

CASE NO.:
Appeal (civil) 851 of 2005

PETITIONER:
M/S Goa Shipyard Ltd.

RESPONDENT:
Babu Thomas

DATE OF JUDGMENT: 30/05/2007

BENCH:
H.K. SEMA & R.V. RAVEENDRAN

JUDGMENT:
JUDGMENT

H.K.SEMA, J.

The challenge in this appeal is to the order of 25th November, 2003 passed by the Division Bench of the High Court of Bombay at Goa in Civil Writ Petition No. 414 of 1997 whereby the order of dismissal of the respondent dated 21.1.1997 dismissing him from service passed by the Chairman and Managing Director and also the order of the Appellate Authority (Board) of 27.9.1997 confirming the order of dismissal were set aside. This appeal is preferred by M/s Goa Shipyard Ltd.

Few facts may be noted.

2. The respondent was appointed by Chairman and Managing Director as Joint Manager (Security) by an order dated 18.1.1991. On 26.8.1991 he was given additional charge as officiating Manager-Personnel and Administration. It is stated that on 14.9.1994 the respondent was caught red handed by C.I.D./Crime Branch of Goa Police while demanding illegal gratification of Rs.20,000/- from one Shri Chennaiah, a cleaning labour contractor employed by the appellant. He was placed under suspension by an order dated 15.9.1994 in contemplation of the disciplinary proceedings. On 15.12.1994, 13 counts of charges were levelled against the respondent namely (i) demanding and collecting illegal gratification, (ii) accepting bribe of illegal gratification for recruitment in Petitioner company, (iii) withholding authorised payments for extorting money or bribe, (iv) financial loss caused to the company by misleading the Management by intentionally furnishing wrong advice; (v) misuse of contract employee; (vi) violation of company's policy on recruitment; (vii) creating of new posts and converting security assistants as Personnel Administration Assistants without sanction of the appropriate authority; (viii) attempt to extort money from contractors; (ix) prejudicing the company and its contractors by influencing a wage agreement; (x)(a) financial irregularities, improprieties and fraud and non accounting of company's funds; (x)(b) wrongful appropriation of money from the imprest account of Shri M.R. Furtado; (x)(c) non-accounting of appropriation of advance drawn by Shri M.R. Furtado; (xi) possession of pornographic materials; (xii) misuse of company's car; and (xiii) unauthorized telephone bills of office and residential phones.

3. On 4.1.1995 one Shri N.P. Kumar was appointed as an

Inquiry Officer. The respondent in the interregnum filed Writ Petition No.137 of 1995 before the High Court of Bombay at Goa challenging the inquiry proceedings on the grounds that relevant documents were not furnished to him, legal assistance was not provided and subsistence allowance was not correctly paid. The High Court by its interim order dated 2.5.1995 granted interim stay of inquiry proceedings. By another order dated 10.7.1995 the High Court vacated the interim stay and allowed the disciplinary authority to proceed in accordance with principles of natural justice and in accordance with law and directed the appellant to furnish copies of all relevant documents to the respondent. The Writ Petition was disposed of on 26.7.1995 directing the appellant to complete the disciplinary proceedings within four months and the respondent was also allowed to be represented by a lawyer of his choice during the disciplinary proceedings. In the interregnum Cmdr. S.K.Mutreja was appointed as an Inquiry Officer in place of Shri N.P. Kumar, who has since resigned.

4. The conduct and discipline of all officers of the appellant were governed by the Goa Shipyard Officers' Conduct, Discipline and Appeal Rules, 1979 ('CDA Rules' for short). On 15.12.1995, an amendment to the CDA Rules proposing substitution of the Schedule to the said Rules, was circulated to the Board of Directors, vide Circular Board Resolution No. 13 of 1995 for approval by circulation. The purpose of the proposed amendment was to redesignate the Disciplinary, Appellate and Reviewing Authorities for imposing minor and major penalties. The said amendment to CDA Rules were approved by circulation, by the Board of Directors. On 29.3.1996 CMD issued a Circular notifying all employees, that the amendment to the CDA Rules were approved and that the amendments came into force with effect from 08.01.1996. The said amendment inter alia substituted the General Manager/Functional Director as Disciplinary Authority in place of 'Board' and CMD as Appellate Authority in place of 'Board' for imposing major penalties in the cases of officers (upto and inclusive of Managers). In regard to grades above Deputy General Manager, CMD was designated as the Disciplinary Authority and the Board was the Appellate as well as Reviewing Authority. We extract below the relevant portion of the Schedule to the CDA Rules before and after amendment:

Before Amendment :

Grade of Officer
Appointing
Authority
Disciplinary Authority
Appellate
Authority
Reviewing
Authority
Superintendents
to General
Manager
Board
Reduction to a
lower stage in
the time scale
or to lower
grade/ post

Other Major
Penalties

MD

Board
Board

Board
Board

Board

Note : For the purpose of this Schedule, 'Board' means a Committee of Directors appointed by the Board of Directors

After amendment :

Grade of Officer
Appointing
Authority
Disciplinary Authority
Appellate
Authority
Reviewing
Authority
All Officers up
to and
inclusive of
Manager
Chairman &
Managing
Director
General Manager/
Functional Director
Chairman &
Managing
Director
Board

Note : for the purpose of this Schedule, 'Board' means a Committee of Directors appointed by the Board of Directors \005\005.

5. The Inquiry Officer completed the inquiry and submitted its report on 19.9.1996 holding that the charges No. (i), (ii), (v), (vi). (vii), (x)(a), (x)(c), (xi), (xii) and (xiii) were proved against the respondent and charges (iii), (iv), (viii) and (ix) were withdrawn by the Management and further holding that charge (x)(b) was not proved. A Show Cause Notice dated

5.10.1996 was issued to the respondent as to why the Inquiry Report and findings should not be accepted. After examining the reply dated 31.10.1996 to the show cause notice the respondent was dismissed from service by an order dated 21.01.1997 passed by the Chairman-cum-Managing Director. The respondent's appeal before the Appellate Authority (Board) was rejected by an order dated 27.09.1997. The Appellate Authority, however, held that charges no.(ii), (v), (x)(a), (x)(b), (xi) and (xiii) were not fully or entirely proved and confirmed the dismissal on charges (i), (vi), (vii), (x)(c) and (xii).

6. Aggrieved thereby the respondent preferred Writ Petition No. 414 of 1997 before the High Court of Bombay at Goa. Many contentions were raised before the High Court. However, the High Court disposed of the Writ Petition on a preliminary contention. It held that amendment to CDA Rules by Board Resolution circulated on 15.12.1995 and notified on 29.3.1996 did not come into force at all, even though the circular dated 29.3.1996 under which the amendment was notified stated that the amendments will come into force with effect from 8.1.1996. The High Court held that Rule 41 of CDA Rules provided that any amendment will take effect from the date stated therein and therefore, the date of coming into effect should be contained in the amendment itself and not in a circular notifying the amendment. The High Court held that the amendment approved vide board resolution notified on 29.3.1996 did not mention the date from which the amendment would be effective and therefore the amendment did not come into effect. The High Court held that as per the CDA Rules (unamended), the Board was the Disciplinary Authority and therefore the dismissal order by a lower authority namely CMD was without authority. On this ground alone, the order of dismissal passed by the CMD on 21.1.1997 and the Appellate Authority's order dated 27.9.1997 rejecting the appeal were set aside by the High Court by the impugned order. The said order is challenged in this appeal by special leave.

7. We have heard Mr. Surendra Desai, learned senior counsel for the appellant and Mr. L. Nageswara Rao, learned senior counsel for the respondent at length.

8. The whole controversy revolves around the enforcement and effective date of the Amended CDA Rules as provided under Rule 41 of CDA Rules, relating to amendment of Rules. It reads:

"Amendment:

The Board may amend, modify or add to these rules, from time to time, and all such amendments, modifications or additions shall take effect from the date stated herein."

(emphasis supplied)

The High Court was of the view that since the date of enforcement of amended Rules were not stated in the amendment Rules as provided under Rule 41, it cannot be said that the amendment to the CDA Rules came into force from 08.01.1996. The High Court held :

"The question, however, is whether the Rules could be said to have been amended and come into force. As already noted earlier, Rule 41 specifically and expressly provides for

amendment in the Rules. Under the said provision, the Board could amend, modify or add the Rules, but such amendment would take effect "from the date stated therein". In other words, the Rules would get amended and such amendment would be effective from the date mentioned in such amendment. So far as the amendment is concerned, nothing is stated in the amendment. Exh.R-4 recites:

"Amendments to Goa Shipyard Officers' Conduct, Discipline and Appeal Rules, 1979". It also states that those amendments would come into force from 8th January, 1996. Such a communications (CMD/34/96), in our opinion, however, cannot be said to be amendment in the Rules covered by Rule 41 of the Rules. Obviously, therefore, when the amendments were made in the Rules, no provisions had been made as to when they will come into force and with effect from which date, they will be implemented. Reliance on Section 289 of the Companies Act, 1956 does not help the respondent. We would have considered the said submission, but in view of the specific provision in rule 41 of the rules which expressly lays down the date on which the amendment would come into force, the learned counsel for the petitioner, in our opinion, is right in contending that the amendment would not come into operation till the procedure laid down in Rule 41 is followed and the date is specified. Apart from that, no resolution has also been placed on record as to when such a decision was taken and as to the date from which the amendment would become effective. The so-called decision dated 18th March, 1998 produced at the time of hearing is subsequent to the order of dismissal passed dated 21st January, 1997 and the same cannot salvage the situation. The order of dismissal passed by the Chairman-cum-Managing Director, hence deserves to be set aside as also the order passed in Appeal by the Board. If the initial order is invalid, its invalidity cannot be cured by ratification, approval or confirmation by any authority (vide *State of U.P. v. Mohd. Nooh*, AIR 1958 SC 86; *Farid Ahmed v. Ahmedabad Municipal Corporation*, AIR 1976 SC 2095, *Marathwada University v. Sheshrao*, AIR 1989 SC 1582).

9. Learned counsel for the appellant contended that the views taken by the High Court were clearly erroneous in law. He submitted that Resolution by circulation was recognized and permitted by Section 289 of the Companies Act, which reads:-

"289. Passing of resolutions by circulation.- No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or to all the members of the committee, then in India (not

being less in number than the quorum fixed for a meeting of the Board or committee, as the case may be), and to all other directors or members at their usual address in India, and has been approved by such of the directors as are then in India, or by a majority of such of them, as are entitled to vote on the resolution."

The appellant contends that the draft of the amendment to the CDA Rules was considered in the meeting of the Board of Directors on 28.9.1995 as item No.A-15 but the same was deferred. It was again considered at the Board meeting held on 2.12.1995 as item No.A-10 and it was decided to send the agenda (containing the draft of the amendment to the CDA Rules) by circulation to Directors for their approval. Accordingly the circular resolution was circulated and approved by the six Directors (Members of Board of Directors) on 15.12.1995, 5.1.1996, 5.1.1996, 8.1.1996, 12.1.1996 and 1.2.1996. As the majority approved it by 8.1.1996, it was given effect from 8.1.1996. The approved circular Resolution No.13/1995 was again placed before the Board of Directors on 21-3-1996 for ratification as item No.A-10 and the Board of Directors duly ratified the Circular Board Resolution No.13 of 1995 amending the CDA Rules.

10. Counsel for the appellant has also invited our attention to the resolution of Board of Directors held on 18.3.1998, which further ratified and classified that the Circular Board Resolution No.13 of 1995 dated 15.12.1995 came into effect on 08.01.1996 on which date the same was approved by the majority of directors as required under Section 289 of the Act. The said resolution is extracted below :
"A-11- DISMISSAL OF MAJ. BABU THOMAS JT. MANAGER (S&A)
WRIT PETITION CHALLENGING ORDER OF DISMISSAL IN THE
HIGH COURT OF JUDICATURE OF MUMBAI, PANAJI BENCH -
AMENDMENT TO CDA RULES.

37. CMD apprised the Board in the matter and drew the attention of the Board to Rule 41 of Goa Shipyard Officers' Conduct, Discipline & Appeal Rules, 1979, which provides and empowers the Board to amend, modify or add to the said 1979 Rules, from time to time and further provides that all such amendments, modifications or additions shall take effect from the date stated therein. The CMD further pointed out that no date had been specified as required under Rule 41 in the amendments carried out to the said Rules vide Circular Board Resolution No.13 of 1995 dated 15.12.1995.

38. The Board noted that the Circular Board Resolution No.13 of 1995 was circulated under Section 289 of the Companies Act, 1956, in view of urgency to amend the 1979 Rules due to i) changes in grades taken place since then, ii) on account of administrative difficulties faced in implementation of the existing Rules, and iii) Government instructions received by the Company from time to time to amend the Rules, etc. The said amendments were intended to be enforced immediately and after it were approved as required under the Companies Act, 1956. No specific date had been mentioned in the Resolution, since the said Resolution was intended to take effect from the date the same was approved as required under Section 289 of the Companies Act, 1956. The amendment had been brought into force and were being applied from 08.01.1996, on which date the same were approved by the majority of the Directors as required under Section 289 of the Companies Act, 1956 and on which date, in normal course, any such Resolution under the Companies Act would have come into force. The Board noted that the aforesaid Circular Resolution duly signed and approved by the Directors was received by the Company on various dates from 15.12.1995 and the majority of the Directors had

forwarded the Resolution by 08.01.1996 to the Company. The CMD also drew the attention of the Board regarding the objections taken by Maj. Babu Thomas (dismissed employee) in Writ Petition No.414 of 1997, pending disposal in the High Court of Judicature at Mumbai, Panaji Bench, wherein he has challenged his dismissal on the ground amongst others, that the amendments to 1979 Rules have not come into effect since no date is specified in the amendments resolution.

39. CMD brought out to the notice of the Board that the Board at its meeting held on 28.11.1997, had noted the report of the Appellate Authority appointed by the Board confirming the decision of Disciplinary Authority of dismissing Maj. Babu Thomas from the services of the Company w.e.f. 21.01.1976 for serious and grave misconduct committed by him under the CDA Rules. After detailed discussion, the Board, therefore, desired to clarify the position by passing the following resolution:-

"RESOLVED THAT the Circular Board Resolution No.13 of 1995 dated 15.12.1995 amending the Goa Shipyard Officers' Conduct, Disciplines and Appeal Rules, 1979 shall take effect from the date the same has been approved by the majority of the Directors of the Company, in terms of Section 289 of the Companies Act, 1956".

11. From the facts as adumbrated above it clearly emerges that having regard to Board's resolution dated 18.3.1998, it should be taken that the amendment of CDA Rules by Circular Resolution No.13/1995, itself provided that it would take effect from 8.1.1996 (the date on which the same were approved by the majority of Directors). Therefore, Rule 41 of the CDA Rules that the amendment will come into effect from the date stated therein is fully complied with. The question whether the Board of Directors of a company could subsequently ratify an invalid act and validate it retrospectively is no more res integra. The question has been considered by a three Judge Bench of this Court in Maharashtra State Mining Corpn Vs. Sunil (2006) 5 SCC 96. In that case the respondent, an employee of the Corporation was dismissed by the Managing Director preceded by an inquiry. A Writ Petition was filed challenging the dismissal order on the ground that the Managing Director of the Corporation was incompetent to pass such order. During the pendency of the Writ Petition, the Board of Directors of the Corporation passed a Resolution ratifying the impugned action of the Managing Director and also empowering him to take decisions in respect of the officers and staff in the grade of pay the maximum of which did not exceed Rs.4700/- p.m. The Managing Director who dismissed the employee had earlier the power only in respect of those posts where the maximum pay did not exceed Rs.1800/- p.m. The employee at the relevant time was drawing more than Rs.1800/- p.m. and therefore, the Managing Director was incompetent to dismiss the employee. The High Court set aside the order of termination on the ground that the invalid act cannot be subsequently ratified by the Board of Directors. This Court after referring to various earlier decisions set aside the order of the High Court. This Court held as under:

"The High Court was right when it held that an act by a legally incompetent authority is invalid. But it was entirely wrong in holding that such an invalid act cannot 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".

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"In the present case, the Managing Director's order dismissing the respondent from the service was admittedly ratified by the Board of Directors on 20th February 1991, and the Board of Directors unquestionably had the power to terminate the services of the respondent. On the basis of the authorities noted, it must follow that 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".

We, therefore, reject the contention that the order of dismissal passed by CMD is invalid for want of authority.

12. Mr. Rao, learned senior counsel for the respondent, referred to the decision of this Court in the case of State of Goa vs. Babu Thomas (2005) 8 SCC 130, in which one of us was a Member of the Bench (Sema, J) particularly the observation made in paragraphs 4, 8 and 9 of the judgment. In our view, the judgment rendered in the aforesaid case relating to sanction for prosecution under section 19 of Prevention of Corruption Act, 1988 would be of no assistance to decide the issue on hand.

13. Mr. Rao next referred to the amended CDA rules wherein it has been provided that for all officers up to and inclusive of Manager, the Disciplinary Authority who can impose major penalties is the General Manager/Functional Director and the Appellate Authority is the Chairman & Managing Director. According to Mr. Rao, since the order of dismissal has been issued by the Chairman & Managing Director who is an Appellate Authority, the respondent has been deprived of his right of appeal to the Chairman & Managing Director. According to him, under the amended CDA rules the appellate authority is the Chairman & Managing Director but as the major penalty has been imposed by the Chairman & Managing Director, he cannot act as an Appellate Authority and therefore the respondent has lost one form of remedy available to him. We are unable to countenance to this submission. The respondent was not denied the right of appeal. Undisputedly, the respondent filed an appeal before the Board of Directors, as the order of dismissal was passed by the CMD, and the Board of Directors considered his appeal and by a detailed order dismissed the appeal on 27.9.1997. In fact, the Board of Directors independently considered the appeal and while dismissing the appeal held that charges (ii), (v), (x)(a), (x)(b), (xi) and (xiii) are not fully or entirely proved and confirmed the dismissal order on charges (i), (vi), (vii), (x)(c) and (xii). The appeal was considered independently by the Appellate authority and a detailed order passed after application of mind. In such circumstances, we are clearly of the view that no prejudice whatsoever has been caused to the respondent as he availed

an opportunity of an appeal before the Board of Directors as an Appellate Authority.

14. Mr. Rao invited our attention to the decision of this Court rendered in *Surjit Ghosh vs. Chairman & Managing Director* (1995) 2 SCC 474, where this Court observed as under:-

"However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned".

In our view, this decision would be of no help to the respondent's case on facts. As already noticed in the present case, the respondent in fact, had availed the remedy of appeal and filed the appeal before the Board of Directors. That apart, the decision in *Surjit Ghosh* (supra) has been distinguished by this Court in *Balbair Chand vs. Food Corporation of India Ltd.* (1997) 3 SCC 371. It was pointed out as under:

"The learned Counsel for the petitioner has raised the contention that since the petitioner was required to be dismissed by the disciplinary authority, namely, Zonal Manager, who alone is competent to remove him, the order of dismissal passed by the Managing Director is bad in law. In support thereof, he placed reliance on a judgment of this Court in *Surjit Ghosh v. Chairman and Managing Director, United Commercial Bank* (1995) 2 SCC 474. It is an admitted position that as a joint enquiry was conducted against all the delinquent officials, the highest in the hierarchy of competent authority who could take disciplinary action against the delinquents was none other than the Managing Director of the Corporation. In normal circumstances the Managing Director being the appellate authority should not pass the order of punishment so as to enable the delinquent employee to avail of right of appeal. It is now a well settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In the judgment relied on by the

counsel, it would appear that in the Rules, officer lower in hierarchy was the disciplinary authority but the appellate authority had passed the order removing the officer from service. Thereby, the appellate remedy provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right to consider his case by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules. In this case, a right of second appeal/revision also was provided to the Board. In fact, appeal was preferred to the Board. The Board elaborately considered the matter through the Chairman. It is not violative of Article 14 of the Constitution". [Emphasis supplied]

15. The High Court had allowed the respondents' writ petition by upholding the preliminary contention that the CMD did not have the authority and jurisdiction to pass the order of dismissal. It did not consider the several contentions raised by the respondent on merits. In the view that we have taken, the decision of the High Court dated 25.11.2003 on the preliminary contention cannot be sustained. We, therefore, set aside the Order of the High Court dated 25.11.2003 which allowed Writ Petition No. 414 of 1997 on a preliminary ground. Consequently the writ petition shall stand restored to the file of the High Court. The High Court shall now consider the other contentions raised by the respondent-writ petitioner other than the issue answered by this Court.

16. This Court on 23.8.2004 stayed the operation of the judgment of the High Court subject to the appellant making payment of the amount equivalent to subsistence allowance from the date of the judgment of the High Court within four weeks. This order was passed keeping in view that the order of dismissal was set aside by the High Court. As we have set aside the order of the High Court, the order of dismissal dated 21.1.1997 confirmed by Appellate Authority's order dated 27.9.1997 stands restored subject to the final decision of the writ petition. The respondent-writ petitioner shall not be entitled to any subsistence allowance from today till the writ petition is finally disposed of by the High Court in accordance with law.

17. The appeal is allowed accordingly. Parties to bear their respective costs.