

Harsh Kumar Singh Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jul-21-2006

Reported in : 2007(1)AWC374

Judge : S. Rafat Alam and; Sudhir Agarwal, JJ.

Appellant : Harsh Kumar Singh

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. H.N. Shukla

Disposition : Petition dismissed

Judgement :

S. Rafat Alam and Sudhir Agarwal, JJ.

1. This writ petition is directed against the order dated 6.6.2006, passed by the Commissioner and Secretary, Board of Revenue, U. P., Lucknow (respondent No. 2) placing the petitioner under suspension in a contemplated departmental proceeding.
2. Sri H.N. Shukla, learned Counsel for the petitioner contended that the petitioner has been placed under suspension on the allegation of allotment of 800 bighas of agricultural land in village Rampur Shahpur, district Aligarh, fraudulently to 231 persons by granting approval in back date ignoring the fact that the approval

granted by the petitioner while working as Tehsildar was in exercise of his statutory powers under Sections 195 and 197 of the U.P.Z.A and L.R. Act. He further submitted that the action of the petitioner being statutory exercise of power and if there was any illegality or irregularity in exercise of said power the statute provided remedy of appeal against such orders and, therefore, the disciplinary enquiry in such matters is not permissible. He further submitted that the aforesaid order of suspension has been passed on a complaint made with mala fide intention against the petitioner and therefore, the entire proceedings are vitiated in law.

3. Having heard learned Counsel for the petitioner, we do not find any force in the submission. The order of suspension shows that the petitioner has been found prima facie guilty of certain fraudulent exercise of power as Tehsildar. If an authority exercises quasi-Judicial or otherwise statutory power, it does not mean that a departmental enquiry in respect to the acts or omission in passing such orders, cannot be conducted against such person. In the departmental enquiry the validity of the order of such authority itself is not questioned but motive, manner and the intention with which the authority has exercised its powers is subject-matter of enquiry.

4. Enumerating circumstances, when disciplinary enquiry can be conducted against quasi-judicial or judicial authority in respect to the orders passed by such authority, the Hon'ble Apex Court held where the power is exercised negligently or recklessly or in order to confer undue favour on a person, such conduct of quasi-judicial or judicial authority can be subject-matter of disciplinary enquiry. The statutory or judicial orders passed; their legality may be subject-matter of appeal or revision under the Act but it does not preclude the employer from taking disciplinary action for violation of the Conduct Rules. Some of the instances enumerated by the Hon'ble Apex Court as an illustration and not as an exhaustive list, in the case of *Union of India and Ors. v. K.K. Dhawan* : (1993)ILLJ777SC , as contained in para 28 of the Judgment may be reproduced as under:

Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago 'though the bribe may be small, yet the fault is great.

5. The aforesaid view has been followed in the case of Union of India and Ors. v. Upendra Singh : (1994)ILLJ808SC .

6. Learned Counsel for the petitioner, however, placed reliance on a single Judge judgment of this Court in Iftikhar Ahmad Siddiqui v. State of U.P. and Ors. 1991 RD (HC) 427 : 1991 (2) AWC 1163, and referring to para 11 of the Judgment, he argued that in earlier matter the Hon'ble Apex Court upheld the order of the U.P. Public Service Tribunal, Lucknow, holding that the Officer who had passed certain orders under the U.P. Consolidation of Holdings Act was entitled for protection under Section 49A of the Act, since the orders were passed in judicial capacity and, therefore, it is submitted that the statutory orders passed by the petitioner could not be the subject-matter of departmental enquiry. in our view, the aforesaid Judgment does not help the petitioner at all. Part of the order of the Hon'ble Apex Court quoted in para 11 of the Judgment does not make it clear whether the Apex Court held that in respect to orders passed on Judicial side, no disciplinary enquiry can be conducted. Even the Hon'ble single Judge before whom in Iftikhar Ahmad Siddiqui v. State of U.P. and Ors. (supra) the question was raised that the charges levelled against the petitioner related to the orders passed by him in Judicial capacity being the order of the Consolidation Officer, and were either confirmed in

appeal or revision and, therefore, no enquiry is permissible, was left open to be decided by the Hon'ble single Judge and has not been decided in affirmance in favour of the petitioner, as is apparent from para 12 of the Judgment which is reproduced as under:

Thus, from the aforesaid judgment it is not clear the determination, as to whether the orders were passed in good faith or not, could be done by the disciplinary authority or by the appellate or revisional authority as contemplated under the Act. However, since the writ petition is being allowed on the first question the matter is being left open for being decided by the respondent No. 2 and it shall be open to the petitioner to raise this contention also, which shall be decided by the respondent No. 2 in accordance with law.

7. Subsequently, this question has specifically been raised, argued and decided by the Hon'ble Apex Court in a catena of cases some of which we have already referred hereinabove and, therefore, we are clearly of the view that even if the judicial or quasi-judicial order passed by the authority is correct, still disciplinary enquiry can be conducted in respect to the manner or motive, if any, of the said officer in passing such orderS. These aspects have already been narrated by the Hon'ble Apex Court, which we have also reproduced and need not be dealt with further.

8. Learned Counsel for the petitioner further contended that even the allegation of fraudulent act against the petitioner is not correct and there is material on record to show that the land settlement was approved by the petitioner pursuant to the recommendation of the other authorities and the said action was also approved by the Sub-Divisional Magistrate. in our view, it is not a stage where correctness of the charges can be looked in to, since the correctness of the charge is subject-matter of departmental enquiry and any observation made by this Court, on this issue at this stage, would prejudice the interest of the parties in the contemplated departmental enquiry.

9. The next submission of the learned Counsel for the petitioner that the proceedings have been initiated on account of mala fide, has also no force, inasmuch as, a perusal of the array of the party would show that no person by

name has been impleaded by the petitioner and the allegation of mala fide has been levelled vaguely. It is settled that the plea of mala fide cannot be entertained and permitted to be argued unless a person against whom the allegation of mala fide has been levelled is impleaded eo-nomine and the mala fide is pleaded with sufficient material on record. Thus, the contention with respect to mala fide is also rejected.

10. in view of the aforesaid discussions, we are of the view that the impugned order of suspension does not warrant any interference at this stage. However, we are also of the view that the departmental proceeding should not be prolonged unnecessarily and the authorities should endeavour to conclude the departmental proceeding expeditiously and within a reasonable time. A Government servant cannot be allowed to remain under suspension for an in definite period as it causes not only loss of morale to such Government servant but also causes wastage of public money and time. We, therefore, direct the respondents to conclude the departmental proceeding against the petitioner expeditiously, preferably, within a period of six months from the date of production of a certified copy of this order. It is also made clear that in case the respondents find that the departmental proceeding cannot be concluded before the aforesaid time despite co-operation rendered by the petitioner, it is open to the respondents to reconsider the question of continuance of the suspension of the petitioner.

11. With the above observations, the writ petition stands dismissed.