



2024:DHC:9660-DB



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

+ **W.P.(C) 13655/2023, CM APPLs. 23536/2024 & 23537/2024**

**UNION OF INDIA THROUGH THE
SECRETARY MINISTRY OF URBAN
DEVELOPMENT & ANR.**

.....Petitioners

Through: Mr. Vikrant N Goyal and Mr.
Aditya Shukla, Advs.

versus

RAM ROOP MEENA & ORS.

.....Respondents

Through: Mr. Ramesh Rawat and Mr.
Sambhav Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

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29.11.2024

C. HARI SHANKAR, J.

1. The respondents, while working as Class III employees in the Government of India Press, availed advance Leave Travel Concession¹, during the period 24 November 2013 to 27 November 2016, to visit Srinagar and areas in the North East, on private airlines. There is no dispute about the fact that the respondents, in fact, underwent the said journeys. Their LTC claims were also settled accordingly.

2. Thereafter, *vide* various memoranda issued on 22 May 2018, 23

¹ "LTC" hereinafter



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May 2018, 24 May 2018 and 12 June 2018, the respondents were directed to return the amounts of LTC granted to them, which range from ₹ 28560/- to ₹ 91140/-, within 7 days. The memoranda were cyclostyled and were identically worded. One such memorandum dated 23 May 2018 issued to Respondent 1 Ram Roop Meena may be reproduced as under:

“MEMORANDUM

Sh/Smt. Ram Roop Meena, Designation KBD, is hereby informed that the LTC claim to visit Srinagar is not as per LTC rule wherein tickets were to be purchased from the Authorised Agent/Online/Direct from Airlines Counter as per audit observations.

Sh/Smt. Ram Roop Meena is therefore directed to deposit the amount of LTC advance/claim taken of ₹ **18560** with penal interest Rs_____ (till date of deposit) total Rs_____ within seven days from the date of issue of the memo failing which suitable disciplinary action will be taken against him/her as per LTC Rules.

This issues with the approval of the Manager.

Sd/-
A.K.Singh
Asstt. Manager (Admn)”

3. Thus, it would be seen that the only justification adduced in the memoranda issued to the respondents, calling on them to return the LTC availed by them, was that the tickets for the journeys undertaken by them were not purchased from authorized agents/online/direct from airline counters.

4. The respondents represented, against the said memoranda, to



the petitioners, asserting that there was no illegality in the availment, by them, of LTC and, therefore, requesting the petitioners to withdraw the memoranda.

5. The petitioners did not, however, do so and, instead, threatened the respondents with disciplinary action in the event of their failing to return the LTC amounts availed by them. The respondents thereupon approached the Central Administrative Tribunal² by way of OA 2429/2018, praying that the memoranda, alleging that they had irregularly availed LTC and calling upon them to return the LTC availed by them, be withdrawn and that the petitioners be restrained from initiating recovery proceedings against the respondents for the said amounts.

6. The petitioners filed a counter affidavit, in response to the respondents' OA, before the Tribunal. In the counter affidavit, for the first time, it was sought to be alleged that the amounts of LTC claimed and availed by the respondents were found to be in excess of the normal airfares for the sectors on which they had travelled.

7. For this reason, as also because the respondents had allegedly purchased the tickets from travel agents and sources not authorized in that regard, the petitioners submitted that there was no illegality in the demand, from the respondents, to return the said amounts. It was, therefore, prayed that the OA be dismissed.

² "Tribunal" hereinafter



The Impugned Order

8. The Tribunal has, by judgment dated 28 October 2022, allowed the respondents' OA 2429/2018. Before the Tribunal, the petitioners sought to contend that the respondents had availed LTC by resorting to financial fraud and forgery, which *ipso facto* disentitled them from any right to retain the amounts LTC so availed.

9. The Tribunal has, in the impugned judgment, rejected the said submission. Paras 6 to 8 of the judgment read thus:

“6. It is not disputed that the applicants were entitled to avail the benefits for Leave Travel Concession (LTC). It is also on record that for the Block Year 2013-2016, the applicants applied for and were sanctioned LTC along with the advance for the same. It is no one's case that the applicants did not perform the journey as per the approval they had obtained from the Competent Authority. The only ground on which the impugned orders have been passed appear to be the purchase of tickets from agents who were not authorized. There is no allegation of any fraud or forgery committed by the applicants.

7. Since the claim has been rejected and recovery initiated on a single ground which does not amount to any misrepresentation or misappropriation, least to say fraud or forgery, we do not find justification in the action of the respondents to initiate recovery based on merely a technical ground, especially when the basic facts of the entitlement of the applicants and the fact of their having purchased the tickets and performed the journey is not disputed. Moreover, even though the judgment of the O.A. No.2719/2019 be a Single Bench judgment, we have no reason to take any divergent view. We also find that the impugned orders passed in the case of the applicants are cyclostyled orders wherein the name and the amount have been filled in by hand. It definitely does not instill confidence that the Competent Authority had passed these orders after due diligence and application of mind. Accordingly, the impugned orders are set aside. In case, the respondents have effected any recovery pursuant to the said orders, the same shall be refunded to the applicants, within a period of four weeks from the date of receipt of a certified copy of this Order.



8. With this observation, the O.A. is disposed of.”

Thus, the Tribunal has rejected the allegation of fraud and forgery, observing that there was no such allegation in any of the memoranda whereby the respondents were directed to return the LTC amounts availed by them.

10. Aggrieved by the aforesaid decision of the Tribunal, the petitioners have approached this Court by means of the present writ petition.

Rival Contentions

11. We have heard Mr. Vikrant N Goyal, learned Counsel for the petitioners and Mr. Ramesh Rawat, learned Counsel for the respondents at length.

12. Mr. Goyal submits that, as the LTC amounts had been availed by the respondents by resorting to financial fraud, they could not be permitted to retain the said amounts. On his attention being drawn to the judgment of the Supreme Court in *State of Punjab v Rafiq Masih*³, which specifically proscribes recoveries of amounts paid to government servants more than five years after the amounts were paid, Mr. Goyal submits that the said principle would not apply where the payment was made by fraud or forgery. He submits that the Tribunal has not properly addressed this issue.

³ (2015) 4 SCC 334



13. As against this, Mr. Ramesh Rawat, learned Counsel for the respondents adopts the reasoning contained in the impugned judgment of the Tribunal.

Analysis

14. We find no reason to interfere with the impugned judgment of the Tribunal.

15. The petitioners cannot be heard to say that there was any fraud or forgery committed by the respondents, for the simple reason that none of the memoranda, whereunder the respondents were directed to return the amounts of LTC availed by them, so allege. Krishna Iyer J, speaking for the Constitution Bench in *Mohinder Singh Gill v Chief Election Commissioner*⁴ has, adopting the words of Vivian Bose J in *Commissioner of Police v Gordhandas Bhanji*⁵, observed thus:

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:

‘Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be

⁴ (1978) 1 SCC 405

⁵ AIR 1952 SC 16



construed objectively with reference to the language used in the order itself.’

Orders are not like old wine becoming better as they grow older.”

16. The aforesaid dictum has been reiterated, times without number, by the Supreme Court, some of the more recent instances when this principle has been applied being found in *Opto Circuit India Ltd v Axis Bank*⁶ and *United Air Travel Services v UOI*⁷. Thus, an executive order has to stand or fall on the basis of what is contained therein. The reasoning and justification for the order has to be contained in the order itself. The authority cannot be permitted to supplement or improve the order by way of pleadings advanced before a Court, when the order is challenged.

17. This principle, by now fossilised in the law, completely disentitles the petitioners from being permitted to urge or plead that the respondents had committed any financial fraud or forgery. We, in fact, emphatically deprecate the use, by the petitioners, of the word “forgery” and “financial fraud”, when, even on the basis of the allegations now contained in the writ petition, no such case is made out.

18. Allegations of fraud are not to be lightly bandied around, unmindful of whether there is any material to support them. Apropos “fraud”, the Supreme Court, in *S.P. Chengalvaraya Naidu v Jagannath*⁸ observes:

⁶ (2021) 6 SCC 707

⁷ (2018) 8 SCC 141

⁸ (1994) 1 SCC 1



“A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage.”

A more detailed delineation of the contours of “fraud” is to be found in the following passage from *Shrisht Dhawan v Shaw Bros*⁹:

“20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, ‘wing me into the easy-hearted man and trap him into snares’. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. In Concise Oxford Dictionary, it has been defined as criminal deception, use of false representation to gain unjust advantage; dishonest artifice or trick. According to Halsbury's Laws of England, a representation is deemed to have been false, and therefore a misrepresentation, if it was at the material date false in substance and in fact. Section 17 of the Contract Act defines fraud as act committed by a party to a contract with intent to deceive another. From dictionary meaning or even otherwise fraud arises out of deliberate active role of representator about a fact which he knows to be untrue yet he succeeds in misleading the representee by making him believe it to be true. The representation to become fraudulent must be of a fact with knowledge that it was false. In a leading English case [*Derry v Peek*¹⁰] what constitutes fraud was described thus:

“[F]raud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without

⁹ (1992) 1 SCC 534

¹⁰ (1889) 14 AC 337



belief in its truth, or (iii) recklessly, careless whether it be true or false.”

But fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in *Khawaja v Secretary of State for Home Deptt.*¹¹, that it is dangerous to introduce maxims of common law as to effect of fraud while determining fraud in relation to statutory law. In *Pankaj Bhargava v Mohinder Nath*¹², it was observed that fraud in relation to statute must be a colourable transaction to evade the provisions of a statute. “If a statute has been passed for some one particular purpose, a court of law will not countenance any attempt which may be made to extend the operation of the Act to something else which is quite foreign to its object and beyond its scope.” [*Craies on Statute Law*, 7th edn., p. 79] Present day concept of fraud on statute has veered round abuse of power or mala fide exercise of power. It may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations. The colour of fraud in public law or administrative law, as it is developing, is assuming different shades. It arises from a deception committed by disclosure of incorrect facts knowingly and deliberately to invoke exercise of power and procure an order from an authority or tribunal. It must result in exercise of jurisdiction which otherwise would not have been exercised. That is misrepresentation must be in relation to the conditions provided in a section on existence or non-existence of which power can be exercised. But non-disclosure of a fact not required by a statute to be disclosed may not amount to fraud. Even in commercial transactions non-disclosure of every fact does not vitiate the agreement. “In a contract every person must look for himself and ensures that he acquires the information necessary to avoid bad bargain.” [*Anson's Law of Contract*] In public law the duty is not to deceive. For instance non-disclosure of any reason in the application under Section 21 of the Act about its need after expiry of period or failure to give reason that the premises shall be required by son, daughter or any other family member does not result in misrepresentation or fraud. It is not misrepresentation under Section 21 to state that the premises shall be needed by the landlord after expiry of the lease even though the premises in occupation of the landlord on the date of application or, after expiry of period were or may be sufficient. A non-disclosure of fact which is not required by law to be disclosed does not amount

¹¹ (1983) 1 All ER 765

¹² (1991) 1 SCC 556



to misrepresentation. Section 21 does not place any positive or comprehensive duty on the landlord to disclose any fact except that he did not need the premises for the specified period. Even the Controller is not obliged with a pro-active duty to investigate. Silence or non-disclosure of facts not required by law to be disclosed does not amount to misrepresentation. Even in contracts it is excluded as is clear from explanation to Section 17 unless it relates to fact which is likely to affect willingness of a person to enter into a contract. Fraud or misrepresentation resulting in vitiation of permission in context of Section 21 therefore could mean disclosure of false facts but for which the Controller would not have exercised jurisdiction.”

Animus and intent to deceive is, therefore, the *sine qua non* for a finding of fraud to be returned.

19. Even if it were to be assumed, for the sake of argument and no more, that the amounts of LTC claimed by the respondents was more than the usual fare for the trips concerned, it would not tantamount to financial fraud or forgery unless there was positive evidence to indicate that the respondents did not, in fact, spend the said amounts while undertaking the trips.

20. In any event, one need not travel down that path, as the sole ground on which the memoranda issued to the respondents called upon them to return the LTC amounts availed by them was that the tickets had been purchased from unauthorized agents. As the Tribunal has rightly held, in the absence of any allegations that the respondents had not, in fact, undertaken the trips against which they availed LTC, recovery of the said amounts could not be legitimately sought merely on the ground that they had not purchased the tickets from unauthorized agents.



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21. We are in agreement with the Tribunal that no sustainable ground for recovery of the amounts of LTC claimed and paid to the respondents existed.

22. We see no reason, therefore, to interfere with the order under challenge.

23. The writ petition is accordingly dismissed with no order as to costs.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 29, 2024/ar

Click here to check corrigendum, if any