

05.12.2022
Item Nos. 09 & 10
Crt.No.11
b.r.

MAT 1655 of 2018
with
IA No. CAN 1 of 2019 (Old NO. CAN 1136 of 2019)

Robert Lakra (H.C.) No. 89007056
-vs-
Union of India & Ors.

With
FMA 607 of 2021
with
IA No. CAN 1 of 2019 (Old No. 1135 of 2019)

Tapan Kumar Gharami
-vs-
Union of India & Ors.

Mr. Mukunda Lal Sarkar
..... for the appellant in both the
matters.

Mr. Anirban Mitra
..... for the Union of India in both
the matters.

Party/parties is/are represented in the order of their
name/names as printed above in the cause title.

Both the matters are taken up for analogous
consideration.

Mr. Sarkar, learned Counsel, appears for the
appellants in both the appeals.

The respondents/the Border Security Force (BSF) is
represented by Mr. Mitra, Learned Counsel.

Under challenge in this appeal is the Judgement and
Order dated 12th August, 2018 passed by the Hon'ble
Single Bench in this writ petition.

The writ petition pertains to an Enquiry Proceeding initiated against the appellants by the BSF in 2010 connected to a charge of cattle smuggling at the Indo-Bangladesh Border. The Enquiry Proceeding was conducted in terms of the BSF Act, 1968 and its Rules. The Record of Evidence (for short ROE) disclosed the commission of the offence by the appellants. On receipt of illegal gratification, the appellants allowed heads of cattle to pass through the border without making entries thereof at the Gate Register. The appellants were awarded the punishment of dismissal from service which was upheld by the Appellate Authority.

Mr. Sarkar submits that the appellants were not granted adequate opportunity of defence since the Enquiry Proceeding was concluded against them by the Commandant within a day. It is also submitted that Commandant could not have acted as a judge of his own cause, since the Enquiry Proceeding was initiated at the behest of the Commandant and was also concluded under his supervision.

Mr. Mitra, learned Counsel, takes this Court to the detailed Judgement of the Hon'ble Single Bench dated 12th October, 2018. It is submitted that the Commandant proceeded with the Enquiry in exercise of the powers conferred by the BSF Act and Rules. It is submitted that the Hon'ble Single Bench was, *inter alia*, pleased to notice the decision making process in the enquiry.

It is pointed out that the appellants did not avail the opportunity of cross-examination in the Enquiry. It is asserted that the appellants admitted their guilt at the Enquiry for allowing cattle to pass in lieu of illegal gratification. The ROE was placed before the Deputy Commandant and the Commandant acted as the Summary Security Force Court (for short, SSFC) in terms of Section 70 of the BSF Act, 1968. It is pointed out that the appellants accepted their guilt in the Enquiry Proceeding on the premise that they will be handed over a lesser punishment of dismissal instead of life imprisonment.

At the stage of the appeal, the appellants therefore cannot be allowed to reprobate from their admission in the Enquiry Proceeding, also when such admission was never retracted.

Heard the parties. Considered the materials placed.

From the judgement and order of the Hon'ble Single Bench under challenge in this appeal, it does not transpire to this Court that the decision making process adopted in the Enquiry Proceeding was without jurisdiction and perverse.

The facts emerging out of the ROE do not support the stand of the appellants before this Court. This Court also notices that the Hon'ble Single Bench correctly appreciated both the facts and the law on the point.

Accordingly, the Judgement and Order impugned deserves no interference.

MAT 1655 of 2018 with CAN 1 of 2019 (Old No. CAN 1136 of 2019) and FMA 607 of 2021 with CAN 1 of 2019 (Old No. 1135 of 2019) stand accordingly dismissed.

Since affidavits are not invited, allegations to the contrary are deemed to be denied and disputed.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)