

Hemant Kumar Sharma Vs. Uoi and ors

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Court : Delhi

Decided On : Feb-08-2012

Appellant : Hemant Kumar Sharma

Respondent : Uoi and ors

Advocate for Def. : Mr. Jatan Singh

Advocate for Pet/Ap. : Mr. V. Shekhar, Mr. Abhigya, Ms. Deepakshi Jain

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: 8th February, 2012 + W.P.(C) 1347/2011 % HEMANT KUMAR SHARMAPetitioner Through: Mr. V. Shekhar, Sr. Adv. with Mr. Abhigya and Ms. Deepakshi Jain, Advs. Versus UOI and ORS. Respondents Through: Mr. Jatan Singh, CGSC. CORAM:- HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW JUDGMENT RAJIV SAHAI ENDLAW, J..

1. The petition impugns: i) the order dated 25.02.2011 of the respondent UOI relieving the petitioner "of his duties and post with immediate effect" as Chairman-cum-Managing Director (CMD) of M/s Satluj Jal Vidyut Nigam Ltd. (SJVN); ii) the Office Memorandum dated 31.12.2010 of the respondent No.3 Central Vigilance Commission (CVC) recommending initiation of minor penalty proceedings against the petitioner. As a consequence to the said two reliefs, the petition seeks extension of services of the petitioner as CMD of SJVN upto 31.07.2014, as

recommended by the Public Enterprises Selection Board (PESB), without getting influenced W.P.(C) No.1347/2011 *Page 1 of 14* by the recommendations / advice aforesaid of the CVC. The writ petition was accompanied with an application for interim relief seeking inter alia continuation of the petitioner as CMD of SJVNL..

2. Notice of the petition was issued on 28.02.2011 but the only interim relief granted was of making further arrangements with respect to the post of CMD subject to further orders of the Court. LPA No.222/2011 was preferred by the petitioner against the order of non grant of the interim relief sought but without any success. Pleadings have been completed and the counsels have been heard. Written submissions have also been filed by the petitioner..

3. The petitioner was vide order dated 18.07.2005 of the Ministry of Power, Government of India, acting on behalf of the President of India, and in pursuance of Article 32 of the Articles of Association of the SJVNL, appointed to the post of CMD of SJVNL with effect from the forenoon of 18.07.2005 for a period of five years or till the date of his superannuation or until further orders whichever event occurs the earliest. The said term of five years was going to end on 17.07.2010. Since the tenure of the CMD could be extended upto the date of superannuation and which the petitioner W.P.(C) No.1347/2011 *Page 2 of 14* was/is to attain on 31st July, 2014, the Ministry of Power, Government of India on 02.06.2010 referred the proposal for extension of tenure of the petitioner as CMD, SJVNL to PESB for a period upto 30.06.2014. The PESB recommended extension of tenure beyond 17.07.2010 till 30.06.2014. However since the proposal further required vigilance clearance from the CVC before seeking approval of the Appointments Committee of the Cabinet (ACC) and which process was likely to take some time, vide order dated 15.07.2010, the petitioner was permitted to continue to hold the charge of the post of CMD for a period of three months beyond 17.07.2010 pending consideration of the proposal for extension till 31.07.2014. Vide another order dated 15.10.2010, further ad-hoc extension of three months beyond 17.10.2010 i.e. till 17.01.2011 was given to the petitioner pending consideration of the proposal for extension till 31.07.2014..

4. According to the petitioner, at this stage, with the intent of denying extension to the petitioner an old case was raked up. However, according to the respondent the said case was brewing since before. It is undisputed that two complaints dated 20.09.2007 and 24.09.2007 had been received in the Ministry alleging irregularities in award of tender by SJVNL and on which factual report / comments of Central Vigilance Officer (CVO), SJVNL were W.P.(C) No.1347/2011 *Page 3 of 14* called for on 28.09.2007. The CVO, SJVNL submitted interim report dated 26.11.2007 and final report dated 31.03.2008 to the effect that of the six allegations, three were found genuine. One of the allegations was of laying down of minimum qualifications in the tender in a manner to make only a single party eligible therefor. The Ministry of Power on 22.07.2008 sought the comments of the petitioner on the said report. In the meanwhile, on 20.10.2008, CVO, SJVNL forwarded its report directly to CVC. The Ministry after receiving the comments from the petitioner called for further comments which were submitted on 12.05.2009. The CVC on the basis of the report received by it from the CVO, SJVNL directed identification of the names of the officers of SJVNL who had so restricted competition. However, since the names of the Board Level Officers were not indicated, CVO, SJVNL was asked to name the Board Level Officers responsible. The CVO, SJVNL vide his letter dated 16.09.2009 indicated the names of two Directors and the petitioner as CMD as the Board Level Officers responsible. Comments were thereafter called from the petitioner and the CVC, on 31.12.2010 after examining the case advised initiation of minor penalty proceedings against the petitioner and Director, Finance of SJVNL. The CVC accordingly denied vigilance clearance for extension of the tenure W.P.(C) No.1347/2011 *Page 4 of 14* of the petitioner as CMD. Accordingly, the petitioner was vide order dated 25.02.2011 impugned in this petition relieved from his duties..

5. At this stage, it may also be mentioned that upon the respondent No.1 scheduling interviews for appointment to the post of CMD, another application seeking stay thereof was filed which was dismissed vide order dated 02.08.2011..

6. The contention of the senior counsel for the petitioner is, that the advice of the CVC for initiation of minor penalty proceedings against him is not binding; that

vigilance clearance has been wrongly withheld; that the petitioner is being victimized to deny him his legitimate right of extension of tenure till 31.07.2014; that the representations of the petitioner have remained unheeded; that no inquiry for minor penalty proceedings also was initiated against him; that the ACC was not apprised of the facts; that a Board Level appointee has a vested right of extension till the age of superannuation; that the petitioner has an impeccable record of service and has earned laurels and also transformed SJVNL and made it attain the status of Mini Ratna Category-1. The senior counsel for the petitioner has W.P.(C) No.1347/2011 *Page 5 of 14* further argued that on the basis of a prima facie opinion of guilt inviting minor penalty, extension could not have been denied. Reliance is placed on: (i) Dr. Jose Paul Vs. UOI 77 (1999) DLT 653 (DB) on the scope of the powers under Article 226 of judicial review in the matter of appointment. (ii) A.K. Kapur, VSM (Major General) Vs. UOI 157 (2009) DLT 527 (DB) where ACC was directed to re-examine the matter for the reason of no results having been reported for 16 months on the case against the petitioner therein. (iii) A.K. Kapur, VSM (Major General) v. UOI 163 (2009) DLT 606 (DB) (iv) UOI Vs. Bhaskarendu Datta Majumdar IX (2010) SLT 102 where direction for reconsidering the case was issued finding no reason for rejecting the recommendations of the Selection Board..

7. The senior counsel for the petitioner has argued that the ACC in the present case was not given the unadulterated information. He has also W.P.(C) No.1347/2011 *Page 6 of 14* invited attention to the copy of the Cabinet Secretarys DO No. 27(18)/EO/86-ACC dated 12.12.1986 providing for approval of the ACC before termination of appointment i.e. refusing extension. On the basis thereof, it is contended that the Rule is of first considering extension depending upon the past performance and only if the past performance is found dismal is the fresh recruitment to be resorted to. He has further argued that since it is the case of the respondent UOI that the matter regarding irregularities aforesaid in tender was under consideration since 2008, the very fact that notwithstanding the same, the Ministry of Power as well as the PESB recommended extension for the petitioner and in fact granted extension albeit for three months only is indicative of the said irregularity not coming in the way of extension. He has also invited attention to the proposal dated 16.12.2010 of the Ministry of Power for grant of extension for one

year to the petitioner. Though the said proposal did not fructify, on the basis thereof, it is contended that the same is also indicative of the alleged irregularity being not a reason for not granting extension to the petitioner. Attention is also invited to the Office Memorandum No.104/33/2005-AVD.I dated 29.10.2007 of the Department of Personnel and Training qua guidelines regarding grant of vigilance W.P.(C) No.1347/2011 *Page 7 of 14* clearance to All India Services officers. On the basis thereof, it is contended that vigilance clearance is not to be withheld unless the officer is under suspension or is on the Agreed List or a chargesheet has been issued against him in a disciplinary proceedings and the proceeding is pending or unless orders for instituting disciplinary proceedings have been issued and the chargesheet is served within three months of such an order or unless the chargesheet has been filed in a Court by the investigating agency or when orders for instituting a criminal case against the officer have been issued or when sanction for investigation or prosecution has been granted or when an FIR has been filed and lastly when the officer is involved in a trap / raid case on charges of corruption and investigation is pending. It is thus contended that vigilance clearance cannot be withheld on the grounds of minor penalty being under contemplation. Mr. K.K. Rai, Senior Advocate who appeared for the petitioner on one of the dates of hearing, with reference to the order dated 04.02.2011 in W.P.(C) No.638/2011 earlier filed by the petitioner has also contended that the issue of minor penalty even if under contemplation ought to have been decided before taking decision on termination of the petitioner. He also contended that all that the W.P.(C) No.1347/2011 *Page 8 of 14* petitioner was claiming in the present petition was for the unadulterated facts to be placed before the ACC..

8. Mr. Jatan Singh learned counsel for the UOI has contended that the appointment of the petitioner was a tenure appointment and the petitioner had no vested right of extension. Reliance in this regard is placed on Shankar Raju Vs. UOI I (2011) SLT.

168. He has further contended that the Ministry of Power was bound by the advice of the CVC irrespective of departmental action and once the CVC had refused clearance to the petitioner, the question of his being entitled to extension does not arise. Reliance is placed on Centre for PIL Vs. UOI (2011) 4 SCC 1 where

principle of institutional integrity was laid down. He has further argued that even if the petitioner is good and has performed well as the CMD, that alone does not confer a right in him to extension if not above board. Mr. Jatan Singh learned counsel for the UOI in his list of judgments also included Nagar Mahapalika Kanpur Vs. Vibha Shukla (2007) 15 SCC 161 and Reji Kumar Vs. Director of Health Services, Kerala (2009) 16 SCC 385 qua fixed term appointments. W.P.(C) No.1347/2011 Page 9 of 14.

9. The counsel for CVC has invited attention to paras 24 to 26 of Y.N.P. Sinha Vs. UOI 95 (2002) DLT 186 laying down that even after a person is recommended by the PESB before his name is forwarded to the ACC, it is mandatory to obtain clearance from vigilance angle and for which clearance, scrutiny of his antecedents is to be done; that the words "scrutiny of antecedents" are of wide sweep and consideration would not be confined only in respect of cases wherein departmental proceedings or criminal proceedings are pending but would include those cases where allegations against such person are pending investigation; that any material can be relevant in this regard..

10. The senior counsel for the petitioner in rejoinder has referred to the SJVNL Conduct, Discipline and Appeal Rules to show the minor penalties and the procedure to be dealt therewith. Attention has also been invited to the dictionary meaning of the word "extension". Reference is further made to Dr. A.K. Doshi Vs. UOI (2001) 4 SCC 43 on the requirement to place all material before the ACC..

11. What strikes one as peculiar from the aforesaid narrative based on records is that the case of the petitioner is not of any person in authority W.P.(C) No.1347/2011 *Page 10 of 14* being inimical to him or being interested in denying extension to him. The pleadings are bereft of any names. The Supreme Court recently in THDC India Ltd Vs. Voith Hydro Gmbh Co. (2011) 4 SCC 756 also held that allegations of malafide and bias directed against an organization as a whole without naming any individual person cannot be accepted. The sole case of the petitioner was of an old matter being raked up at the time of consideration of his extension. However, the facts as aforesaid speak otherwise. The matter was certainly brewing since 2007-08, that is long prior to the consideration of extension

of the petitioner. It is also not in dispute that the CVC clearance was a must and was denied. The only question which thus remains for consideration is, whether any case for interference with the said denial of CVC clearance can be made out..

12. The CVC is a high level body and in the absence of any allegations of malpractices or bias therein, this Court cannot sit in appeal over its decision denying clearance to the proposal for extension of the petitioner. The proposal for extension mooted by the Ministry of Power, in the absence of any finding of guilt of the petitioner and the recommendation of the PESB which is concerned with the past performance of the petitioner do not confer any benefit on the petitioner. The questions of integrity and whether the W.P.(C) No.1347/2011 *Page 11 of 14* performance of the petitioner was honest were within the domain of CVC. The CVC on a consideration thereof has found the petitioner wanting and not entitled to such clearance for the reason of irregularities in the tender aforesaid. It thus cannot be said that the decision of the CVC is without any reason or basis. The arguments of the petitioner that the penalty is minor or that no proceedings with respect thereto have been taken are irrelevant in this regard. The CVC, as held by this Court in *Y.N.P. Sinha (supra)* is to "scrutinize the antecedents" and which words are of a wide sweep. The CVC before making its recommendations, though not to act arbitrarily, at the same time is not to comply with the principles of natural justice or render any finding as to the guilt of the petitioner. It was held that the opinion so formed by the CVC is not dependent upon whether chargesheet has been issued or is under contemplation or any criminal proceedings are pending or sanctioned. Once CVC on the basis of the material, which admittedly exists in the present case has come to the conclusion that clearance is to be denied, that is a reasonable exercise of power..

13. The Division Bench of this Court in *Waris Rashid Kidwai v. Union of India* (1998) III AD (Delhi) 113 held that in respect of Board level appointments, CVC acts as a watchdog and the person to be appointed to W.P.(C) No.1347/2011 *Page 12 of 14* such a post has to be above board and ought to have impeccable integrity. It was further held that the recommendations of the PESB are of no avail in as much as PESB is not concerned with the vigilance angle. Similarly this Court in *A.K. Chawla v. UOI* (1996) V AD (Delhi) 604 held that mere failure on the part of

the authorities to complete the appraisal before the expiry of the term itself would not entitle the incumbent to extension or to continue. I also find that a Division Bench of the Jharkhand High Court in Deobart Sahay v. UOI MANU/JH/0971/2003 in near similar facts held that extension in such cases is not a matter of right and no case of legitimate expectation also is made out..

14. As far as the argument of the senior counsel for the petitioner of unadulterated material having not been placed before the ACC is concerned, the same is without any basis. There is nothing to show that all the material was not placed before the ACC. Moreover, it is always open to the ACC, if desirous of, to seek further clarification. However, it is apparent that the ACC was satisfied with the rejection of vigilance clearance by the CVC. The petitioner on the basis of the said plea is merely seeking a second chance and which cannot be allowed. W.P.(C) No.1347/2011 Page 13 of 14.

15. No merit is thus found in the petition. The same is dismissed. No order as to costs. RAJIV SAHAI ENDLAW, J FEBRUARY 8, 2012 gsr W.P.(C) No.1347/2011 Page 14 of 14

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