SUPREME COURT OF INDIA

Muklesh Ali

Vs

State of Assam and Anr

Appeal (Civil) 3246 of 2005

(Dr. Ar. Lakshmanan and Altamas Kabir, JJ)

04.07.2006

JUDGMENT

DR. AR. LAKSHMANAN, J.

The appellant, Muklesh Ali, was working as Assistant Conservator of Forest, State of Assam, North Kamrup Division, filed the above appeal against the final judgment and order dated 5.5.2004 passed by the Gauhati High Court in Writ Appeal No. 133 of 2003 whereby the High Court dismissed the writ appeal filed by the appellant herein.

BACKGROUND FACTS:

The appellant while serving as Assistant Conservator of Forest in the year 1994 in the North Kamrup Division, Rangia respondent No.2, namely, The Secretary to the Government of Assam, Forest Department, by Notification dated 16.9.1994 placed him under suspension. By Notification dated 12.12.1994, the appellant was reinstated in his service. On 29.7.1997, the appellant was served with a memo to show cause containing as many as five charges along with the statement of allegations and list of documents and a list of witnesses giving ten days' time for filing written statement. The five charges against the appellant reads as under:

"Charge No.1: Connivance in illegalities for your personal gain causing colossal loss of revenue to the State Government exchequer.

Charge No.2 : Fraudulent issue of Transit Pass, connivance in illegality for personal gain.

Charge No.3 : Criminal misconduct, breach of trust, connivance in illegalities for personal gain.

Charge No.4 : Criminal breach of trust.

Charge No.5: Gross dereliction and willful negligence of duties, misuse of power for personal gain."

The appellant submitted his written statement as well as additional written statement in his defence. This Court, vide its order dated 15.1.1998, in Writ Petition (C) No. 202 of 1985 titled T.N. Godavarman Thirumalpad vs. Union of India passed a detailed order. In paragraph 27 of the said order, directions were issued to the State Government to identify within 45 days all those forest divisions where significant illegal felling of trees have taken place and initiate disciplinary/criminal proceedings against those found responsible. The States were further directed to submit First Action Taken Report in that regard to the Central Government within three months which were to be followed by Quarterly reports till the culmination of the matter. Paragraph 27 of the said order reads as under:

"27. The State Government shall identify within 45 days all those forest divisions where significant illegal fellings have taken place and initiate disciplinary/criminal proceedings against those found responsible. The first action taken report (ATR) in this regard shall be submitted to the Central Government within three months which shall be followed by quarterly reports (Qrs) till the culmination of the matter."

The Enquiry Officer, after concluding the enquiry, submitted his Report along with enclosures wherein it was found that the appellant was not guilty of the alleged offence. The report was submitted on 25.4.2000. On 1.11.2000, proceedings against the appellant were dropped with order directing that the suspension period of the appellant from 16.9.1994 to 12.12.1994 be treated as on duty.

This Court again vide its order dated 12.5.2001 in W.P.(C) No. 202 of 1995 passed certain directions. In paragraph 12 of the said order, this Court directed the Chief Secretaries of North Eastern States to immediately review the action taken against officials and other found responsible for significant felling of trees in terms of paragraph 27 of the order dated 15.1.1998. This Court further directed that an Action Taken Report should be submitted to this Court through an affidavit by the concerned Chief Secretaries within 60 days which inter alia should include their observations about adequacy of this action taken against the concerned officials. Paragraph 12 of the order reads as under:

"12. The Chief Secretaries of North Eastern States shall immediately review the action taken against

officials and others found responsible for significant illegal fellings as per para 27 of this Court's order dated 15.1.98 and those involved in movement of illegal timber seized confiscated by the Special Investigating Team. Wherever it is found that the action taken requires to be reviewed, the concerned State Government shall take appropriate steps be it in the nature of Departmental proceedings or criminal proceedings as many as be necessary to assure this Court that the State are serious in creating an environment of deterrence against illegal felling of trees. The Railways shall also review the action taken and take corrective measures required. An action taken report shall be submitted to this Court through an affidavit by the concerned Chief Secretaries within sixty days which inter alia should include their observations about adequacy of the action now taken against the concerned officials. The proceedings for confiscation of trucks and other vehicles used for movement of illegal timber, especially where such movement has taken place using fake/tampered/expired transit passes, may also be reviewed. Such review shall also be done by the Chief Secretary while taking half yearly view meeting as per para 27 of the Court's order dated 15.1.1998."

In pursuance of this Court's aforesaid order dated 12.5.2001, respondent No.2 by Memo dated 20.10.2001, directed the appellant to submit written statement as to why the decision intimated to the appellant vide order No. FRE.79/98/139 dated 1.11.2000 will not be reviewed asking the appellant to submit his written statement within ten days. The appellant challenged the validity and correctness of notice dated 20.10.2001 by way of filing writ petition before the learned single Judge of Gauhati High Court and the same was numbered as W.P.(C) No.8406 of 2001. The learned single Judge by his order dated 13.3.2003 dismissed the writ petition. Aggrieved by the said order, the appellant preferred a writ appeal before the Division Bench of the High Court and the same was numbered as W.A. (C) No. 133 of 2003. Vide its order dated 5.5.2004, the Division Bench dismissed the writ appeal filed by the appellant. Aggrieved by the said judgment, the appellant preferred the above appeal in this Court. We heard Mr. Rana Mukherjee, learned counsel appearing for the appellant and Mr. Riku Sarma, learned counsel appearing on behalf of the respondents. At the time of hearing, Mr. Rana Mukherjee drew our attention to the earlier proceedings initiated against the appellant under Memo dated 29.7.1997 and the two orders passed by this Court issuing certain directions on 15.1.1998 & 12.5.2001 in W.P.(C) No. 202 of 1985, annexures filed along with the writ petition and also in this appeal and the order passed by the learned single Judge and of the Division Bench. Mr. Rana Mukherjee, learned counsel appearing for the appellant, submitted that the orders passed by this Court on 15.1.1998 and 12.5.2001 were prospective in operation and not retrospective so as to include the case of the appellant for review of the concluded departmental proceeding in pursuance of the order dated 15.1.1998 as no action was taken against the appellant in pursuance of the said order. He would further submit that the respondents had no authority or jurisdiction to re-open the departmental proceedings which ended in favour of the appellant being not guilty. It has never been the case of respondent No.2 that the reviewing authority suo moto exercised the power of review under Rule 27 of the Assam Service (Discipline & Appeal) Rules, 1984, (hereinafter referred to as "the Rules"). Any such exercise of powers by the authority must be within the ambit and in terms of this Court's orders dated 15.1.1998 and 12.5.2001 which this Court never meant to be retrospective. Therefore, he submitted that the Division Bench was not justified in holding that the second show cause notice dated 20.10.2001 was issued on the basis of the directions of this Court. According to the learned counsel, the High Court was not justified in holding that the respondents have the power to review under Rule 27 of the Rules particularly, when the review was sought to be done in pursuance of this Court's orders dated 15.1.1998 and 12.5.2001. Per contra, Mr. Riku Sarma, learned counsel appearing for the respondents, submitted that the sole objective of the

two orders passed by this Court is to ensure that no guilty official is let scot-free and this objective has to be achieved by providing for 'Review Mechanism', whenever and wherever the State Government finds reasons to find fault with any disciplinary proceeding or enquiry procedural or substantive and it should be in the light of this main objective that the said two orders should be interpreted. He would further submit that in any case under Rules 26 and 27 of the Rules, the State Government can review any order passed or enquiry report submitted, independent of any order of any Court of law. Learned counsel further submitted that the notice dated 20.10.2001 for review of the Enquiry Report dated April 25, 2000 was without any mala fide intention nor was the same intended to affect the career of the appellant and that the said notice was issued in exercise of the powers of review given to the Government of Assam by Rules 26 and 27 of the Rules.

We have carefully gone through the entire pleadings, annexures, impugned judgments of the learned single Judge and of the Division Bench and all other relevant records. As already noticed, disciplinary proceedings were initiated against the appellant and he was placed under suspension and later was reinstated in service. He was served with a Memo dated 29.7.1997 to show cause certain charges . The appellant submitted his written statement as well as the additional written statement. In the meanwhile, this Court issued certain directions on 15.1.1998. The Enquiry Officer, after concluding the enquiry submitted his report wherein it was found that the appellant is not guilty of the alleged offence. The proceedings against the appellant were dropped on 1.11.2000 with the order directing that the suspension period of the appellant from 16.9.1994 to 12.12.1994 was to be treated as on duty. It has also never been the case of respondent No.2 that the reviewing authority suo moto exercised the power of review under Rule 27 of the Rules. Any such exercise of powers by the authority must be within the ambit and in terms of this Court's order dated 15.1.1998 and 12.5.2001 which this Court never meant to be retrospective. Therefore, we are of the opinion that the second show cause notice dated 20.10.2000 was issued on the basis of the directions of this Court. In other words, the High Court was not justified in holding that the respondents have power to review under Rules 26 and 27 of the Rules particularly, when the review was sought to be done in pursuance of this Court's order dated 15.1.1998 and 12.5.2001 mentioned above. The High Court, in our view, failed to interpret and judicially considered the order dated 12.5.2001 passed by this Court in Writ Petition (C) No. 202 of 1995 clearly mentioning that the review should be made by the Chief Secretaries only in respect of action taken after 15.1.1998 which was a matter of past. Hence, in our view, the learned single Judge and the learned Judges of the Division Bench completely misinterpreted and misread paragraphs 27 and 12 of the orders dated 15.1.1998 and 12.5.2001 respectively passed in W.P.(C) No. 202 of 1995 in coming to the conclusion that the case of the appellant was covered by the aforesaid two orders of this Court. The findings of the High Court, if followed, would create a chaos as it would mean that by virtue of the aforesaid orders passed by this Court all departmental proceedings concluded in the past would become liable to be opened as that would never have been intended by this Court.

According to the learned counsel appearing for the appellant, the mala fide action of the respondents in passing the order dated 20.10.2001 was passed at a time when the appellant's promotion to the post of Divisional Forest Officer had become due and the appellant had been deprived of enjoying his promotion in view of the purported review of the departmental proceedings already closed and sought to be reopened under the garb of orders dated 15.1.1998 and 12.5.2001 passed by this Court which are only prospective in operation. We find merit and substance in this contention.

This Court also did not intend to give retrospective operation of the two orders passed by it referred to in paragraphs supra and, therefore, the adequacy of the action taken cannot be a reason for reopening the concluded issue. This Court's directions were not intended to allow the State Government to reopen all or any proceeding which was logically concluded by accepting the enquiry report in which the State- respondents gave warning just cautioning to be careful in future as no direct guilt or wrong was attributed to the appellant by the enquiry officer. Hence, in our view, the order dated 1.11.2000 dropping the proceedings by the Government cannot be termed as letting the appellant off for any reason or any account of any laxity or lapse in the enquiry proceedings. This apart, the alleged offence of dereliction of duty was not found to be willful and, therefore, proceeding was dropped by accepting the enquiry report ended in favour of the appellant being not guilty.

The plea as to their exercise of review power under Rules 26 and 27 of the Rules was not taken either before the learned single Judge or before the Division Bench of the Gauhati High Court. Further no written plea or any oral argument was advanced in this regard and, therefore, we are of the opinion, that the Division Bench of the High Court was not justified in upholding the action of the respondents on the ground that the State has exercised the power under Rule 27 of the Rules. We have perused the Action Taken Report of the State of Assam in pursuance of this Court's directions contained in W.P.(C) No. 202 of 1995. Para 27 of the Report is as follows:

"Para 27 : Of the 28 divisions in the State, the areas of larger concern from the point of view of significant illegal fellings are Kamrup West, Sonitpur West, Dhubri, Nagaon and Nagaon South Divisions. Special protection measures are taken in the areas from time to time but this severely constrained for allocation of resources of fund/police force. Recently, combing operation has been initiated in Kamrup West Division on receipt of the report of large scale illegal fellings. 851 F.I.Rs have been lodged with the police. 371 vehicles seized, 2, 888 persons arrested, 92 departmental proceedings drawn up against the forest staff. The number of Government personnel against whom proceedings have been initiated division wise are as follows:

1. Sibsagar Division : 7 Nos.

2. Nagaon Division : 9 Nos.

3. Nagaon South Division : 5 Nos.

4. Goalpara Division : 9 Nos.

5. Darrang Division : 3 Nos.

6. Cachar Division : 18 Nos.

7. Kamrup West Division : 22 Nos.

8. Dhubri Division : 10 Nos.

9. Karimganj Division : 2 Nos."

It is pertinent to notice that the appellant was working as Assistant Conservator of Forest attached to North Kamrup Division and the North Kamrup is not part of the Action Taken Report. Common Cause, A Registered Society vs. Union of India & Ors. , : This case relates to the allotment of retail outlets of petroleum products by Minister concerned out of discretionary quota. This Court by its earlier decision held the allotments to be arbitrary, discriminatory and mala fide and set aside the allotments. This Court also held that the Minister committed misfeasance in public office. This Court issued show cause notice to the Minister. Accordingly, notice was issued as to why a direction be not issued to police authority to register a case and institute criminal prosecution against the Minister for criminal breach of trust or any other offence. This Court also ordered CBI to conduct investigation into offence of "criminal breach of trust" or "any other offence" and also awarded exemplary damages of Rs. 50 lakhs to be paid by the Minister to the Government Exchequer. Review Petitions were filed against these two judgments and orders. This Court while sustaining the earlier order setting aside 15 allotments of petroleum outlets and agreeing that there should be public accountability and transparency in administrative matters, held, there was error apparent on the fact of the record resulting in serious miscarriage of justice in regard to the decision about commission of misfeasance in public office by the Minister and directions for payment of exemplary damages of Rs. 50 lakhs and for investigation by CBI against the Minister, this Court held that part of the judgment not sustainable. Saghir Ahmad, J. speaking for the three Judge Bench in paragraph 176 of the judgment observed as follows:

"176. A man has, therefore, to be left alone to enjoy "LIFE" without fetters. He cannot be hounded out by the police or CBI merely to find out whether he has committed any offence or is living as a law- abiding citizen. Even under Article 142 of the Constitution, such a direction cannot be issued. While passing an order under Article 142 of the Constitution, this Court cannot ignore the substantive provision of law much less the constitutional rights available to a person."

Indian Bank vs. ABS Marine Products Pvt. Ltd. 2006 (4) SCALE 423: In Paragraph 23 of the above judgment, this Court (Dr. AR. Lakshmanan & R.V. Raveendran, JJ.) observed as follows:

"One word before parting. Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the

exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The Courts should therefore be careful to ascertain and follow the ratio decendendi, and not the relief given on the special facts, exercising power under Art. 142. One solution to avoid such a situation is for this Court to clarify that the particular direction or portion of the order is in exercise of power under Art.142. Be that as it may."

For the foregoing reasons, we are of the opinion that this appeal has absolute merits and the judgment passed by the learned Judges of the Division Bench of the Gauhati High Court affirming the judgment of the learned single Judge is bad in law and against the directions issued by this Court in W.P.(C) No. 202 of 1995 dated 15.1.1998 and 12.5.2001. We have, therefore, no hesitation to set aside the judgment passed by the learned single Judge and the Division Bench impugned in this appeal.

In the result, the appeal is allowed and the judgment of the High Court is set aside. However, there shall be no order as to costs. The appellant is not guilty as alleged by the respondents and as found by the High Court.

In view of the order now passed, the respondents should consider the name of the appellant for promotion and other consequential benefits at the relevant point of time. This exercise should be done within three months from the date of the receipt of this order and the appellant's seniority should be fixed at the appropriate place.

J