

Delhi High Court

S.S. Tyagi vs Central Bureau Of Investigation on 23 March, 1995

Equivalent citations: 1995 CriLJ 2872, 1995 (33) DRJ 155

Author: V Jain

Bench: V Jain

JUDGMENT Vijender Jain, J.

(1) The short question involved in this case is whether the order of the learned Special Judge dated 23.3.1994 and framing of charge dated 8.8.1994 can be sustained in the eyes of law. Mr.Talwar, learned counsel for the petitioner has contended that the respondent-CBI filed a charge-sheet under Section 120B read with Section 420 Indian Penal Code and Section 5(2) read with Section Section 5(1)(d) of the Prevention of Corruption Act against the petitioner, I.K.Sharma Ias, L.K.Joshi Ias, D.P.Bahuguna and Prakash Chand Gupta.

(2) It is the case of the petitioner that as per the impugned order, the petitioner was appointed as 'Tehsildar' under Section 4(2) of the Delhi Development Act, 1957 (hereinafter referred to as " Act") and as such sanction of his prosecution was to be given by the Delhi Development Authority (hereinafter referred to as "Authority") and not by the Chairman of the Authority. Mr.Talwar has contended that Chairman at the first instance is not the authority as contemplated under the Schedule of the Act and also submitted that in the exercise of powers conferred by Section 57 of the Act the Authority made rules with the approval of the Central Government called the 'Delhi Development Authority (Salaries, Allowances and Conditions of Service) Regulations, 1961' and according to that Regulations and Schedule of the Act, the petitioner would fall in Class-II category of posts and for Class-II category of posts, it is the authority which is empowered to appoint such class of officers as per the Schedule. Mr.Talwar has further contended that Vice-Chairman of the Authority is empowered as per the said Schedule to impose minor penalties on the said category of Class-II Officers and for all major penalties it is the Authority and none else who can impose penalties. What Mr.Talwar has contended is that according sanction for prosecution is a major penalty and it ought to have been accorded by the Authority in this case. No sanction accorded by the Chairman of the Authority in the absence of any resolution of the Authority is without the sanction of law and illegal and on this ground alone he has argued that the impugned order is bad in law and should be set aside.

(3) On the other hand, Mr.Lal, learned counsel for the respondent-CBI, has vehemently contended that the Chairman of the Authority has got power to grant sanction for the prosecution of the petitioner. Mr.Lal has contended that the Chairman is an authority as defined under sub-section 3 of Section 3 of the Act. What Mr.Lal has tried to convass before me is to read in sub-section 3 to hold that the Chairman is an authority to exercise the power independently by virtue of being the Chairman of the Authority. Sub-section 3 of Section 3 of the Act is as under |-

"(3)The Authority shall consist of the following members, namely|-

(A)a chairman who shall be the Administrator of the Union territory of Delhi, ex officio;

(B)a vice-chairman to be appointed by the Central Government;

(C)a finance and accounts member to be appointed by the Central Government;

(D)an engineer member to be appointed by the Central Government;

(E)as and when the Municipal Corporation of Delhi is established, two representatives of that Corporation to be elected by the councillors and aldermen of the Corporation from among themselves;

(F)as and when the Metropolitan Council for the Union territory of Delhi is constituted, three representatives of that Council to be elected by the members of the Council from among themselves, and until that Council is constituted, three representatives of the Interim Metropolitan Council from among themselves;

(G)three other persons to be nominated by the Central Government, of whom one shall be a person with experience of town planning or architecture; and (H)the Commissioner of the Municipal Corporation of Delhi, ex officio.

(4) From the plain reading of sub-section 3 of Section 3 of the Act, the arguments of Mr.Lal cannot be sustained. What has been described in sub-section 3 of the Act is how the authority of the Delhi Development Authority can be constituted. The Lt.Governor is only one of the components of the Authority. The legislative intentions are manifest in the plain language of sub-section 3 which lays down that the Authority shall consist of the said members and the Chairman being one such members and to ascribe to any other meaning to the plain language of this Section is neither fair nor legal.

(5) The Regulations and Schedule framed under the provisions of the Act which is passed by the Parliament cannot be relegated to the interpretation of one member whether he is the Chairman or the Vice-Chairman of the Authority. What is required under law has to be given its due weight and meaning. This Court has the occasion to deal with a matter pertaining to Class-I Officers of the Authority where identical questions were raised by the respondent-DDA in R.P.Sharma v. Vice-Chairman Delhi Development Authority Civil Writ No.2402/1991 decided on 23.9.1993, the Division Bench of this Court held in the said case |- ".....WHENa law requires a thing to be done in a particular manner it cannot be done in any other manner..... It could not have one so only if section 57 of the Act provided otherwise and specific power was with the D.D.A. for the purpose.

(6) MR.LAL has also contended that this authority dealt with the case of Class-I category of posts and not to Class-II category of posts to which the petitioner belongs. In my opinion this will hardly make any difference as the principle of law which has been determined by the Division Bench holds good. My attention has also been drawn that against the decision of the judgment in the case of R.P.Sharma's case (supra), the Authority filed a Special Leave Petition No.20926/93 with Special Leave Petition Nos.561/94 and 566/94 in the Supreme Court and that were disposed of in terms of the following order |-

"MR.Arun Jaitley, learned senior advocate, fairly states that in view of the Standing Order 207(E) dated 1.3.94 the petitioner, Delhi Development Authority will take action under the said Notification. He prays for leave to withdraw. Leave is granted without prejudice to the right of the petitioner to take action against the respondent under the said Notification.

INTERIM order will continue for a period of three weeks to enable the Delhi Development Authority to initiate action under the said Notification. We make it clear that by this Order we have not gone into the question of law involved in this case."

(7) On the last few hearings, I had specifically asked Mr.Lal, learned counsel for the respondent, as to whether in deference to the statement made by the Counsel for the Delhi Development Authority in that Special Leave Petition, certain modifications or amendments as per law have been carried out by the Authority or not and if such amendments have been carried out whether the sanction as contemplated under the law or amended provisions of law has been taken. On persistent enquiry, no affidavit has been filed on behalf of the respondent as to whether any amendment in the Regulation or Schedule in accordance with law has been carried out or not. I do not find any merit in the contentions of the learned counsel for the respondent. The case reported in 1982 Cr.L.J.73, which he has cited in the present case, is not applicable because in the present petition it is not a question of exercising power by superior officer for grant of sanction. What this Court has to see in this particular case is whether the sanction accorded is by an authority which is prescribed under law or not. The answer in this case is in negative. As sanction has not been accorded by the Authority, the sanction by the Chairman is no sanction in the eyes of law.

(8) In view of the above observations, I allow the petition and set aside the impugned order of the Trial Court. Petition stands disposed of accordingly.