

Suman Nain Vs State of Haryana

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 2, 2013

Acts Referred: Constitution of India, 1950 " Article 14, 226

Hon'ble Judges: Rajiv Narain Raina, J

Bench: Single Bench

Advocate: R.K. Malik and Mr. Vijay Dahiya, for the Appellant; Harish Rathee, D.A.G., for the Respondent

Final Decision: Partly Allowed

Judgement

Rajiv Narain Raina, J.

Heard. Mr. R.K. Malik, learned senior counsel has brought to the notice of this Court that purchases made by the

petitioner as Chairperson of the Purchase Committee when she was the Additional District Education Officer-cum-District Elementary Education

Officer, Jhajjar were from an approved source which fact is not disputed by Mr. Harish Rathee, learned Sr. DAG, Haryana appearing for the

respondents. In various correspondences, it is established on record that the Ambala Central Cooperative Consumer Store, Chandigarh is an

approved store for making purchases by Government of "other general items of store" for use in its offices, departments etc. The Government of

Haryana has declared the store located at Chandigarh and Ambala Cantt. as approved stores vide memo dated 30.4.2001 (P-8) from where the

purchases were made of gas stoves, lighters, pipes, cylinders, regulators, burners for Rs. 3170/- + 4% VAT charges per set from the store at

Chandigarh for 350 Government Primary Schools in District Jhajjar. These Gas Chulhas/Bhattis etc much hyped in the enquiry were purchased

from out of fund allocation of total Rs. 17,50,000/- and duly sanctioned for two sets per school from the above approved store would be broadly

covered by this memo dated 30.4.2001. The only negative thing pointed out at the enquiry was that they did not bear the ISI mark or ISI

specifications though purchased by the Committee from approved sources/store. The petitioner had pointed out in her reply to the dissent note that

at the time of purchase on 29.10.2007 ISI marked Chulha/Bhattis were not available but were urgently needed to cook food for a large number of

students for the Mid Day Meal Programme and were working well till date without any complaint on quality. The disagreement on this issue was,

therefore, too technical to base harsh and severe punishment of compulsory retirement. If the Director Supplies and Disposal, Haryana had

declared the Ambala Central Co-operative Consumer Store, Chandigarh and Faridabad as "non approved stores for the supply of Gas

Chulha/Stove" it was on 31.1.2008 and such decision could operate only prospectively but not invalidate purchases made prior thereto to bring

about a state of flux, which law usually abhors. If this is the position then the petitioner cannot be so severely penalized for making purchases from

such store of items covered under the charge memo, and therefore, the pith and substance of the charges are misdirected and amount to excessive

criticism or nitpicking and are unrealistic so as to shock the conscience of the Court. The charge was not one of corruption or receiving kickbacks

it was of purchasing kitchen equipment from un-approved sources on higher prices which were more than the open market rates. The question of

exaggerated price of Chulha/Bhattis should not hold good equipment being bought from Government approved source through bank drafts against

bills duly presented against sanctioned expenditure. This is in substance established in the inquiry conducted by a retired IAS officer in which the

petitioner was broadly exonerated but the Financial Commissioner and Principal Secretary to Government Haryana, School Education

Department, Chandigarh disagreed and put a dissent note recording its opinion on disagreement with the findings recorded in the enquiry report

and proceeded to pass the order of punishment of compulsory retirement which is not only perverse conclusion on the materials available on

record but totally unreasonable, unfair and arbitrary. There should normally be reasonableness in imposition of punishments so as to make them

look non-discriminatory when there is plurality in the decision making process such as in this case where the petitioner and four delinquent

members of the purchase committee consisting of total 9 officials sat together in approving kitchen equipment and the expenditure involved in inter

alia purchase of chulha/bhattis which are fabricated from angle iron. No doubt the petitioner was the Chairperson of the committee and owed

greater responsibility by virtue of holding higher office but that alone may not be sufficient to sequester her for disproportionate treatment and to

throw her out of service while doling out only minor punishments of censures to the others. The rest too were officers of Government at the level of

Block Education Officers and held posts of responsibility and confidence. This would send a wrong message to subordinates who may have

actually prevailed upon decision making process, no one knows.

2. The State in its written statement has appended four orders passed by the Financial Commissioner and Principal Secretary to Government

Haryana, School Education Department, Chandigarh against the four members who sat with the petitioner in the committee. The total financial loss

assessed by the Financial Commissioner is Rs. 8,56,380/- 50% of which is to be recovered from the pensionary dues of the petitioner after

inflicting her with punishment of compulsory retirement and the balance 50% equally from the other four. The minor punishments awarded to the

other four officers are Censure under Rule 4 (1) (ii) of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 and one fourth of half of

total financial loss assessed. The one who had retired meanwhile has had an order of recovery only of his share assessed and no other punishment.

It is urged that this is grossly disproportionate and excessively discriminatory and therefore arbitrary and liable to be struck down. When

discrimination is alleged this Court in proceedings under Article 226 exercises primary review of administrative action by applying principles of

proportionality on the touchstone of Article 14 of the Constitution. This case in my view does not pass muster of the acid test of non-discrimination

and expected levels of fairness in action. When this court shifts its examination to secondary review testing presence of arbitrariness challenged in

proceedings under Article 226 also on the touchstone of Article of the Constitution the impugned order would not survive the litmus test by

application of Wednesbury principles to depth charge administrative action. In the view of this Court the letter dated 30.1.2008 declaring said

source from where purchase was made is not an approved source for the purchase of commercial chulha/bhattis was an irrelevant fact to be

applied to past transactions and the learned Financial Commissioner fell in error in accepting it as a valid reason for reaching adverse conclusion.

The very fact of its issuance inferentially means that there was no such prohibition in the past.

3. The level of discrimination practiced in a particular case is for constitutional Courts to examine and determine whether interference is called for

and to what extent or not at all. The guiding principles laid down by the Supreme Court in such matters is found in the erudite judgment delivered

by His Lordship Justice M. Jagannadha Rao, in Om Kumar and Others Vs. Union of India, and the salutary principles enunciated therein would

have to be kept in mind in all such cases involving judicial review of administrative action. Measured from these angles I am unable to sustain

Government action against the petitioner. I am also unable to reconcile myself to believe that from the total sanctioned amount of Rs. 17,50,000/-

for purchase of kitchen equipment for 350 Government Primary Schools in Jhajjar District for the Mid Day Meal Programme a loss of Rs.

8,72,900/- determined in the statement of charges (P-2) can result to the State exchequer when the Government itself had put aside Rs. 5,000/-

per school for the purpose. The actual purchase in District Jhajjar was of Rs. 11, 53,800/- for 342 Government schools and 8 Government aided

schools (see P-22 colly). There is no technical report on record that the equipment purchased was of sub standard quality or does not work or

does not exist at site. It has been asserted by the petitioner at many places in the pleadings that till date there is no source which provides for

commercial chulha/bhatti with ISI mark and this fact can be verified from the website of the Bureau of Indian Standards. This assertion has not

been denied at all. After all chulha/bhatti was part of budget proposal and was named equipment to be purchased.

4. The Director General, State Vigilance Bureau, Haryana has investigated the matter including the conduct of the petitioner and had recommended

departmental proceedings under rule 8 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 for minor misconduct but had

exonerated her from criminal action. A case of cheating was recommended and registration of a criminal case against the fabricator of the

chulha/bhattis-Rattan Singh, owner of The Haryana Fabrication, Village Nasibpur, District Narnaul and Smt. Vijay Sharma of the Ambala

Cooperative Consumer Store, Sector 22-D, Chandigarh for conniving with each other for selling over priced chulha/bhattis and receiving excess

money to the tune of Rs. 6, 54, 500/-. The Chief Secretary, Haryana has agreed with the report vide letter dated 29.12.2009 (P-22). It can be

said that the petitioner has been exonerated of the criminal charge by the State Vigilance Bureau, Haryana with recommendation to proceed with

domestic enquiry for minor penalty.

5. Therefore, and for the foregoing reasons I have no hesitation in quashing the order of compulsory retirement (P-7) based on much laboured,

forced and unsound reasoning, and that too without hearing and to so do by applying the tests of primary and secondary review jurisdiction

exercised by this Court as explained above on grounds of active and hostile discrimination between the petitioner on one side and the remaining

four delinquents on the other, and of arbitrariness in the choice of extreme punishment of compulsory retirement imposed by the administrator

without looking to the defence pleas in her reply in their correct perspective or to her past record of service and whether there were any mitigating

circumstances to warrant lesser punishment or to the recommendation of the State Vigilance Bureau for departmental proceedings under rule 8,

that is, for minor punishment. The size of the punishment consequently disturbs me as one which is shockingly disproportionate to the misconduct

alleged or proved especially when it is juxtaposed with lesser and minor punishments of only ""censure"" meted out to the other four members of

the purchase committee which consisted of four other officials as well, the punishment inflicted upon the petitioner then appears on the face of it

rather exaggerated. Besides, it was inflicted without hearing the petitioner or issuing second show cause protected by the ratio of law laid down in

Union of India and others Vs. Mohd. Ramzan Khan, which also shows that there was hardly any fairness in action. In Government action there

should be no witch hunting. I am also unable to make out what to do with the following averments in paragraph 7 (iii) of the writ petition which

have not been rebutted in the written statement:

The petitioner has taken the explanation of Smt. Bimla Dhull Home Sc. Mistress for her willful absence who was the wife of sitting MLA

Parminder Dhull and at his instance one Bijender Singh had filed civil writ petition no. 1289 of 2011 with a prayer to direct the department to

finalize the departmental enquiry pending against the petitioner and in the influence of the said MLA the said harsh punishment was imposed on the

petitioner and said writ petition was disposed of with liberty to the petitioner to challenge the said order dated 16.3.2012.

6. In the replication to the written statement the petitioner has drawn the attention of this Court that one of the officers who had purchased material

for his district (Ambala) from the same source is none other than Zile Singh who has had the gumption to file and sign the written statement dated

7.2.2013 in this case. The petitioner states that he was also charged of the same misconduct. He should have reused. Strange, the petitioner has

been compulsorily retired while Zile Singh stands promoted to higher rank. I think nothing can hurt a litigant more than this or to receive a final

order where this fact is not noticed or dealt with by the Court. These are the workings of the corridors of power. This Court expresses its deep

anguish at such deviant behaviour which can tend to pollute the fountains of justice, and therefore directs the registry of this Court to send a copy

of this order separately to the Chief Secretary, Government of Haryana, Chandigarh for his knowledge, record and necessary action to ensure that

such a thing does not recur and invite strictures. Consequently, the writ petition is partly allowed and the impugned order (P-7) is quashed. The

petitioner is ordered to be reinstated to service. Consequential benefits would follow. The arrears of full salary for the period after the petitioner

was unlawfully boarded out of service becomes the petitioner's due which would normally be made over to her within two months from the date of

receipt of a certified copy of this order together with the interest @ 8.5% which rate is paid on Fixed Deposits by nationalized banks. However,

given that this Court has interfered principally on quantum of punishment which is found too harsh it would be in the fitness of things that the State

Government should have liberty to reexamine the matter holistically and to pass fresh orders, in case it is so felt in the interest of justice, but after

affording full and effective opportunity of oral hearing to the petitioner by an officer other than those associated with this case, but this course

would remain open only after full compliance of this order to the extent of reinstatement to service. In case this mode is adopted then I feel that

justice and equity would demand that the monetary benefits due under this order be kept on hold, except salary after reinstatement, and till fresh

orders are passed which would necessarily require the administrator to notice and deal with all contentions and issues in accordance with rules. In

case such exercise is resorted to, it should be concluded within 60 days of reinstatement to service. In case the Government does not feel

motivated enough to go ahead and pass fresh orders then the monetary dues kept on hold for the time being by virtue of this order will become due

and payable as ordered above within two months from the date of receipt of a certified copy of this order.