IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5967 OF 2017

M.S. Ahluwalia,
aged 60 years, occupation :
retired, r/o B-2, Block A,
Ground Floor, Bhagirat Vihar,
Amravati Road, Nagpur. ... Petitioner

- Versus -

1) Western Coalfields Limited,
A Mini Ratna Company, Government
of India Undertaking, subsidiary
of Coal India Limited, Coal Estate,
Civil Lines, Nagpur.

2) Chairman-cum-Managing Director,
Western Coalfields Limited,
Coal Estate, Civil Lines, Nagpur.

3) Coal India Limited, through its
Chairman-cum-Managing Director
No.4, MAR Plot No.AF 3rd
Action Area, IA New Town Rajarhat,
Kolkatta-700156 (West Bengal).

4) South Eastern Coal Fields Ltd.,
through its Chairman-cum-Managing
Director, Sepat Road, Bilaspur
(Chhatisgarh).

5) Chief Vigilance Commission,

through its Director, Satarkata
Bhavan, G.P.O. Complex,
Block A, INA, New Delhi.

6) Mr. Rajeev Ranjan Mishra,
Chairman-cum-Managing Director,
Western Coalfields Limited,
Nagpur. ... Respondents

Shri A.C. Dharmadhikari, Advocate for Petitioner.

Shri S.P. Dharmadhikari, Senior Advocate, assisted by Adv. S.S. Ghate, Advocate for Respondent Nos.1 to 4 and 6.

Shri A.M. Ghare, Advocate and Shri Pushkar Ghare, Advocate for Respondent No.5.

CORAM : NITIN JAMDAR AND ANIL L. PANSARE, JJ.

DATE : 5 APRIL 2022

JUDGMENT (Per Nitin Jamdar, J.) :

Petitioner M.S. Ahluwalia worked as a General Manager (Civil) with Respondent No.1 Western Coalfields Limited. The Petitioner was served with a memorandum of charge sheet on 5 December 2016 by the Chairman-cum-Managing Director of the Western Coalfields. The Petitioner has filed this petition to quash the said Memorandum of charge sheet dated 5 December 2016. The Petitioner retired from service on 6 January

2017 and has also prayed that his retiral benefits, which have been withheld, should be released.

2. Respondent No.1 is Western Coalfields Limited, Respondent No.2 is Chairman-cum-Managing Director of Western Coalfields Limited, Respondent No.3 is Coal India Limited, of which Respondent No.1 Western Coalfields is a subsidiary, Respondent No.4 in South Eastern Coalfields Ltd., Respondent No.5 is Central Vigilance Commission and Respondent No.6 Rajeev Ranjan Mishra was Chairman-cum-Managing Director of the Western Coalfields Limited, who was at the relevant time Managing Director. The Petitioner and Respondent No.6 have now retired.

3. We have heard Shri A.C. Dharmadhikari, learned Counsel for the Petitioner, Shri. S.P. Dharmadhikari, learned Senior Advocate, assisted by Adv. S.S. Ghate, for Respondent Nos.1 to 4 and 6 and Shri A.M. Ghare, learned Counsel for Respondent No.5.

4. Since the Petitioner has approached this Court at the stage of issuance of a memorandum of charge sheet and the enquiry is not concluded, even though the Petitioner has elaborated various facts and events, we do not deem it necessary or appropriate to deal with the issue in intricate details as it would

be pre-judging the enquiry neither it can be the scope of scrutiny under writ jurisdiction. The facts necessary for adjudication of this petition are summarised as under.

5. The Petitioner was appointed as a Junior Engineer (Trainee) in Respondent No.3 Coal India Limited. Thereafter he worked with Bharat Cooking Coal Limited, a subsidiary of Respondent Coal India Limited. The Petitioner worked as a Chief Manager (Civil) in Respondent Central Coal Fields. In September 2015, the Petitioner was transferred to Respondent No.4 South Eastern Coal Fields Limited. Respondent No.1 Western Coalfields is a subsidiary of Respondent No.3 Coal India Limited and is involved in the mining and production of coal. It is not a disputed position that the Western Coalfields is a "State" within the meaning of Article 12 of the Constitution of India.

6. The Central Vigilance Commission is constituted under the Central Vigilance Commission Act, 2003. Section 8 lists the functions and powers of the CVC. Section 8(1)(g) empowers the CVC to tender advice to the Central Government, Corporations established under any Central Act, Government Companies, Societies or Local Authorities owned or controlled by the Central Government on such matters, which may be referred to it by the Authority. Under Section 8(1)(h), the CVC exercises

superintendence over the vigilance administration of the Agencies, such as Western Coalfields. Western Coalfields has a Vigilance Manual in which departmental proceedings have been listed in Clause 1.6.3. Under this Clause, the CVC would tender its advice at two stages. The first stage of advice is where the vigilance angle is present in respect of Government servants specified in Section 8(2) of the Act of 2003 after the conclusion of a preliminary enquiry and investigation and before the issuance of the charge sheet. The Petitioner belongs to category "A". Clause 1.6.3(b) contemplates that in such cases where first stage advice has been tendered on conclusion of oral enquiry after issuance of charge-sheet, but before a final decision is taken by the competent Authority, the CVC is required to be consulted for second stage advice. There is a difference made in respect of the Presidential appointee where this procedure is not followed.

7. The Western Coalfields had moved the matter in respect of a complaint against Petitioner and others to the Central Vigilance Commission on 19 November 2016. CVC examined the case and observed that :

> *'2, The case has been examined in the Commission. The Commission advises major penalty proceedings against Shri MS Ahluwalia, GM (Civil), Shri PK Roy, GM (E&M), Shri SP Pandey, GM (Mining), Shri PV Bhattad, GM (F), Shri A. Harwani, Sr. Manager (Civil) and Shri G. Samul, Chief Manager (F). The Commission has noted the*

status of the case in respect of Shri LS Thwarani, GM(F) (retired).

3. The Commission has advised Ministry of Coal to identify the role of board-level officers of WCL in the case, fix the responsibility and seek first stage advice of the Commission on the observations as under :

i. As per WCL vigilance, the rates of the items along with technical specifications, which were accepted by GM(E&M) were based on details submitted by M/s. Black Diamond vide his letter dated 01.08.2014. Probably the same rates were taken into consideration by the tender committee while carrying out rate reasonability of the actual tenders. This is a serious irregularity as the justification of rates is to be prepared beforehand after ascertaining from the manufacturer of the plant/supplier of items.

ii. As per the details submitted by CVO, WCL, ten tenders (some tenders were with sub-works) were floated for the provision of secondary crushers in 41 CHPs of 9 areas. This is splitting of tenders for keeping the tenders within the financial limit of the officers concerned and which was probably the reason for cartel formation and high rates received in the price bids. Due to a number of tenders for the same work, there were variations in cost observed, which could have been avoided if a comprehensive turnkey tender process was adopted.

iii. The tender committee consists of all the directors of WCL. Also all the tenders might have been accepted by CMD/Director. The role of these board-level Officers has not been identified and thereafter, responsibility fixed.

> *iv. The tender committee has carried out negotiations in all the tenders to reduce the price, which otherwise may not be permissible."*

8. While the Petitioner was in service of Western Coalfields Limited, Respondent No.2 Chairman-cum-Managing Director issued a memorandum of charge sheet to the Petitioner under Rule 29 of the Conduct, Discipline and Appeal Rules, 1978 of the Coal India Limited. The Memorandum was accompanied by Articles of Charge and a statement of the imputation of misconduct. An enquiry was proposed, and lists of documents and witnesses were given. The Petitioner was given the opportunity to submit his written statement.

9. The Memorandum dated 5 December 2016 stated that enquiry was proposed to be held in light of articles of charge annexed as Annexure-I to the Memorandum, the statement of the imputation of misconduct at Annexure-II, list of documents and list of witnesses at Annexures-III and IV. At the time of serving of the Memorandum, the Petitioner was then General Manager (Civil), Western Coalfields Headquarters and was posted as General Manager (Civil), SECL/Headquarters Civil Department. The gist of charges against the Petitioner was set out in eleven articles. The charge under Article I was that while the Petitioner was functioning as General Manager (Civil) during the period

from June 2013 to May 2015, as a member of the Tender Committee for Supply, Installation and Commissioning of Secondary Crushers for different areas of Western Coalfields, granted undue favour to M/s. Larsen and Toubro by qualifying the firm in Part-I of bid in deviation of the tender documents and experience criteria. In Article II, it was stated that while functioning as General Manager (Civil) during the same period, i.e. June 2013 to May 2015, and a Tender Committee member in respect of secondary crushers granted undue favour to Black Diamond Equipment Private Limited. Article III stated that as a General Manager (Civil) and as a Tender Committee member in respect of secondary crushers, the Petitioner illegally disqualified one M/s. Karam Chand Thappar and Sons, although its bid was submitted as per laid down norms. Article IV stated that during the aforesaid period and the tender, the Petitioner failed to comply with the provisions of Clause 4.12.2 of the Civil Manual by non-deliberation of Part-II of Tender Nos.16 and 19 at the Director level of the Tender Committee. Article V stated that the Petitioner abused his official position as a General Manager (Civil) and Tender Committee member in respect of the tender for Secondary Crushers and failed to deliberate commercial aspects in the Tender Committee for Part-II for opening price bid even though all tenders constituted technical and commercial bid in Part-II of the bid. Article VI stated that the Petitioner, during the aforesaid period and in respect of the same tender, granted undue favour to M/s. Larsen and Toubro by not considering the effect of CENVAT credit in the evaluation of Part III of the bid. Article VII stated that the Petitioner granted undue favour to M/s. Black Diamond Equipment Private Limited in Tender No.26 (sub-work-I) by considering that firm was the lowest bidder even though the firm was the second-lowest bidder, which resulted in the grant of work order to that firm to the tune of Rs.2.07 crores. As per Article VIII, it was stated that as a General Manager (Civil) and a Tender Committee member, the Petitioner did not consider the preparation of justified cost with the price index of Material Handling Equipments and order price of an entity placed on M/s. Larsen and Toubro for the same model and accepted by the Tender Committee. Article IX stated that the Petitioner allowed cartel formation by deliberately floating multiple tenders and grouping the workaround Rs.2 crores and facilitated M/s. Larsen and Toubro, M/s. Black Diamond Equipment Private Limited and M/s. Utakal Innovatives to form a cartel. Article X imputed that the Petitioner, during the aforesaid period and in respect of the same tender, caused loss to the Western Coalfields to the tune of Rs.1,16,56,989/- by placing orders at differential prices for the same equipment and involving the same installation and commissioning process. Article XI stated that the Petitioner violated the Rules, guidelines and procedure by not obtaining clearance of internal audit before approval of the proposals, by not obtaining the concurrence of Director (Finance) before approval of Chairman-cum-Managing Director and by accepting post-tender modification of bid by M/s. Larsen and Toubro Limited.

10. The Employer-Respondent alleged that the Petitioner deviated from the procedure and recommended the opening of Part-II of the technical and commercial bid of M/s. Larsen and Toubro, without obtaining any approval granting undue favour. It was stated that the offer of M/s. Larsen and Toubro was considered even though the requirement of previous experience of coal size being minus 100 mm for crushing was not available with the firm. As regards M/s. Karam Chand Thappar and Brothers, this firm did not submit bids separately for each sub-works, and there were irregularities on that count. It was alleged that the accepted bid of M/s. Black Diamond Equipment Private Limited was in deviation from the provisions of the tender, and no approval was obtained. It was stated that CENVAT credit was not considered for evaluation of the bids of the firms, although the excise consultant had opined that the Western Coalfields could avail of CENVAT credit. It was also imputed that the provisions of the Civil Manual were violated, and mathematical errors in the bids were overlooked. The allegation regarding cartel formation was elaborated in the imputations, which stated

that tender was a formality and award of contract to bidders with negotiations was pre-fixed. It was alleged that by awarding the contract at variable prices, loss as above was caused. With these imputations, the Memorandum stated that the Petitioner had violated Clauses 4.1(I), 4.1 (II), 4.2 and 4.3, which amounts to misconduct under Clauses 5.9 and 5.26 of the Conduct Discipline and Appeal Rules, 1978 of the Coal India Limited. Along with the Memorandum, lists of documents and witnesses were given, and it was stated that eight Officers would be examined.

11. Though the record of the proceedings has become bulky with various documents in respect of the allegations that have been placed on record, as stated earlier, it is not the scope of these proceedings to hold the Petitioner guilty or innocent. That would be decided in the enquiry proposed. The Petitioner was an employee of Western Coalfields, and, therefore, the Petitioner is governed by the Discipline and Appeal Rules, and as an employer, Western Coalfields has the power to initiate departmental enquiry against the employee, i.e. the Petitioner. There is, therefore, no legal bar against the institution of enquiry. The learned Counsel for the parties are ad idem on the proposition that ordinarily the Writ Court will not interfere at the stage of Memorandum of charge-sheet except in exceptional circumstances and in light

thereof, the learned Counsel for the Petitioner though the record is made bulky by filing various documents, has restricted his contentions so as to bring Petitioner's case within the ambit of limited scrutiny.

12. In the case of *Union of India and others vs. Upendra Singh*[1] the Supreme Court considered the scope of judicial review to examine the correctness of charges. Though this decision is rendered in respect of the jurisdiction of the Administrative Tribunal, the Supreme Court observed that it is akin to that of the High Court under Article 226 of the Constitution of India. In paras 6 and 7 of the judgment, it is observed thus :

> "*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*

1 (1994) 3 SCC 357

down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath and Sons (1992 Supp (2) SCC 312). 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 authorised 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."*

7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is ununderstandable how can that be done by the tribunal at the stage of framing of charges ? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but mainly on the basis of the material produced by the respondent before it, as we shall presently indicate."

13. In the case of *Union of India and another vs. Kunisetty Satyanarayana*[2] The facts were that the respondent therein was appointed as a Clerk in the Postal Department of the Union of India. A show-cause notice was issued to the Petitioner as to why his services should not be terminated. A charge memo was issued thereafter. The Respondent filed an application in Central Administrative Tribunal, Hyderabad, which was disposed of with a direction to the Respondent to submit a reply to the charge memo. Instead of filing a reply, the Respondent filed a writ petition in the High Court, which was allowed. The Supreme Court held that the High Court was not justified in allowing the writ petition and observed as follows :

> *"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh {(1996) 1 SCC 327)}, Special Director v. Mohd. Ghulam Ghouse {(2004) 3 SCC 440}, Ulagappa v. Divisional Commr., Mysore {(2001) 10 SCC 639,} State of U.P. v. Brahm Datt Sharma {(1987) 2 SCC 179}, etc.*
>
> *14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible*

2 (2006) 12 SCC 28

> *that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.*
>
> *15. Writ jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet."*

14. Therefore, a short question arises - whether the case before us is a very rare and exceptional case. The Petitioner also accepts the limited ambit of judicial scrutiny.

15. The Petitioner contends that three circumstances would show that exceptional circumstances exist for the intervention of this Court in writ jurisdiction. The first is based on the functions of the Managing Director of the Western Coalfields, and the role played by Respondent No.6 in this case, because of which the Managing Director had disqualified himself from being able to issue a memorandum of the charge sheet. Respondent No.6, to cover up his deeds, has made a scapegoat out of Petitioner. The second ground is that Respondent No.6

had a personal bias against the Petitioner, which has been demonstrated in the pleadings, which have not been categorically denied. Thirdly, the Respondent Western Coalfields, while deciding to proceed against the Petitioner and the other employees, has adopted a pick and choose policy and has proceeded only against a select few while exonerating the others, who performed the same role in respect of the concerned tender process.

16. The response of the Respondent Western Coalfields, in short, to these contentions is that they are irrelevant. Once the Central Vigilance Commission, an independent Supervisory body, has found a case against the Petitioner for conducting the enquiry, the allegations of malafides are denied, and it is stated that the Central Vigilance Commission has found that the case is made out against some Officers and the allegation of pick and choose does not arise. Regarding Respondent No.6, it is contended that the competent Authority, which is the Ministry of Coal, has considered his role and found that he need not be proceeded with.

17. As regards the first contention regarding the role of Chairman-cum-Managing Director and how the tender process was conducted, the learned Counsel for the Petitioner has taken

us through the Manual for Civil Engineering works published by Coal India Limited. Chapter I of the Manual deals with details and system review of Civil Engineering Works. Chapter II provides for the preparation of the estimate. Chapter III deals with budgetary control and monitoring. Chapter IV defines different types of tenders and awards of work. Chapters V and VI deal with the commencement and execution of work and payments. Chapter VII lays down the duties and responsibilities of the Officers.

18. According to the Petitioner, the Coal India Limited vide letters dated 14 June 2014 and 19 June 2014 directed the Subsidiaries to supply crushed coal of minus 100 mm size. The Board of Directors granted approval to a comprehensive scheme for the purpose of installing secondary coal crushers between the primary feeder and belt conveyer, and administrative approval was granted by the Board of Directors at the total cost of Rs.42.82 crores on 4 August 2014. Tenders of 24 works were floated for the Civil Department to supply, install, and commission secondary crushers. As per the Manual of Civil Engineering Works, a Tender Committee was constituted. The Tender Committee for works up to Rs.2 crores comprised of General Manager (Civil), General Manager (Finance), General Manager (Power) and General Manager (Planning/Project). For works above Rs.2

crores, the Tender Committee is comprised of Director (Technical), General Manager (Civil), General Manager (Finance), General Manager (Power) and General Manager (Planning/Project).

19. According to the Petitioner, tender documents were scrutinised by the Technical and Civil Department, and they were placed before the Tender Committee. A pre-bid meeting was called for on 16 September 2014. The envelopes were opened on 20 October 2014. The Tender Committee decided on 11 April 2015 about the price bids of only three bidders, ie. Black Diamond Equipment Private Limited, M/s. Utakal Innovatives and M/s. Larsen and Toubro. The price bids were opened on 17 April 2015. The Petitioner was a member of the Tender Committee. Thereafter the tenders were allotted to these three bidders for various amounts. According to the Petitioner, Respondent No.6 Chairman-cum-Managing Director, was himself the authority who approved the tenders by accepting recommendations of the Tender Committee for the award of works and is a co-delinquent in the proceedings and, therefore, the Respondent No.2 could not have issued a charge-sheet as a Disciplinary Authority under the signature of the Respondent No.6. According to the Petitioner, Respondent No.6 would be acting as a Judge in his cause.

20. Therefore, the main contention of the Petitioner is that even though the Petitioner was part of the Tender Committee and recommended that works should be allotted to three tenderers, the decision had to be confirmed by the Managing Director, who at the relevant time was Respondent No.6. If there are alleged malpractices regarding the grant of tenders, Respondent No.6 is equally responsible. It would be grossly unfair that he would issue orders instituting a disciplinary enquiry and that being the extra-ordinary situation, interference of the Court is warranted. The Petitioner has relied upon decisions in the case of *Union of India and others vs. Kunisetty Satyanarayana (supra), Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha*[3]*, Bhupendra Pal Singh vs. Union of India and others*[4] *and Eknath Gaude vs. State of Goa and others*[5]

21. As stated earlier, the Respondents have countered this submission that this is of no relevance as long as the Petitioner is guilty and there is no legal principle shown that in such a situation, the enquiry needs to be quashed. In the reply affidavit, Respondent Western Coalfields the reply-affidavit has stated that the Central Vigilance Commission examined the matter and found *a prima facie* case against the Petitioner pursuant to which a

3 (2012) 11 SCC 565
4 (2022) 11 APR 627
5 2017(6) Mh.L.J. 892

Memorandum charge sheet has been issued. It was submitted that enquiry commenced prior to Petitioner's superannuation and can be continued as per Rules. By filing an additional affidavit, the Petitioner has sought to raise a contention that the charge sheet has been selectively issued. The Central Vigilance Commission has filed a reply affidavit in this petition wherein it is stated that the Respondent No.5 was of the *prima facie* opinion that Members of Tender Committee, namely, i.e. Petitioner, Mr. P.K. Roy, Mr. S.P. Pandey (Petitioner in Writ Petition No.1915/2020), Mr. P.V. Bhattad (Petitioner in Writ Petition No.4351/2017), Mr. A. Harwani and Mr. G. Samul committed serious illegalities while proceeding with the tenders and have advised Western Coalfields Limited to initiate proceedings.

22. It is not a disputed position that the Petitioner was a member of the Tender Committee, which considered 24 works. Out of 24 works, the cost of 14 works was above Rs.2 crores. These were sent for approval to Respondent No.2, and 10 works, which were below Rs.2 crores, were sent for approval of the Director of the concerned Department. The departmental enquiry is in respect of both. Even assuming the contention of the Petitioner that Respondent No.6, who was then Managing Director, could not have issued the charge sheet having been disqualified himself, the enquiry as regards the tenders approved

by the Director of the concerned Department will have to continue.

23. Since Petitioner being Category "A" Officer, as per provisions of the Act of 2003 and the Vigilance Manual, the case was examined by the Central Vigilance Commission, which has recommended that enquiry be instituted against the Petitioner. Respondent No.6, who was at the relevant time the Managing Director being a Board level Officer, the case was examined by the Ministry of Coal. The Ministry of Coal, by order dated 11 May 2018, had observed that no case is made out against Respondent No.6 for proceeding because Respondent No.6, who was at that time Managing Director of the Respondent No.2 and had issued the Memorandum, cannot be stated to be disqualified himself for issuance of charge-sheet so as to quash the charge-sheet *per se*.

24. That the Petitioner is innocent and has been wrongly involved is ultimately a defence during the enquiry. All delinquents against whom the enquiry is instituted when they seek to defend themselves raise various grounds, including that they are innocent and are needlessly involved. That alone cannot be a ground to quash the Memorandum of charge sheet and enquiry in the writ jurisdiction. No legal principle is shown to us on the basis of which, in the facts and circumstances, Respondent

No.6, who acting as a Managing Director, had issued a memorandum of charge sheet after he approved the tenders, would be disqualified from conducting the enquiry. No such absolute proposition of law that in a layered decision making, if it is found that there were irregularities, the last Authority, which grants sanction, is alone guilty, and none else involved in the decision making can be held to be guilty is shown, neither an absolute proposition that if the last decision making Authority is not found guilty, everybody should be deemed innocent and enquiry be quashed. It is not the argument of the Petitioner, nor there is any proof that Respondent No.6 was aware of the illegalities and yet consciously and deliberately granted approval.

25. The argument of the Petitioner that Respondent No.6 has managed to get himself a clean chit and has made scapegoat of the Petitioner are general propositions casually advanced. This would attribute *malafides* to the Ministry of Coal, which held that Respondent No.6 need not be proceeded with. It will also attribute *malafides* to the Central Vigilance Commission, which found a case of the institution of enquiry against the Petitioner. No such case is made out. By filing a voluminous record and advancing various contentions on merits., the Petitioner has sought to convert present proceedings into a disciplinary enquiry, which is not permissible.

26. As per directions of this Court, Respondent Central Vigilance Commission has filed a reply. CVC has stated that after examining the material, it was found that enquiry needs to be instituted against the Petitioner. As per the Vigilance Manual, the Petitioner being category "A" Officer, the matter was referred to the Central Vigilance Commission. Upon finding that enquiry needs to be instituted, a memorandum of charge sheet has been issued. CVC stated in agreement with the Ministry of Coal that no action against Respondent No.6 is needed and no role of then Chairman-cum-Managing Director, i.e. Respondent No.6 and other Directors already retired, was found. CVC observed that the primary responsibility of irregularities lay on the Tender Committee members. The learned Counsel for the Petitioner sought to emphasise that the CVC only found irregularities and not misconduct. As rightly pointed out by the learned Senior Advocate for Respondent No.2, the irregularity was the foundation of misconduct and, therefore, nothing much would turn on this choice of words in the affidavit of Respondent No.5 CVC.

27. The Central Vigilance Commission is constituted under the Act of 2003. The Act of 2003 provides protection to CVC for acts which were done in good faith. In view of provisions

of Section 8 of the Act of 2003, the Commission carried out an investigation in relation to the complaint received against the Tender Committee members of the Respondent Western Coalfields of which the Petitioner was a member, and after scrutiny of the papers, the Commission recorded a *prima facie* finding that members of the Tender Committee, i.e. Petitioner, Mr. P.K. Roy, Mr. S.P. Pandey (Petitioner in Writ Petition No.1915/2020), Mr. P.V. Bhattad (Petitioner in Writ Petition No.4351/2017), Mr. A. Harwani and Mr. G. Samul committed serious illegalities. Accordingly, CVC advised Western Coalfields Limited to initiate proceedings for a major penalty against the Petitioner and others.

28. According to us, in light of the fact that the Central Vigilance Commission examined the matter and, after recording *prima facie* findings, recommended an enquiry, the submission made by the Petitioner regarding the role of Respondent No.6 as a Managing Director, is insignificant. That the Ministry of Coal has not found the case against Respondent No.6 per se does not mean that no enquiry against the Petitioner should be conducted. Therefore, what remains is only a memorandum of charge sheet in the enquiry, which the Petitioner will have to face. In the case of *Kunisetty Satyanarayana,* the Supreme Court has observed that a mere charge sheet or show cause notice does not give rise to any

cause of action because it does not amount to any adverse order which affects the rights of the party. If such a charge sheet is issued by a person having no jurisdiction to do so, the exception is that. In the present case, the argument of jurisdiction does not arise as Respondent No.6, acting as Managing Director at the relevant time, had the power to issue the Memorandum of the charge sheet.

29. The second argument of the Petitioner is that while initiating the enquiry, Respondent Western Coalfields has adopted a policy of pick and choose. According to the Petitioner, the tender process was initiated in the year 2014, and the work order was allotted in May 2015, and the other Officers, including Officers of the rank of Director, who were responsible for allotment and dealing with the case, were allowed to retire and the Petitioner, who was on the verge of retirement, was served with the charge-sheet. According to the Petitioner, Respondent Western Coalfields discriminated against the Petitioner.

30. This issue raised by the Petitioner is again irrelevant for the purpose of the present enquiry being at the stage of charge-sheet. When the Central Vigilance Commission found that *prima facie* the Petitioner and other Tender Committee members were responsible and action had been initiated against

them, the argument of the Petitioner that the Petitioner was not guilty and his actions were similar to those against whom no enquiry was launched is the defence of the Petitioner. The CVC recommended enquiry against certain Officers, which has been done. The argument advanced by the Petitioner, therefore, cannot be a ground for quashing the charge sheet.

31. The third argument advanced by the Petitioner is that Respondent No.6 had personal *malafides* against the Petitioner. Apart from ascertaining whether this assertion is correct, in light of the Central Vigilance Commission recommending enquiry against the Petitioner *prima facie* after having found him guilty, the fact that the charge sheet was issued thereafter by Respondent No.6, who is alleged to have a personal grudge against the Petitioner, is irrelevant because the action of issuing a memorandum of charge-sheet against the Tender Committee members by the Respondent No.6 was not in respect of the Petitioner alone, but as per observations of the Central Vigilance Commission.

32. Even to deal with the allegations of personal *malafides* against Respondent No.6, we find that the pleadings in the petition are totally general in nature. In the petition, it is stated that Respondent No.6 had a personal grudge because one

person named S.Q. Zama was occupying the quarter as a General Secretary of the Union and the Petitioner, who was authorised to take action against Mr. Zama for his eviction, completed the task successfully, and according to the Petitioner, Mr. Zama was known to the Respondent No.6, and the Respondent No.6 was upset because of the action taken by the Petitioner. Therefore, Respondent No.6 had a grudge against the Petitioner, which led to the issuance of the charge sheet. The Petitioner stated that the brother of Respondent No.6 wanted to transport some material from Nagpur to New Delhi, and he demanded money, which the Petitioner did not pay. Then it was stated that Respondent No.6's son had taken a job in New Delhi where Respondent No.6 wanted to send some household goods, and the Petitioner did not give up to the demands of the Respondent No.6, because of which he became angry and, therefore, nudged a grudge against the Petitioner.

33. Respondent No.6 has filed a reply refuting all the allegations. Respondent No.6 has pleaded that the Petitioner did take action against Mr. Zama, which is borne out from the record and except for the word of the Petitioner that Mr. Zama was close to Respondent No.6, nothing has been pleaded. Respondent No.6 has also stated that there are absolutely no particulars regarding Respondent No.6's brother and his son, and even their

names have not been given. No particulars as to the place where the goods were to be transported and such other relevant particulars have not been stated.

34. It is settled that if allegations of malice, in fact, are to be made, they need to be specific and cannot be general in nature. If they are not as per the requirement of law, then the person, who makes such allegations, is not deemed to have discharged his burden. Order VI Rule 4 of the Code of Civil Procedure states that in all cases in which the party pleading relies on any misrepresentation, fraud, etc., the same should be pleaded with necessary particulars, which deal with items and the case need to be decided only on such particulars. If relief is founded on the allegations of personal malice, then the burden is heavy on the party who alleges malice. Respondent No.6 is right in contending that no such particulars as required have been pleaded, let alone proved. The Petitioner cannot build a case of vague imputations. Apart from this position, as stated above, once the Memorandum of the charge sheet was instituted after scrutiny by the Central Vigilance Commission, the aspect of the alleged acrimonious relationship between Respondent No.6 and Petitioner cannot be a ground for quashing the Memorandum of charge-sheet.

35. The Petitioner contends that no loss is caused, and the entire project was completed within norms. It was contended that no show cause notice was issued to the Petitioner prior to serving the Memorandum of the charge sheet. It was also contended that action was not taken for two years by the Respondents, and the Memorandum of charge-sheet was belatedly issued. It was contended that no enquiry could be conducted against the Petitioner, who has retired from service. It was also submitted that the allegations contained in the charge sheet could not amount to misconduct.

36. The argument that no loss was caused to the Western Coalfields Limited is an argument of the Petitioner and is not an admitted position. The Memorandum of charge sheet contains a specific charge of causing loss to Respondent Western Coalfields Limited. Whether ultimately the work was performed by the tenderer properly and satisfactorily is not the relevant aspect in the present enquiry. The charges are in respect of the Petitioner's role during the process of tendering. Again this is a matter of defence for the Petitioner to take during the enquiry.

37. The Memorandum of the charge sheet was admittedly issued to the Petitioner prior to his retirement, and the enquiry has been continued. Since the Memorandum of charge-sheet is

regarding major misconduct, the pensionary benefits have been withheld. Nothing is shown to us as to how the said action of the Respondents is illegal and contrary to Rules.

38. Various grounds have been raised regarding procedure during enquiry and correctness of the allegations made in the Memorandum of charges. It is not necessary to examine as the charge sheet is not quashed prior to enquiry on the ground that the facts stated in the charges are incorrect. To decide the correctness of the charges is the duty of the Enquiry Authority. The submissions advanced by the Petitioner do not constitute an exceptional case to bring it within the narrow ambit of interference in the enquiry. An independent Authority examined the issue, and the Memorandum of charges has been issued. The defence of the Petitioner will be examined in such enquiry. No case for interference is made out.

39. The writ petition is accordingly dismissed. No costs.

(ANIL L. PANSARE, J.) (NITIN JAMDAR, J.)

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