

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15th June, 2011

+

W.P.(C) 4326/2011

S.K. SRIVASTAVA

..... Petitioner

Through: Ms. Jyoti Singh, Sr. Advocate with
Mr. S.K. Gupta & Mr. H.P. Singh,
Advocates

Versus

UOI & ORS.

..... Respondents

Through: Ms. Preeti Dalal, Adv. for R-1.
Mr. Saqib, Adv. for R-1&3.
Mr. Vikas Singh, Sr. Advocate with
Ms. Amrita Narayan, Adv. for R-4.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | |
|--|----|
| 1. Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. To be referred to the reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petition seeks setting aside / quashing of the recommendations of the empowered Committee of Secretaries for appointment to the post of Member, CBDT qua respondent no.4 Sh. S.S. Rana (IRS 75014) and

respondent no.6 Ms. Sudha Sharma (IRS 76007). The petition also seeks setting aside and quashing of the Vigilance Clearance issued to the said Sh. S.S. Rana and Ms. Sudha Sharma, on the ground of the same being patently illegal.

2. The petitioner has pleaded:

- (i) That the petitioner himself is an IRS officer;
- (ii) That the respondent No.4 Sh. S.S. Rana had between the years 1988-1990 conducted search and seizure operations in the premises and business of Sitani Group and detected and seized documents and other evidences of large scale tax evasion and money laundering;
- (iii) That Sh. S.S. Rana however handed over the appraisal report and seized material to the petitioner who was the Assessing Officer, only on 23rd March, 1992 when the limitation for passing assessment orders was to expire on 31st March, 1992;

leaving virtually no time with the petitioner to pass the assessment order;

- (iv) That even though the delay as aforesaid was attributable to Sh. S.S. Rana but the petitioner was imputed with gross negligence and unlawful conduct, for not passing the assessment order in the case of Sitani Group by 31st March, 1992;
- (v) That the petitioner was made the scapegoat to protect and cover up the corrupt practices of Sh. S.S. Rana, while no action was taken against Sh. S.S. Rana;
- (vi) That the petitioner was thereby implicated in false vigilance cases;
- (vii) That Sh. S.S. Rana and Ms. Sudha Sharma thus do not possess high professional merit and excellence and cannot be called to be persons of impeccable integrity;

(viii) “That serious allegations of corruption and gross misconduct are pending against Sh. S.S. Rana and Ms. Sudha Sharma and to inquire into those imputations of misconduct and allegations, Government has set up inquiries by Inquiry Committees comprising subordinate officers of CBDT wherein Sh. S.S. Rana and Ms. Sudha Sharma are being appointed and whereby they would be controlling those inquiries”. Reference is made to “one man Inquiry Committee of Sh. Akhilesh Prasad, CCIT, Delhi III, New Delhi (Annexure S-3) to enquire into allegations by petitioner against other officers that include Sh. S.S. Rana and Ms. Sudha Sharma” and to “Inquiry Committee headed by Smt. Poonam Kishore Saxena, Member (A&J), CBDT (Annexure S-4) and comprising of Ms. Pramila Bhardwaj, Commissioner of Income Tax (CIT) and Sh. Virendra Singh, CIT to enquire into allegations by petitioners and allegations against the petitioner”;

- (ix) The petitioner has earlier filed Cr.W.P. No.876/2011 for directing CBI to register FIR and investigate under Prevention of Corruption Act, 1988 to determine illegal loss and likely loss in excess of ₹100 crores to the Public Exchequer;
- (x) That CAT Bar Association has also found gross misconduct overreaching the process of administration of justice and obstruction of justice delivery system by Sh. S.S. Rana and his accomplices and have reported the same to the Chairman, CAT etc.;
- (xi) That mischief and manipulation of Sh. S.S. Rana and Ms. Sudha Sharma stand judicially determined in judgment dated 28th April, 2011 in C.W.P. No.7880/2010, copy whereof is filed as Annexure S-6 to the writ petition;
- (xii) That Ms. Sudha Sharma as DGIT (Vig.) and as CVO, CBDT protected and sheltered Sh. S.S. Rana and has colluded with him;

(xiii) Reference is made to various judgments to contend that in exercise of judicial review the Courts can determine whether the incumbent possesses qualifications for appointment and whether the manner of appointment was fair, just and reasonable and on the proposition that the post of Member, CBDT is a ex-cadre selection post;

(xiv) The petitioner has in the list of dates stated that on 23rd November, 2010 “Government set up Inquiry Committee to enquire into allegations by petitioner against officers like Sh. S.S. Rana, etc.” and that on 28th April, 2011 “Government set up another Inquiry Committee under Smt. Poonam K. Saxena to inquiry into allegations by petitioner against officers like Sh. S.S. Rana, Ms. Sudha Sharma, Sh. Prakash Chandra etc.”

3. The senior counsel for the petitioner has during the hearing stated that the recommendations of the Committee of Secretaries for appointment of Sh. S.S. Rana and Ms. Sudha Sharma as members CBDT are now pending consideration before the Appointments Committee of the Cabinet.

She has further referred to the Central Board of Direct Taxes (Chairman and Members) Recruitment Rules, 2006 which prescribe essential qualification *inter alia* of “ Having impeccable reputation of integrity” for deputation/absorption as member of CBDT. She has vehemently argued that once two inquiries as aforesaid are pending against Sh. S.S. Rana & Ms. Sudha Sharma, they cannot be said to be having reputation of impeccable integrity and there is obviously an error in the recommendation of the Committee of Secretaries and in report of vigilance inquiry done qua the said persons and which is required to be corrected by this Court in exercise of judicial review. Reliance is placed on para 43 of judgment dated 3rd March, 2011 of the Apex Court in W.P.(C) No.348/2010 titled ***Centre for PIL Vs. Union of India*** and which in turn refers to ***Hari Bansh Lal Vs. Sahodar Prasad Mahto*** (2010) 9 SCC 655 where the challenge was made on the ground of the selectee being a person of “doubtful integrity”. The senior counsel has contended that even though the report of the two inquiries aforesaid against Sh. S.S. Rana & Ms. Sudha Sharma has not been submitted yet but the very pendency of inquiries against them

would make them persons of doubtful integrity and by no means can they be said to be having impeccable reputation of integrity.

4. The Apex Court in the judgment dated 3rd March, 2011 (supra) also held that a writ of *quo warranto* lies only when the appointment is contrary to a statutory provision; else suitability of a candidate for appointment to a post is to be judged by the Appointing Authority and not by the Court, unless the appointment is contrary to the statutory rules / provisions.

5. It was thus enquired from the senior counsel, whether the Court can interfere with the decision of the Committee of Secretaries and the Vigilance Department, of Sh. S.S. Rana & Ms. Sudha Sharma having impeccable reputation of integrity in as much as while this Court is not equipped to know the reputation enjoyed by Sh. S.S. Rana & Ms. Sudha Sharma, the Committee of Secretaries is expected to have, by making inquiries and on the basis of record, reached a conclusion that they are enjoying impeccable reputation of integrity.

6. The senior counsel however contends that owing to the pendency of two inquiries aforesaid, the recommendation for appointment is in violation of the Rules aforesaid and thus this Court ought to interfere.

7. I may mention that though the senior counsel in the list of cases handed over has also mentioned *Registrar, Cooperative Societies Vs. F.X. Fernando* (1994) 2 SCC 746 and to the judgment dated 20th July, 2010 of this Court in W.P.(C) No.8216/2009 titled *Raghubir Singh Vs. UOI* but no reference / reliance during hearing was placed on the two judgments aforesaid.

8. The senior counsel for the respondent No.4 Sh. S.S. Rana appearing on advance notice has vociferously contended that the petitioner has blatantly misrepresented facts in the list of dates and in the writ petition and sought to create an impression as if the two inquiries aforesaid are against Sh. S.S. Rana. He contends that the counsel for the petitioner has argued also on the same lines, when the documents filed as annexures to the petition do not support the averments in the petition. It is further contended that it has been mischievously stated in the list of dates that the

inquiries are against officers “like” Sh. S.S. Rana & Ms. Sudha Sharma. The senior counsel has taken me to Annexure S-3 to the petition being the letter dated 23rd November, 2010 of the Deputy Commissioner of Income Tax (Vig.) to the petitioner. It is contended that the vital enclosure to the said letter is intentionally suppressed. The senior counsel has handed over the said enclosure being the Memorandum dated 9th November, 2010 of the CBDT qua holding of preliminary confidential inquiry in respect of allegations against officers made by the petitioner. With reference thereto, it is shown that the same nowhere concerns Sh. S.S. Rana or Ms. Sudha Sharma. Similarly with reference to Annexure S-4 being the Office Memorandum dated 28th April, 2011 of CBDT, it is again shown that the other inquiry is also not against Sh. S.S. Rana and Ms. Sudha Sharma. He has thus contended that an entirely false case has been urged, of inquiries pending against Sh. S.S. Rana & Ms. Sudha Sharma. It is further contended that the petitioner is a highly litigious person who has filed as many as 31 cases against various officials of the department. A list of such cases is handed over. It is thus contended that no case for judicial review is made

out and the petition ought to be dismissed with exemplary deterrent costs on the petitioner.

9. Though the senior counsel for the petitioner in rejoinder attempted to faintly urge that in the two inquiry proceedings aforesaid, inquiry is to be made into allegations by the petitioner against all concerned but the said argument cannot be accepted. The name of Sh. S.S. Rana & Ms. Sudha Sharma does not find mention anywhere in the documents filed of the inquiry. The argument that even though their names do not find mention, but since the petitioner is making allegations against them also, the inquiry would be against them also is preposterous and cannot be accepted. Without the Inquiry Officer having been directed to look into the allegations against Sh. S.S. Rana & Ms. Sudha Sharma, Inquiry Officer would be incompetent to do so.

10. Similarly though reference to the judgment dated judgment dated 20th July, 2010 of this Court in W.P.(C) No.8216/2009 (supra) has been made but it has not been shown as to how the same in any manner indicts Sh. S.S. Rana & Ms. Sudha Sharma. The representation of CAT Bar

Association to Chairman CAT, cannot also be the basis for this Court to interfere when that Bar Association is not even before this Court.

11. The senior counsel for the petitioner lastly falls back on W.P.(CRL) No.876/2011 in which notice has been issued. However, no copy even of the said writ petition has been filed for this Court to form an opinion as to what are the allegations, if any, therein of the petitioner.

12. I am not willing to adjourn the matter on the said ground, without the petitioner having been able to make out a case inspite of the petitioner himself personally present in the Court and briefing the counsel and without the petitioner having been able to place any material before the Court. Keeping the writ petition, of the nature as the present one, pending can play havoc with the careers of others under consideration for appointment to high offices. The petitioner, admittedly entertaining a personal grievance and vengeance against Sh. S.S. Rana & Ms. Sudha Sharma, without making out a case against them, cannot interfere with the process of their deputation/absorption/promotion/appointment by casting a cloud as to their eligibility by merely keeping such petition pending.

13. The Supreme Court in *Ashok Kumar Pandey v. State of West Bengal* (2004) 3 SCC 349 though in relation to PILs held that the same are to be admitted with great care for redressal only of genuine public wrong or public injury and not for the redressal of private, publicity oriented or other disputes not genuinely concerned with public interest. It was further held that Courts should be watchful that no one's character is besmirched and that justifiable executive actions are not assailed for oblique motives; the Court has to be extremely careful that it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature; Court has to strike balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. It was further held that the Court cannot afford to be liberal. Similarly in *Secretary, Minor Irrigation & Rural Engineering Services, UP v. Sahngoo Ram Arya* (2002) 5 SCC 521 it was held that the High Court must reach a conclusion on the basis of pleadings and material on record that a *prima facie* case has been made out against a person and

merely because a party has made allegations against a person, High Court cannot direct investigation.

14. Even though the present is not a PIL but since the petitioner is admittedly not competing with Sh. S.S.Rana and Ms. Sudha Sharma for the post of Member, CBDT, and even though out of personal vendetta is impugning the process of selection of Sh. S.S. Rana and Ms. Sudha Sharma as contrary to public interest, the above principles would apply.

15. In this regard it may also be noticed that the senior counsel for the petitioner has lastly urged that if all the records are summoned relating to the Sitani Group, the petitioner would be able to demonstrate therefrom that Sh. S.S. Rana has helped the Sitani Group to evade tax in excess of ₹1000 crores and that Ms. Sudha Sharma protected Sh. S.S. Rana. It is contended that the said records cannot be available with the petitioner.

16. However, a writ petition cannot be entertained to allow the petitioner to commence a roving and fishing inquiry. Reference in this regard may be made to a) *Prakash Vir Shastri v. UOI* AIR 1974 Delhi 1; b) *AGR*

Investment Ltd. v. Addl. Commr. of Income Tax 176 (2011) DLT 703; c) *A.Hamsaveni v. State of Tamil Nadu* (1994) 6 SCC 51; d) *N.K. Singh v. UOI* (1994) 6 SCC 98 & (e) *Sadananda Halo v. Mumtaz Ali Sheikh* (2008) 4 SCC 619. Moreover, the petitioner himself is working in the same department and from the documents annexed to the petition, appears to have access to whatsoever documents he requires. Further in the present day times of Right to Information, the failure of the petitioner to place any material before this Court can lead to only one inference that the petitioner is not possessed of any such material and had he been so possessed, he would have placed the same before the Court in the first instance itself.

17. As aforesaid, it is not the job of this Court to determine whether Sh. S.S. Rana & Ms. Sudha Sharma enjoy impeccable reputation of integrity. The petitioner as aforesaid has failed to place any material before this Court to show that they do not.

18. There is thus no merit in the petition; the same is dismissed. Though the petitioner is found guilty of making a false façade of inquiries pending against Sh. S.S. Rana & Ms. Sudha Sharma and of having gone to the

extent of pleading that appointment of Sh. S.S. Rana & Ms. Sudha Sharma as members of the CBDT would place them above the Officers inquiring against them and which pleas have turned out to be blatantly false but since the writ petition is dismissed *in limine*, I refrain myself from imposing any costs on the petitioner. The petitioner is however warned to be careful in future of the pleas made and the arguments taken before the Court.

**RAJIV SAHAI ENDLAW
VACATION JUDGE**

JUNE 15, 2011
'gsr'..