M.H. Devendrappa Vs. Karnataka State Small Industries Development Corporation

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SooperKanoon Citation : sooperkanoon.com/372253

Court : Karnataka

Decided On : Sep-10-1987

Reported in : ILR1988KAR950; 1988(1)KarLJ136; (1988)IILLJ12Kant

Judge : S.G. Doddakale Gowda, J.

Acts : Constitution of India - Articles 19, 26, 29 and 30; Corporation Service Rules - Rule 22

Appeal No. : W.P. No. 42524/1982

Appellant : M.H. Devendrappa

Respondent : Karnataka State Small Industries Development Corporation

Judgement :

1. Two main charges, amongst others, framed against the petitioner in a departmental enquiry were :

'1. Mr. M. H. Devendrappa has written a letter dated 3rd June, 1977, directly to the Governor of Karnataka pointing out the mismanagement in KSIDC. Being an employee of the Corporation, he cannot address letter to the Government or Governor directly without permission of the management, which amounts to violation of rule 22 of the Service Rules of the Corporation, viz., misconduct,

knowingly done things detrimental to the interest and prestige of the Corporation.

2. Sri M. H. Devendrappa has issued a press statement in Samyuktha Karnataka, Kannada daily, dated 31st December, 1977 attributing motives to the then Chairman, Mr. S. C. Venkatesh, and welcoming his dismissal from the Presidentship of Bangalore District Congress Committee. Being an employee of the Corporation, he cannot issue a press statement of political nature or indulge in political activities, which amounts to gross misconduct, misbehaviour and knowingly committed things detrimental to the interest or prestige of the Corporation.'

2. In the written statement the petitioner contended that whatever he has done/uttered, has been done as a President of the Karnataka State Small Industries Development Corporation Welfare Association; justified contents of memorandum citing Sri Umashankar Dixit, Ex-Governor of Karnataka, Sri Govindanarayan, Governor of Karnataka and Sri K. S. N. Murthy, Sri N. A. Muttanna, Sri William Nazareth, Sri S. C. Venkatesh, Sri R. S. Halepet, Sri T. M. Mariyappa, Sri M. P. Hanumanthe Gowda, Ex-Chairman, Ex-Managing Directors, Ex-Accounts Officers and Senior Assistants, so on, as his witnesses.

3. Relevant portion of the memorandum submitted to the Governor reads thus :

'The Association brought to the notice of the management of the Corporation its laches in administration and other such things at an early stage, but, however, it is all in vain.

Therefore, it is honestly felt to bring to your kind notice;

(A) Several persons are being appointed in the Corporation who are inefficient and unqualified at the instance of the political leaders and Ministers.

(i) For instance, Sri Kariguddaiah, Lecturer in Technical Education Board on deputation to this Corporation as Junior Engineer, but de facto working as Assistant Engineer in the Corporation. He has been sought to be absorbed as permanent Assistant Engineer of the Corporation at the instance of Sri S. M. Krishna, the Hon'ble Minister for Industries and Parliamentary Affairs.

(ii) Though the Corporation has appointed a Design Engineer in 1973 his services have not been utilised and no design section has been opened. It is not known how his services are being utilised by this Corporation.

(iii) Unqualified persons like tracers and draughtsmen for execution of the works, and services of qualified persons are not being utilised.

(B) Before undertaking any works, which involves the expenditure of crores of rupees, it is necessary to have complete plans in hand having regard to the nature of the work, the proposed production and money to be invested. to illustrate the above point, it is necessary to state that the Corporation in order to please a particular contractor has started execution of additional work of Peenya Industrial Estate, Second Stage; the same contractor was the contractor for major works in Peenya First Stage. On 23rd March, 1977 itself the Corporation called for the tenders, for road works without even taking possession of the land from M/s. Karnataka Industrial Areas Development Board. The possession of the land was taken on 9th may, 1977.

On 30th March, 1977, the Corporation called for tenders for the construction of 40-'A' type sheds, curiously enough the plan was approved on 24th May, 1977, by the Chief Manager, C & M (Superintending Engineer). The P.W.D. Code (Vol. I) provides the procedure for taking up new projects. The question of inviting tenders will arise only after the project is approved by the administration and technical branches. The Corporation has ignored all the procedures and with a sole intention to benefit the contractor has issued the work orders. It is learnt that the contractor is not a registered contractor.

A project report submitted by technical consultant has been neglected. However, the same has been utilised to raise loans from the nationalised banks. The plan submitted by the technical consultant is one and plan to be executed is another. The work is being carried on in piecemeal rates.

(C) Though there is an equipped complete Civil Engineering Section in the Corporation technical consultants have been appointed.

(D) In Peenya Industrial Estate, First Stage, several sheds which were started in 1974 are still incomplete and the public money has been wasted. Due to corruption and understanding between the management and the contractors several sheds newly constructed have been collapsed and the Corporation has not taken any action against such contractor and, on the other hand, the management has entrusted the new works to the same contractors.

(E) Wagon loads of cement purchased by the Corporation have been diverted even at the goods shed level and lakhs of rupees have been misappropriated.

(F) There is a sales section and foreign trade section in the Corporation. Both the sections are sleeping and nothing has been brought out. There is an audit section which is blind against all the malpractices.

By virtue of the above facts and omissions, the Corporation is incurring heavy loss and it is on the verge of liquidation. It does not come within the purview of the Public Accounts Committee and there is nobody to think of the welfare of the Corporation and its employees.

Under the circumstances, the above Welfare Association in the interest of public and on behalf of the employees of KSIDC, I appeal to your goodself to be good enough to arrange to investigate the working conditions of the above Corporation and bring the evils to light. For this act of kindness we ever remain grateful to you, Sir.'

4. The same memorandum was released to the press and published in Samyuktha Karnataka, dated 31st December, 1977, a Kannada daily newspaper.

5. Earlier to initiation of this proceeding the Managing Director had called for explanation from the petitioner drawing his attention to rule 22 of the Service Rules of the Corporation, which read thus :

'Penalties. - An employee who commits a breach of these rules, or displays negligence, inefficiency or insubordination or who knowingly does anything detrimental to the interests or prestige of the Corporation or in conflict with official instructions or is guilty of any activity of misconduct or misbehaviour shall be liable

to one or more of the following penalties .....'

Explanation of the petitioner read thus :

'In the letter referred to above, you have called for my explanation in connection with certain activities of mine as President of the KSIC Employees' Welfare Association. At the outset, it may be mentioned that the first two paragraphs relate to my activity as President of the Welfare Association and not as an employee of the Corporation. The two offices are different and the duties and functions of the two offices are also different. Therefore, it cannot be held that for the activities of mine as President of the Welfare Association, disciplinary action can be taken against me as an employee of the Corporation. In view of this, the press statement referred to in para 1 of your letter and the letter addressed to His Excellency the Governor do not amount to any misconduct or breach or violation of the Service Rules. There was every justification for me to have issued the Press Statement and the letter addressed to His Excellency the Governor, as the President of the Welfare Association.'

6. Sri P. N. Ananthashayanam Naidu, Deputy Chief Manager (C & M) of the Corporation, was appointed as an Enquiry Officer. On 31st May, 1978, when the enquiry started the petitioner urged before the Enquiry Officer that in view of the pendency of O.S. No. 7 of 1978 on the file of the First Munsiff, Bangalore, (later on renumbered as O.S. No. 1315 of 1978) no enquiry could be held. That was a suit filed by the petitioner against the Managing Director, the Enquiry Officer and the Corporation, to forbear from holding an enquiry, attributing bias to the Managing Director as well as to the Enquiry Officer. As there was no interim order staying the proceedings, the Enquiry Officer declined to postpone the enquiry. As recorded in the report of the Enquiry Officer, delinquent official (petitioner) declined to participate in the proceedings.

7. The Enquiry Officer, after holding an enquiry, held that charges 1 and 2 were proved and charge 3 was proved partially. Managing Director, i.e., disciplinary authority, accepting finding of the Enquiry Officer issued a show-cause notice as per Annexure-Q. The petitioner offered his explanation as per Annexure-R. Thereafter, the Managing Director considering the report, explanation offered and

the material available on record, has accepted the findings of the Enquiry Officer, and ordered dismissal. Validity of this order as well as appellate order dismissing appeal are challenged in this writ petition.

8. First ground of attack was that it was an ex-prate proceeding, hence finding as well as punishment were vitiated.

It was submitted that the petitioner was not provided with sufficient opportunity to establish his case and/or to disprove allegations of the department/respondent. As has already been indicated, the petitioner had declined to participate in the enquiry; he was unsuccessful to get an interim injunction in O.S. No. 7 of 1978 to restrain the respondents from proceeding with the enquiry. That suit later renumbered as O.S. No. 1315 of 1978 was dismissed as withdrawn. Moreover, at no time the petitioner disowned the presentation of the memorandum to the Governor. In view of this specific stand, denial of opportunity to examine persons like Governors, etc., has not resulted in prejudice. Moreover, when he has declined to participate in the enquiry, it was impossible to conceive in what form opportunity should have been given. The object of examining those persons and to cause production of documents, referred to therein, as submitted by Sri Leela Krishnan, was to justify the contents of the memorandum. In other words, the petitioner intended to establish that whatever he has stated was true and correct. Assuming for the sake of argument, what all the petitioner has stated in the memorandum and to the press was correct, does rule 22 of the Conduct Rules permit such an action by an employee of the department/respondent

9. So, question that requires consideration is : whether presentation of such a memorandum and release of an article like the one, referred to above, to press by an official of the Corporation is protected/get immunity, if done as an office bearer of the union

As facts are not in controversy, this Court can straightaway proceed to ascertain the ratio of precedents on this aspect and its applicability to the facts of the present case. This Court, while examining the validity of a rule, which prohibited a Government servant from broadcasting on radio or publishing a document anonymously or in his own name or in the name of any other person or

communicating to the press or utterances of any statement of facts or opinion capable of embarrassing the relationship (which had the same impact as the present rule), has explained the scope of right of an employee and restraint that could be imposed in B. Manmohan v. State of Mysore (1967-I-LLJ-69 at 76). A contention 'On this branch of the case his arguments proceeded thus : a Government servant, as a citizen of this country, is entitled to freedom of speech and expression; but being a Government servant he has special duties and responsibilities; his occupation requires him to be disciplined and efficient, without which there will be chaos in the administration; a public servant who indulges in public criticism of recent policy or action of Government cannot remain disciplined; and consequently his efficiency is bound to suffer. According to him, it would be a sad day for the country if Government servants are permitted to publicly criticise the Government's policy or action; as Government servants they are expected to loyally implement the policy decisions taken by the Government; it is through them the Government implements its policy; if the very persons through whom the Government acts are avowedly critical of the policy to be implemented then administration would become well-nigh impossible' has been answered as follows at p. 76 :

'There is a great deal of overlapping of the rights guaranteed under that Article. Therefor, the impact of every right guaranteed along with restrictions that could be validity imposed on that right or on the other guaranteed rights should not be overlooked. A citizen of this country is not merely a citizen; in addition to being a citizen, he may have other capacities. In determining the validity of any restriction placed on him, his duties and responsibilities arising from his occupation will have to be considered.'

So, restriction imposed on an officer is not lifted by virtue of his being an office-bearer of a union. As the Supreme Court has graphically stated the stream can rise no higher than the source, an office-bearer of the union gets no better or higher rights than its constitutent.

10. The Supreme Court in A.I.B.E. Association v. N.I. Tribunal (1961-II-LLJ-385) after formulating the point at pp 394-395,

'When sub-clause (c) of clause (1) of Article 19 guarantees the right to form associations, is a guarantee also implied that the fulfilment of every object of an association so formed is also a protected right, with the result that there is a constitutional guarantee that every association shall effectively achieve the purpose for which it was formed without interference by law except on grounds relevant to the preservation of public order or morality set out in clause (4) of Article 19 ....' answered it thus (at p. 395) :

'.... The acceptance of any such argument would mean that while in the case of an individual citizen to whom a right to carry on a trade or business or pursue an occupation is guaranteed by subclause (g) of clause (1) of Article 19, the validity of a law which imposes any restriction on this guaranteed right would have to be tested by the criteria laid down by clause (6) of Article 19, if, however, he associated with another and carried on the same activity - say as a partnership, or as a company, etc., he obtains larger rights of a different content and with different characteristics which include the right to have the validity of legislation restricting his activities tested by different standards, viz., those laid down in clause (4) of Article 19. This would itself be sufficient to demonstrate that the construction which the learned counsel for the appellant contends is incorrect, but this position is rendered clearer by the fact that Article 19 - as contrasted with certain other Articles like Articles 26, 29 and 30 - grants rights to the citizen as such, and associations can lay claim to the fundamental rights guaranteed by that Article solely on the basis of their being an aggregation i.e., in right of the citizens composing the body. As the stream can rise no higher that the source, association of citizens cannot lay claim to rights not open to citizens, or claim freedom from restriction to which the citizens composing it are subject.'

11. Dealing with the right of a labour union it has stated thus at pp. 395-396 of (1961-II-LLJ-385) :

'We consider it unnecessary to multiply examples to further illustrate the point. Applying what we have stated earlier to the case of a labour union the position would be this : While the right to form a union is guaranteed by sub-clause (c), the right of the members of the association to meet would be guaranteed by sub-

clause (b), their right to move from place to place within India by sub-clause (d), their right to discuss their problems and to propagate their views by sub-clause (a), their right to hold property would be that guaranteed by sub-clause (f) and so on - each of these freedoms being subject to such restrictions as might properly be imposed by clauses (2) to (6) of Article 19 as might be appropriate in the context. It is one thing to interpret each of the freedoms guaranteed by the several Articles in Part III in a fair and liberal sense; it is quite another to read each guaranteed right as involving or including concomitant rights necessary to achieve the object which might be supposed to underlie the grant of each of those rights, for that construction would, by a series of ever-expanding concentric circles in the shape of rights concomitant to concomitant rights and so on, lead to an almost grotesque result. .... If the fulfilment of every object for which an union of workmen was formed were held to be a guaranteed right, it would logically follow that a similar content ought to be given to the same freedom when applied to an union of employers which would result in an absurdity.'

In view of this declaration it was not possible to dissociate his status for the purpose of gaining immunity, to which he was not otherwise entitled. Otherwise, the Conduct Rules would get denuded.

12. Sri Leela Krishnan, relying on an unreported decision of the Madras High Court in Writ Petitions Nos. 6752 and 7391 of 1986 contended that the petitioner as an office-bearer of the union had the immunity. The decision of the Madras High Court has proceeded on the premise that the memorandum submitted by the petitioner therein to the Chief Secretary of the State was nothing but a representation ventilating grievances of workers concerned. Decisions of this Court referred to above itself has found out an exception to 'absolute restraint' and it reads thus :

'But, if he is restrained from criticising the Government's policy or action regarding his conditions of service in his own association meetings or if he is prohibited from circulating any document among the members of his own association criticising the Government's policy or action relating to his conditions of service or about matters connected with them, the same cannot be said to be a reasonable

restriction in the interest of the general public.'

13. If grievance ventilated in the memorandum fell within the scope of this explanation, probably, there would have been some substance in this contention. The object of extracting the contents of the memorandum was to establish that there existed no similarity. Looked at any angle, it is difficult to accept that such acts/deeds get immunity or take them out of the ambit of rule 22.

14. The next submission was that non-furnishing of enquiry report and other proceedings vitiated impugned orders. First of all, there was no necessity to issue a second show-cause notice after the 44th Amendment of the Constitution. Secondly, learned counsel fairly submitted that there was no rule which enjoined the respondent to furnish a copy of the report. However, he contended that the Disciplinary Authority having opted to give him a show-cause notice should have furnished a copy of the enquiry report. When the Disciplinary Authority was not enjoined to issue a show-cause notice, non-furnishing copy of the report, if any, would not vitiate the finding. If issuance of a second show-cause notice was obligatory then non-furnishing of a copy of the report would have a different consequence.

15. Nextly, it was contended that the appellate order not being a speaking order cannot be sustained in law. On perusal of the order, it was noticed that the board of directors have assigned sufficient and valid reasons for not interfering with the order of the Disciplinary Authority. Learned counsel submitted that the Managing Director, who was the Disciplinary Authority, had also participated in the proceedings of the board at the time of deciding the appeal thereby the order of the appellate authority was vitiated. In the absence of any material on record to show that the Managing Director participated in the meeting when the board decided the appeal, it was not possible to accept that plea.

16. Lastly, it was contended that the punishment imposed was excessive. The Disciplinary Authority, having regard to the gravity of the charge and defence taken to establish the contents of the memorandum as correct, has opinion that dismissal was the only punishment that could be imposed. This assessment cannot be characterised as perverse or illegal. There is no merit any one of these

contentions.

17. For the reasons stated above, this writ petition is dismissed with costs of Rs. 250. Rule discharged.