

CASE NO.:
Appeal (civil) 2367 of 2007

PETITIONER:
Bongaigaon Refinery & P.C.Ltd. & Ors

RESPONDENT:
Girish Chandra Sarmah

DATE OF JUDGMENT: 08/08/2007

BENCH:
A.K.MATHUR & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

A.K. MATHUR, J.

1. This appeal is directed against the order passed by the Division Bench of the Guwahati High Court in Writ Appeal No.248 of 2005 whereby the Division Bench has set aside the order of learned Single Judge dismissing the writ petition and allowed the writ petition of the respondent and set aside the order of reversion passed against the respondent reverting him from his grade of Deputy General Manager to Grade F, Chief Manager in a lower pay scale of Rs.19000-24570/- for a period of five years or till he is found fit by the competent authority to restore him in the higher grade and post from the post of Deputy General Manager (POL- Marketing).

2. Aggrieved against the order of reversion passed in a disciplinary proceeding on 20.9.2002, the respondent filed a writ petition in the Guwahati High Court and submitted that the domestic inquiry which had been conducted against him and which has found him guilty was perverse and totally illegal.

3. The respondent while working as Deputy General Manager (POL-Marketing) in Bongaigaon Refinery and Petrochemicals Limited, Dhaligaon during the year 1998-99 was alleged to have committed serious misconduct for which he was charge-sheeted. The following charges were framed against him which read as under:

\023 Article of Charge No.1:

Sri G.C.Sarma dishonestly selected and recommended purchase of land at Jorabat on the ground of economic viability. As a Member in the price negotiating committee, he failed to assess the reasonable price of the land inasmuch as he himself intimated the price of 7 acres of land at Rs.30 lakhs in his preliminary report.

Article of Charge No.2:

Sri G.C.Sarma appointed the Valuer Sri I. Sharma for land valuation violating the due process of tendering and that the fictitious price fixed by the Valuer at Rs.25/- per sq.ft. was accepted.

Article of Charge No.3:

Sri I.Sharma who floated the firm M/s. ESS Pvt. Ltd., was engaged without process of tendering for determination of soil and rock strata as recommended by Sri G.C.Sarma. The report submitted by Sri I.Sharma was fictitious and

misconceived as the land being hilly, rocky and undeveloped was recommended to be suitable for the outlet. Sri G.C.Sarma in connivance with Sri I.Sharma thereby dishonestly recommended the land as suitable.\024

On the basis of these charges a regular inquiry was initiated against the respondent and Shri N.C.Barua, retired District & Sessions Judge, Bongaigaon was appointed as Inquiring Authority. The Inquiry Officer submitted his report on 6.6.2002 finding all the three charges to have been proved against the respondent. Thereafter, the disciplinary authority gave a notice and after hearing the respondent passed the aforesaid impugned order. Aggrieved against this order the respondent filed a writ petition before the Guwahati High Court. Learned Single Judge dismissed the writ petition. Aggrieved against that order the respondent preferred a writ appeal before the Division Bench. The Division Bench allowed the writ appeal of the respondent, set aside the order of learned Single Judge and quashed the order of the disciplinary authority imposing the aforesaid punishment. Hence the present appeal.

4. We have heard learned Mr.Amarendra Sharan, learned Additional Solicitor General for the appellants and Mr.Jaideep Gupta, learned senior counsel for the respondent and perused the records.

5. Learned Additional Solicitor General, Mr.Sharan strenuously submitted that the Division Bench sat over the matter as an appellate authority and reversed the finding of the learned Single Judge as well as the inquiry officer on re-appreciation of evidence. The Division Bench cannot sit as a court of appeal in the matter of domestic enquiries and re-appreciate the evidence. Learned Additional Solicitor General invited our attention to the following decisions of this Court.

1. (2006) 6 SCC 794
Union of India & Anr. v. K.G.Soni
2. (1995) 6 SCC 749
B.C.Chaturvedi v. Union of India & Ors.
3. (1997) 3 SCC 72
Indian Oil Corporation Ltd. & Anr. v.
Ashok Kumar Arora

Learned Additional Solicitor General also submitted that the respondent has already given up the plea of perversity before learned Single Judge yet the Division Bench considered the same plea. Learned Additional Solicitor General submitted that once the counsel has already given up the plea of perversity before learned Single Judge, he cannot re-agitate later before the Division Bench and in support of his submission, invited our attention to a decision of this Court in Common Cause v. Union of India & Ors. [(2004) 5 SCC 222].

6. As against this, Mr.Jaideep Gupta, learned senior counsel for the respondent submitted that the charges which have been framed against the respondent were not sustainable on the basis of the materials on record and the Division Bench of the High Court has rightly looked into the matter and found that all the charges have been wrongly proved by the inquiring authority.

7. We have bestowed our best of consideration to the rival submissions of learned counsel. The whole issue started on the basis that Bongaigaon Refinery & Petrochemicals Ltd (for short, BRPL) launched a programme for setting up of a Jubilee Outlet for marketing its finished products. A Tender Committee (Technical) was constituted to finalise the project. Respondent was one of the members of the Tender Committee (Technical) along with other four

members i.e. Shri A.Saran, Shri T.V.John, Shri P.K.Gogoi and Shri H.R.Chopra. Pursuant to the advertisement for purchase/ lease of land, certain tenders were received. This Tender Committee met on 16.9.1998 and examined various offers received against the advertisement inviting tenders for purchase/lease of land for establishing the Jubilee Retail Outlet. It called for various other information from all eligible bidders. This Tender Committee examined the offers received against the notice inviting the bids and after discussing sixteen eligible offers, four were found to be technically suitable including Jorbat out of the tenders which had been received. It was also decided in the Committee's meeting held on 28.10.1998 to submit the same to the competent authority for consideration and approval for opening the price bid. On the same day the appellant company by order dated 28.10.1998 asked the Tender Committee to carry out the detailed techno economic study and also to ensure reasonable cost of the land through a Government approved valuer. On 2.11.1998 the Committee opened the price bids and found that only the Jorbat land was offered on outright basis. The Committee decided to engage a Government approved valuer for valuation of Jorbat land. The proposal received from one Shri I.Sharma was submitted to the competent authority for approval and the competent authority approved the same. Shri I.Sharma was one of the listed valuers who had earlier done the work for the appellant company. Therefore, he was found to be suitable valuer. Thereafter, the Central Tender Department awarded the work of valuation of land to Shri I.Sharma on 5.11.1998. On 9.11.1998, Shri I.Sharma, Government approved valuer submitted a report that the fair market value of the land was assessed at Rs.25/- per sq.ft and the size of the land being 2,17,721.07 sq.ft, the total cost was determined at Rs.54,43,000.00. Thereafter, the Purchase Committee held its meeting on 14.11.1998 for considering the price bids. Four price offers were considered and the Committee opined that the Jorbat offer was economically viable. Accordingly, the Committee recommended the opening of Model POL, retail outlet at Jorbat. This was approved by the General Manager (Finance). Thereafter, on 12.12.1998 the Director (Commercial) found Jorbat to be techno-commercially the best location and after administrative approval a high level committee was constituted to negotiate with the land owner. Thereafter the Price Negotiation Committee was constituted which was headed by Shri S.C.Goswami, General Manager (R & P) and the respondent was one of the members. The Price Negotiation Committee in its meeting dated 18.12.1998 considered the offer and assessment of the valuer and decided inter alia that a second assessment of price through local source would be necessary because of the high value of the deal and accordingly, deputed the respondent with Shri P.K.Gogoi, Senior Manager (Project) to get the details. Respondent and Shri P.K.Gogoi thereafter visited Jorbat and Nongpuh and collected necessary information regarding the land. The Deputy Commissioner, Ribhoi District informed that as per the past sale record, the price of land at Jorbat was Rs.20/- per sq.ft. but the sale price in registered documents is shown less than the market value to reduce registration costs. As per the local information it was found that the price varied from Rs.20/- to Rs.25/- per sq. ft. depending on topography. Accordingly, a joint note was submitted by respondent and Shri P.K.Gogoi recording their findings. The Price Negotiation Committee negotiated with the land owners on 4th & 5th January, 1999 wherein Rs.45 lakhs was offered by the Committee against Rs.61 lakhs demanded by the land owner. Thereafter, the land owner on 21.1.1999 informed the General Manager (R & P) that Rs.45 lakhs as offered was not acceptable and the minimum price acceptable was Rs.51 lakhs. The Board of Directors of the appellant company in its 156th meeting held on 23.1.1999 approved the setting up of Jubilee Retail Outlet at Jorbat. Thereafter, the Director (Commercial) by order dated 27.1.1999 directed the respondent to appoint one surveyor of civil engineering

firm to conduct soil testing and survey on top priority. Thereafter, the Deputy Manager (POL- Marketing) by note dated 29.1.1999 intimated the respondent regarding receipt of an offer from Shri I.Sarma for determining rock strata. The note also stated that as the value of the work to be done was more than Rs.25,000/- a tender committee was to be constituted to recommend the said job. The Tender Committee was also constituted and the tender committee on 2.2.1999 decided that the job was of priority and inviting further quotations would cause delay and since Shri I.Sarma has surveyed the land earlier, the work could be done by that person expeditiously. The Tender Committee recommended the award of work to Shri I. Sarma's firm, M/s. ESS Firm. The same was placed before the respondent for approval and it was sent to the Vigilance approval. After receipt of the approval the matter was placed before the Central Tendering Department which in turn issued the work order on 5.2.1999. The soil exploration report (rock strata) was submitted by Shri P.K.Gogoi, SM (Project) with his comments and the same was endorsed by the respondent to the Director (Commercial) that the land was suitable. The Director (Commercial) gave clearance to the Price Negotiation Committee to proceed for further negotiation. The Price Negotiation Committee after series of discussion, finalized the deal ultimately at Rs.50.01 lakhs for 5 acres of land which was considered reasonable and recommended the price of the land. Meanwhile, on 11.1.2000 the Officer-on-Special Duty, Revenue Department, Meghalaya informed the Executive Director (Vigilance) of the appellant company that there was no classification of land in Ribhoi district since no land revenue had been realized. However, from a land acquisition case in 1993, the land in that area was termed as wasteland which was assessed at Rs. 10.22 per sq. ft. Thereafter, one letter was received from the Deputy Commissioner, Ribhoi District on dated 12.10.2001 that the rate of the land was valued at Rs.8/- per sq.ft. That letter formed the basis of the regular departmental enquiry in which the respondent was charge-sheeted, on the basis of the above charges. The first charge levelled against the respondent was that the respondent submitted a preliminary report being the member of the Tender Committee in which after meeting the land owner he recommended that the land owner was prepared to sell 7 acres of land at Rs.30 lakhs and that report was directly submitted to the Director (Commercial). The Director (Commercial) was also a member. Shri S.C.Goswami, General Manager (Marketing) as the Chairman of the Price Negotiating Committee admitted in his statement that he did not dispute the submission of the report where the price of 7 acres of land was mentioned as Rs.30 lakhs and he was also a member of the Committee. That was the tentative price offered by the land owner. The preliminary report of the respondent was before the Price Negotiation Committee which did not consider the report as relevant. But thereafter ultimately the negotiation was done and the same was effected at Rs.50.01 lakhs. Therefore, it is not a case that the respondent alone was responsible. He had recommended in the preliminary report along with Shri P.K.Gogoi, Senior Manager (Project) which was placed before the Director (Commercial). It was within the knowledge of the General Manager (Marketing) and he has admitted that they did not consider bid offers which had been received. Thus as per the facts mentioned above, it appears that it was the joint decision which has passed through various levels. Similarly the respondent alone was not responsible for approval of the valuer, Shri I.Sharma nor was he responsible for giving the work to his company, M/s.ESS firm for further development of the area. All the three Committees i.e. Tender Committee (Technical) along with the respondent, other four members were there and similarly in Techno Commercial Committee along with the respondent as member there were other four members and likewise in the Price Negotiating Committee Shri S.C.Goswami, General Manager (Marketing) was Chairman, Shri P.K.Baruah, Deputy General

Manager (Project/GM) (HRD), Shri D.B.Das, Deputy General Manager; Shri T.V.John, CM/DGM (Finance) and Shri P.K.Gogoi, SM/CM (Project-Civil) were the members along with the respondent. All these three Committees have processed the deal and it is only the respondent has been made a scapegoat. After going through the report and the finding recorded by the Division Bench of the High Court, we are of opinion that in fact the Division Bench correctly assessed the situation that the respondent alone was made a scapegoat whereas the decision by all three committees was unanimous decision by all these members participating in the negotiations and the price was finalized accordingly. It is not the respondent alone can be held responsible when the decision was taken by the committees. If the decision of the Committee stinks, it cannot be said that the respondent was alone stink, it will be arbitrary. If all fish stink, pick one and say it stinks only is unfair in the matter of unanimous decision of the Committee. In all the three charges, the respondent has been found to be guilty for not assessing the reasonable price in his report submitted by him where the price indicated by the owner of the land was Rs.30 lakhs. The appointment of Shri I.Sharma as a valuer for land valuation was not also the decision of the respondent alone and the exploration of soil and rock strata given to the company, M/s.ESS Pvt. Ltd. was also not the decision of the respondent alone. Therefore, all the three charges which have been framed against the respondent as if he is alone responsible for the deal is not the correct approach. It is also not necessary that the land owner who has given the offer at one point of time at Rs.30 lakhs to stick to that. Instead she has intimated the appellant company by her letter quoting the price at Rs.61 lakhs and that was subsequently negotiated and brought out to Rs.50.01 lakhs. The preliminary report submitted by the respondent to the Director (Commercial) was after discussion with the land owner at the cost of Rs.30 lakhs yet this cannot work as an estoppel against the land owner. May be the land owner at one point of time might have offered the land at Rs.30 lakhs but that report cannot operate as estoppel against the land owner that she cannot jag up the price for the land. In fact when the Price Negotiating Committee asked for written proposal from the land owner, she quoted at Rs.61 lakhs and ultimately the Price Negotiating Committee after taking into consideration all the factors negotiated at Rs.50.01 lakhs for 5 acres of land. This was the joint decision of the Price Negotiating Committee which was headed by Shri S.C.Goswami, General Manager (Marketing) as the Chairman. Therefore, from the above discussion, we are of opinion that the view taken in these set of facts by the Division Bench cannot be said to be wrong.

8. So far as the legal proposition as contended by learned Additional Solicitor General with regard to appreciation of evidence is concerned, there is no quarrel that the Courts cannot sit as appellate authority over the domestic enquiries but in the present case what appears us is that the respondent has become a scapegoat in order to make someone responsible for no fault of his. He alone was targeted for the simple reason that he submitted preliminary report where the price of the land proposed by the land owner was Rs.30 lakhs. But this was tentative price given by the land owner and the authorities negotiated with the land owner and she quoted the price at Rs.61 lakhs and thereafter they again negotiated with her. The background was fully known to Shri S.C.Goswami, General Manager (Marketing) who was the Chairman of the Tender Negotiating Committee and even otherwise also just because that one of the Officers has submitted a preliminary report intimating the price given by the landowner as Rs.30 lakhs for 7 acres of land, that does not bind the land owner to sell the land for similar price, later on if she wriggles out, for which the officer of the appellant company who had inquired from the land owner cannot be found guilty. The respondent cannot be held responsible for the same and more so in the present

case the price has been negotiated by the Price Negotiating Committee. Therefore, simply because a preliminary report was submitted by the respondent and all the three Committees in which he was a member along with others cannot disown their liability. If the respondent is targeted then all the members of the Committees are equally responsible. Therefore, such finding given by the enquiring authority cannot be countenanced.

Similarly, so far as the appointment of Shri I.Sharma is concerned, the respondent alone was not responsible.

9. Learned Additional Solicitor General has submitted that since learned counsel for the respondent-writ petitioner has already abandoned the plea of perversity i.e. that the finding is perverse, the

same is not open for learned counsel for the respondent- writ petitioner to press again before the Division Bench of the High Court. Since the writ appeal is in continuation of the original order passed in the writ jurisdiction by learned Single Judge, it cannot operate as an estoppel against learned counsel for the respondent to press the same. If the finding recorded by the Inquiring Officer is not sound and it relates to perversity then the appellate court in writ appeal cannot estop the counsel from raising the same. More so, the Division Bench after considering the matter has found that the whole approach was perverse because the respondent alone has been made a scapegoat. When the decision of all the three committees was unanimous, then to take one and put the entire blame on him is definitely perverse approach and the Court cannot stand to the technicalities so as to defeat the ends of justice. Thus, the submission of learned Additional Solicitor General has no merit.

10. As a result of our above discussion, we do not find any merit in the appeal and the same is dismissed with no order as to costs.