

Before Rajiv Narain Raina, J.

SUBHASH CHANDER—Petitioner

versus

**FINANCIAL COMMISSIONER AND SECRETARY TO
HARYANA AND OTHERS—Respondents**

CWP No.11433 of 2013

October 30, 2018

Haryana Civil Services (Punishment and Appeal) Rules, 1987—Rl. 7—Illegality in allotment of surplus land—Initiation of charge sheet by the Department 14 years after incident and 3 years after discharge in criminal case bearing identical facts—Department cannot improve upon this dismal failure—Charge can be sustained on fresh material other than what was presented in criminal Court—SDO (Sub-Divisional Officer) civil was the allotment authority—Petitioner had no role to play in the Allotment process—Right against being vexed twice on same imputation of charges—Petition Allowed—Charges quashed— Directions to pay all his due benefits.

Held, that it is beyond doubt that the proposal for allotment of surplus land was made by the Naib Tehsildar (Agrarian), Guhla as per Annex. P-6. The petitioner was Naib Tehsildar but not the Naib Tehsildar (Agrarian). Neither was the petitioner the allotment authority which was the Sub Divisional Officer (Civil) Guhla, the petitioner's superior officer and boss in the revenue wing of the State. Certificate of allotment was issued by the allotment authority. The petitioner had no role to play in the allotment process of land declared surplus, but was roped in on the charge of conspiracy with five revenue officials which had led to the registration of the criminal case against them. The prosecution failed over an inordinately long period of time to produce even the basic documents i.e. the sale deeds and power of attorneys to sustain the criminal charge.

(Para 10)

Further held, that what the police could not do, the department ought not to be allowed to, unless it has in its possession fresh material other than what was presented in the criminal case to depend on a preponderance of probabilities. Besides, the State did not challenge the order of the learned Additional Sessions Judge discharging the six accused including the petitioner arrayed as accused No. 5 in the array

of parties. Department could have assisted the trial court by leading probative evidence/additional evidence to bring the charge home by supplying relevant material bearing on the case to the prosecution agency, but they miserably failed to do so.

(Para 11)

Further held, that charges in the domestic enquiry and in the criminal case are identical in character. The petitioner has a right against being vexed twice on the same imputation of charges which had led to discharge in the criminal case.

(Para 12)

Further held, that the charge-sheet has been issued 14 years after the incident and three years after discharge in the criminal case which is an inordinately long time. Person be vexed twice on same imputation of charges?

(Para 13)

Upasana Dhawan, Advocate, *for the petitioner*

Shruti Jain Goyal, DAG, Haryana

RAJIV NARAIN RAINA, J. (ORAL)

(1) This matter coming on for the first time in motion hearing, this Court, while issuing notice of motion passed the following order on 24th May, 2013:-

“The petitioner is serving as a Naib Tehsildar under the Department of Revenue, State of Haryana. He is due to superannuate in the year 2014. The challenge in the instant writ petition is to the issuance of a charge dated 27.11.2012 (Annexure P-1). Counsel for the petitioner would submit that the precise article of charge framed against the petitioner is regarding commission of certain illegalities in allotment of surplus land measuring 430 kanals, 16 marlas of Village Rasulpur. The precise argument raised is that in relation to this very charge, criminal proceedings had been initiated against the petitioner in which he stands acquitted in the light of decision dated 20.05.2009 (Annexure P-3) passed in Sessions Case No. 15/08 by the Additional Sessions Judge, Kaithal. Notice of motion for 30.07.2013. In the meanwhile, the departmental proceedings initiated in pursuance to the impugned charge sheet dated 27.11.2012 shall be kept in abeyance.”

(2) The case of the petitioner in brief is that while serving as a Naib Tehsildar he was served with a charge-sheet alleging serious irregularities committed in the years 1995-1996 in the subject matter of allotment of surplus land measuring 430K-16M in village Rasulpur, District Kaithal in breach of law. The Vigilance Bureau, Ambala Division investigated the matter and submitted Report No.5 on 24th March, 1999 finding the petitioner guilty of irregularities in office. On the basis of the report, a criminal case was registered against the petitioner and others in First Information Report dated 12th October, 2000 registered under Sections 467/468/471/120-B of the IPC and under Section 13(1) (d) of the Prevention of Corruption Act, 1988. The Additional Sessions Judge, Kaithal by order dated 20th May, 2009 discharged the accused, meaning thereby, that a case for framing of criminal charge was not made out. Concededly, the moot sale deeds which were stated to be bogus between the original owners of land, declared surplus, as forged and fabricated and so also the power of attorney signed by the petitioner were not collected during the investigation of the case by the police and they did not form part of the final report presented under Section 173 of the Cr.P.C before the trial court. Neither the petitioner nor his five co-accused were beneficiaries under the sale deeds is a finding of fact.

(3) The learned Additional Sessions Judge held that in the absence of the beneficiaries of the sale deeds and in the absence of any evidence connecting the accused with the beneficiaries, it could not be inferred by any stretch of imagination that the accused made wrongful gains for themselves. These documents were a must to be adduced in evidence before any charge could be framed against the accused. As required by law of registration of documents the petitioner as Naib Tehsildar was bound to register the document whenever presented before him for registration. It was not the case against the petitioner that certain bogus persons were produced before him as the registering authority. These alleged bogus documents had not seen the light of the day and had not been collected during investigation.

(4) The learned Additional Sessions Judge noticed in his order of discharge that the case was registered in the year 2000 based on the Vigilance report and till 2009 the investigation lingered on for one reason or the other, but still, absolutely nothing incriminating was found against the accused in the material collected by the investigating agency. The provisions of Section 13 of the Prevention of Corruption Act would not come into play unless there is some evidence on record

of the case that some favour was shown by the accused to the vendees of the sale deeds or they were to get some undue benefits in one way or the other by registering the documents at the instance of the vendees. The conspiracy theory between the six officials including the petitioner was not proven or what benefit they attained by registering the documents. Even the complaint had not been filed by the allottees before any authority or court that their signatures were obtained on blank papers. No steps were taken by any allottee that the sale deeds or power of attorney should be rescinded or cancelled. Under Sections 17, 32 and 34 of the Registration Act, 1908 the Registering Authority has no power to verify or ascertain as to whether the executants of the document possessed title to the disputed property or refused registration on the ground of absence of title or defect. The court found nothing incriminating against any of the accused including the petitioner and as a result declined to frame a criminal charge against the petitioner and others.

(5) The alleged irregularities were related to the period January, 1995. After a lapse of 14 years from the charge incident and three years after discharge in the criminal case, the petitioner was served with a departmental charge-sheet under rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 (for short "Rules" on 27th November, 2012 (Annex. P-1) on the same set of allegations as contained in Sessions Case No.15/2008. The petitioner filed reply to the charge-sheet on 7th February, 2012 (Annex. P-2) explaining that the criminal case had ended in discharge of the accused including the petitioner on 20th May, 2009. An enquiry officer was appointed to conduct a domestic enquiry relying on the same set of allegations report on which the criminal case was registered. It is in this background that the petitioner has approached this Court by filing this petition.

(6) The State pleads that there is no bar of limitation to initiate departmental enquiry after acquittal or discharge on a criminal charge and the accepted position in law that departmental and criminal proceedings can continue simultaneously or one after the other.

(7) The State in its preliminary submissions submits that the petitioner has not been discharged by the court on merits and has been given the benefit of failure on the part of the investigating agency to collect requisite documents/materials. They do not deny that the criminal case and the departmental proceedings are based on the same set of allegations.

(8) The petitioner has by way of application- CM No.6023 of 2016 placed on record documents Annex. P-5 to P-8 in continuation of the annexures filed with the petition. These documents bear out that the Allotment Authority in surplus proceedings was by none other than the Sub Divisional Officer (Civil), Guhla, Kaithal. It was he who in his official capacity convened the meeting for allotment of disputed surplus land available in the administrative/revenue Division by his letter dated 1st December, 1995 (Annex. P-5). The SDO (Civil), Guhla fixed the meeting on 6th December, 1995 requesting one Sh. Milkhi Ram Aggarwal, President Congress (I), Guhla and one Kulwinder Singh of Village Habri, Kaithal to attend the meeting so that allotment of surplus land may be made as per rules. Annex. P-6 is the proposal for allotment of land declared surplus under the Haryana Ceiling on Land Holdings Act, 1972 (for short "Act of 1972") and as per the Scheme of the Haryana Utilization of Surplus and other Areas Scheme, 1976 regarding allotment of surplus land declared in Village Rasulpur, Tehsil Guhla, District Kaithal, the area which is in question. A total of 28 beneficiaries are named as allottees in the letter. There is a note at the end of Annex. P-6 dated 6th December, 1995 signed by the Allotment Authority, Guhla (Kaithal), that "according to the allotment proposal of Naib Tehsildar (Agrarian), Guhla and consent given by non-Government Members, the allotment is hereby approved. Form US-3 be issued". Certificate of allotment is Annex.P-7 dated 11th December, 1995 which is also signed by the Allotment Authority, Guhla. Annex. P-8 is a letter from the Government to the Deputy Commissioner, Kaithal dated 23rd December, 2014 with a direction that in view of the pending departmental enquiry under Rule 7 of the Rules of 1987, gratuity be not paid to the petitioner who was due to retire from government service on 31st December, 2014 on his attaining the age of 58 years. However, payment of provisional pension and leave encashment was directed to be released.

(9) I have heard learned counsel for the parties and have also gone through the paper-book.

(10) It is beyond doubt that the proposal for allotment of surplus land was made by the Naib Tehsildar (Agrarian), Guhla as per Annex. P-6. The petitioner was Naib Tehsildar but not the Naib Tehsildar (Agrarian). Neither was the petitioner the allotment authority which was the Sub Divisional Officer (Civil) Guhla, the petitioner's superior officer and boss in the revenue wing of the State. Certificate of allotment was issued by the allotment authority. The petitioner had no

role to play in the allotment process of land declared surplus, but was roped in on the charge of conspiracy with five revenue officials which had led to the registration of the criminal case against them. The prosecution failed over an inordinately long period of time to produce even the basic documents i.e. the sale deeds and power of attorneys to sustain the criminal charge. Those documents were kept in the dark during the investigation and for years together and have still not seen the light of the day as is recorded as a fact by the trial court and have not even been produced in the present petition to ignite the curiosity of this Court. The department in its proceedings cannot improve upon this dismal failure of the redoubtable and legendary prosecution. The police has as usual been a laughing stock.

(11) In trying to persuade this Court that at least this much allowance deserves to be permitted to it that the departmental proceedings should continue; the State is wholly wrong in saying that the petitioner was discharged by giving him the benefit of doubt or asserting that the case was not decided on merits. This, however, does not mean that a trial has taken place and innocence proved but still what the police could not do, the department ought not to be allowed to, unless it has in its possession fresh material other than what was presented in the criminal case to depend on a preponderance of probabilities. Besides, the State did not challenge the order of the learned Additional Sessions Judge discharging the six accused including the petitioner arrayed as accused No. 5 in the array of parties. Department could have assisted the trial court by leading probative evidence/additional evidence to bring the charge home by supplying relevant material bearing on the case to the prosecution agency, but they miserably failed to do so. If the legal position is that surplus land could not be sold till five years of the date of allotment, as per provisions of Section 5(5) of the Act of 1972 and the petitioner as Naib Tehsildar had registered General Power of Attorney No.137, 139 to 147 on 15th January, 1996, then the State should have first questioned the allotment authority i.e. the Sub Divisional Officer (Civil), Guhla as to what did he do in the matter of registration of sale deeds and allot land which was not within the jurisdiction of the petitioner.

(12) If there has been any violation of the rules, no direct evidence exists or has been brought on record in the trial court to prove ex facie to the contrary to start a criminal trial. Mens rea is relevant to both criminal and domestic proceedings. The statement of imputation of charges in the impugned charge-sheet is manifestly that the

petitioner in connivance with Ram Charan, Patwari and Parshotam Dass, Namberdar of Village Kawartan wrongly allotted the land to 28 persons. Later, by obtaining Power of Attorney from them, this land was further sold whereas surplus land cannot be sold till five years after the allotment. The documents relied on in the charge-sheet are none other than the Enquiry Report No.5 of 1999 of State Vigilance Bureau, Ambala Division and the file relating to allotment of 430K-16M surplus land of Village Rasoolpur as is borne out from the charge docket. This affirms that the charges in the domestic enquiry and in the criminal case are identical in character. The petitioner has a right against being vexed twice on the same imputation of charges which had led to discharge in the criminal case.

(13) Moreover, the charge-sheet has been issued 14 years after the incident and three years after discharge in the criminal case which is an inordinately long time. The evidence will not remain the same after a lapse of about a decade and a half. The criminal court is right in observing this. Neither the complainant nor the State challenged the order of discharge of the petitioner. The petitioner was not the allotment authority. If there is presence of the hand of the petitioner on the power of attorney executed by the allottees, it does not follow that he conspired with the sale of surplus land by the allottee to third party. If there was a systems failure, then the high-ups should be asked whether they had performed their duties properly as allotment authority. The charge against the petitioner is specific that he got wrong allotment made to 28 persons from the then allotment authority, namely, Sh. B.B Kaushik, HCS, SDM, Guhla. This charge cannot be sustained till the role of the allotment authority is not investigated and the truth unearthed. Even later on, the land was further sold on the basis of power of attorney when the petitioner was not registering authority. He neither made the allotment nor was the registering authority of landed surplus property. Neither can this Court make fishing and roving enquiry of the happenings in the years 1995-1996. If the prosecution could not prove the charges in the criminal trial on the evidence collected by the prosecution, would the department be able to prove the charges in the departmental proceedings on the same set of allegations and material and that too after a long span of time. I have very serious doubt on the petitioner having been dealt with fairly in slapping a charge sheet by the respondent department on the same materials on record only to dishonour the petitioner short of retirement and make him a scapegoat and deprive him of his unpaid retirement dues. There

does not appear to be any fairness in action in what was done to the hapless petitioner in his rank.

(14) For the reasons recorded above, this petition is allowed and the impugned charge-sheet dated 27th November, 2011 (Annex. P-1) as also the proceedings which are consequential thereto are quashed and set aside as illegal, arbitrary and unreasonable. All the pensionary benefits including gratuity etc. be released to the petitioner within two months from the date of receipt of a certified copy of this order failing which the principal amount in default will carry 8% interest per annum till realization payable by the erring official/s from his/their own pocket. In case promotion to any higher post has been held up only due to the pendency of the criminal case or the departmental proceedings, the competent authority would look into this aspect and the petitioner's case be accordingly considered and if he is found otherwise eligible as per rules to do so by passing a speaking order to be conveyed to the petitioner by mid February 2019 with copy to the registry of this Court with request to place it on file for perusal.

Dr. Payel Mehta