

THE INDIAN OIL CORPORATION & ORS.

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v.

AJIT KUMAR SINGH & ANR.

(Civil Appeal No. 3663 of 2023)

MAY 17, 2023

B

[ABHAY S. OKA AND RAJESH BINDAL, JJ.]

Service Law: Disciplinary proceedings – Scope of judicial review – Bid tampering matter, wherein disciplinary proceedings initiated against two employees – Order of imposition of major penalty of withholding five annual increments against the respondent no. 1 and punishment of reduction to a lower grade against the other employee – Order of punishment against the respondent no.1 upheld by the appellate authority as also the Single Judge of the High Court – However, the punishment imposed set aside by the Division Bench – On appeal, held: During the course of inquiry, fair opportunity of hearing was afforded to the respondent no.1 at every stage – This was even found by the Single Judge – However, the Division Bench of the High Court dealt with in a manner as if it was the first stage of the case, namely, the inquiry was being conducted and inquiry report was being prepared, which is not the scope in judicial review – Division Bench of the High Court proceeded to reappreciate the entire evidence – When the changed form of quotation also contained signature of respondent no.1, it clearly established his involvement in the tampering of document – Division Bench of the High Court failed to notice the same, thus, the order passed by the Division Bench set aside and that of the Single Judge restored – Judicial review.

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Deputy General Manager (Appellate Authority) vs. Ajai Kumar Srivastava (2021) 2 SCC 612; Ex-Const/Dvr Mukesh Kumar Raigar vs. Union of India and Ors. (2023) SCC Online SC 27 – referred to.

G

Case Law Reference

(2021) 2 SCC 612

referred to

Para 6

CIVIL APPELLATE JURISDICTION: Civil Appeal No.3663 of 2023.

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A From the Judgment and Order dated 28.02.2019 of the High Court of Judicature at Patna in LPA No. 1593 of 2015 in CWJ No. 2176 of 2004.

V. N. Koura, Mrs. Paramjeet Benipal, Sirish Kumar, Avneesh Arputham, Ms. Anuradha Arputham for M/s. Arputham Aruna and Co.,
B Advs. for the Appellants.

Navaniti Pd. Singh, Sr. Adv., Vaibhav Niti, Ms. Sayaree Basu Mallik, Md. Madhavi Agrawal, Advs. for the Respondents.

The Judgment of the Court was delivered by

C **RAJESH BINDAL, J.**

1. Aggrieved against the order passed by the High Court of Judicature at Patna in Letters Patent Appeal No. 1593/2015 dated 28.2.2019, the present appeal has been filed. Vide aforesaid order, the judgment and order of the learned Single Judge of the High Court dated 25.6.2015 in CWJC No. 2176/2004 was reversed.
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2. The brief facts as available on record are that on 30.6.2001, tender notice was issued by the Appellant Corporation for the job of 'Repair of Surface Drain and Tank Pad and Tank No. 235, 236 and 237 inside Refinery' (Barauni Refinery), in which three bidders participated. Technical bids were opened on 24.8.2001. However, the price bids were not opened on that day and were kept with the remarks 'not opened today' in the table drawer of K.C. Patel under lock. The keys thereof were available with him and respondent no.1, Ajit Kumar Singh. Price bids were opened on 1.10.2001. Form of quotation submitted by each bidder was signed by K.C. Patel and G.S. Mahto. Entries were made in the register. While preparing the comparative table on 3.10.2001 K.C. Patel noticed change in the price bid of M/s. B.S. Jha as compared to the quoted price in the form of quotation, which was recorded on 1.10.2001. The signatures of K.C. Patel were missing in the changed form of quotation of price bid of M/s. B.S. Jha. There was over-writing in the quoted percentage wherein digit '9' in the figure of '9.6' was over-written as '5'. M/s. B.S. Jha, who was the second lowest bidder (L-2) when the price bids were opened on 1.10.2001, was found to be the lowest bidder (L-1). The matter was not reported to the higher authorities. Efforts were made to trace the original form of quotation. When it was not found, the matter was brought to the notice of the
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H higher authorities.

3. G.S. Mahto confessed that at the instance of M/s. B.S. Jha along with B.K. Mishra, he replaced the form of quotation/price bid and destroyed the originals thereof so that the firm comes at L-1. Inquiry was initiated against them. The envelope containing the price bid of M/s. Laxmi Singh was also sent to the Central Forensic Institute, Bureau of Police Research & Development, Kolkata, vide letter dated 8.4.2002. The report established that the said envelop had been tampered with by opening and then resealing. Considering the fact that the envelopes containing bid were kept in a drawer of which a duplicate key was available with the respondent no.1, chargesheet was issued to him to explain as to why departmental proceedings be not initiated against him for changing the form of quotation/ price bid of M/s. Laxmi Singh to enable him to be L-1 in the tendering process. Simultaneously, chargesheet was also issued to K.C. Patel for tampering with the quotation of price bid of M/s. Laxmi Singh. Since the response to the show cause notice was found to be unsatisfactory, departmental proceedings were initiated against the respondent no.1 and K.C. Patel. In the Inquiry Report, the Inquiry Officer opined that there was tampering with the bids. It was found that tampering was done in the case of tender of bidders M/s. Laxmi Singh and M/s. B.S. Jha. The changed form of quotation of M/s. Laxmi Singh contained the original signature of respondent no.1. The charges were proved. The report was forwarded to the Disciplinary Authority. Copy was sent to the respondent no.1 to enable him to make representation. The respondent no.1 filed representation against the Inquiry Report. After considering the same, the Disciplinary Authority vide order dated 7.8.2003 imposed major penalty of withholding five annual increments with cumulative effect, effective from 1.1.2004. To put the record straight, it is added that K.C. Patel was inflicted punishment of reduction to a lower grade. The appeal preferred by the respondent no.1 against the order of punishment was dismissed on 18.11.2003. Thereafter, the respondent no.1 filed a writ petition challenging the order of Disciplinary Authority as well as the Appellate Authority, which was dismissed by the learned Single Judge. However, in the intra-court appeal, the order of the Single Judge was reversed and the punishment imposed on the respondent no.1 was set aside. It is the aforesaid order which is impugned in the present appeal.

4. The argument raised by the learned counsel for the appellant was that in the matter of judicial review only scope for interference by the High Court in the disciplinary proceedings is to see as to whether the

- A due process was followed during the course of inquiry and fair opportunity was given to the employee concerned. Threadbare evidence could not be examined, that too in an intra-court appeal, when the order of punishment and the appellate order were already upheld by the Single Bench of the High Court. It was a case in which tampering in the price bid was found to be fully established from the report of Central Forensic Institute, Bureau of Police Research & Development, Kolkata. During the period tampering was done, the bid documents were lying in the joint custody of the respondent no.1 and K.C. Patel. Most important part was that on the changed form of quotation of M/s. Laxmi Singh, original signature of respondent no.1 was found. It was not possible unless he was involved. The order passed by the Division Bench was to be set aside.

5. On the other hand, learned counsel for the respondent no.1 submitted that the injustice done to the respondent no.1 was corrected by the Division Bench of the High Court. The appellants should not have any grievance against that. Merely because the duplicate key of the drawer in which the bid documents were kept was with the respondent no.1, he cannot be made liable for any tampering or replacing of the bids. In fact, he has been made a scapegoat by the other employees. The respondent no.1 is already suffering in the process for last more than two decades. There is no error in the order passed by the Division Bench of the High Court. The appeal may be dismissed.

6. The facts of the case leading to the issuance of chargesheet, initiation of departmental inquiry, the report of the inquiry officer and the punishment inflicted upon respondent no.1 have already been narrated in the preceding paragraphs. It is not in dispute that during the course of inquiry, fair opportunity of hearing was afforded to the respondent no.1 at every stage. This was even found by the learned Single Judge while dismissing the writ petition challenging the punishment inflicted upon him. The judgment passed by the Division Bench of the High Court shows that matter was dealt with in a manner as if it was the first stage of the case, namely, the inquiry was being conducted and inquiry report was being prepared, which is not the scope in judicial review. The views expressed by this Court on the scope of judicial review in Deputy General Manager (Appellate Authority) vs. Ajai Kumar Srivastava¹, are extracted below:

H ¹(2021) 2 SCC 612

“24. It is thus settled that the power of judicial review, of the constitutional courts, is evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.

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28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

(emphasis supplied)

Similar view was expressed in the later judgment of this Court in Ex-Const/Dvr Mukesh Kumar Raigar vs. Union of India and Ors.²

7. If the facts of the case are examined in the light of the settled principles of law in scope of judicial review, we find that the Division Bench of the High Court proceeded to reappraise the entire evidence

² (2023) SCC Online SC 27

- A as if conviction in a criminal trial was being re-examined by the next higher court. The stand taken by the respondent no.1 was that he was on leave and there was no question of his tampering with any document. His contention was that merely because he had the duplicate key of the drawer where the documents were kept, he cannot be made responsible for any tampering. However, there was no answer to the finding recorded
- B by the Inquiry Officer in the Inquiry Report, namely, that the changed form of quotation of M/s. Laxmi Singh contained original signature of respondent no.1. The fact that this “Form of quotation” was changed is not in dispute. When the changed form of quotation also contained signature of respondent no.1, it clearly established his involvement in the
- C tampering of document. This fact has not even been noticed by the Division Bench of the High Court.

8. For the reasons mentioned above, the appeal is allowed. The impugned order dated 28.2.2019 passed by the Division Bench of the High Court in Letters Patent Appeal No. 1593/2015 is set aside and the
- D order dated 25.6.2015 passed by the Single Judge in CWJC No. 2176/2004 is restored.

Nidhi Jain
(Assisted by : Rakhi, LCRA)

Appeal allowed.