

Shivmuni Ram Vs. Road Construction

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Court : Jharkhand

Decided On : Sep-23-2015

Appellant : Shivmuni Ram

Respondent : Road Construction

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (S) No. 2298 of 2013
Shivmuni Ram..... Petitioner Versus

1. The State of Jharkhand.
2. The Principal Secretary, Road Construction Department, Govt. of Jharkhand, Ranchi.
3. The EngineerinChief, Road Construction Department, Govt. of Jharkhand, Ranchi.
4. The Special Secretary, Road Construction Department, Govt. of Jharkhand, RanchiRespondents. CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioner : M/s. Navin Kumar Singh & Manoj Tandon, Advs. For the Respondents : M/s. Abhay Kumar Mishra, S. C. III & Bhola Nath Ojha, J.C. to S. C. III 13/23.9.2015 Heard learned counsel for the parties. Petitioner has been imposed with a punishment of reduction to the lowest scale of pay of his substantive post and recovery of Rs.80,60,800/ by the impugned order (Annexure11) dated 15th January, 2013 bearing Memo No. 445(S) issued by

EngineerinChief, Road Construction Department, Govt. of Jharkhand, Ranchi, respondent no.

3.

2. Petitioner's appeal has also been rejected by order dated 26th July, 2013 (Annexure13) passed by Principal Secretary, Road Construction Department, Govt. of Jharkhand, Ranchi, respondent no. 2, during pendency of the writ petition which has also been allowed to be challenged by the order dated 14th August, 2013 passed in I. A. No. 5995 of 2013 .

3. The chronology of facts which are material for adjudication of the instant issue are being briefly narrated hereunder: Petitioner was working in the capacity of Junior Engineer in Road Construction Department and the charges in the departmental proceedings relate to the period of his posting at Road Division, Daltonganj in 2006.

4. As a matter of fact, petitioner was proceeded in two different

2. chargesheets, one under office order no. 17 dated 24th January, 2012 bearing Memo no. 563 issued by the respondent no.3, EngineerinChief, Road Construction Department, Govt. of Jharkhand. Charges therein are also in substance similar to the charges contained at Annexure5/1 bearing Order no. 4, Memo no. 106 (S) dated 6th January, 2012 issued by the same respondent no.

3. Under the office order no. 17 containing four charges, the allegations relate to sanction of forged vouchers of bitumen in relation to agreement no.1F2/200405 with M/s. Kaushalya Infrastructure Development Corporation Limited which were entrusted with execution of specified works under Road Division, Daltonganj. It was alleged that the petitioner did not verify the invoices and Bills were prepared while 26 of the invoices were found to be forged. Petitioner did not verify the invoices and also did not check the quality of the execution of work nor empty bitumen drums were returned by the contractor. Charge nos. 2, 3 and 4 are similar to the charges nos. 2,3 & 4 at Annexure5/1 issued through office order no.4 dated 6th January, 2012 though in relation to a different agreement with a different

contractor.

5. Four charges contained in Prapatra (Ka), Chargesheet issued by the disciplinary authority, Engineer in Chief, Road Construction Department enclosed to the office order no. 4 dated 6th January, 2012, Annexure 5/1 shows that they are also in relation to grave charges of irregularities and dereliction of duties on his part. Charge No. 1 shows that petitioner while posted in Road Division, Daltonganj, did not verify the bitumen invoices submitted by the Contractor, M/s. Kalawati Construction Private Ltd., Garhwa in connection with Agreement no. 11F2/200304 and Bills were prepared while 61 of the invoices were found to be forged and one was found to be issued for another work. It was also alleged that without verification of the quality of the work executed despite less use of bitumen, the invoices were allowed to be made the basis for preparation of the bills for payments of the amounts to the contractor.

3. Charge no. 2 shows that the estimated amount of bitumen were neither used for the work nor purchased but forged invoices of claim were furnished. The quality of the work had obviously suffered. Charge no. 3 alleges violation of Para 243 of the Bihar Public Accounts Code. Charge no. 4 alleged that the contractor had also not returned the empty drums used for the purposes of bitumen. These were not verified by the officer which made the whole transaction suspicious.

6. The substance of the charge, as canvassed by the respondents, relate to a bitumen scam detected in execution of work in the respondent department. These were also subject matter of vigilance inquiry and were later on handed over to the CBI pursuant to the direction of the learned Division Bench of this Court in a Public Interest Litigation.

7. It appears from the pleadings on record that initially the Finance Secretary, Mrs. Rajbala Verma pointed out the objections found during audit by the office of Accountant General in the matter of procurement of bitumen for road work to the Secretary, Road Construction Department through letter dated 22nd November, 2008 (Annexure 1). The said letter refers to the audit objection in relation to procurement of bitumen in 15 divisions at a cost of Rs.06.74 Crores paid against 308 invoices bearing identical invoice codes. It also refers to payments made to

Contractor of Rs. 36.86 lakhs against 22 invoices bearing identical invoice code for purchase of huge amount of bitumen in execution of two works under two divisions. The letter further refers to payments made to contractor in similar manner on the basis of fake invoices. The audit objections were communicated for taking action against responsible officials and persons and also for initiation of vigilance inquiry. It also recommended disciplinary action against the concerned official and corrective measures to avoid repetition of such acts.

4. 8. As would appear from Annexure2, Memo no. 917 dated 28th July, 2009, Mrs. Rajbala Verma while posted as Vigilance Commissioner wrote to the Director General (Vigilance Bureau) to undertake vigilance inquiry in respect of the purchase of bitumen under Road Construction Department also enclosing certain communications from the office of His Excellency the Governor on the subject. She also gave permission to take assistance for Technical enquires through the Chief Engineer Technical Evaluation Cell. Annexure3 is another noting on the file in the capacity of Vigilance Commissioner by the same officer dated 13th October, 2009 to the Advisor, Department of Cabinet (Vigilance) referring the direction of the High Court in W.P.(PIL) No. 803/2009 for CBI enquiry into the irregularity in procurement of bitumen for road works. 9. Petitioner was put under suspension vide Annexure4 dated 6th January, 2011 issued by Road Construction Department. The disciplinary authority, respondent no.3, thereafter initiated departmental proceeding against the petitioner for the charges discussed hereinabove vide office order nos. 4 and 17 dated 6th January, 2012 and 24th January, 2012 bearing Memo nos. 106(S) & 563(S) at Annexures5/1 and 5 respectively. The Principal Secretary, Department of Food, Civil Supplies and Consumer Affairs, Govt. of Jharkhand, Mrs. Rajbala Verma, I.A.S., was appointed as the Inquiry Officer to conduct the inquiry against the petitioner. On conclusion of the enquiry, the inquiry report submitted by the same officer indicted the petitioner on all counts. Petitioner was asked to furnish reply to the second show cause notice by the respondent no.3 through letter dated 5th September, 2012 bearing no. 6464(S)W Annexure8 enclosing copy of the inquiry report. After consideration of the petitioner's reply the impugned punishment has been imposed. 10. It is evident from the notings enclosed by the petitioner at Annexure10, undisputed by the respondents, that before imposing the 5. punishment of recovery, the approval

of Principal Secretary, Road Construction Department was also obtained. The officer, Mrs. Rajbala Verma was then posted as Principal Secretary of the Road Construction Department. Since the order was passed by the Disciplinary Authority i.e., EngineerinChief, respondent no. 3, a remedy of appeal lied before the Secretary of the department as the petitioner was a Junior Engineer. Petitioner's appeal has also been rejected by the same officer, Mrs. Rajbala Verma in her capacity as the Appellate AuthoritycumPrincipal Secretary, Road Construction Department. These facts on being canvassed were noticed in the order dated 26th June, 2015, quoted hereunder: The impugned order at Annexure11 dated 15.01.2013 issued by the EngineerinChief, Road Construction Department, has imposed the punishment of reduction in rank and recovery of Rs. 80,60,800/ upon the petitioner who is a Junior Engineer in the Department. This punishment is based upon the inquiry initiated vide office order no. 04 dated 06.01.2012 enclosing a charge sheet in Prapatra (Ka) where one Smt. Rajbala Verma, IAS, Principal Secretary, Food, Public Distribution and Consumer Affairs, Jharkhand was appointed as Conducting Officer. On the basis of the Inquiry Report furnished by the said Conducting Officer dated 16.02.2012, the EngineerinChief, Road Construction Department, Government of Jharkhand issued the second showcause notice (Annexure8) upon the petitioner as to why a major penalty be not imposed upon him. After imposition of such punishment, petitioner preferred an appeal before the Appellate Authoritycum Secretary, Road Construction Department, vide Annexure12. The said appeal has been rejected by order dated 26.06.2013 (AnnexureA to the counter affidavit) issued under the signature of Deputy Secretary, Road Construction Department based upon the decision of the Appellate AuthoritycumPrincipal Secretary, Road Construction Department. 2. Counsel for the petitioner has referred to the notings on the file, extracts of which is at Annexure10, as per which, a direction has been issued for recovery of Rs. 80,60,800/ from the petitioner by Mrs. Rajbala Verma. It is stated on his behalf by virtue of statements made at para6 of the rejoinder that the said officer had become Principal Secretary of Road Construction Department on 18.06.2012 itself while the Inquiry Report was submitted on 16.02.2012. It is further stated at para7 of the rejoinder that the appeal filed by the petitioner was rejected by order dated 06.07.2013 by the same officer in her capacity as Principal

Secretary, Road Construction Department who was the Inquiry Officer of the petitioner also. Therefore, the impugned order and the Appellate Order suffer from violation of principles of natural justice as the same person cannot become judge in his own cause who was herself the Inquiry Officer. 3. Petitioner has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of Mohd. Yunus Khan Vs. State of Uttar Pradesh & others [(2010) 10 SCC 539] and Roop Singh Negi Vs. Punjab National Bank & others [(2009) 2 SCC 570] and also State of Uttaranchal and others vs. Kharak Singh [(2008) 8 SCC 236]. 4. Learned Standing Counsel No. III submits that the aforesaid procedural infirmity pointed on behalf of the petitioner go to the root of the matter as it may have bearing on the conduct of the Departmental Proceeding from the stage of submission of the Inquiry Report. He further submits that before taking a final decision in the matter, he may be allowed time to deliberate with the 6. concerned authorities under the respondent Government and the Department and come out with a fresh response. 5. Having regard to the conspicuous facts noted hereinabove, as prayed for on behalf of the counsel for the State, before taking a final decision in the matter, one more opportunity is allowed to the counsel for the respondent to come out with their considered stand. 6. As prayed for, four weeks time is allowed. List the case on 07.08.2015

11. An affidavit was filed thereafter sworn by Assistant Engineer, Road Construction Department, Ranchi, reiterating the actions taken by the respondents and justifying the impugned decisions taken by the concerned officer while posted as Principal Secretary, Food, Civil Supply and Consumers Affairs Department, Govt. of Jharkhand as the Inquiry Officer and thereafter in the capacity of Principal Secretary, Road Construction Department, Jharkhand as a disciplinary authority as well as appellate authority. Considering the seriousness of the issues raised, the Principal Secretary, Road Construction Department, Government of Jharkhand was asked to file a response on affidavit sworn by himself in terms of the order dated 26th June, 2015. Such an affidavit has been filed and sworn by Mrs. Rajbala Verma in the capacity as Principal Secretary, Road Construction Department, Govt. of Jharkhand. Paras 5 & 6 of the affidavit containing the stand is being quoted hereunder: Para 5 : That Smt. Rajbala Verma, I.A.S. was posted as the Principal Secretary, Food and Civil Supplies, Jharkhand, Ranchi when she was

appointed as the Enquiry Officer in the Departmental Proceeding against Shri Shivmuni Ram vide order contained in memo no. 563(S) dated 24.01.2012 and 106(S) dated 06.01.2012 Para6: That the Enquiry Officer submitted the report being on the same post of the Principal Secretary, Food and Civil Supplies, Jharkhand, Ranchi on 16.02.2012./ That Smt. Rajbala Verma, I.A.S. was transferred and she became the Principal Secretary, Road Construction Department, Jharkhand. She was the disciplinary authority and acted as the appellate authority by virtue of the post held by her.

12. It does not dispute the fact that she acted as an Inquiry Officer in the departmental proceeding and also in the nature of a disciplinary authority and the appellate authority as well. Justification advanced to support the impugned order is that such action was taken by virtue of post held by her. 7.

13. The impugned orders have been challenged by the petitioner on the grounds of complete violation of principles of natural justice. In support thereof the following judgments rendered by Hon'ble Supreme Court have been relied upon. i) Mohd. Yunus Khan Vs. State of Uttar Pradesh & others [(2010) 10 SCC539 ii) Roop Singh Negi Vs. Punjab National Bank & others [(2009) 2 SCC570 iii) State of Uttaranchal and others vs. Kharak Singh [(2008) 8 SCC236.

14. It is urged that the same person who was the complainant was appointed inquiry officer and indicted the petitioner of the charges. She again acted in the capacity of disciplinary authority and also sat over the appeal preferred by the petitioner. At every stage, therefore, a person became a judge of his own cause which is in teeth of the principles of natural justice. Therefore, the impugned orders cannot survive the test of legal scrutiny as the decision making process has been vitiated beyond redemption. 15. Counsel for Respondent State submits that the charges against the petitioner are of very serious nature. It relates to actions/omissions done by the petitioner in the capacity of a Junior Engineer during his posting at Road Division, Daltonganj, which has resulted in huge defalcation of Government money and misappropriation of funds by the Contractor and several persons. Petitioner has also been facing two CBI cases in relation to same charges. Learned counsel has made an attempt to defend the impugned

action on the submission that the officer did not carry any personal grudge against the petitioner. She only discharged her duty of the post held at different points of time. However, learned counsel for Respondent State is not in a position to dispel the well settled legal proposition that a person who has been the author of the inquiry reaching to the finding of guilt against an delinquent employee could not act as the disciplinary authority or the appellate authority. He has 8. sought to dispel the contention of the petitioner that the said officer was the complainant by stating that she had only forwarded the audit reports in the capacity of Finance Secretary or as a Vigilance Commissioner to the concerned Vigilance Bureau for investigation. 16. It is submitted that considering the gravity of the charges therefore, this Court in exercise of its discretionary jurisdiction may not like to interfere in the same. 17. I have heard learned counsel for the parties at some length and gone through the relevant materials on record. The sequence of relevant facts do not leave an iota of doubt that the departmental proceedings have suffered to a point beyond salvage as the same person who not only made recommendation in the capacity of the Finance Secretary to the Road Construction Department and as the Vigilance Commissioner for action and initiation of vigilance enquiry, was appointed the enquiry officer and also acted as the Disciplinary Authority as well as the Appellate Authority in the departmental proceedings against the petitioner. It cannot be said that a person who in the capacity as a Vigilance Commissioner recommended initiation of vigilance inquiry in respect of instances of misappropriation and defalcation of funds in the matter of purchase of bitumen had not applied her mind while recommending to the Director General Vigilance Bureau for initiation of the vigilance inquiry and also investigation through its technical cell. By a strange quirk of decision taken by respondent authorities the same officer became an inquiry officer and conducted the departmental inquiry against the petitioner for the alleged charges relating to purchase of bitumen and defalcation of government money on submission of fake invoices by contractor, without verification. Not only that, the same officer acted as the disciplinary authority as the disciplinary authority respondent no. 3 chose to seek approval of Principal Secretary of the Road Construction Department before imposing the punishment of recovery upon the petitioner. The 9. same person acted in the capacity of the Appellate Authority while rejecting the petitioner's

appeal. 18. The person may be holding different designations or post at different point of time but the identity of the person does not change by holding different posts. If that be so, then a person conducting an inquiry while posted in a different capacity would always sit in judgment over his own report as a disciplinary authority or even as an appellate authority. Its an elementary principle of the law which any officer holding such a high and responsible post is supposed to know. 19. The principle that no man can be a Judge in his own cause is one of the facets of the Principles of Natural Justice. *Nemo debet esse iudex in propria sua causa*. The exposition of law laid down by the Apex Court in the case of *Crawford Bayley & Co. and others vs. Union of India & Ors.* reported in (2006)6 SCC Page 25 as contained para 18 is being quoted hereunder: 18. In this connection, a reference was made to *Delhi Financial Corpn. v. Rajiv Anand* with regard to personal bias i.e. an officer of the statutory authority has been appointed as an Estate Officer, therefore, they will carry their personal bias. However, this Court in the aforesaid case held that the doctrine no man can be a judge in his own cause can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a corporation is named to be the authority, does not by itself bring into operation the doctrine, no man can be a judge in his own cause. For that doctrine to come into play it must be shown that the officer concerned has a personal bias or connection or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting. Such view has also been taken by the Apex court in the case of *Mohd. Yunus KhanVs. State of Uttar Pradesh and others* reported in (2010) 10 SCC 539. Paragraphs 26, 28 and 29 of the report are quoted hereunder for better appreciation.

26. This Court in *A.U. Kureshi v. High Court of Gujarat* placed reliance upon the judgment in *Ashok Kumar Yadav v. State of Haryana* and held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The 10 question is not whether the person is actually biased but whether the circumstances are such as to create a reasonable

apprehension in the minds of others that there is a likelihood of bias affecting the decision.

28. In *Arjun Chaubey v. Union of India* a Constitution Bench of this Court dealt with an identical case wherein an employee serving in the Northern Railway had been dismissed by the Deputy Chief Commercial Superintendent on a charge of misconduct which concerned himself, after considering by himself the explanation given by the employee against the charge and after thinking that the employee was not fit to be retained in service. It was also considered whether in such a case, the Court should deny the relief to the employee, even if the Court comes to the conclusion that the order of punishment stood vitiated on the ground that the employee had been guilty of habitual acts of indiscipline/misconduct. This Court held that the order of dismissal passed against the employee stood vitiated as it was in utter disregard of the principles of natural justice. The main thrust of the charges against the employee related to his conduct qua the disciplinary authority itself, therefore, it was not open to the disciplinary authority to sit in judgment over the explanation furnished by the employee and decide against the delinquent. No person could be a judge in his own cause and no witness could certify that his own testimony was true. Anyone who had a personal stake in an enquiry must have kept himself aloof from the enquiry. The Court further held that in such a case it could not be considered that the employee did not deserve any relief from the Court since he was habitually guilty of acts subversive of discipline. The illegality from which the order of dismissal passed by the authority concerned suffered was of a character so grave and fundamental that the alleged habitual misbehaviour of the delinquent employee could not cure or condone it.

29. Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an enquiry officer nor can he pass the order of punishment as a disciplinary authority. This rule has been held to be sacred. An apprehension of bias operates as a disqualification for a person to act as adjudicator. No person can be a judge in his own cause and no witness can certify that his own testimony is true. Anyone who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of the principles of natural justice renders the order null and void. 20. The

Doctrine No man can be judge of his own cause can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. For the Doctrine to come into play, it must be shown that the Officer concerned has a personal bias or connection or personal interest or personally acted in the matter concerned and/or has already taken a decision one way or the other, which he may be interested in supporting.

21. It is clear as noon from the relevant facts noticed hereinabove that the concerned officer had not only recommended institution of 11. vigilance inquiry and investigation in the mater relating to bitumen scam, a subject matter with which the petitioner is concerned but had also come to a finding of guilt as a Inquiry Officer on being appointed by the disciplinary authority, respondent no.3. In that sense, the person had taken a decision one way or other which he/she may be interested in supporting while taking a decision as a disciplinary authority or as an appellate authority. The inference that can be easily drawn is that the entire decision making process has suffered. The inquiry stands vitiated from the stage of appointment of inquiry officer itself. The charges are reported to be grave. The court need not comment upon them at this stage as fresh inquiry from the stage of appointment of inquiry officer is required to be undertaken on the same set of charges where the prosecution and the delinquent employee will have opportunity to prove the charges and/or defend themselves. However, the impugned orders and the departmental proceedings cannot be saved in the eye of law. Accordingly, the order of punishment dated 15th January, 2013 (Annexure11) and the appellate order dated 26th July, 2013 (Annexure13) are quashed. However, liberty is reserved with the respondent authorities to proceed afresh from the stage of appointment of inquiry officer on the charges against the petitioner in the said departmental inquiry in accordance with law and after observance of principles of natural justice in a time bound manner. 22. In view of the findings recorded herein above, let a copy of this order be sent to the Chief Secretary, Government of Jharkhand, Ranchi for taking corrective steps. 23. The writ petition is accordingly, allowed. (Aparesh Kumar Singh,J) jk