

(2013) 09 AP CK 0023

Andhra Pradesh High Court

Case No: Writ Petition No. 27531 of 2013

The Government of A.P. and
Others

APPELLANT

Vs

P. Krishna Reddy and The
Hon'ble Andhra Pradesh
Administrative Tribunal

RESPONDENT

Date of Decision: Sept. 23, 2013

Hon'ble Judges: L. Narasimha Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: GP for Services II, for the Appellant; K. Ram Mohan Mahadeva, for the Respondent

Final Decision: Dismissed

Judgement

L. Narasimha Reddy, J.

The 1st respondent was working as Head Master in Zilla Parishad High School in Chittoor District. In the year 2002, the Zilla Parishad, Chittoor has undertaken certain works as part of programme, viz., Janmabhoomi. Certain complaints were received to the effect that a Senior Assistant, by name, A.S. Shajahan; Superintendent of Mandal Parishad, Gudipala Mandal, Sri C. Ramanamurthy Reddy, and Sri P. Krishna Reddy, the 1st respondent herein (for short "the respondent") have resorted to irregularities. It was also alleged that the respondent who was working as Head Master, in the Z.P. High School, Mullhaevulu, at the relevant point of time, functioned as benami contractor and caused financial loss to the Government. A common enquiry was proposed, charge memos were issued to all the three persons, named above. The respondent submitted his explanation on 15-01-2003. The other two persons submitted their explanations in February and April 2003. The Government in Panchayat Raj Department, the 1st petitioner, examined the explanations, and not satisfied with the same, ordered common enquiry, in exercise of Rule 24 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 (for short "the Rules"). The Chief Executive Officer, Zilla Parishad,

Chittoor, was appointed as enquiry officer through G.O.Rt. No. 1077, dated 23-07-2003. The enquiry officer submitted the report, holding that the charges against the respondent are proved. Taking the same into account, the 1st petitioner issued memo dated 08-09-2005, requiring the respondent to explain as to why the major penalty be not imposed against him, under Rule 9 of the Rules. The respondent is said to have not submitted any reply. Through U.O. Note No. 11673/Vig.III/2004-14, dated 19-01-2010, the 1st petitioner requested the Department of School Education to dismiss the respondent from service. Acting on that, the Commissioner of School Education, the 3rd petitioner addressed letter dated 07-05-2010 to the Regional Joint Director of School Education, the 4th petitioner. The latter, in turn, issued proceedings dated 27-05-2010, imposing the punishment of dismissal from service on the respondent.

2. The respondent filed O.A. No. 3520 of 2010, challenging the order of dismissal. He pleaded that the findings recorded against him by the enquiry officer are totally untenable and that the petitioners herein have violated the procedure prescribed under the relevant provisions of law. The O.A. was opposed by the petitioners by filing counter-affidavit.

3. Through its order dated 04-06-2013, the Tribunal allowed the O.A. The same is challenged in this writ petition.

4. Learned Government Pleader for Services-II submits that, in view of the large scale irregularities resorted to by the employees of different categories, the Government exercised powers under Rule 24 of the Rules and ordered a detailed enquiry. He contends that the enquiry officer submitted a report, holding that the charge against the respondent is proved and punishment was also imposed, according to Rules. He submits that the prescribed procedure was followed and there was no basis for the Tribunal in interfering with the order of punishment. Learned Government Pleader submits that the Tribunal has undertaken extensive discussion on the findings of the enquiry officer, as though it is an Appellate Authority and its approach is contrary to law.

5. Sri Rammohan Mahadeva, learned counsel for the respondent, on the other hand, submits that there was absolutely no basis for initiating disciplinary proceedings against his client. He contends that the report submitted by the enquiry officer in relation to the respondent was totally baseless and contrary to the basic principles. Learned counsel submits that a serious irregularity has crept into the proceedings, inasmuch as, though Rule 24 of the Rules was invoked, the punishment was imposed by the 4th petitioner, despite the fact that he did not initiate any proceedings, at all.

6. There used to be a perfect mechanism for execution of civil works by various departments in the State of Andhra Pradesh. Wherever necessity to undertake any work by the concerned department was felt, the first step used to be, to prepare the

plans and estimates. On submission of the proposals, the concerned authority used to verify the utility of the work to the public at large, the budgetary allocation, and then accord sanction. The execution of the work used to be by inviting tenders and assigning it to a competent contractor, duly assessing his experience and past record. The works so conducted used to be of better standard and utility to the public.

7. In the recent past, populism and politics have replaced such settled procedures and work pattern. Schemes with attractive names are launched and the existing procedures were scraped or done away with. Allotment of works through nomination, mostly guided by the local politicians; became the order of the day. Though the basis cited for introduction of such schemes was otherwise attractive, they ultimately turned out to be rehabilitation avenues or sources of income for persons with suitable political affiliation. Naturally, large scale misuse of public money has taken place. Instances are not lacking where the so-called works, either were not executed at all or were disappeared, by the time the records were re-verified, but payments were made in full, if not in excess. To show to the general public that the Government is serious about these matters, now and then enquiries were also ordered. The case on hand presents one such instance.

8. Taking note of the fact that large scale irregularities have taken place in Janmabhoomi programme in Chittoor District, the Government exercised its power under Rule 24 of the Rules and ordered enquiry against three employees, viz., a Superintendent and a Senior Assistant in the Zilla Parishad, and a Teacher in a School, the respondent herein. Through G.O.Rt. No. 1077, dated 23-07-2003, the 1st petitioner appointed the Chief Executive Officer of Zilla Parishad, as an enquiry officer. The allegations against the respondent was that he got executed three works in the name of one Mr. Krishna Swamy and excess payment of Rs. 7,10,900/- was made for those works and that he violated the conduct Rules, involving himself in financial transactions. The respondent submitted his explanation, denying the charge. He stated that he was in no way connected with the execution of the works, except that the contractor, by name Krishna Swamy, was known to him and now and then he used to lend money. In the enquiry report, the findings on Articles I and II were recorded, as under:

Article-I:

That the said Sri P. Krishna Reddy, while functioning as School Assistant, ZP High School, Kammathimmaiahpalli of Gudipala Mandal has involved in the financial transactions with the Mandal Parishad Development Officer's Office in connection with the following 3 works executed by him in the name of K. Krishnaswamy and irregularly received an excess payment of Rs. 7,10,900/-causing loss to that extent to the Government exchequer.

1. Construction of Special culvert Bathuvandla Vooru AAW through K. Krishnaswami, Executant.
2. Metalling the road from Chithapara road to Bandlavanipalle H/W through Sri K. Krishnaswami, Executant.
3. Formation of road from Chittoor-Vellore road to Bathavandlavooru AAW (via) VC Kandriga & Muthuvandlavooru through Sri K. Krishnaswami, Executant.

Basis of Charge:

Report submitted by the District Collector, Chittoor in Roc. No. 93/JB/DSO-4/2000, Dated 13.03.2000.

The Delinquent Officer has stated that he has worked as School Assistant in ZP High School, Kammathimmaiahpalli of Gudipala Mandal from the year 1995 to 2001 and the period of irregularities committed in execution of Janmabhoomi Works, comes well within the tenure of the Delinquent. During the enquiry, Sri P. Krishna Reddy, formerly School Assistant, has revealed that it is a fact that an amount of Rs. 7.10 Lakhs were paid in excess to the works, executed in the name of Sri K. Krishnaswamy. The Delinquent Officer has further stated that he is in no way connected to Janmabhoomi Works executed in Gudipala mandal or with Sri K. Krishnaswamy, the executant. He has only extended financial help. Accordingly to the Charged Officer, he had not committed any mistakes and as a School Assistant he had discharged his legitimate duties and the school won good academic results. Even though the Delinquent Officer impeded innocence, it is far from the truth.

In these circumstances, payment of Rs. 7.10 Lakhs causing loss to that extent to the Government exchequer mentioned in the Charge-I is held proved.

Article-II:

That he was violated the conduct rules by involving himself in the financial transactions in Janmabhoomi works and cheated the Government by way of receiving Rs. 7,10,900/- in excess of the work value by unlawful methods.

Basis of the charge:

Report submitted by the District Collector, Chittoor in Roc. No. 93/JB/DSO-4/2000, Dated 13.03.2000.

To the second charge, the Delinquent Officer has agreed that it is a fact that an amount of Rs. 7,10,900/- has been paid to Sri K. Krishnaswamy, pertaining to three works executed, in violation of guidelines prescribed under Janmabhoomi. The Delinquent Officer has further stated, he has not neglected his legitimate duties. According to him, he had only rendered financial help to Sri K. Krishnaswamy for executing the works as he is fond of Janmabhoomi Programme. The contention of the Delinquent Officer in both the charges is far from the truth and it is only to

cover-up his guiltiness. Finally Sri P. Krishna Reddy, School Assistant formerly worked in ZP High School, Kammathimmaiahpalli of Gudipala Mandal has agreed to have executed the works in the name of benami contractor. And it is a fact that the Delinquent Officer himself executed the works in the name of benami contractor.

As in the case of two Delinquent Officers, articles of charges framed against Sri C. Ramamurthy Reddy formerly Superintendent, MP-Gudipala was also read out loudly in the presence of the Delinquent Officer when his turn came in the enquiry

9. The report does not refer to the factum of examining any witnesses or filing of any documents. The findings are rested only upon the report dated 13-03-2000, submitted by the District Collector. Even the contents thereof are not referred to. Though the Senior Officer viz., the Chief Executive Officer of Zilla Parishad acted as an enquiry officer, he did not observe the fundamentals in the disciplinary enquiry.

10. It is not in dispute that the work was awarded to a contractor, by name, Krishna Swamy. Things would have been different altogether, in case Krishna Swamy was examined as a witness and he deposed that the work was executed by the respondent. According to the report, the illegality attributed to the respondent was that he lent money to Krishna Swamy. It is un-understandable as to how the lending of money by the Government official to another would constitute an act of misconduct. It was a clear case of no evidence. The whole exercise appears to have been undertaken to cover up the lapses or acts of corruption in payment of excess money without verification. As a matter of fact, the programmes themselves were framed in such a way, that hardly there exists any control on the free flow of public money to party affiliates.

11. The Tribunal has taken correct view of the matter, as regards the findings on the charges framed against the 1st respondent.

12. Apart from what was pointed out by the Tribunal, there is a serious infirmity in the proceedings. It has already been mentioned that Rules 20 and 24 of the Rules were invoked by the Government, and G.O.Rt. No. 1077, dated 23-07-2003 was issued, directing common enquiry. The relevant portion of the G.O. reads,

3. Government have examined the written statements of defence submitted by the Delinquent Officers and found them not satisfactory and decided to conduct regular common enquiry against the above said Delinquent Officers under Rule 24 of A.P.C.S. (CCA) Rules, 1991 by appointing an Enquiry Officer.

4. Accordingly, in exercise of the powers conferred by Sub rule (2) of rule 2 of Rule 20 read with Rule 24(a) of A.P.C.S.(CCA) Rules 1991, Government hereby appoints the Chief Executive Officer, Zilla Parishad, Chittoor as Enquiry Officer by designation to enquire into charges framed against Sri A.S. Shajahan, retired Senior Assistant, Sri C. Ramamurthy Reddy, Superintendent, Mandal Parishad, Gudipala and Sri P. Krishna Reddy, School Assistant, Kammathimmanapalle, Chittoor District.

5. In exercise of the power conferred by Sub Rule (5)(c) of Rule 20 read with Rule 24(a) of A.P.C.S. (CCA) Rules, 1991 Government hereby appoints the Deputy Chief Executive Officer, Zilla Parishad, Chittoor as Presenting Officer by designation to present on behalf of the disciplinary authority the case in support of the articles of charge.

13. Rule 20 of the Rules deals with the procedure to be followed for imposing penalties. Sub-rule (5) thereof directs that it is the disciplinary authority, which can initiate disciplinary proceedings by framing articles of charges, etc. Rule 24 empowers the Government to initiate common proceedings. It reads,

Rule 24. Common proceedings:-(1) Where two or more Government Servants of the same service or different services are concerned in any case the Govt. or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings.

Provided that if the authorities competent to impose the penalty of dismissal on such Government servants are different, such authorities not being the Government, an order for holding such inquiry in a common proceeding may be made by the highest of such authorities with the consent of the other authorities competent to impose the said penalty on the others.

(2) Subject to the other provisions of these rules, every such order shall specify--

(i) the authority which may function as the disciplinary authority for the purpose of such common proceedings;

(ii) The penalties specified in Rule 9 and Rule 10 which such disciplinary authority shall be competent to impose;

(iii) whether the procedure laid down in Rule 20 and Rule 21 or Rule 22 shall be followed in the proceedings.

14. From a perusal of this, it becomes clear that once the Government exercises power under Rule 24 of the Rules, it assumes the role of the disciplinary authority, be it for initiation of proceedings, or for imposition of penalty. The G.O. was not clear as to who shall function as the disciplinary authority. It has conferred power upon the Deputy Chief Executive Officer of the Zilla Parishad to act as Presenting Officer on behalf of the disciplinary authority. Beyond that, the powers of the disciplinary authority for the respondent were not conferred upon any authority. In the absence of the same, a clear infraction or non-compliance with Rule 24 of the Rules comes into play.

15. The result is that, a) though the Government assumed the role of the disciplinary authority, vis-a-vis the respondent, it did not impose the punishment upon him, and b) the 4th petitioner herein passed an order of punishment against the respondent,

but he did not initiate disciplinary proceedings against him. This patent illegality has crept into the proceedings, obviously on account of the knee-jerk reaction exhibited by the Government for the plundering of Government money, even while permitting that to happen without any hindrance.

16. We do not find any basis to interfere with the order passed by the Tribunal.

17. The writ petition is accordingly dismissed. The miscellaneous petition filed in this writ petition shall also stand disposed of. There shall be no order as to costs.