

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

FMA 1087 of 2009

with

IA No. CAN 2 of 2010

(Old No. CAN 6893 of 2010)

Marine Products Export Development Authority (MPEDA) & Anr.

Versus

Balaram Basak & Ors.

For the Appellants : Mr. Anirban Roy
Mr. Soumabho Ghosh
Mr. Rishov Dutt
Ms. Tiana Bhattacharyya
.....Advocates

For the Respondent No. 1 : Mr. Soumya Majumder
Mr. Victor Chatterjee
Mr. Barnamoy Basak
.....Advocates

Heard on : 20.12.2021

Judgment on : 21.03.2022

Krishna Rao, J.: The appellants have filed the instant appeal against the judgment passed by Hon'ble Single Judge in W.P. No. 6850 (W) of 2007 (Balaram Basak Vs. Union of India & Others) dated 09.04.2009.

At the very outset the parties were informed by this Court that the appeal, which appears before this Bench holding the regular determination pertaining to Service (Group VI) appeals, challenges the Judgment and Order of a Hon'ble Single Judge (S.P. Talukdar, J.), who retired in 2010 and, is related to one of us (Subrata Talukdar, J.).

The parties, upon consenting to the appeal being taken up before this Regular Bench, the matter, being an old appeal of 2009, was taken up for final hearing by this Bench.

Now turning to the merits, the respondent/writ petitioner was initially appointed as Assistant Director in the year 1981 and subsequently he was promoted to the post of Deputy Director in the year 1987 in the office of the Marine Products Export Development Authority (hereinafter referred to as MPEDA).

On 13.05.1994 the respondent/writ petitioner was sent on deputation to Orissa Shrimp Seed Production and Research Centre (hereinafter referred to as OSSPARC) as Project Director and the respondent/writ petitioner was with the said authority from 13.05.1994 to 28.09.1996.

After repatriation of the petitioner to his parent department on completion of his deputation period at OSSPARC, on 20.04.1998 the Director, Chief Vigilance Officer, MPEDA had issued a Memorandum to the respondent/writ petitioner on the allegation that when the respondent was posted at OSSPARC had incurred heavy loss on import of Artemia Cysts during the period of 1995-1996 & 1996-1997 due to bulk purchase of poor

quality Artemia Cysts. The memorandum dated 28.04.1998 reads as follows:

“Shri B. Basak, Deputy Director, TCA Vallarpadom, was on deputation to OSSPARK, Gopalpur-on-sea, Orissa, as Project Director during the period from 13.05.1994 to 28.09.1996.

It has been brought to notice that the OSSPARC had incurred a heavy loss on import of Artemia Cysts during the year 1995-96 and 1996-97 due to the bulk purchase of poor quality Cysts and Shri B. Basak, the then Project Director was absolutely responsible for the loss incurred by OSSPARC on the import of Artemia Cysts.

Shri B. Basak, who was then the Project Director of the OSSPARC during the above period and who had the absolute power and authority to place orders for purchase of imported cysts responsible for such a huge loss to the OSSPARC due to the negligence in duties as Project Director, OSSPARC Shri Basak failed.

- (i) to assess the requirement of Cysts;
- (ii) to purchase the right quality of Cysts;
- (iii) to check the quality of Cysts on its arrival
- (iv) to Dispose of the Cysts before the expiry of the shelf life period; and
- (v) to get compensation from the suppliers

OSSPARC had incurred a total loss of Rs. 30 lakhs on the laps of Artemia Cysts due to the negligence and failure of Shri B. Basak in executing his duties. Shri Basak is therefore responsible to the loss of Rs. 30 lakhs for OSSPARC.

Shri Basak is directed to show cause why disciplinary action should not be taken against him for his failure in the discharge of one of the most important duties and responsibilities connected with the management of the OSSPARC and consequent to the heavy loss to the Society. His explanation should reach the undersigned within a fortnight from the date of receipt of this memorandum.”

On receipt of the memorandum dated 20.04.1998 the respondent/writ petitioner had requested the appellants MPDEA for supply of documents for submission of appropriate reply to the said memorandum but when the appellants could not supply the documents to the respondent, the

respondent had filed a writ petition before the Honble Kerala High Court and pursuant to the order passed by the Hon'ble Kerala High Court dated 06.07.1999, the appellants have provided documents to the respondent and on receipt of the documents, the respondent had submitted his detailed reply to the appellant to the Memorandum dt. 20.04.1998.

On receipt of reply submitted by the respondent, the appellants have not satisfied with the same and accordingly on 21.08.2000 a Memorandum along with Article of Charges have been served upon the respondent for initiation of inquiry under Rule 14 of the CCS (CCA) Rules, 1965.

In the said charge-sheet dated 21.08.2000 altogether nine (9) charges were framed and it was alleged that due to the negligence on the part of the respondent, the respondent would be responsible to compensate the loss of Rs. 18,44,593/- which the appellants claim to represent the value of the Artemia Cysts written off as scrap.

On receipt of the Memorandum of Article of Charges, the respondent has submitted his detailed reply on 05.10.2000 but the appellants being the Disciplinary Authority without considering the reply submitted by the respondent has appointed Inquiring Authority and Presenting Officer to proceed with the inquiry initiated against the respondent.

On completion of inquiry, the Inquiring Authority had submitted enquiry report to the Disciplinary Authority wherein the Inquiring Authority exonerated the respondent from all of the charges except charge no. 2 & 6.

Charge nos. 2 & 6 reads follows:

“Chare No. 2:

- i) The project Director purchased 397.7 kg of Artemia at a cost of Rs. 2.59 lacs in December 1994. The balance stock of 806.3 kg was ordered in April, 1995 and purchased in June, 1995 at a cost of Rs. 22.81 lacs without reassessment of the requirement of this quantity.
- ii) The quantity to be purchased was not reduced considering that hardly few months remained of the period for which the purchase was being affected.

Charge No. 6.

This instruction to the Bank for opening the L/C stipulated that payments under the L/C should be effected to Argent on production of a test Certificate, current dated, to be issued by Argent supplying hatching rate etc. Argent issued a general certificate without specifying the hatch out percentage. The P.D. failed to get a Certificate from Argent specifying the hatch out percentage. The P.D. failed to get a Certificate from Argent specifying the hatch out rate, and also failed to take up the matter with the Bank.”

On receipt of the inquiry report submitted by the Inquiring Authority the Disciplinary Authority had disagreed with the said report and accordingly the Disciplinary Authority had communicated disagreement notice to the respondent. On receipt of the said disagreement notice, the respondent had submitted his detailed reply to the said disagreement notice to the Disciplinary Authority.

After receipt of the reply of the respondent against the disagreement notice, the Disciplinary Authority had issued an order no.166 dated 05.05.2006 wherein the Disciplinary Authority had imposed the following penalty:

“In view of the facts and circumstances as mentioned above, I hereby, impose on Shri Balaram Basak, the Charged Officer, the penalty of reduction in rank from the current post of Dy. Director held by him in

the grade of S-19 in time scale. Rs. 10,000-325-15200 to the lower post of Assistant Director in grade of S-15 in time scale. Rs. 8000-275-13500 with effect from 01.07.2006 till the date of retirement. His pay will be fixed in the reduced scale of pay of Rs. 8000-275-13500 with effect from 01.07.2008 and he will earn normal increments in the scale of pay of Rs. 8000-275-13500 in the month of July every year,

As regards, the pecuniary loss of Rs. 18,44,593/- caused by mismanagement, it is proved that Shri Basak is individually and collectively responsible for the same. However separate orders for recovery of the amount will be issued later.

This order shall come into force with effect from 01.07.2006.”

Being aggrieved and dissatisfied with the order of penalty, the respondent had preferred statutory appeal before the Appellate Authority. The Appellate Authority had rejected the appeal preferred by respondent on 26.03.2007 and upheld the order passed by the Disciplinary Authority.

Being aggrieved and dissatisfied with the order of the Disciplinary Authority as well as the Appellate Authority, the respondent had preferred a writ petition before the Hon'ble Single Judge being W.P. No. 6850 (W) of 2007 (Balaram Basak Vs. Union of India & Others). The writ petition filed by the respondent was duly contested by the appellants and accordingly on 09.04.2009, the Hon'ble Single Judge has disposed of the writ petition by passing the following order which is impugned in the instant appeal:

“In view of the discussion already made, I do not think it necessary to deal with the nature and quantum of punishment since it has already been found that the findings of guilt, as had been made by the disciplinary authority and thereafter, confirmed by the appellate authority, are not based on concrete materials but relate to their own perception and belief. In my opinion, what can be said to have been established in disciplinary proceeding is that he was guilty of error of judgment. In absence of any ill-motive, this could not be taken as misconduct.

As discussed earlier, the manner which the disciplinary authority has dealt with the matter is not just and proper.

Thus, the present writ application being W.P. No. 6850 (W) of 2007 succeeds and be allowed. The impugned order being order dated 5th May, 2006 passed by the Disciplinary Authority and the order dated 26th March, 2007 passed by the Appellate Authority are hereby quashed. The respondent authorities are directed not to give effect to the said orders being Annexure- 'P-7' & 'P-8' respectively."

The appellants contend that the Hon'ble Single Judge has wrongly come to the conclusion that the respondent was not guilty of misconduct. The respondent submit that to establish misconduct, the authorities during the enquiry have produced the documents which was admitted by the respondent to prove that the respondent has committed gross negligence while performing his duty, which the appellant firm has suffered severe financial loss.

The Counsel for the appellant further contended that the Ld. Single Judge while passing judgment has wrongly appreciated that in the disciplinary proceeding, it is for the Disciplinary Authority to appreciate materials on record in different perspective.

The Counsel for the appellant had further pointed out that the Ld. Single Judge while passing order held that while agreeing with the Disciplinary Authority may not be under obligation to analyse every aspect of the matter and deal with every minor details but the authority while passing the same, must show that there had been proper application of mind. The Counsel for the appellant had further submitted that the Ld. Single Judge has wrongly come to the conclusion that the order passed by

the Appellate Authority is without proper application of mind. The Counsel for the appellant further contended that judicial review cannot extend the examination of the correctness of the charges as it is not an appeal. The Counsel for the appellant further submitted that appraisal of evidence is not permissible while exercising power under Article 226, Constitution of India.

The Counsel for the appellant has further submitted that the Ld. Single Judge has wrongly come to the conclusion that what can be said to have been establish in the disciplinary proceeding is that he was guilty of error of judgment. It is further submitted that the Hon'ble Single Judge has wrongly held that any ill motive cannot be taken as guilty of misconduct. The Counsel for the appellant further submitted that the Hon'ble Single Judge has wrongly come to the conclusion to establish misconduct against the respondent something more is required to be added and mere negligence, failure to appreciate the matter in its proper perspective or any procedural lapses may not amount to misconduct.

The Counsel for the appellant further submitted that it is evident from the order dated 26.03.2007 passed by the Appellate Authority, sufficient opportunity was provided to the respondents and after proper consideration of the facts and circumstances of the case, the respondent was held guilty of failure to discharge his duties as Project Director of OSSPARC.

The appellants further submitted that the role of the respondent as Project Director was from 13.05.1994 to 28.09.1996 involved the duties being primarily responsible for achieving the targeted production of shrimp seeds and marketing of seeds and all the managerial aspects involving

smooth operation of hatchery including day to day and operations of hatchery and implementation of project tasks. The appellants further submitted that it is categorically evident that the respondent showed gross negligence/derelection of duties during his tenure as Project Director on deputation at OSSPARC and as such a disciplinary proceeding was initiated against the respondent.

The appellants further contended that the respondent being the Project Director was officer responsible for taking the decision for quantity of Artemia Cysts which ought to have been purchased from;

- a) Sanfrancisco Bay, USA
- b) Macau, Brazil.
- c) Great Salt Lake USA
- d) Tangu, bohai Bay, China
- e) Chaplin Lake, Canada
- f) Mithapur, Gujrat, India.

The appellants further submitted that the contention of the respondent that the Artemia cysts can only be purchased from USA is incorrect, erroneous and baseless. It is further submitted that two other important facts involved in this case are the quantity of Artemia Cysts being purchased by the respondent as Project Director OSSPARC and the life span of such cysts. The appellants further submitted that the respondent failed and neglected to make a proper assessment of Artemia Cysts required for the winter 1994-1995 and summer of 1995-1996.

The appellants further submitted that the assessment required to produce 80 million seeds cannot be put in a Straight Jacket Formula, as Project Director should have taken the decision to place orders of Artemia Cysts only after due appreciation of the relevant record and material facts.

It is further submitted that the respondent being Project Director was responsible for sanction, purchase and for performance of Artemia Cysts at OSSPARC and the same is evident that the respondent while sanctioning purchase of Artemia Cysts for the relevant period failed and neglected the proper assessment of the quality and quantity of Artemia Cysts.

The appellant further contended that for proper consideration of the opening stock, the likely consumption, quality of Artemia Cysts being ordered, the hatch out percentage and the expiry date of Cysts are involved when the respondent have placed an order to purchase the same.

The appellants further submitted that the respondent being the Project Director was duty bound to assess the requirement of cysts keeping in mind the past averages of 1993 and 1994. The consistent practice of the Project Director at OSSPARC has been to place reliance ought to give more weight to the date of the previous year in producing seeds.

The appellants further submitted that it is erroneous to rely solely and exclusively on the basis of an alleged scientific stipulation in deciding the quantity of Artemia Cysts required for producing 80 million seeds and not consider the practical ground realities.

The appellants further submitted that during the course of enquiry the respondent was unable to produce any document to support the so called scientific stipulation that approximately 15-18 kgs of Artemia Cysts is required to produce 1 million seeds as stated by the respondents.

The appellants further submitted that past averages would evidenced that the alleged scientific stipulation is wholly inaccurate and that in the past average of 702 Kgs. of cysts were required to produce 80 million seeds. It is further submitted that for the year 1993-1994, total production of the seeds were about 70 million and 604 kgs. of Artmia cysts were consumed and in the year 1994-1995 for producing 82 million seeds, 797 kgs. of cysts were consumed.

The appellants further submitted that from the above it is crystal clear that the past average consumption of Artemia Cysts was 08-10 kgs. of production of 1 million seeds in OSSPARC and thus the scientific stipulation as calculated by the respondent was wholly erroneous.

The Counsel for the appellant relied upon judgments reported in AIR 1997 SC 1030 (20 & 21), AIR 1999 SC 194 (16), 2011 (10) SCC 249 (13) and 2010 (3) SCC 732 (36, 37 & 41) and have submitted that the Hon'ble Single Judge without considering the fact that the disciplinary authority as well as the appellate authority after considering the documents and the evidence available on record have passed an appropriate order but the Hon'ble Single Judge by re-appreciating the evidence had passed the impugned judgment which is liable to be set aside.

Per contra, the Counsel for the respondent no. 1/ writ petitioner submitted that the writ petitioner was on deputation in Orissa Shrimp Seed Production and Research Centre with effect from 13.05.1994 to 28.09.1996 while he was holding lien to the post of Deputy Director in Marine Products Export Development Authority. During his tenure as Project Director of OSSPARC, a technical expert of the organization had asked the writ petitioner on 09.02.1995 to take steps to ensure adequate stocks due to possible scarcity of Artemia Cysts in the market and accordingly, the writ petitioner had completed the said work.

On 24.04.1998 a show cause notice was issued to the writ petitioner alleging that the OSSPARC had incurred loss towards import of Artemia Cysts due to purchase of bulk of poor quality Cysts, failure to assess the requirement, failure to check the quality of Cysts before expiry and failure to get compensation from the suppliers. Though the writ petitioner had submitted his reply but without being satisfied with the same the Chairman and the Disciplinary Authority issued a charge-sheet against the writ petitioner on the allegation as mentioned above.

It is further submitted that the charges contained in the charge-sheet pertain to;

- (a) Improper assessment of requirement,
- (b) not following purchase procedure and
- (c) failure to make a claim from suppliers.

The writ petitioner in reply to the said charge-sheet had set up the following defence:

- (a) Purchase was made on the basis of a report prepared by the Hatchery Manager, purchase assistant and accounts manager were aware of the likely consumption.
- (b) Delay in delivery of purchased cysts from abroad was due to Custom clearance.
- (c) The season for production and sales being January to September, there could be no scope for re-assessment.
- (d) The entire purchased cysts have been consumed but for the heavy cyclone, viral disease of shrimps and massive cancellation of bookings by the customers. The subsequent unseen factors compelled production curtailment from 80 million to 30 million. The target was fixed by the Governing Council.
- (e) The proposal was approved by the Governing Council on the basis of the production achieved in previous year, and on the recommendation of personnel of OSSPARC who were in employment, even before the writ petitioner had been placed on deputation in OSSPARC.
- (f) Purchase was made on the basis of scientific evaluation or evaluation by Experts.

- (g) Purchase was made on the basis of quotation from five suppliers, of which only two respondent; scarcity of cysts arose due to natural calamity, the other supplier did not have adequate quantity of cysts.
- (h) Quality parameters of supplier were analyzed in an exhibition held in Chennai in January 1995.
- (i) The supplier was an old one and no bad record with OSSPARC and the particular hatching percentage was known for the particular product.
- (j) Production being achieved but for the unforeseen events, like natural disaster and disease of the seeds, the production target would have been achieved and assessment would have matched purchase much before the expiry date of cysts.
- (k) Almost 90 % of bookings were cancelled by the customers due to natural disaster.
- (l) After the writ petitioner left OSSPARC, the supplier agreed to replace 500 kgs. of cysts as complementary.
- (m) No scrap was mentioned in the audit report of the OSSPARC.

It is further submitted that on completion of the evidence the Inquiring Authority submitted report holding that charge nos. 2 and 6 were only proved while the other charges were not proved.

The Counsel for the writ petitioner further submitted that even charge nos. 2 and 6 is not proved since it was on record that technical personnel working for several years never failed to calculate the actual consumption in line with production for previous year.

It is further submitted that on analysis of inquiry report, it reveals that the missing link which the Purchase Officer has not taken into account the balance stock available in the stores the other brands of Artemia Cysts is really a question. Probably when he received the indent from the concerned section the Indenting Officer might have indicated these two brands only, which is still a matter of fact to be ascertained.

It is further submitted that on the basis of the indent, purchase order was placed by the writ petitioner and it is reasonably not expected that the Chief Executive Officer would physically inspect the balance stock on weighment.

The Counsel for the writ petitioner further submitted that as regard charge no. 6, Inquiring Authority held that the test certificate of Letter of Credit was of general nature and there was no lapse in getting certificate showing the hatching rate. The Counsel for the writ petitioner further submitted that the finding of the Inquiring Authority is contrary to the evidence collected, since it has been admitted by P.W-2 that the catalogues contained all the technical details. It is further submitted that P.W-2 in his evidence admitted that the procedure for obtaining certificate from the supplier in the case of Letters of Credit transaction had been followed.

The Ld. Counsel for the petitioner further submitted that disagreement of the disciplinary authority to the finding of the Inquiring Authority was principally on the basis that the Inquiring Authority had found other officers to be equally responsible and the writ petitioner was not fully responsible. It is further submitted that the reply submitted by the petitioner to the disagreement was not considered by the disciplinary authority which had imposed the order of penalty against the writ petitioner.

The Counsel for the writ petitioner submitted that the order of the appellate authority is perverse on the following points:-

- (a) Assessment as per previous consumption rate was 9-10 kg/million and not 15-18 per million. But the said finding is contrary to the evidence of P.W-5 wherein he as admitted that actual consumption of artemia for 1 million of production was 12/15 kg.
- (b) The appellate authority has placed the reliance on Circular 1999 as said circular is only having prospective effect and could not have controlled or regulated a purchase procedure of 1995.
- (c) Earlier incumbent had followed the practice of inviting quotations and the system and practice of purchase in the instant case, in the teeth of non availability of artemia cysts in the world market had been explained through the mouth of the witnesses and the same was duly discussed by the Inquiring Authority.
- (d) As regard the Argent Chemicals was reputed company/supplier, the same is admitted by the P.W-4 that the supplier was a world

renowned company and the Argent Chemical was an old supplier of OSSPARC.

- (e) As regard details/catalogues for hatched out rate and expiry date is contrary to the evidence of P.W-5 which shows that the product catalogue was collected by the technical staff.
- (f) The Counsel for the writ petitioner further submitted that this is a case where the findings of the disciplinary authority are wholly contrary to the evidence collected on behalf of the appellant. It is further submitted that this is not a case of inviting the Court to sit in appeal over the findings of the disciplinary authority.
- (g) The Counsel for the writ petitioner relied upon the judgments reported in 2006 (4) SCC 713, 2007 (1) SCC 437 and 2021 (2) SCC 612 and submitted that judicial review and interference in inquiry is well laid down.

Considered the submissions of both the parties, documents available on record and the judgment relied by the parties. Admittedly, it is settled law that the Writ Court under Article 226 of the Constitution of India does not permit examination of correctness of the charges wherein there is a concurrent finding of both the authorities i.e. Disciplinary Authority as well as the Appellate Authority. It is also settled law that the Writ Court can certainly intervene when the findings are not based on legally permissible substantive evidence.

In this case, the Inquiry Officer had submitted inquiry report and held that out of nine charges only two charges namely charge no. 2 and charge no. 3 is proved and other charges are not proved. On receipt of inquiry report, the Disciplinary Authority had disagreed with the findings of the inquiry report and had passed an order of punishment holding that all the charges have been proved against the respondent. The Appellate Authority had upheld the order of the Disciplinary Authority. Being aggrieved with the order passed by the Disciplinary Authority as well as the Appellate Authority, the respondents had preferred writ application and the Hon'ble Single Judge had set aside the impugned order dt. 05.05.2006 passed by the Disciplinary Authority and the order dt. 26.03.2007 passed by the Appellate Authority.

Now the primary question before this Court is to ascertain whether the judgment passed by the Hon'ble Single Judge dt. 09.04.2009 is sustainable in law.

The Ld. Single Judge while passing judgment held that:

“Thus, on careful scrutiny of the materials available on record, it can be found that there was practically no material worth mentioning so as to attribute any ill-motive or malafide intention in the conduct of the writ petitioner. In that event, the charges largely entered around the allegation that there had been error of judgment. If so, it cannot be said that the authorities were justified in holding the writ petitioner guilty of misconduct. It could very well be that there had been gross negligence or rashness on the part of the writ petitioner. But in order to establish misconduct, something more than that is required to be added to that. Mere negligence, failure to appreciate the matter in its proper perspective or any procedural lapse may not amount to misconduct.”

This Court is of the view that to decide the issue that the evidence on record did justify the authorities to come to a finding of guilt, each and every charges and the corresponding evidence is to be looked into.

Charge 1 is as follows:-

“Shri B. Basak, Dy. Director, MPEDA was functioning as Project Director of OSSPARC, Gopalpur-on-Sea in Orissa on deputation during the period from 13.05.1994 to 28.09.996. In November 1994, he approved a proposal (D-1) for purchase of 1200 kg of Artemia (Live Shrimp Feed) from abroad without a proper assessment of the requirement i.e. without considering the opening stock, the likely consumption, etc.”

The Inquiring Authority after the enquiry, while submitting report held that the Charge No. 1 is not proved. The Disciplinary Authority after the disagreement with the finding of the Inquiry Officer has held that the final conclusion of the Inquiry Officer stating that the charge is not proved because of the Charged Officer was new to the job is not at all correct one. The Disciplinary Authority while issuing disagreement notice failed to consider the evidence available on record. As per the evidence of R.K. Mishra who was the Hatchery Manager and was examined as P.W-4 submitted that 12-13 kg Artemia Cysts is used to be required for production of one million PL-20 and also clarified technically that consumption of Artemia Cysts during 93-94 and 94-95 was 8.77 kg and 9.72 kg per million production and the Artemia Cysts imported (800 kgs.) would have been consumed if production had reached 70 million during 95-96 as projected by Shri R.K. Mishra. In the evidence he has further admitted that the booking/demand of shrimp seeds during 94-95 (winter) and (95-96) summer

were more than 90 million and he had projected the production schedule of shrimp seeds of 70 million during 95-96 summer i.e. from April to September, 1995.

During cross examination of P.W-4 he has admitted that requisition of stock for production of 80 million seeds during winter 94-95 and summer 95-96 is projected 1200 kg of Artemia taking care of 162 kg.

P.W.2 Shri. A.K. Patnaik has also admitted that for purchase of 1200 kg of Artemia on 22.09.1994 total stock of Artemia Cysts was only 162 kg.

The disciplinary authority without considering the said evidence had come to the conclusion that charge I against the respondent is proved which is not in consonance with the evidence available on record.

Charge 2 reads as follows:-

“In pursuance of the above decision, around 397.704 kg at cost of Rs. 2.59 lakh were purchased in December 1994. Although the 1200 kg was indicated as the quantity required for the “winter 94-95 and summer 95-96” production of shrimp seeds (i.e. till, say, August, 1995), (D-3), orders were placed for the balance 806.304 kg in April 1995 and actual purchase (of 806 kg) effected in June 1995 at a cost of Rs. 22.81 lakh. No reassessment of the requirement was done before purchasing this 806 kg. The quantity to be purchased was also not reduced considering the fact that hardly few months remained of the period for which the purchase was being effected. Shri B. Basak, as the officer who took the decision was responsible for this”.

The Inquiring Authority while submitting inquiry report had held that the charge 2 is proved against the respondent but the said fact is also not in consonance with the evidence. The Inquiring Authority has not considered the evidence of P.W-5, M.M. Rao wherein the said witness has stated that

the production of the previous year i.e. 94-95 was more than 80 million and actual consumption of artemia for one million of production is 12 to 15 kg. per million. In the earlier occasion MPEDA had purchased artemia of Argent Brand for which there was no complaint and it had given good result. The P.W-5 further stated that actual dispatch of the artemia cysts by Argent Chemicals, USA is 02.05.1995. The said facts were neither considered by the Inquiring Authority nor the Disciplinary Authority or the Appellate Authority and have come to the conclusion that charge 2 is proved against the respondent.

Charge 3 reads as follows:-

“For making such a large purchase (totalling Rs. 22.81 lakh), Shri Basak did not follow the procedures for purchase such as ascertaining the names of and addressing all the important suppliers, specially including the quality parameters in the letters inviting offers, fixing a time limit for receipt of quotations, analysing the varlous offers with reference to the quality parameters, etc”.

The Inquiring Authority after the inquiry had submitted that charge 3 is not proved but the Disciplinary Authority had disagreed with the findings of the Inquiring Authority and held that the conclusion of the Inquiring Authority is not correct. The Inquiring Authority while submitting the inquiry report had considered the evidence and the documents available on record and come to the finding that charge 3 is not proved. As per the evidence of P.W-2 he has submitted that for both hatcheries consumables and office stationary based on the requirements of different units of stores. The store clerk normally prepares a purchase requisition (after considering the present stock position) and submitted to the office through the Hatchery

Manager based on that Hatchery Officer put up the file for inviting quotation and ultimately once approved by the Project Director action is initiated for calling quotation. In the evidence it is further stated by the P.W-2 that it has never been a practice in OSSPARC to call for sample from overseas suppliers, test them to verify their efficiency and place order accordingly, he further stated that MPEDA normally invited quotation from reputed suppliers and ask the quotations along with hatching efficiency for processing the quotation.

The Disciplinary Authority as well as the Appellate Authority has not considered the evidence of P.W-2 and wrongly come to the conclusion that charge no. 3 is proved.

Charge no. 4 reads as follows:-

“In fact, it is seen that on 2.11.1994 offers were called for from two suppliers and after receiving those offers further offers were called for from three more suppliers. Later, on 30.3.1995, more offers were called for from different suppliers. Finally, the order was placed on M/s. Argent Chemical Laboratories arbitrarily without considering all the previous quotations received. Shri Basak being the officer who took these decisions is responsible for this.”

After considering the evidence from the materials on record, the Inquiring Authority held that charge no. 4 is not proved.

In the disagreement notice, the Disciplinary Authority held that the findings of the Inquiring Authority are liable to be rejected. The Disciplinary Authority failed to consider that P.W-2, Shri A.K. Patnaik during his evidence stated that documents as 13 and as 14 relates to the inviting quotation from M/s. Novalak Inc, the Producer of Bay Select Artemia Cysts

for San Francisco Bay and M/s. Bonneville Artemia International, the producer of "Bonneville Brand of Artemia Cysts". These two quotations were invited based on specific requirement from technical unit. As M/s. Bonneville Artemia International, informed that the hatching efficiency was below 55 % which was not acceptable to Hatchery Manager, quotation was invited from the Sole Indian Agent of Prime Artemia (M/s. Atherton). As per record only two producers and supplier of Artemia in USA responded out of which M/s. Argent Chemical Laboratories, USA, who possessed the ready stock of 800 kg of Artemia quoted the lowest rate. The said fact was not considered by the Disciplinary Authority as well as the Inquiring Authority.

The Disciplinary Authority without considering the evidence of P.W-5, M.M. Rao. During his evidence he has submitted that:

"Purchase requisition prepared by Stores Clerk and recommended by Hatchery Manager is forwarded to me for purchase of materials. After receiving the purchase requisition I forward it to the Accounts Manager and then to Project director for sanction. Then I take permission for collection of quotations which was signed by Accounts Manager and Project Director. After getting sanction I had collected quotations and after the processing I had put up for sanction for placing order after getting sanction, accounts Manager had placed order of procurement of materials."

"Technical specifications/brand is mentioned by the Stores clerk at the time of forwarding purchase requisition to Hatchery Manager. Accordingly, we prepared quotations for procurement of materials. If the specified material or brand is not available we will call quotations of different types and after recommended by the Hatchery Manager and sanctioned by the Project Director the materials are being procured."

The Disciplinary Authority without considering the evidence/statement of P.W-5 has held that the charge levelled against the respondent is proved.

Charge no. 5 reads as follows:-

“While placing orders for 806 kg of artemia with M/s. Argent Chemical Laboratories, USA on April 1995 for Rs. 22.81 lakh, (D-4), the hatch out percentage, expiry date, etc. was not mentioned. This is considered a serious lapse as earlier tenders (for considerably lower price) are seen rejected on the ground of low hatch rate”.

The Inquiring Authority while submitting Inquiry report has held that Charge 5 is not proved but the Disciplinary Authority and the Appellate Authority have held against the respondent.

The Disciplinary Authority and the Appellate Authority failed to consider the evidence available on record. The P.W-2 during his evidence it is categorically stated that it has never been a practice in OSSPARC to call for samples from overseas suppliers test them to verify their efficiency and place order accordingly. MPEDA normally invite quotations from reputed suppliers and ask for quotations along with hatching efficiency for processing the quotations. However, as already clarified the Project Director can at any point of time seek the opinion of Hatchery Manager before approving a proposal.

P.W-3 has stated that in few times MPEDA were getting the hatching rates and expiry dates and same time it is not printed in tin. P.W-3 further stated that if the hatching rate is 80 % artemia from the cysts as it is thought to be a good hatching rate.

The Disciplinary Authority and the Appellate Authority failed to consider the evidence available on record.

Charge no. 6 reads as follows:-

“In the instruction to the bank for opening L/C for the purchase of 806 kg of artemia, (D-5), it was clearly prescribed as one of the conditions that for effecting the payment to the supplier, “the test certificate/inspection certificate, current dated, issued by supplier specifying hatching rate, etc.” should be insisted. However, the supplier M/s. Argent Chemical Laboratories only produced a general test certificate without indicating the hatch out percentage, (D-6). Shri B. Basak failed to get a certificate from the supplier specifying the hatch out rate, etc. He also failed to take up this issue with the bank. In the instruction to the bank for opening L/C for the purchase of 806 kg of artemia, (D-5), it was clearly prescribed as one of the conditions that for effecting the payment to the supplier, “the test certificate/inspection certificate, current dated, issued by supplier specifying hatching rate, etc.” should be insisted. However, the supplier M/s. Argent Chemical Laboratories only produced a general test certificate without indicating the hatch out percentage, (D-6), Shri B. Basak failed to get a certificate from the supplier specifying the hatch out rate, etc. He also failed to take up this issue with the bank”.

The Inquiring Authority while submitting the inquiry report held that charge no. 6 is proved but the Inquiring Authority while submitting the inquiry report failed to consider the evidence of P.W-2, Shri A.K. Patnaik, Accounts Manager, stated that while effecting payment we have never received any communication from Andhra Bank informing any discrepancy in the document received from the supplier and instead they have made the payment on our behalf. The P.W-2 has further stated that the application for L/C was made to the Andhra Bank on 18.04.1995 immediately after the proposal was approved by the Project Director on the same day. The P.W-2 has further stated that there is no other procedure to obtain certificate from supplier in case of L/C transaction. The P.W-2 had further stated that all the originals documents such as invoice, packing list, inspection of quality certificate, Certificate of Origin, Certificate of Insurance etc. are normally

dispatched by the supplier at a time soon after the consignment is dispatched.

P.W-5 has further stated that the hatch rate was not mentioned in the test and Inspection Certificate but the L/C was open and the material was supplied against payment which was granted by the Andhra Bank and the artemia received from the supplier was in June and there was no report regarding the quality.

In the year 1995 there was an Indaqua exhibition at Madras where some of MPEDA technical staff had been in Indaqua and collected the catalogues from different suppliers. MPEDA have received one letter from Argent along with the gift cheque where it mention that MPEDA technical persons have collected product catalogues from them and everything was mentioned in the product catalogue.

In a copy of printed letter send by Argent was mentioned that the catalogue given to the technical persons in it, the technical specifications were mentioned all the details of the product.

In the letter of Argent it is mentioned that the hatching rate was mentioned in the product catalogue which was collected by the technical staff.

The Disciplinary authority and the Appellate Authority have failed to consider the evidence as stated above and have wrongly concluded that charge 6 is proved against the respondent.

Charge no. 7 reads as follows:-

“As soon as the 806 kg was received, its quality including hatch out rate should have been assessed and the period of expiry should have been verified. Shri B. Basak failed to have these done.”

The Inquiring Authority while submitting the report held that charge 7 is not proved but after receipt of the inquiry report, the Disciplinary Authority had disagreed with the findings of the Inquiring Authority and held that the charge 7 against the respondent is proved. The Disciplinary Authority failed to consider that P.W-2 in his evidence has stated that as per the requisition, received through the Hatchery Manager on 02.09.1994 is specifying the requirements of various feed item for production of 80 million seeds the local stock of artemia cysts was only 162 kg as such he was not aware of any huge balance of artemia. The Disciplinary Authority and the Appellate Authority have also failed to consider that Argent Chemical Laboratory is a reputed supplier for production of feed.

P.W.5 further stated that the hatch rate was not mentioned in the test and inspection certificate but the L/C was opened and the material was supplied against payment which was guaranteed by the Andhra Bank and the Artemia received from the supplier was utilised in the June and there was no report regarding the quality.

The Disciplinary Authority and the Appellate Authority have failed to consider the said evidence and have wrongly held that charge no. 7 is proved against the respondent.

Charge 8 reads as follows:-

“When the 806 kg of Artemia from M/s. Argent Chemical Laboratories was supplied in June 1995 it was clearly indicated that the cysts would expire in April 1996, (D-7). Shri B. Basak failed to assess the requirement of Artemia during the period from its delivery till the date of expiry and to take action to consume or dispose of otherwise the said Artemia before the expiry date, (D-8). The balance 662,840 kg costing Rs. 18,44,593 was later declared as scrap. Shri Basak is responsible for this loss.”

The Inquiring Authority has held that charge 8 is not proved but the Disciplinary Authority as well as the Appellate Authority has wrongly held that the charge is proved. The Disciplinary Authority and the Appellate Authority failed to consider that the Presenting Officer has put the specific question to the P.W.5 “When a quotation was invited from Argent Chemical Laboratories on 20.03.1995 for supply of 400 kg (Utah strain of artemia cysts their letter dt. 30.03.1995 enclosed the proforma invoice for 806 kg of artemia. How come another 400 kg was in excess offered by the party. In response to the said question, the P.W.5 categorically stated that after checking by the Accounts Manager with the indent once again quotations are invited for Sanfrancisco grade and Utah strain as per the purchase requisition by the Accounts Manager. P.W-2 has also categorically stated that there was a very good booking received during the year for supply of cysts during the summer circle of 95-96 but due to huge cancellation was received particularly from the farmer of Andhra Pradesh consequent upon decease outbreak only in the month of May 1995, the farmers started deferring their programme indefinitely.

Charge no. 9 reads as follows:-

“Even during the use of Artemia from June 1995 it has been reported by the Hatchery Manager that the Artemia is giving very poor hatching result, (D-9). No action was taken by Shri B. Basak to make a claim from the supplier. The matter was finally taken up with a so called agent of the supplier, only in April’96 by which time the expiry date was already over.”

The Inquiring Authority while submitting the inquiry report has held that the charge no. 9 is not proved but subsequently after the disagreement by the Disciplinary Authority, the Disciplinary Authority and the Appellate Authority have held that charge is proved. The Disciplinary Authority and the Appellate Authority failed to consider the evidence on record wherein P.W-4 R. K. Mishra stated in his report dt. 19.03.1996 that document no. 5 to 9 submitted by him is stating low/negligible hatching rate of Artemia Cysts was the first time. P.W-4 he has further stated that generally the consumption of Artemia is varying from rearing to rearing depending on following factors i.e. temperature, over rearing due to late sale. We were calculated while giving indent considering the above factors are usually getting little more quantity (10 to 15 %) for several sides otherwise it may create problem during production. The P.W-4 further admitted that 12 to 13 kg of Artemia is being used in OSSPARC for production of one million PL-20 during that period.

Without considering the above evidence the Disciplinary Authority and the Appellate Authority wrongly come to the conclusion that charge no. 9 is proved against the respondent.

The Hon’ble Single Judge has proceeded with the matter on the basis of the legality and propriety of the decision making process. The findings of

the Disciplinary Authority is totally contrary to the evidence available on record. This is not a case, the Court to sit in appeal over the finding of the Disciplinary Authority. In the instant case, the Disciplinary Authority and the Appellate Authority has totally disregarded and misread the evidence available on record. The instant case is totally based on no evidence. The evidence available on record is leading to the findings that the respondent had acted with good intention for achieving the target of the authorities. No evidence is available on record to prove that the respondent had acted in a malafide intention to cause damage or financial loss to the authority. It is the specific case that due to natural calamities, viral disease, and heavy cyclone massive cancellation was done by the farmers due to which the Artemia could not be sold out. It is not the case that the respondent with the malafide intention had forged document and had brought the Artemia to cause loss to the Company. In the instant case, though the inquiry was conducted and collected materials but the material collected during the inquiry has not established the misconduct against the respondent. The judgment reported in 2021 (2) SCC 612 at paragraph 24 the Hon'ble Supreme Court has held that:

“It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on

the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as matter of fact.”

The judgment has referred above is squarely applicable in the instant case as the instant case also based on no evidence. The judgments referred by the appellants are distinguishable as the fact of the instant case is totally different. This is not the case that the respondent has forged or manipulated any document and the respondent has suppressed the fact. The Ld. Single Judge has not sat in appeal over findings of the authorities. The Ld. Single Judge returned the finding that the authorities found no evidence of misconduct. In view of the above, this Court is of the view that the Hon’ble Single Judge has not committed any error and the judgment passed in WP No. 6850 (W) of 2007 dt. 09.04.2009 does not require any interference.

FMA 1087 of 2009 with IA No. CAN 2 of 2010 stands thus dismissed.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)

Later,

The Counsel for the appellant prays for stay of the operation of order.

The Counsel for the respondent opposes the prayer for stay.

Prayer for stay is refused.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)