction of the President, the respondents have no jurisdiction to initiate disciplinary proceedings against the petitioner. In the absence of such a sanction, no disciplinary proceedings could be initiated against the petitioner. So it is the sanction which gives life to a dead matter and the question is whether such a sanction was accorded on the availability of relevant materials or not.

31. According to the petitioner, no materials were placed before the sanctioning authority in respect of 2nd Article of charge, which is not denied by the respondents and relevant materials including the subsequent amendment were not placed before the President in respect of the 1st Article of the charge, which is also not disputed by the respondents.

32. The 3rd Article of Charge is withdrawn by the respondents themselves as per their order dated 23.8.10 and the stand taken in their counter affidavit. When the sanction order giving life to a dead matter which was passed without considering the relevant materials in respect of the first Article of the charge and no materials in respect of the 2nd Article of the charge, it is unfair on the part of the respondents to contend before this Court that they have got power to conduct enquiry against any employee even after their retirement, which is not only unjustifiable, but also unlawful.

33. It is to be pointed out at this juncture that in view of the subsequent amendment in 2006, the circular of 2003 referred to in the first Article of charges, which is the basis of that charge goes. The charge memo is dated 4.6.07 and the Sanction Order is dated 8.1.07 and the Amendment is dated 28.9.06. It is painful to note that the respondents have framed a charge in spite of the non existence of a subject matter of the first charge and this according to me would substantially support the contention of the writ petitioner that there is no proper application of mind before issuing the sanction order.

34. Even assuming that the lapse was committed according to the respondents when the Circular of 2003 was in force, the



petitioner's contention that the Circular 2003 was complied with on his return from leave after clarification given by the Group Leader cannot be ignored. Further the third Article of Charge was withdrawn on being pointed out by the petitioner subsequently and the Sanction Order was passed even for that also. Without even noting that the third charge is time barred, Sanction was given and this also would support the stand of the petitioner.

35. In view of the aforesaid reasons, this Court is inclined to quash the impugned charge memo dated 4.6.07 and the Memo dated 23.8.10. Accordingly, the impugned charge memo is quashed and the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Director General,
Bureau of Indian Standards,
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2. The Inquiring Authority,
Deputy Director General (S)
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+1cc to Mr.S.Karthik, Advocate SR.No.22666

W.P.No.26465 of 2010

GPL(CO)
RVM(26/08/2021)