

Rakesh Kumar Mishra Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Jul-23-2001

Reported in : 2002LabIC149; (2001)3UPLBEC2231

Judge : S.R. Singh and ;D.R. Chaudhary, JJ.

Appeal No. : C.M.W.P. Nos. 18683 and 23896 of 2001

Appellant : Rakesh Kumar Mishra

Respondent : State of U.P. and Another

Advocate for Def. : S.C. and Ashok Mehta, Adv.

Advocate for Pet/Ap. : Yogesh Agarwal and ;R.K. Dubey, Advs.

Disposition : Writ petitions dismissed

Judgement :

S.R. Singh and D. R. Chaudhary, JJ.

1. Both these petitions were taken up together by the consent of the parties counsel with a view to disposing them of by a common order. Writ Petition No. 18683 of 2001 seeks quashing of an order whereby a fact-finding inquiry committee has been constituted to inquire and report about allegations contained in the complaint made by one Chaudhary Yashwant Singh, General Secretary.

Yuva Janta Dal. Uttar Pradesh, in his letter dated 9.1.2001 addressed to the Chief Minister with a copy endorsed to the concerned Minister arrayed herein as one of the respondents besides the allegations contained in the complaint of Sri Devi Singh and others addressed to the concerned Minister. The complaints are against the petitioner and other officers of the district including the District Magistrate. In Writ Petition No. 23896 of 2001, a direction has been given to Commissioner and Administrator, Sharda Sahayak Samadesh, Jawahar Bhawan, Lucknow. to transfer the petitioner presently working as Incharge Soil Conservation Unit D.P.A.P.. Pratham, Sonbhadra. out of eastern districts to a distant district in a vacant post. This direction appears to be an off shoot of complaints which are the subject-matter of inquiry by the fact-finding inquiry committee.

Writ Petition No. 18683 of 2001

2. Impugned in this writ petition is the office memo dated March 24, 2001 being Annexure-10 whereby the State Government have appointed a three-member committee headed by Sri Jagat Pal, Upper Prashasak Ram Ganga Command Pariyojana, Kanpur, to Inquire and report within 15 days about the financial irregularities allegedly committed by the petitioner, (a Junior Engineer), as Incharge Soil Conservation Officer, D.P.A.P.Pratham, Sonbhadra, in connivance with the District Magistrate. Sonbhadra and other officers as per complaint made by one Chaudhary Yashwant Singh, General Secretary. Yuva Janta Dal. Uttar Pradesh, in his letter dated 9.1.2001 addressed to the Chief Minister. Uttar Pradesh and the one made by Devi Singh and others dated 20.9.2000 addressed to the Minister for Land and Water Resources Department of Uttar Pradesh, Lucknow Sri Mandaleshwar Singh arrayed herein as party respondent No. 2 and the allegations made by the said Minister in his letter dated 9.2.2001.

3. Sri Ashok Mehta, chief standing counsel stated at the very out set that the inquiry committee constituted by the impugned office memo is a fact-finding committee which is to submit its report to the State Government in respect of the truth or otherwise of the allegations of the financial irregularities referred to in the complaint aforesaid. No regular departmental inquiry has yet been commenced against the petitioner in respect of the financial irregularities allegedly committed

by him as Incharge, Soil Conservation Unit, D.P.A.P., Pratham, Sonbhadra. Sri Yogesh Agarwal appearing for the petitioner, however, submits that even the commencement of inquiry suffers from the vice of mala fide and is tantamount to harassment of the petitioner, in that, proceeds the submission, inquiry into the alleged irregularities were conducted earlier by various authorities including the Divisional Commissioner and the District Magistrate but were found without any substance. It is noteworthy that the second respondent in his letter dated 14.2.2001 annexed as [Annexure-1) addressed to the Principal Secretary. Land Development and Water Resources has referred to the complaints of Chaudhary Yashwant Singh. General Secretary, Yuva Janta Dal, Uttar Pradesh and Devi Singh and others and has also stated : that it was brought to his notice that the petitioner had been managing and directing various voluntary organisations in the districts of Maharajganj. Gorakhpur. Farrukha-bad. Kannauj, Kaushambi and Sonbhadra in the name of others ; that in one particular unit the petitioner spent more than the prescribed limit of Rs. 2 crores in the name of development work in contravention of the prescribed norms : that in Vikas Khand. Ghorawal, a sum of Rs. 19.54 lakhs is shown to have been spent in between 1995-96 to 1998-99 whereas the work had already been done for a sum of Rs. 7.11 lakhs in 1997-98. Several other similar instances of financial irregularities have been set out in the complaint. The Minister accordingly suggested that an inquiry committee be constituted with a view to ascertaining the quantum of work actually done by the voluntary organisations and the amount spent in such work. Chaudhary Yashwant Singh. General Secretary, Yuva Janta Dal, Uttar Pradesh. in his letter dated 9.1.2001 addressed to the Chief Minister, Uttar Pradesh has alleged 'herapheri' of Rs. 10 crores by the petitioner in connivance with the District Magistrate, the Chief Development Officer. Project Director and Assistant Engineer, D.R.D.A. in various projects undertaken in district Sonbhadra in the year 1996. Nature of complaint made by Chaudhary Yashwant Singh. General Secretary, Yuva Janta Dal. Uttar Pradesh, in his letter dated 9.1.2001 is concededly such as may warrant major punishment in the event of the same being established not only to the petitioner but to other officers including the District Magistrate. Sonbhadra. Complaints made by Sri Devi Singh and others is also not less serious.

Question is whether interference by the Court at this stage would be justified.

4. Sri Yogesh Agarwal has placed reliance on a report dated 9.4.2001 submitted by the District Magistrate, Sonbhadra, copy of which has been annexed as Annexure-3A to the writ petition and the report dated 14.4.2001 submitted by Sri J. P. Vishwakarma, I.A.S., Divisional Commissioner, Mirzapur. Reliance has also been placed on a decision of the Supreme Court in State of Punjab v. V. K. Khanna, JT 2000 (Suppl 3) SC 349. Learned chief standing counsel, on the other hand, submitted that report submitted by the District Magistrate deserves no credence in view of the fact that the complaint made by Chaudhary Yashwant Singh, General Secretary, Yuva Janta Dal, Uttar Pradesh, contains an allegation that the petitioner committed various irregularities pointed out therein in connivance with various officers mentioned therein including the District Magistrate, Sonbhadra. So far as the report submitted by the District Magistrate is concerned, it has been submitted by the learned chief standing counsel that in view of the seriousness of the allegations, the Government was not bound to accept the report of the Divisional Commissioner nor was it debarred from constituting a fact-finding inquiry committee.

5. Having given our anxious consideration to the submissions made by the learned counsel and upon regard being had to the nature of allegations, of wide ramification embracing whether its sweep not only the petitioner but many other officers including the District Magistrate, we are not inclined to interfere with the order impugned herein. The Government was not bound to accept the reports relied on by the petitioner, therefore, the decision to constitute fact-finding inquiry committee cannot be said to be suffering from any bias. Mere fact that the Minister concerned forwarded the complaints made by Chaudhary Yashwant Singh, General Secretary, Yuva Janta Dal, Uttar Pradesh, with the request that the allegations may be inquired into does not by itself constitute bias against the authority which has constituted the fact-finding Inquiry committee. There is no allegation of mala fide against the authority who has constituted the fact-finding inquiry committee. Even in the State of Punjab v. V. K. Khanna and others, the Supreme Court has observed that interference by the Court at the very threshold of fact-finding exercise should not be made by the Courts. We are of the considered view that it would not be in 'public interest' to interfere with an administrative order constituting a fact finding Inquiry committee to go into

allegations which involve not only the petitioner but several officers including the District Magistrate, Sonbhadra. The observations made by the Supreme Court in State of Punjab v. V. K. Khanna and others (para 37) : 'in the event there is an element of malice or mala fide motive involved in the matter of issue of a charge-sheet, or the concerned authority is so biased that the inquiry would be a mere farcical show and the conclusions are well known, then and in that event, law Courts are otherwise Justified in interfering at the earliest stage so as to avoid the harassment and humiliation of a public official' does not apply to the facts of the present case and we are of the considered view that justifiability of the decision to constitute the fact finding inquiry committee at this stage is not justiciable. It would be tantamount to perverting the course of justice, at this stage, interfere with the decision to set up the fact-finding inquiry committee in respect of various allegations contained in the complaint of Chaudhary Yashwant Singh. General Secretary, Yuva Janta Dal. Uttar Pradesh and others. The petitioner cannot be said to be aggrieved by the order constituting a fact-finding committee. No disciplinary Inquiry has yet been commenced against him.

Writ Petition No. 23896 of 2001

6. Petitioner who has been working as Prabhari Bhumi Sanrakshan Adhikari, D.P.A.P. Pratham. Sonbhadra, has instituted this writ petition for quashing of the order dated 30.6.2001 being Annexure-1 whereby one Anil Kumar Sinha. Soil Conservation Officer, Sharda Nahar Pralali. Biswa, Sitapur, has been transferred to Soil Conservation Unit D.A.A.P. Pratham, Sonbhadra, to take over as Soil Conservation Officer, Sonbhadra. The order issued by the State Government a copy whereof has been enclosed to the Commissioner and Administrator. Sharda Sahayak Samadesh. Jawahar Bhawan. Lucknow, with a direction that the petitioner be transferred away from the eastern districts of Uttar Pradesh, The direction appears to have been issued in the background of serious complaints of grave financial Irregularities in the development work involving 'ghotala' and herapheri of crores of rupees by the petitioner in collusion with the District Magistrate, Sonbhadra, Chief Development Officer, Sonbhadra and other officers referred to in the complaint made by Chaudhary Yashwant Singh, General Secretary. Yuva Janta Dal, Uttar Pradesh.

7. Transfer of a Government servant holding a transferable post is an Incidence of service-'a part of service conditions' and is normally not interfered with by this Court in its discretionary jurisdiction 'unless the Court finds that either the order is mala fide or that the service Rules prohibit such transfer or that the authority, who Issued the order, had not the competence to pass the order. State Bank of India v. Anjan Sanyal, 2001 AIR SCW 1674. In absence of prima facie material to establish mala fide. Judicial review of transfer would be unjustified. Union of India v. D. Mohan. (1995) 3 SCC 115. Allegation of mala fide without specifying the officers to whom that allegation is made cannot be looked into. State of M. P. v. S. S. Kaurav, (1995) 3 SCC 270. Expediency of transfer order issued on 'administrative ground' or in 'public interest' is normally not open to judicial review. Union of India v. D. Mohan, (1995) 3 SCC 115. The Instant case is not covered under any of the exceptional circumstances warranting Interference by this Court.

8. Government have every right to transfer and post any other officer in place of the petitioner as Prabhari Bhumi Sanrakshan Adhikari. D.P.A.P. Pratham, Sonbhadra. It is not the case of the petitioner that Anil Kumar Sinha who has been posted in the Soil Conservation Unit D.P.A.P., Pratham, Sonbhadra, is not competent to hold the post. Anil Kumar Sinha is also a Soil Conservation Officer and he has been transferred from Bhumi Sanrakshan Adhikari, Sharda Nahar Pralali, Biswa, Sitapur, to the Soil Conservation Unit. Pratham, Sonbhadra, as Soil Conservation Officer. Direction given to the Commissioner and Administrator Sharda Sahayak Samadesh, Jawahar Bhawan, Lucknow, to transfer the petitioner outside the eastern districts of Uttar Pradesh is to be appreciated in the light of the allegation that the petitioner has set voluntary organisation in Maharajganj. Gorakhpur. Farrukha-bad, Kannauj, Kaushambi and Sonbhadra in the names of others. We are also of the view that apart from the petitioner, other officers including the District Magistrate. Chief Development Officer, Project Director and Assistant Engineer, D.R.D.A., Sonbhadra. if not already transferred, should be transferred forthwith so that a free and fair inquiry be held by the fact finding inquiry committee.

9. Accordingly, the writ petitions fail and are dismissed in limine.

