



AFR

Reserve Judgment

Court No. - 8

Case :- WRIT - A No. - 4054 of 2022

Petitioner :- Deepak Yadav

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Dept. Of Home Confidential And Vigilance Lko. And 2 Others

Counsel for Petitioner :- Ghaus Beg, Lalta Prasad Misra

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Dr. Lalta Prasad Misra as well as Sri Ghaus Beg, learned counsel for the petitioner as well as Sri Rahul Shukla, learned Chief Standing Counsel appearing for the respondents.

2. By means of present writ petition the petitioner has assailed order passed by the State Government dated 27.04.2022, whereby an open inquiry is sought to be conducted by the Vigilance Establishment on the ground that respondents have already conducted an inquiry with regard to same allegations and no material was found against the petitioner and hence the proceedings were concluded in favour of the petitioner and by means of impugned order the petitioner is sought to be victimised and harassed yet again by holding vigilance inquiry.

3. Brief facts of the case are that the petitioner was initially appointed on the ex-cadre post of Assistant Director, City Cleansing Department, Nagar Malapalika, Kanour in the year 1991. Subsequently, petitioner's services were absorbed in the vacant post of Assistant Engineer (E/M) in the cadre of Centralized Services created under Rule 3 of the U.P. Palika (Centralized) Service Rules, 1966 and was further confirmed by order dated 11.05.1994. He was then promoted to the post of Chief Engineer (E/M) in 2016.

4. A complaint dated 25.04.2017, was made against the petitioner by one Vinod Kumar Pandey, Advocate alleging that petitioner while discharging his duties as Chief Engineer in Nagar Nigam, Lucknow had amassed huge property by corrupt means. On the basis of aforesaid complaint an inquiry was initiated by the State Government by order dated 15.11.2017. The inquiry was conducted by Economic Offences Wing Organization, Lucknow. In the said inquiry written and oral evidences were led and inquiry report was submitted on 14.06.2019. In the said inquiry report allegations against the petitioner could not be proved. The inquiry report was duly forwarded by the Additional Director General of Police, Economic Offences who vide letter dated 21.06.2019, informed the State Government that allegations regarding financial irregularities and financial embezzlement has not been proved but, for some other minor misconduct recommended for initiation of departmental proceedings against the petitioner.

5. Accordingly, departmental proceedings were initiated against the petitioner pursuant to which a show cause notice dated 09.10.2019 was given seeking his response. The State Government considering reply of the petitioner dated 27.02.2020 and 13.03.2020, passed an order dated 13.06.2020, whereby minor penalty of "censure entry" was imposed against the petitioner.

6. It is submitted by learned counsel for the petitioner that yet another complaint dated 09.08.2019 has been made by one Dr. S.K. Sharma, Advocate to the Chief Minister, U.P. levelling similar allegations of accumulating assets disproportionate to petitioner's known source of income. The said complaint has resulted in passing of the impugned order which has been challenged by the petitioner in the present writ petition.

7. The complaint made by Dr. S.K. Sharma, Advocate resulted in an inquiry by the Vigilance Establishment, Lucknow. After conducting the inquiry, a report was submitted on 03rd June, 2021, which is marked as "confidential" document and has been annexed alongwith the writ petition. In the inquiry report Superintendent of Police, U.P. Vigilance Establishment records that a complaint was received from Dr. S.K. Sharma, Advocate alleging that the petitioner has amassed huge wealth and property for himself as well as in the name of his relatives to the tune of nearly Rs.500 Crores.

8. During the inquiry it was found that income of the petitioner from all known sources was around Rs.1,06,67,598/- and he has acquired certain properties in Nainital and also that he has certain LIC policies. The income and assets of his wife were also taken into account and considered that petitioner has received remittances from his relatives living in UK, which has been shown to have been gifted to him.

9. Inquiry was concluded in his favour stating that the petitioner has been able to demonstrate that assets, commensurate with his income, but the inquiry officer only found that he had not informed the authorities with regard to acquisition of the properties for which further disciplinary proceedings were recommended.

10. Dr. L.P. Mishra, learned counsel for the petitioner while assailing the impugned order dated 27.04.2022, whereby open vigilance inquiry has been directed to be held against the petitioner, has submitted that present inquiry is being initiated on the basis of certain baseless and unverified evidences which are contrary to the Government Orders issued in this regard which provide that it is mandatory that allegations have to be supported by an affidavit. He submits that the Government Order dated 9th May, 1997, states that looking into the large number of complaints received with regard to higher officials mainly category I, it is provided that whenever a complaint is

received, from a MP/MLA or any other person holding high post, then firstly, it should be verified from the person making such complaint that he had infact made the said complaint. In case complaint is received from any other person then the complainant should be asked to submit his complaint on affidavit. Similar provisions were reiterated in the Government Order dated 1st August, 1997.

11. The second ground of challenge is that once an inquiry into the allegations with regard to accumulation of disproportionate assets has already been conducted and punishment of "censure" entry has been awarded, then it is not open for the Government to conduct another inquiry on the same set of facts. Counsel for the petitioner submits that second inquiry in the given circumstances would be impermissible and contrary to law and amounts to "double jeopardy" inasmuch a person can be punished only once for his misconduct and cannot be repeatedly punished for the same misconduct again and again as the same would be violative of Articles 14 and 21 of the Constitution of India.

12. Sri Rahul Shukla, learned Additional Chief Standing Counsel appearing for the respondents while opposing the writ petition has submitted that there are very serious allegations against the petitioner, who was holding post of Chief Engineer, Nagar Nigam, Lucknow. He submits that the petitioner was awarded punishment of "censure" entry on the ground that, on 02.04.2013 and 18.06.2013, petitioner had purchased fire arms and acquisition of the said fire arms was never informed to the State Government and for the said negligence a show cause notice was given to him pursuant to which "censure" entry was given to him only on the ground that he had informed the State Government about the aforesaid acquisition with delay. He further submits that punishment of 'censure' entry was not awarded to the petitioner for acquiring any of the properties for which earlier matter was inquired by the Economic Offence Wing, and therefore submitted

that both the allegations are distinct and different and hence vehemently opposed the arguments of the petitioner that he has been already punished for the same allegations.

13. Learned Additional Chief Standing Counsel has drawn attention of this Court to the confidential letter dated 03.06.2021 written by Superintendent of Police, U.P. Vigilance Establishment stating that on the basis of complaint dated 09.08.2019, made by one Dr. S.K. Sharma, Advocate, property of nearly Rs.500/- Crores have been acquired by the petitioner. The Vigilance Establishment was asked to enquire into the said matter by means of order dated 20.08.2020.

14. In pursuance to the aforesaid directions supplementary Intelligence Report was submitted to the State Government on 05.05.2022.

15. It has been further stated that details of the complaint were got verified from the complainant who submitted all the details to the Vigilance Establishment including bank details of Smt. Shalini Yadav, wife of petitioner. Cognizance has also been taken to a news report published in the media with regard to certain allegations with regard to the petitioner having accumulated assets more than his known sources of income.

16. The Vigilance Establishment conducted inquiry and submitted its report to the State Government on 03.06.2021. It has been informed that the State Government did not agree with the previous open Vigilance Inquiry and it has also been stated that in the earlier Vigilance Inquiry only 10 properties were subjected to scrutiny, but according to fresh complaint the petitioner is alleged to have amassed 14 properties which are subject matter of present inquiry.

17. The learned Additional Chief Standing Counsel has submitted categorically that the petitioner has not been punished in pursuance to the first inquiry conducted by the Economic Offences Vigilance

Department for amassing disproportionate assets, but had been awarded only 'censure' entry for tendering delayed information to the State Government with regard to acquisition of fire arm by the petitioner. It is stated that the issue pertaining to the allegations of corruption and also for accumulating disproportionate assets no formal inquiry or proceedings have been initiated against the petitioner, and it is only at the stage of preliminary inquiry.

18. It has further been submitted that on 28.09.2021, the Government being of the view that earlier inquiries have not been conducted in proper manner has rejected all the earlier inquiry reports and all the previous inquiry officers have been replaced with the direction to again inquire into the allegations against the petitioner and the inquiry need to be conducted by an officer not below the rank of Inspector General of Police.

19. It is in the aforesaid facts of the case that prayer has been made for quashing the impugned order whereby Vigilance Establishment has been asked to conduct an open inquiry against the petitioner. The said Vigilance inquiry has been assailed firstly on the ground that same has been initiated on the basis of baseless and unverified allegations, contrary to the provisions of Government Orders dated 9th May, 1997 and 1st August, 1997. In the first Government Order all the Principal Secretaries have been informed that in case a complaint has been made by officials occupying high positions, then it should be verified whether they had been sent by the complainant and in all the other matters the complainant should be asked to submit an affidavit, in support of his allegations leveled against the delinquent employee.

20. It is urged that the aforesaid provisions are mandatory and present inquiry being conducted contrary to the aforesaid Government Orders is a nullity hence deserves to be set aside.

21. Perusal of the complaints made against the petitioner reveal that while holding post of Chief Engineer of Nagar Nigam, Lucknow he is alleged to have purchased several properties and also created assets in his own name and that in the name of his relatives which cannot be explained from his known sources of income and hence there is presumption that he is engaged in corrupt practices. When ever there are allegations particularly relating to corruption or defalcation of funds from State exchequer, it is primary duty of the State Government to take immediate steps and hold preliminary inquiry to verify the veracity of the allegations, and stop any further such activity.

22. This Court is of the considered view that every rupee which is amassed by any person holding public office, through corrupt means infact is that money which should have been found its place in the State exchequer rather than pocketed in illegal, unjustified manner resulting in unjust enrichment of such public officials.

23. It is due to the fact that government functions as a trustee of the public funds and it is duty bound to protect and preserve the public money and undoubtedly prevent it from same finding its way into the hands of unscrupulous public servant.

24. In the present case, on the basis of one such complaint inquiry was conducted by the Economic Offences Wing where the report was submitted to the State Government on 18.06.2019, exonerating the petitioner where they inquired into ten properties acquired by the petitioner. In the present case the inquiry has been initiated pursuant to the complaint made by one Dr. S.K. Sharma, Advocate. The State Government proceeded to verify the contents of the complaints. The complainant provided details of his complaint and also provided material on the basis of which said complaint was made.

25. Dr. L.P. Mishra, learned counsel for the petitioner has submitted that unless the complaint is given on affidavit, the State Government cannot initiate any inquiry proceedings. To consider as to whether the provisions of the above two Government Orders requiring the complaint to be submitted on an affidavit are mandatory or directory, it will be useful to refer to some legal pronouncements of Hon'ble the Apex Court in this regard.

26. The Hon'ble Supreme Court in the case of **May George Vs. Special Tehsildar and Others, (2010) 13 SCC 98**, has stated the precepts, which can be summed up and usefully applied by this Court, as follows:

- (a) While determining whether a provision is mandatory or directory, somewhat on similar lines as afore-noticed, the Court has to examine the context in which the provision is used and the purpose it seeks to achieve;
- (b) To find out the intent of the legislature, it may also be necessary to examine serious general inconveniences or injustices which may be caused to persons affected by the application of such provision;
- (c) Whether the provisions are enabling the State to do some things and/or whether they prescribe the methodology or formalities for doing certain things;
- (d) As a factor to determine legislative intent, the court may also consider, inter alia, the nature and design of the statute and the consequences which would flow from construing it, one way or the other;
- (e) It is also permissible to examine the impact of other provisions in the same statute and the consequences of non-compliance of such provisions;

(f) Physiology of the provisions is not by itself a determinative factor. The use of the words 'shall' or 'may', respectively would ordinarily indicate imperative or directory character, but not always.

(g) The test to be applied is whether non-compliance with the provision would render the entire proceedings invalid or not.

(h) The Court has to give due weightage to whether the interpretation intended to be given by the Court would further the purpose of law or if this purpose could be defeated by terming it mandatory or otherwise.

27. Reference can be made to the following paragraphs of **May George (supra)** :

"16. In Dattatraya Moreshwar Vs. The State of Bombay and Others, AIR 1952 SC 181, the Court observed that law which creates public duties is directory but if it confers private rights it is mandatory. Relevant passage from this judgment is quoted below:

'7.....It is well settled that generally speaking the provisions of the statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

28. A Constitution Bench of the Apex Court in **State of U.P. and Others Vs. Babu Ram Upadhyaya**, AIR 1961 SC 751, decided the issue observing:

"29.....For ascertaining the real intention of the Legislature, the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

29. In **B.S. Khurana and Ors. v. Municipal Corporation of Delhi and Ors.**, (2000) 7 SCC 679], the Apex Court considered the provisions of the Delhi Municipal Corporation Act, 1957, particularly those dealing with transfer of immovable property owned by the Municipal Corporation. After considering the scheme of the Act for the purpose of transferring the property belonging to the Corporation, the Court held that the Commissioner could alienate the property only on obtaining the prior sanction of the Corporation and this condition was held to be mandatory for the reason that the effect of non-observance of the statutory prescription would vitiate the transfer though no specific power had been conferred upon the Corporation to transfer the property.

30. In **State of Haryana and Anr. v. Raghubir Dayal**, (1995) 1 SCC 133, the Apex Court has observed as under:

"5. The use of the word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, or consequences to flow from such construction would not so demand. Normally, the word 'shall' prima facie ought to be considered mandatory but it is the function of the Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and the consequences that would flow from the construction to be placed thereon. The word 'shall', therefore, ought to be construed not according to the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be described to the word 'shall'; as mandatory or as directory accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public, without very much furthering the object of the Act, the same would be construed as directory."

31. The purpose of the aforesaid government Orders is very clear which is to prevent unnecessary harassment to the public servant which may be occasioned by lodging of false and frivolous complaints by anonymous persons only with the oblique purpose of causing harm to the reputation and career such public servant, without there being any basis for the said allegations.

32. At this stage, we would hasten to add, the aforesaid Government Orders, on the other hand does not grant an omnibus or to prevent any inquiry where there are serious allegations of corruption, and the allegations are based on verifiable facts. In case there are serious allegations of corruption and amassing of property through corrupt means, then mere giving a list of property would be sufficient to initiate preliminary inquiry.

33. These Government Orders cannot be utilised by public servant to stall any inquiry, as this could never have been the intention of the State Government while passing the Government Orders. Where it is found that the allegations relate to actions/facts which are not in the public domain and are dependent upon the statements or material which can be disclosed only by private individuals, in such cases it would be necessary to proceed only when such allegations are made on affidavit, as most people tend to retract from their statements when asked to depose against a public servant during inquiry.

34. The provisions of Government Orders dated 9th May, 1997 and 1st August, 1997 are only to ensure that a public servant is not harassed and is not faced with baseless and false allegations. It is not the mandate of the said Government Orders that no preliminary inquiry can proceed unless and until the complaint is given on affidavit. It is only a measure as to filter baseless and motivated complaints and to provide guidelines to the authorities to see that a person making complaint is serious about his complaint and there is substantial material in the same and is not made with oblique motive without having any basis. The said Government Orders also do not prescribe the consequences of non compliance and therefore, this Court is of the considered view that the said Government Orders are, only 'guidelines' and are directory and not mandatory. Each complaint has to be examined individually to come to a conclusion as to whether the allegations are serious and worthy of an inquiry or are otherwise

baseless, made with intention to harass the Government servant. It is also noticeable that if after a complaint is made on the basis of an affidavit it has to be followed by an inquiry to verify the contents contained therein and in any case the affidavit in itself cannot be sole basis for taking any action against the delinquent employee.

35. Considering the facts on record specially considering the order dated 30th June, 2021, it is noticed that it is only after due diligence and after verifying the requisite facts, that the competent authority as well as the Vigilance Establishment proceeded to inquiry into the matter.

36. The arguments of learned counsel for the petitioner with regard to the said issue does not merit any interference and are hence, rejected.

37. The second ground for assailing the said Vigilance inquiry is the fact that in the present case where the petitioner has already been awarded punishment of 'censure', he cannot be proceeded against on the same set of facts and has invoked principle of "double jeopardy".

38. It has been brought forth clearly in the various documents annexed with the writ petition as well as stand taken by the respondents that punishment of 'censure' was awarded only because the petitioner has purchased fire arm and sought permission of the State Government after great delay. Issue of disproportionate assets and amassing wealth beyond known sources of income no departmental proceedings were ever initiated against him and no charge sheet was ever served on him. It has also come on record that with regard to inquiry conducted by the Economic Offices Wing and subsequently by the Vigilance department never attained finality and consequently it cannot be said that the petitioner is being punished again on the basis of facts on which the present inquiry is being conducted. The principle of "double jeopardy" is not applicable to the facts of the present case.

39. In the light of aforesaid decisions second ground raised by the petitioner is accordingly rejected.

40. It was further contended that once an inquiry is concluded in favour of the petitioner and inquiry report submitted the competent authority even conducted inquiry again on the same set of facts, would amount to harassment and may merit interference of this Court in exercise of powers under Article 226 of the Constitution of India.

41. It is noticed that on the first occasion there were allegations regarding purchase of only ten properties by the petitioner, and the inquiry report submitted by the Economic Offences Wing to the State Government was never accepted and hence subsequent Vigilance inquiry was initiated. The Vigilance Establishment also conducted inquiry and submitted its report to the State Government, which again was not accepted, as the State Government was of the opinion that inquiry was not conducted fairly and hence fresh inquiry is sought to be conducted on the basis of 14 properties acquired by the petitioner, by a senior Police Officer not below the rank of Inspector General of Police.

42. It has been vehemently submitted that four properties which are alleged to have been acquired by the petitioner were never subject matter of the earlier preliminary inquiries and hence it cannot be said that subject matter of the earlier inquiries are same as that of the present inquiry.

43. It cannot be said that the petitioner is being harassed. It was informed to this Court that now inquiry is being directed to be conducted by the officials not below the rank of Inspector General of Police to ensure that proper and fair inquiry is made into the allegations leveled against the petitioner.

44. It is further noticed that mere conducting preliminary inquiry cannot amount to harassment as at this stage the petitioner is not

subjected to any adverse consequences as a result of the said inquiry. The Vigilance inquiry is a fact finding inquiry where only veracity of the allegations are sought to be tested and it is only when the allegations are found to be correct then only disciplinary proceedings are initiated and the petitioner is given charge sheet.

45. Considering the aforesaid facts, this Court does not find any reason to interfere with the impugned order, whereby open Vigilance inquiry is sought to be initiated against the petitioner.

46. The writ petition being devoid of merits, is accordingly **dismissed**.

Order Date :- 05.08.2022

A. Verma

(Alok Mathur, J.)