

SUPREME COURT OF INDIA

National Institute of Technology & Anr.

Vs.

Pannalal Choudhury & Anr.

C.A.No.5070 of 2008

(Vikratjit Sen and Abhay Manohar Sapre,JJ.,)

01.07.2015

JUDGMENT

Abhay Manohar Sapre,J.,

1. This appeal is filed against the final judgment & order dated 17.11.2006 passed by the High Court of Gauhati in W.A. No. 106/2004.
2. In order to appreciate the issue involved in this appeal, which lies in a narrow compass, it is necessary to set out the relevant facts in brief infra.
3. The appellant is a reputed Technical Educational Institute in the country. It is known as "National Institute of Technology" (hereinafter referred to as "NIT") at Silchar in the State of Assam. Till 28.06.2002, it was functioning as Regional Engineering College (hereinafter referred to as "REC ") in equal participation of State and Central Government. However, on and after 28.06.2002, it became fully owned Central Government Educational Institute under the exclusive control and supervision of Central Government and was accordingly named as NIT.
4. The respondent was originally appointed as Deputy Registrar (Accounts) on 17.07.1986 by the erstwhile REC in their Institute. After few years, the respondent, on being selected, was appointed as Registrar of the REC. However, he was asked to hold the post of Deputy Registrar (Accounts) till the said post was regularly filled up.
5. In the year 1994-95, it was noticed in the audit that while functioning as Registrar/Deputy Registrar(Accounts), the respondent had committed several serious financial as also administrative irregularities. The irregularities were related to the acts of insubordination, dereliction of duties while attending to the work of the Institute, suppression of facts from the higher authorities and misappropriation of Institution's funds thereby putting the Institute to suffer loss etc.

6. The Management of REC accordingly issued three show cause notices/charge sheets two on 24.10.1994 (Annexure-P-1collectively) and one on 01.02.1995 (Annexure P-3) to the respondent under Rule 9 of the Assam Services (Discipline and Appeal) Rules, 1964 (hereinafter referred to as “the Rules”). The details of the irregularities/misconduct committed by the respondent were enclosed with the charge sheets. The respondent was asked to file his written reply to the aforesaid charge sheets. He was also asked to inspect the relevant documents, if he so desired to do so.

7. The matter was accordingly placed in the 66th meeting of the Board of Governors (in short “BOG”) held on 07.12.1994 as agenda Item Nos. 7 (a) and 8 under the caption - “To receive a note of recent financial stalemate created by Shri Pannalal Choudhary, Registrar who was also holding the charge of Deputy Registrar (Accounts) and suggest remedial measures to avoid such situation in future” and second “To consider rectification of irregularities observed by A.G. Audit in the accounts of REC “Silchar”.

8. The BOG discussed the matter under reference in the said meeting and viewed the same as being serious because of nature of charges and the allegations made in support thereof. The BOG approved the action proposed, initiated and taken by the Principal & Secretary against the respondent so far and further directed to take next disciplinary step in consultation with the Chairman, BOG.

9. This led to constitution of an inquiry Committee consisting of three Members by the Management for holding a regular departmental inquiry into the charges leveled against the respondent. Out of three Members, one Dr. S.K. Das - Head of the Department of Humanities of REC Silchar was appointed as the Presiding Officer while Sri. R. Gupta, Head of the Department of Applied Mechanics and Sr. A.I. Laskar, Lecturer in the Department of Civil Engineering were the Members. Since the charges leveled against the respondent were serious in nature, the BOG, by order dated 17.02.1995 put the respondent under suspension pending departmental inquiry.

10. The Committee then issued notices to the respondent for his appearance on various dates such as 04.07.1995, 20.07.1995, 03.08.1995, 14.08.1995 and 27.12.1995 to participate in the inquiry but he failed to appear for the reasons best known to him. The Management accordingly examined four witnesses in support of the charges on 14.08.1995. Thereafter, on 27.12.1995 the respondent sent a letter to the Committee praying therein that since he has challenged his suspension order in Court, the departmental proceedings initiated against him be stayed awaiting the outcome of the Court proceedings.

11. The Committee considered the prayer made by the respondent and was of the view that in the absence of stay order passed by any Court, there is no justification to stay the departmental proceedings as prayed by the respondent. The Committee, therefore, rejected the prayer made by the respondent and issued another notice to the respondent requesting him to appear before the Committee on 10.01.1996. The respondent did not appear and hence the inquiry proceedings were adjourned for 18.01.1996. In the notice sent to the respondent for his appearance on 18.01.1996, it was specifically mentioned that in case the

respondent fails to appear on that date, no further notice would be sent to him of the proceedings. The respondent, despite service of notice, remained absent even on 18.01.1996. The Committee then concluded its proceedings on the basis of material produced before it by the Management and submitted its 16-page report on 29.02.1996 (Annexure-P-4), concluding therein that all the charges leveled against the respondent in 3 charge sheets stood proved.

12. On 11.03.1996, the report of the Committee was placed before the BOG in their 68th meeting as Agenda Nos. 6 and 24 to decide further action keeping in view the findings of the Committee. The BOG, after perusing the report, accepted all the findings of the Committee and accordingly resolved to impose punishment on the respondent. The BOG also authorized the Principal & Secretary to prepare the show cause notice and take necessary action as the Chairman/Board advises (Annexure-P-5) and do the needful in the matter.

13. Accordingly, a show cause notice was sent to the respondent on 07.06.96 (Annexure-P-6) by registered post along with the copy of the Inquiry report dated 29.02.1996 proposing therein the punishment of dismissal of the respondent from the service. Even after receipt of the show cause notice, the respondent did not file any reply. The Principal & Secretary accordingly informed the Chairman by his letter dated 01.07.1996 (Annexure-P-7) about non-submission of any reply by the respondent. The Principal & Secretary by his order dated 16.08.1996(Annexure-P-8) dismissed the respondent from the services of REC.

14. The matter was then placed before the BOG in their 69 th meeting held on 22.08.1996 as Item No. 2 for appropriate orders, if any, in relation to the respondent's services. The BOG, in express terms, after deliberating the matter approved the minutes of earlier meeting and also approved of the action taken against the respondent by the Principal & Secretary and accordingly noted its compliance made in that behalf.

15. It is with these aforementioned facts, which are undisputed, the respondent, felt aggrieved by the dismissal order dated 16.08.1996, filed writ petition before the High Court. The challenge to dismissal order in the writ petition was essentially on one ground, namely, that the authority, which passed the dismissal order, had no power to pass and hence it was illegal and thus liable to be set aside. It was contended that the power to pass the dismissal order, as per the Rules, vests with the BOG and hence only the BOG could pass such order. It was pointed out that since the dismissal order was passed by the Principal & Secretary, who had no authority to pass such order under the Rules, hence dismissal order was bad in law. It was also contended that even assuming that the BOG had delegated their powers in favour of Principal & Secretary to take appropriate disciplinary action against the respondent as their delegate, yet mere reading of the resolutions passed by the BOG in this behalf would go to show that no such power was conferred or/and delegated to the Principal & Secretary so as to empower him to pass dismissal order of the respondent.

16. The appellant (as respondent in the writ petition) while opposing the writ petition defended their action, which had culminated in respondent's dismissal from service and contended that it was passed as per the Rules. According to the appellant, the entire action proposed, initiated and eventually taken against the respondent which resulted in his

dismissal from service was taken by the BOG and later approved by the BOG in their meetings held on various dates and hence it was wrong on the part of the respondent to contend that the dismissal order was not passed by the BOG but was passed by the Principal & Secretary. It was pointed out that the Principal & Secretary was also authorized by the BOG to initiate and take disciplinary action against the respondent in consultation with the Chairman, BOG and do the needful, which he did pursuant to such power delegated to him, and later also sought its approval from the BOG. It was lastly contended that when the BOG, in their last meeting held on 22.08.1996 approved the entire action including passing of the dismissal order then all previous actions taken by the Principal & Secretary stood ratified by the BOG from the date they were taken and thus became legal and proper. The appellant also defended the entire departmental proceedings initiated against the respondent contending that the departmental proceedings were held in accordance with law by following proper procedure prescribed in the Rules and giving full opportunity to the respondent to defend and hence no flaw can be noticed in the proceedings.

17. As mentioned above, the writ court (single judge) allowed the respondent's writ petition and set aside the dismissal order dated 16.08.1996 on the short ground that since the competent authority did not pass the dismissal order prescribed in the Rules, i.e., the BOG, whereas it was passed by the Principal & Secretary who had no authority to pass such dismissal order under the Rules and hence it was liable to be set aside being against the rules. The writ court accordingly set aside the dismissal order dated 16.08.1996 with a direction to the appellant to reinstate the respondent in their services by giving him all consequential benefits.

18. Aggrieved by the said order, the appellant filed intra court appeal. By impugned order, the Division Bench concurred with the view taken by the Single Judge (writ court) dismissed the appellant's appeal. Challenging, the said order, the appellant filed this appeal by way of special leave before this Court.

19. Heard Mr. Manoj Goel, learned counsel for the appellants and Mr. Anshuman Sinha, learned counsel for contesting respondent No. 1.

20. Mr Manoj Goel, learned Counsel appearing for the appellant while assailing the legality and correctness of the view taken by the writ court and appellate court contended that both the courts below erred in allowing the respondent's writ petition and quashing the dismissal order dated 16.08.1996.

21. In the first place, learned counsel for the appellant contended that no fault could be noticed in the entire departmental proceedings, which eventually resulted in respondent's ouster from the services because it was conducted strictly in accordance with the Rules prescribed.

22. In the second place, his contention was that the Principal & Secretary was duly authorized by the BOG to initiate departmental proceedings and to take appropriate action in consultation with the Chairman of the BOG against the respondent. In support of his

contention, learned counsel placed reliance on various Resolutions passed by the BOG from time to time and, in particular, Resolutions dated 07.12.1994, 08.06.1995, 11.03.1996, and 22.08.1996.

23. In the third place, he contended that the BOG was involved in all the deliberations at every stage of the departmental proceedings as would be clear from the minutes of meetings of the BOG and hence it can not be said that the BOG did not take any decision or it was not aware of the proceedings or did not approve of the action taken against the respondent by the Principal & Secretary.

24. In the fourth place, it was contended that the entire action in question having been approved or/and ratified by the BOG in their last meeting held on 22.08.1996, whatever so-called defects even if existed in the departmental proceedings including passing of the dismissal order on 16.08.1996, the same stood ratified by the BOG in their meeting held on 22.08.1996 and hence no fault can be noticed in the proceedings.

25. In contra, learned counsel for the respondent supported the reasoning and the conclusion arrived at by the two Courts below and contended that no case is made out to interfere in the impugned order. Learned counsel then elaborated his submissions in support of the reasons rendered by the two Courts.

26. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in all the contentions urged by the learned counsel for the appellant. This we say so for the following reasons:

27. At the threshold, it is noticed that in the writ petition, the respondent had taken several grounds to challenge the dismissal order on merits. However, a perusal of order of the writ court would show that the writ petitioner did not press any of the grounds. The only ground, which he pressed, while prosecuting the writ petition, was that the order of dismissal was passed by the Principal & Secretary of the NIT, who had no authority to pass such order. Since the authority, to dismiss the respondent vested in the BOG of the NIT under the Rules and hence the dismissal order was bad in law. In view of the fact that the respondent did not press any of the grounds before the High Court except the one mentioned above we need not go into any of the ground. The only issue the High Court was called upon to decide was whether the removal of the respondent from service was by the competent authority?

28. The High Court, as mentioned above, allowed the writ petition holding that the impugned order of dismissal dated 16.08.1996 was, in fact, passed by the Principal & Secretary, who had no authority to pass such order under the Rules. It was held that the competent authority to pass the dismissal order under the Rules was the BOG. The High Court accordingly set aside the order of dismissal with a direction to grant all consequential service benefits to the respondent. In appeal filed by the appellant, the Division Bench concurred with the view taken by the Single Judge and accordingly dismissed the appellant's appeal, giving rise to filing of this appeal by the appellant (Management).

29. Before we proceed to appreciate the submissions, it is apposite to reproduce the relevant extracts of the meetings of the BOG, to show as to how the issue of the respondent was dealt with by the BOG:

(1) Minutes of the Meeting held on 07.12.1994

“Item-7(a): To receive a note of recent financial stalemate created by Shri Pannalal Choudhury, Registrar who was also holding the charge of Deputy Registrar (Accounts) and suggest remedial measures to avoid such situation in future: The Board approved the action taken by the Principal & Secretary, on the advice of the Hon’ble Chairman, BOG, regarding financial stalemate as ex-post facto. Further, while discussing various charges of insubordination, dereliction of duty, suppression of facts etc. brought against and accordingly charge-sheets served to Shri Pannalal Choudhury, Registrar who was also holding the charge of Deputy Registrar (Accounts), by the Principal & Secretary, the Board of Governors took the matter with all seriousness and directed the Principal & Secretary to take necessary legal advice for further disciplinary actions in consultation with the Hon’ble Chairman, BOG, REC Silchar.”

“Item-8: To consider rectification of irregularities observed by A.G. Audit in the accounts of Regional Engg. College, Silchar. The Board scrutinized various financial irregularities highlighted by A.G. Audit and also by the Principal & Secretary, BOG, and took the whole matter very seriously and directed the Principal & Secretary to take legal advice and draw disciplinary proceedings against Shri Pannalal Choudhury, Registrar who was also holding the charge of Deputy Registrar (Accounts). The Board further directed the Principal & Secretary, BOG, to take next disciplinary step in consultation with the Hon’ble Chairman, BOG.”

Minutes of the Meeting held on 08.06.1995 Item 6:

To decide on the case of Sri Pannalal Choudhury, Registrar (under suspension). Sri Pannalal Choudhury, Registrar was put under suspension on 17.02.1995 by the Secretary, Board of Governors obtaining necessary legal advice as well as the written directive by the Hon’ble Chairman, Board of Governors.

The Hon’ble Board in its 66th meeting vide Item No. 7(a) discussed various administrative charges of insubordination dereliction of duty, suppression of facts etc. and accordingly the chargesheets were served to Sri Choudhury. The Board then directed the Principal and Secretary to take necessary legal advice for further disciplinary actions in consultation with the Hon’ble Chairman, Board of Governors. And the Board in the same meeting vide item No. 8 also scrutinized various financial irregularities highlighted by the A.G. Audit and also by the Principal and Secretary. The Board took the whole matter very seriously and directed the Secretary to take further legal advice and draw disciplinary proceedings against Sri Choudhury. The Principal and Secretary accordingly took all necessary legal advice both from the

High Court and the District Court Advocates duly appointed by the College and a Board of Inquiry was constituted on May 6, 1995 with the following Members for the purpose of Departmental proceedings:-

1. Presiding Officer : Dr. S.K. Das

2. Members :

i) Dr. R. Gupta

ii) Prof. A.I. Laskar

3. Presenting Officer: Sri Sudipta Kr. Bhattacharjee [However, at present a new Presenting Officer Sri F.A. Talukdar, Lecturer, Deptt. Of Electrical Engg. has been appointed as Sri Sudipta Kr. Bhattacharjee has informed his inability to continue as Presenting Officer as he has applied for leave on medical ground.]

The Board of Inquiry has already completed its assigned job and the report of the Board will be placed on the table for detailed discussion by the Hon'ble Members of the Board of Governors and for necessary action thereafter.”

Minutes of Meeting held on 11.03.1996

“Item-6: To decide on the case of Shri Pannalal Choudhury Registrar (under suspension). The report of the Board of inquiry was placed before the Board and after a detailed discussion, the board authorized the Principal and Secretary to prepare a draft show cause notice on behalf of the Board to be served to Shri Pannalal Choudhury, Registrar (under suspension) for imposing the punishment and to send a copy of the same to the Ministry of Human Resource Development, New Delhi with a request to communicate their comments, if any, within 21 days. The board also authorized the Principal & Secretary to submit the draft show cause notice after expiry of the above period of the Ministry of Human Resource Development and after taking legal advice to the Chairman, Board of Governors for serving the said show cause notice by the Board to Sri Pannalal Choudhury, Registrar (under suspension) and to take necessary action as the Chairman/Board advices.”

“Item-24:

To decide on the misappropriation of college money by sri Pannalal Choudhury in his capacity as Deputy Registrar (Accounts). The Board discussed this item in relation to the item No. 6 and authorized the Principal Secretary to do the needful accordingly.”

(4) Minutes of Meeting held on 22.08.1996

“Item-2: To receive a note on the actions taken and progress made on the resolutions of the last meeting. Under item-6B68/96: In pursuance of the resolution and direction of the Board actions were taken and dismissal order had been issued to Sri Pannalal Choudhury, Registrar (under suspension) on 16.8.1996 and his name had been struck

off from the strength of the Regional Engineering College, Silchar Society. The Board noted the compliance of the action taken. The Board also noted the actions taken against item Nos.7, 8, 10, 15, 24 and 25 and approved the same.”

30. Reading of the aforementioned four Resolutions passed by the BOG in juxtaposition in no uncertain terms show that the BOG monitored, dealt with and eventually decided the case of the respondent in their various meetings since inception and also authorized the Principal & Secretary to deal with the same in consultation with the Chairman of Board of Governors and to do the needful by passing appropriate orders. It is also clear that in the last meeting held on 22.08.1996, the BOG approved the Resolution passed in the earlier 68th meeting held on 11.03.1996, which had dealt with the case of respondent at Item Nos. 6 and 24.

31. In our considered view, the expression “authorization” and “to take necessary action as the Chairman advises ”

in Item No. 6 and lastly, the expression “to do the needful accordingly” in Item No. 24 in the Resolution dated 11.03.1996 were wide enough to clothe the Principal & Secretary with a power to pass the dismissal order, if occasion so arises.

32. As rightly argued by the learned counsel for the appellant, the Resolutions authorizing the Principal & Secretary to pass appropriate orders rightly, did not use the expression “to dismiss the respondent” because at that point of time, the departmental inquiry was in contemplation against the respondent. It was, therefore, not known at that time as to what would be the outcome of departmental proceedings and secondly use of such expression in the Resolution before the start of departmental inquiry could have been construed as prejudging the issue against the respondent thereby indicating existence of bias attitude of the Members of the Board of Governors towards the respondent and lastly as said above, the three expressions used in the Resolution did clothe the Principal & Secretary with the power to pass appropriate orders which included the order imposing punishment of dismissal as prescribed in the Rules, against the respondent depending upon the outcome of the departmental inquiry and subject to grant of final approval by the BOG. Indeed the expression “and to take necessary action as the Chairman/Board advises” and "to do the needful" used in the Resolution were very apt words rightly used in the resolutions for taking intended action which was in contemplation, against the respondent.

33. In the light of aforesaid discussion and keeping in mind the contents of the Resolutions, it is difficult to agree with the view taken by the High Court that the BOG did not pass the dismissal order but it was passed by the Principal & Secretary. In other words, keeping in view the contents of the four Resolutions, we have no hesitation to hold that the dismissal order dated 16.08.1996 was passed by the BOG and the Principal & Secretary only signed the order for and on behalf of the BOG on the strength of authorization made in his favour by the BOG vide Resolution dated 11.03.1996.

34. That apart, the issue in question could be examined from yet another angle by applying the law relating to "Ratification" which was not taken note of by the High Court.

35. The expression “Ratification” means “the making valid of an act already done”. This principle is derived from the Latin maxim “*ratihabitio mandato aequiparatur*” meaning thereby “a subsequent ratification of an act is equivalent to a prior authority to perform such act.” It is for this reason; the ratification assumes an invalid act, which is retrospectively validated.

36. The expression “ratification” was succinctly defined by the English Court in one old case, *Hartman Vs. Hornsby* reported in 142 Mo 368 44 SW 242, 244 as under:

“ ‘Ratification’ is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance.”

37. The law of ratification was applied by this Court in *Parmeshwari Prasad Gupta Vs. U.O.I*.¹ In that case, the Chairman of the Board of Directors had terminated the services of the General Manager of a Company pursuant to a resolution taken by the Board at a meeting. It was not in dispute that the meeting had been improperly held and consequently the resolution passed in the said meeting terminating the services of General Manager was invalid. However, the Board of Directors then convened subsequent meeting and in this meeting affirmed the earlier resolution, which had been passed in improper meeting. On these facts, the Court held,

“Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance of the invalid resolution of the Board of Directors passed on 16-12-1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17-12-1953.”

38. This view was approved by this Court in High Court of Judicature for *Rajasthan Vs. P.P. Singh & Anr*.²

39. The aforesaid principle of law of ratification was again applied by this Court in *Maharashtra State Mining Corpn. Vs. Sunil*.³ In this case, the respondent was an employee of the appellant Corporation. Consequent to a departmental enquiry, he was dismissed by the Managing Director of the appellant. The respondent then filed a writ petition before the High Court. During the pendency of the writ petition, the Board of Directors of the appellant Corporation passed a resolution ratifying the impugned action of the Managing Director and

also empowering him to take decision in respect of the officers and staff in the grade of pay the maximum of which did not exceed Rs. 4700 p.m. Earlier, the Managing Director had powers only in respect of those posts where the maximum pay did not exceed Rs.1900 p.m. The respondent at the relevant time was drawing more than Rs.1800 p.m. Therefore, at the relevant time, the Managing Director was incompetent to dismiss the respondent. Accordingly, the High Court held the order of dismissal to be invalid. The High Court further held that the said defect could not be rectified subsequently by the resolution of the Board of Directors. The High Court set aside the dismissal order and granted consequential relief. The appellant then filed the appeal in this Court by special leave. Justice Ruma Pal, speaking for three- Judge Bench, while allowing the appeal and setting aside of the Court held as under :

“The High Court rightly held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act could not be subsequently “rectified” by ratification of the competent authority. Ratification by definition means the making valid of an act already done. The principle is derived from the Latin maxim *ratihabitio mandato aequiparatur*, namely, “a subsequent ratification of an act is equivalent to a prior authority to perform such act.” Therefore, ratification assumes an invalid act which is retrospectively validated.”

“In the present case, the Managing Director’s order dismissing the respondent from service was admittedly ratified by the Board of Directors unquestionably had the power to terminate the services of the respondent. Since the order of the Managing Director had been ratified by the Board of Directors such ratification related back to the date of the order and validated it.”

40. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16.08.1996 was passed by the Principal & Secretary who had neither any authority to pass such order under the Rules nor there was any authorization given by the BOG in his favour to pass such order yet in our considered view when the BOG in their meeting held on 22.08.1996 approved the previous actions of the Principal & Secretary in passing the respondent's dismissal order dated 16.08.1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal & Secretary to dismiss him stood ratified by the Competent Authority (Board of Governors) themselves with retrospective effect from 16.8.1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in Rules.

41. In such circumstances, the respondent's grievance that the dismissal order had not been passed by the competent authority, i.e., the BOG is no longer survived.

42. In the light of foregoing discussion, we differ with the view taken by the High Court and accordingly hold that the dismissal order dated 16.08.1996 was passed by the Competent Authority, namely, the BOG as prescribed in the Rules and hence it was legal and proper. It is accordingly upheld.

43. As already mentioned above, no other point was urged by the respondent in the writ petition and also in intra court appeal of the appellant by filing cross objection therein for assailing the legality and correctness of the dismissal order on other grounds except the one which we have decided. It is, therefore, not necessary to go into any other question.

44. In view of foregoing discussion, the appeal succeeds and is hereby allowed. The impugned order is set aside. As a consequence, the writ petition filed by the respondent stands dismissed. No costs.

Judgment Referred.

¹(1973) 2 SCC 0543

²(2003) 4 SCC 0239

³(2006) 5 SCC 0096