Before Nirmaljit Kaur, J.

ASHWANI KUMAR,—*Petitioner*

versus

PARKASH CHAND AND OTHERS,—*Respondents*

C.W.P. No.15531 of 1995

22nd July, 2011

Constitution of India - Art. 14 & 226/227 - Khadi and Village Industries Commission Act, 1956 - S. 15(1)(g) - Challenge termination order - Whether termination order was mala fide and procedure adopted by inquiry officer was unreasonable - Refused to supply documents - Rule of natural justice ignored - Petition allowed.

Held, That refusal to supply the documents has caused great prejudice to the petitioner. The rule of natural justice was ignored. "The enquiry was conducted with a closed mind. Failure to supply the documents vitiated the enquiry.

(Para 23)

Further held, That since the present petition is being allowed on ground that the charges were motivated and the inquiry is vitiated as the relevant documents including audit report of the concerned period was specifically denied to the petitioner by the inquiry officer, this Court need not go into the argument with respect to the quantum of punishment.

(Para 25)

Further held, that in view of the above, the present petition is allowed and the order of termination dated 17.6.1995 (P-31) is set aside with all consequential benefits.

(Para 26)

R.S. Bains, Advocate, *for the petitioner.*

None for the respondent.

NIRMALJIT KAUR, J.

(1) Through the present writ petition, the termination of the petitioner vide order dated 17.6.1995 (P-31) has been challenged.

(2) Learned counsel for the petitioner has raised three fold arguments while challenging the termination order. Firstly, the said termination is mala fide which is evident from the sequence of events. Secondly, the procedure adopted by the inquiry officer was unreasonable, no reasonable opportunity was given, relevant documents were not supplied, the audit report was not allowed to be shown. As such, the enquiry was vitiated. Lastly, the punishment awarded is excessive to the extent that it shocks the conscience of a reasonable man. The punishment of termination has been passed for a clerical mistake.

(3) A short written statement was filed by the respondent. The detail written statement was not filed in spite of the direction of this Court vide order dated 16.5.1997. In the written statement, the respondents have taken a specific stand that the present writ is not maintainable against the respondents as it is a society.

(4) Heard.

(5) It is not disputed that the Khadi and Village Industry Commission was established by an Act of Parliament in the year 1956 with a view to promote and develop Khadi and village industries including the function as stated in Section 15(1)(g) of the Act which reads as under:

> "15 (1)(g) to provide financial assistance to institutions or persons engaged in the development and operation of khadi or village industries and guide them through supply of designs, prototypes and other technical information for the purpose of producing goods and service for which there is effective demand in the opinion of the Commission."

(6) It is not disputed that the major capital for the establishment of Commission as well as the working capital was provided by the Central Government and the object of promotion of village and khadi Industries is part of the Constitutional mandate given to the Central Government by the Directive principles. The commission as the statutory body has certified and

organized the various khadi mandals in the States to organized sale depot for the sale of khadi and village industries product. Each State has its own khadi mandal which manages the industries as well as the sale depot of the products of this village and khadi industries for distribution to general public at subsidized rates. Punjab Khadi mandal is one such organization which is registered under the society registration act but under the control and supervision of the khadi commission for the aims of the khadi and village industries commission Act, 1956.

(7) Moreover, the respondents themselves while registering the FIR have admitted in para 1-2 as under:

> "1. That the Punjab Khadi Mandal is a body Financed by Khadi and Village Industries Commissioner Central and with its Head office at Adampur Doaba, Jalandhar.
>
> 2. That the Punjab Khadi Mandal is running stores at Various places. Now the sale of Khadi and Manufactured items including Khadi Clothes, Silk Cloth as and various other house hold items and the same is financed by the Central Government."

(8) This Court in the case of **M/s Bharat Wools, Ludhiana *versus* The State of Punjab through Secretary to Governer, Punjab, Department of Industries, Chandigarh (1)** while holding that Punjab State Hosiery and Knitwear Development Corporation as instrumentality of the State and therefore amenable to writ jurisdiction observed in para 14 as under:

> "From the aforementioned survey of the provisions of Memorandum of Association and Articles of Association, it is more than evident that in order to given boost and encourage the hosiery and knitwear industry in the State and thereby provide and bring a source of employment to the unemployed youth of the region and at the same time, earn revenue in foreign currency, the State Government has delegated its functions to the Corporation. What could have been done by Industries Department is being done by the Government through the medium of the Corporation. The fact that after acquiring the

(1) 1996 PLR 230

> land for industrial development the Government places it at the disposal of the Corporation for the purpose of allotment etc. goes to show that the Corporation acts nothing but as an agency of the Government. Holding of entire share capital by the Government and its deep and pervasive control, direct and indirect, in all the activities of the Corporation buttresses the finding that the respondent Corporation is an agency/ instrumentality of the State."

(9) In the present case, as already discussed above, in view of the statement of objects and reasons of the Act as well as the various functions of the Commission including its financial assistance to institutions like the Mandal herein for the development and operation of Khadi and Village Industries, the respondent-Mandal running under the direct supervision of the commission set up under the aforesaid Act is accordingly an agency/ instrumentality of the State. Hence, amenable to writ jurisdiction.

(10) After having heard the learned counsel for the petitioner and perusing the inquiry report as well as various documents placed on record, this Court finds merit in the first argument raised by the learned counsel for the petitioner that the very charge-sheet was motivated. The various sequence of events speak for themselves. The petitioner was appointed as Salesman on 1.7.1982. Thereafter, he was promoted as auditor on 1.1.1983 and subsequently as Manager on 1.4.1984. On 15.9.1992, the services of the petitioner were terminated as no longer required. The petitioner challenged the said termination order through CWP No.12878 of 1992. Respondent No.1 agreed to reinstate the petitioner into service with continuity of service with the period from the date of termination to the day of appointment as leave of the kind due in pursuance to the orders passed by this Court on 18.12.1992, which reads as under:

> "After hearing the learned counsel for the parties, we find that the matter is likely to be settled amicably if the case is adjourned for a fortnight. Accordingly, the case is adjourned to 5.1.93. In the meantime, it is directed that in case the petitioner reports before the Incharge of Khadi Mandal, Talwara on 18.12.1992 and hands over the remaining charge of the store thereby completely relinquishing the charge with the Bhandar and reports

back to the Secretary, Khadi Manda, Adampur, then the respondents shall give appointment to the petitioner in case the petitioner further applies for the grant of leave for this period and for reinstatement. On the submission of such application, the respondents are further directed to condone the break and the period shall be continued, as if he continued in service."

(11) The respondents handed over the appointment letter to the petitioner as late as on 21.1.1993. Accordingly, writ petition was dismissed as infructuous.

(12) When the petitioner presented himself for duty as Adampur, he was made to join as a worker and not as a Manager. Even though, he was formerly a Manager. When the petitioner sent notice dated 3.3.1993 demanding proper designation and arrears of pay and allowances, he was transferred as Manager, Library, Adampur. The same was another humiliation inflicted upon the petitioner as there was no library at Adampur. He was idle with no work. Finally, the petitioner was charge sheeted vide order dated 16.6.1993. The charge sheet was for the embezzlement of Rs.1168.50 paise. The petitioner filed reply and on the basis of the said reply, the respondents themselves dropped the charges.

(13) Meanwhile, since the respondents had no intention of complying with the undertaking, the petitioner was forced to file COCP No.501 of 1993. Accordingly, it was only after the contempt petition was filed that the respondents reinstated the petitioner as Manager Production at Hazipur. Thereafter, although the petitioner gave his joining report, he was not given any charge. It was only after his pursuation and two letters dated 2.12.1993 and 6.12.1993 then the respondents vide an office order dated 9.12.1993, appointed the petitioner as Manager. There was one post of manager. It was with Charan Singh. Thus, this appointment of the petitioner was on paper. The said charge with all intents and purposes remained with Charan Singh for whom a special post was created of accountant and stock holder at the same place.

(14) Surprisingly, vide order dated 16.3.1994, the petitioner was transferred to Hoshiarpur as Sales Manager, which was even a bigger depot than that of Talwara Depot from where his services were terminated and

respondents had taken the stand in the Court that the petitioner cannot be given sales post. However, this was done to post him away from his home town and for obvious reasons which became clear subsequently.

(15) The petitioner represented against his transfer. He was not paid his salary since Sept, 1992 till 1993. No provident fund, no bonus, no adhoc salary, no house rent, no worker commission was given to him as per his entitlement.

(16) Suddenly, the petitioner received an order of suspension dated 19.9.1994. After suspending the petitioner and without disclosing the charges against him, an FIR No.139 dated 17.10.1994 was registered against him at City Police Station, Hoshiarpur, on a complaint dated 22.9.1994 by Secretary, Parkash Chand. The allegation in the FIR was for an embezzlement of Rs.519/- and of Rs.512/-. After the petitioner was granted anticipatory bail, he was served with the statement of allegations. The allegations were the same as stated in the FIR except for the embezzlement was stated to be of Rs.519/- only and another allegation was regarding 10 days absent from duty without mentioning from which date to which date.

(17) It would be relevant to note here that the petitioner stands acquitted in the FIR case vide order and judgment dated 18.10.2001 passed by Judicial Magistrate Ist Class, Hoshiarpur. Some of the findings are relevant, which read as under:

> "15.————————————————
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> —As it is clear from the prosecution evidence that the prosecution has failed to produce on file the said audit report for the period 1.4.1994 to 30.9.1994 during which it is alleged that the accused embezzled amount of Rs.1300-75 belonging to Punjab Khadi Manda. Hence, when the best evidence available with the prosecution has been with held by it, as per law, the adverse inference is to be drawn against the prosecution for not producing it. On the other hand, perusal of file shows that in the

defence evidence, accused has produced on the file Ex.D7, audit report shows that at page no.7 of the same, it has been found that the stock has been found to be less to the tune of Rs. 6752-85 but stock amount of Rs.7135-10 has been found to be in excess. Perusal of file shows that there is no explanation given by the Auditor as to why the excess of Rs.7135-10 has not been explained. This fact has also been explained by the prosecution. Rather the prosecution has with-held the said audit report. Hence, when the audit report on the basis of which it was found by the prosecution that amount Rs.1300-75 was embezzled by the accused, is not explained. The prosecution story become suspicious to prove on file that the accused embezzled any such amount. Hence, this point argued upon by the learned counsel for the accused is also acceptable.

17 ——— Hence, when the balance sheet of the complainant itself shows that there was gross profit to the Mandal, it cannot be held by even imagination that the accused embezzled any amount of the department. It is also shows that the stock was also intact."

(18) It is apparent from the findings recorded by the trial Court in the FIR case that the respondents did not produce the audit report in which the amount was found to be in excess and the balance sheet also proved that there was profit to the Mandal rather than loss.

(19) The above facts have not been denied by the respondents in their written statement filed by them. Thus, this Court has no choice but to conclude that the very charge sheet was mala fide and motivated.

(20) Taking up the argument of the learned counsel for the petitioner that procedure followed by the inquiry officer was not reasonable and nor any documents were supplied to the petitioner is evident on the face of it. Vide his letter dated 18.2.1995 placed on record as P-22, the petitioner demanded various documents. One of the document demanded by him was "Audit Report".

(21) The audit report were not supplied to the petitioner. In fact, vide letter dated 7.3.1995 (P-23), the said documents were refused as under:

> "After suspension, he has been given the Charge-sheet and the demanded documents are not concerned with the charge-sheet of Ex. Manager. So, we cannot produce these documents in this case demanded by him.
>
> Thanking you.
>
> Yours Faithfully,
> Sd/-
> Secretary"

(22) The said document was the most important document. The same has been placed on record by the petitioner as P-34. The said audit report was not produced as there was no loss of cash shortage. This fact is further strengthened from the findings recorded by the learned Judicial Magistrate Ist Class, Hoshiarpur, recorded in his judgment and order dated 18.1.2011 proving the fact that there was no cash shortage. Thus, it is evident that the charge sheet was issued hurriedly without checking the record i.e. the audit report, shortage of stock or cash and minor discrepancies which are some time common on account of clerical mistakes. The specific denial of the respondent to produce the audit report not only vitiates the enquiry but also strengthens the opinion that the very charge sheet was motivated. In somewhat similar circumstance, the observation of Hon'ble the Supreme Court in the case of **State of Uttar Pradesh and others *versus* Saroj Kumar Sinha (2),** are relevant which read as under:

> "30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government

(2) (2010) 2 SCC 772

servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

31. In Shaughnessy v. United States (Jackson, J.), a Judge of the United States Supreme Court has said: (L Ed p. 969)

"..... Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

32. The affect of non-disclosure of relevant documents has been stated in *Judicial Review of Administrative Action by* De Smith, Woolf and Jowell, 5th Edn.,p.442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

In our opinion the aforesaid maxim is fully applicable in the facts and circumstances of this case.

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35. In considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows:(Kashinath Dikshita case, SCC pp. 234-35, para 10)

"10. ..... When a government servant is facing a disciplinary proceedings, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective

> manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: 'What is the harm in making available the material?' and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

36. On an examination of the facts in that case, the submission on behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations: (*Kashinath Dikshita case*, SCC p.236, para 12)

> "12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also he would have needed the copies of the documents to enable him to

effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself."

37. We are of the considered opinion that the aforesaid observations are fully applicable in the facts and circumstances of this case. Non-disclosure of documents having a potential to cause prejudice to a government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the government servant.

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42. In our opinion, the appellants have miserably failed to give any reasonable explanation as to why the documents have not been supplied to the respondent. The division Bench of the High Court, therefore, very appropriately set aside the order of removal."

(23) Similarly, in the present case, refusal to supply the documents has caused great prejudice to the petitioner. The rule of natural justice was ignored. The enquiry was conducted with a closed mind. Failure to supply the documents vitiated the enquiry.

(24) Learned counsel for the petitioner has raised yet another argument that the punishment is excessive. The amount involved was only Rs.519/-. It was, if at all, only shortage in cash, for which the respondents in any case regularly deducted 5% as security from their monthly salary and in the event of any shortage of cash or stock or due to any other reason falling in the name of such employee, the same was deducted from this reserved security. This is evident from the document placed on record as P-35. Thus, if at all, it could be held as shortage and deducted accordingly. The question of embezzlement did not arise. As such, the punishment of removal could not have been inflicted.

(25) However, since the present petition is being allowed on ground that the charges were motivated and the inquiry is vitiated as the relevant documents including audit report of the concerned period was specifically denied to the petitioner by the inquiry officer, this Court need not go into the argument with respect to the quantum of punishment.

(26) In view of the above, the present petition is allowed and the order of termination dated 17.6.1995 (P-31) is set aside with all consequential benefits. The petitioner would be entitled to all the pay and allowances for the period of his termination. The aforementioned period shall also be counted for the purposes of redetermining his pensionary benefits.

A. AGGARWAL

Before K. Kannan, J.

M/S PHONOGRAPHIC PERFORMANCE LIMITED,—*Petitioner*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No.7772 of 2011

27th July, 2011

Constitution of India - Art. 226/227 - Copyright Act, 1957 - Ss. 2, 30, 33, 34, 51 &63 - Copyright Rules of 1958 - RI. 14-G - Writ petition to quash order of Addl. Director General of Police, Punjab to refer violation of the copy rights by members of the DJ Association to Government - Whether procuring licences from DJ by petitioner company correct according to rules - Held, petitioner company represents a right to manage copy rights of owners - Reproduction of sound by DJ amounts infringement - Marriage functions included - Petitioner company entitle to enforce rights of the owners - Petition allowed. "

Held, That the petitioner-Company represents a right to manage the rights of persons who are owners/authors of such copyrights and seeks for action against such infringing copy through performance or reproduction