

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

% *Date of Decision: 4th August, 2010*

+ **W.P.(C) NO.1361/2004**

UOI Petitioners

Through: Mr.R.V.Sinha, Advocate with
Mr.R.N.Singh, Advocate

versus

M.SHANKAR KUMAR Respondent

Through: Mr.L.R.Khatana, Advocate with
Mr.Prashant Khatana, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. While serving as an Upper Division Clerk in the Department of Science and Technology, the respondent was issued a charge memo dated 8.1.2001 listing 3 charges against him which are as under:-

"Article 1

That the said Shri M.Shankar Kumar while serving as Upper Division Clerk in the Department of Science & Technology established a Non-Governmental Organisation named Sakthi Society for Rural and Urban Development (SSRUD), Registration No.109 of 1996 with its Head Office at Door No.1-38-60, Kollurivari Street, Nazerpet, TENALI-522201 (Guntur District) and held the post of President (Elected) of the said Society without obtaining prior sanction of the Competent Authority. This is violative of provisions of Rule 15 of CCS (Conduct) Rules, 1964.

Article 2

That the said Shri M.Shankar Kumar while serving as Upper Division Clerk in the Department of Science & Technology used the Sakthi Society for Rural and Urban Development (SSRUD) for attempting to secure grants/financial assistance from the Department of Science & Technology for himself and his family members and close relatives, who were also the office bearers members which tantamount to conduct unbecoming of a public servant. This violated Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

Article 3

That the said Shri M.Shankar Kumar while serving as Upper Division Clerk in the Department of Science & Technology unauthorizedly communicated official information which was accessible to him as an employee of the Department for furtherance of the interests of his own self as well as his family members through the said Society. The said Shri Shankar Kumar, UDC not only unauthorizedly communicated the inside official information to this family members but also helped them to misuse the same in the similar manner in using unfair tactics of leveling allegations against departmental officials responsible for disbursing grants to Non-governmental organizations/voluntary groups, and to coerce them into releasing funds to Sakthi Society for Rural and Urban Development (which is largely a family based NGO) by writing threatening letters to Secretary, DST, Ministry of Science & Technology and other senior officers in the Government, thereby violating the provisions of Rule 11 of CCS (Conduct) Rules, 1964.”

2. It is apparent from the Articles of Charge that the allegation against the respondent was of having established an NGO under the name Sakthi Society for Rural and Urban Development (SSRUD) with its head office in District Guntur and he was the President of the said society and for which he did not obtain prior sanction from the competent authority. Further, in his capacity as the Upper Division Clerk in the Department of Science and Technology he used the forum of

society to try and secure grant/financial assistance from the Department of Science and Technology for himself and his family members inasmuch as the beneficiaries of the society were he himself, his family members and relatives.

3. The respondent replied to the charge sheet as under:-

“To

The Deputy Secretary (Admn. & Vig.)
(Attn. Shri Ved Prakash)
Department of Science and Technology
Technology Bhawan
New Delhi 110016.

Sir,

With reference to Memorandum No.A-20017/19/84-Admn.I(B) dated 8th January 2001 it is to request that the rules quoted in the Charge Sheet Articles 1(One), 2 (Two) ad 3 (Three) do not coincide with the rules available in DST Library, perhaps due to old editions available there. It is requested that photocopies of the relevant rules may please be provided to enable me to furnish a reply to the charges.

It may also kindly be advised whether as suggested penultimate para at page 4 (four) of the Charge Sheet, I should tell the Society's Governing Body to withdraw the Writ Petition Number 4546 of 2000 in the Hon'ble Delhi High Court against the Department.

I would, however, like to clarify that the allegation that I relayed official information to the Sakthi Society for Rural and Urban Development, Tenali, Andhra Pradesh is absolutely and wholly false, defamatory and preposterous and are denied. It is requested that such conclusions should not be drawn on the basis of conjectures and suspecision.

Thanking you,

Date:17th January 2001.

Yours faithfully,

Place: New Delhi 110016

Sd/-
(M.SHANKAR KUMAR)
UDC, ISCA CELL AND
HONY.PRESIDENT
Sakhti Soc. Rural & Urban Dev.
TENALI 522201 Andhra Pradesh."

4. Inquiry Officer was appointed. Inquiry was held as per Rule 14 of the CCS (CCA) Rules. After the Department led evidence and the defence rested, the Presenting Officer sought to prove certain letters addressed under the signatures of the respondent to the District Registrar Guntur, in which, making a reference to a memo dated 4.10.2000 received by him he informed the Registrar that he cannot hold an elected post in the society. The same was declined vide order dated 15.11.2001.

5. Thereafter inquiry report was submitted. The findings of the Inquiry Officer are as under:-

"Article of Charge No.1 – The charge against Shri M Shankar Kumar, Upper Division Clerk, Department of Science & Technology that he established a Non-Governmental Organization namely "Sakthi Society for Rural and Urban Development, Tenali and held the post of President (elected) of the said Society without obtaining prior sanction of the competent authority is established. In response to the Memorandum No.A-20017/19/84-Admn.I(B) dated 8th January, 2001 issued by the Department to the charged officer, he has while denying the allegation of relaying information to the said Society vide his letter dated 17th January, 2001 has designated himself as UDC, ISCA Cell and Hony. President, Sakthi Society Rural & Urban Development, Tanali 522201, Andhra Pradesh. On rethinking, he made a Corrigendum dated 23.1.2001 requesting reading his designation as UDC in place of Hony.President, Sakthi Society Rural and Urban Development, Tenali. It is of paramount importance that here we are establishing truth and for that what is on record cannot be washed away by mere technicality. After all it is for the charged officer to brief his Defence Assistant with the complete information of the case.

The request for introduction of authenticated documents received from the District Registrar, Guntur were not allowed as the request was made by the Presenting Officer after he had rested the case but these were taken on record. The documents submitted by Defence Assistant i.e. Outlook weekly magazine 11th December, 2000 with the article "CHILD IS THE FATHER OF MAMMON" and the list of defence witnesses containing 14 names of senior departmental officers was found irrelevant and out of context and scope of the inquiry, but these were also taken on record. **It is on record that Shri M.Shankar Kumar made a written request dated 18th October, 2000 to the Governing Body/General Body of the Sakthi Society for Rural and Urban Development, Door No.1-38-60, Nazerpet, Tenali-522201 (AP) that "due to personal reason, I resign as the President of Sakthi Society for Rural and Urban Development immediately. As per directions from my employer i.e., Department of Science & Technology, New Delhi - 110016, I cannot hold an elective post in your Society without prior sanction vide its letter No.C-13013/01/97-Vig/Admn.I(B) dated 4th October, 2000". The said letter was received by the Society on 27.10.2000 under acknowledgement by M.Gayatri under Society's Seal. It is noted that it has already been established in the Department that Shri M.Shankar Kumar was holding the post of President of the Society and he resigned from the Presidentship of the Society.**

The Defence Assistant's plea that if the defence witnesses had been allowed it could have proved that senior officers of the Department were holding elected posts in NGOs/Cultural Bodies, Commercial Bodies which are registered under the Indian Society Act, 1860 most of which are receiving heavy grants from Department of Science & Technology with the assumption that the charged officer was also competent to hold such an elective post in the NGO (Society) without prior sanction of the Department does not hold good as senior officers may hold such posts with Government sanction or as a part of official

duties. His plea on the basis of the factual information provided by prosecution witness Dr.Shukla that members of the Project Advisory Committees (PAC) were recipients of grants approved by these Committees also cannot draw parallel with the inquiry in question as the Experts on the PACs may get the Projects for which funding is made by the Government against fixed criteria.

The Article of Charge No.1 is as such fully established.

Article of Charge No.2 – The charge that Shri M.Shankar Kumar while serving as UDC in the Department used the Sakthi Society for admitting to secure grants/financial assistance from the Department of Science & Technology for himself and his family members and close relatives who were also the officer bearers/members is also established. The Defence Assistant's plea that the documents by which the charges were to be proved were not original documents by which the charges were to be proved were not original documents and hence could not be admitted because the documents were not signed by the proposer i.e., the officer bearer of the Society and these could be manipulated or replaced does not hold good in the official parlance as the project proposals received with covering letter have the project documents signed only in the end. However, as the first charge is established that Shri M.Shankar Kumar established the NGO named Sakthi Society and held the elective position in the Society as per the documents received from the Department as also from the District Registrar, Guntur in addition to his own statement made in the letter dated 17th January, 2001, there is little doubt that he was an interested party for submission of the project documents from the Society for funding by the Department. It was suggested by the Defence Assistant during the proceedings of the inquiry that one of the prosecution witnesses, Dr.B.K.Shukla informed the Society of the sanctioning of a project proposal of the Society against gratification which was denied by the witness. The same witness had informed that Shri Shankar Kumar used to come to him to know the status of the sanctioning of the project proposal submitted by the Society. The charge of bribe is intended to malign as

well as demoralize the prosecution witness though it confirms the interest of the charged officer in the project.

The plea of Defence Assistant that the Presenting Officer merely throws out allegations in all directions into the air making wild allegations even against family of the charge officer without producing even a smallest shred of evidence proving any link of the charged officer with the imagined family members is also made only on the technicality that the documents submitted by the Government are not authentic because these are not signed on each page and can be manipulated. He even goes to the extent that the Presenting Officer has drawn his own conclusions that Dr.M.R.K.Murthy and Smt.Majeti Gayatri are his father and wife respectively. Also that Dr.M.Shankar Kumar mentioned in the Members of the Association cannot be identified with Shri M.Shankar Kumar. The charged officer is a government employee and the information about his family members is available in office as authentically given by himself. But the fact that Shri M.Shankar Kumar has impersonated for Dr.M.S.Kumar as is evident from the documents received from the District Registrar, Guntur.

Hence, the second article of charge is also fully established.

Article of Charge No.3- The third charge pertains to Shri Shankar Kumar unauthorizedly communicating official information is not fully established by the prosecution. But circumstantial evidence suggest that he was instrumental in giving the information to the Society. Also going by other two charges as these have been established, the instinct is that as Shri Shankar Kumar was himself instrumental in establishing the NGO (Society) and was holding the elective post of President, he had the opportunity to have information both which is for general public as well as which could be gathered by him from various sources in the office and could be given by him to the Society. The charge as such is established.”

6. The Disciplinary Authority furnished the report of the inquiry to the respondent and after receiving his response proceeded to inflict the penalty of compulsory retirement vide

order dated 22.5.2002 in which it was held that keeping in view the grave nature of the offence and misconduct it was felt that his continuous in Government service would be undesirable as he is likely to indulge such practices in future.

7. Statutory appeal filed was rejected vide order dated 19.8.2002 and this compelled the respondent to file OA No.1135/2002 in which he prayed that the order dated 22.5.2002 and the order dated 19.8.2002 be quashed.

8. It was urged by the respondent before the Tribunal that the Inquiry Officer could neither have referred to the letter dated 4.10.2000 nor the letter dated 18.10.2000 for the reason these were not proved at the trial and on the contrary there was a specific order, being the order dated 15.11.2001, prohibiting the letter dated 18.10.2000 to be brought on record.

9. Needless to state the plea was urged for the reason while indicting the respondent vide Article 1 of the Charge, the Inquiry Officer has relied upon the letter dated 18.10.2000 written by the respondent to the District Registrar in which he has made a reference to a memo dated 4.10.2000 received by him and with reference to the said memo has informed the Registrar that he could not hold an effective post in the society.

10. Holding it to be a case of relying upon inadmissible evidence and holding that excluding the same, it is a case of no evidence, the Tribunal has quashed the two orders which were impugned before it.

11. Suffice would it be to state that excluding the letter dated 18.10.2000 written by the respondent to the District Registrar and hence excluding the reference to the memo dated 4.10.2000 which has been referred to in the said letter, the Tribunal had to consider the effect of the response of the

respondent to the charge memo, which, as noted in para 3 above, is indisputably the response of the respondent to the charge sheet and in which he has designated himself as “UDC ISCA Cell and Hony. President, Sakthi Society for Rural and Urban Development”.

12. If the said response of the respondent is correct, it is apparent that he has himself let the cat out of the bag. In the said letter he admit being the Hony. President of the society.

13. Mr.L.R.Khatana, learned counsel for the respondent would urge that the said letter is not a part of the charge sheet has not been included in the documents relied upon in the list supplied and annexed to the charge sheet could not be taken note of by the Inquiry Officer. Counsel states that it was not ever brought on record and proved.

14. Being a response to the charge sheet, it is apparent that the response dated 17.1.2001 to the charge sheet could not be a part of the relied upon documents which were indexed in the list of documents relied upon and annexed with the charge sheet.

15. As regards the submission that the letter was never brought on record of the Inquiry Officer and not proved, suffice would it be to state that being the respondent’s response to the charge sheet, the letter is akin to a written statement to a plaint. It is known to one and all that what is placed before the Inquiry Officer is the charge sheet with all its annexures and the response thereto. Thus said response can be looked into.

16. Should we remand the matter to the Disciplinary Authority for reconsidering the matter by excluding the letter dated 18.10.2000 written by the respondent to the District Registrar Guntur or can we proceed ahead?

17. We think that no useful purpose would be served to

remit the matter before the Disciplinary Authority for the reason the respondent's response to the charge memo has let the cat out of the bag in which the respondent admits being the Hony. President of the Society in question. It is not a case where competing evidence needs to be probablized, for the reason the truth is writ large.

18. The first charge against the petitioner of being the President of the Society without obtaining prior sanction of the competent authority is thus fully established for the reason it is not the case of the respondent that he took the permission. His case was that he was not the President of the Society, a fact which is belied from his response to the charge memo. The reasoning of the Inquiry Officer that if Article I of the Charge is proved, II and III follow, is accepted by us for the reason it is not in dispute that the beneficiaries under the society were family and the relations of the respondent and that as the UDC under the petitioner the grant in aid to the society would have been routed through the office in which the respondent worked. It is obviously a case where the respondent has admitted to secure grant/financial insistence from the Department for himself and for his family members. There is evidence that the respondent took keen interest to ensure that the grant was relieved.

19. It is true that the finding recorded by the Disciplinary Authority while levying the penalty that there is likelihood of the respondent indulging in such practice in future is not supported by any reasonable basis on which it can be founded and to that extent the said order is faulty, but ignoring the taint and retaining the remainder, what stands established is that without obtaining the prior permission of the competent authority the respondent held position of an office bearer of a society; the beneficiaries of the society were

his family members and relations; the said society sought for financial assistance from the department in which the respondent was an employee and as the UDC in the department, he took active interest to ensure that the request for financial resistance was suitably responded to.

20. The penalty of compulsory retirement from service is thus absolutely justified.

21. We allow the writ petition and quash the impugned order dated 17.11.2003 passed by the Central Administrative Tribunal and dismiss OA No.1135/2003 filed by the respondent. As a consequence, the order dated 22.5.2002 and 19.8.2002 are restored.

22. No costs.

**(PRADEEP NANDRAJOG)
JUDGE**

**(MOOL CHAND GARG)
JUDGE**

AUGUST 04, 2010

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