

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(DB : Sheel Nagu and Rajeev Kumar Shrivastava J. J.)

W.A. No.1125/2017

(JMFC Jaura, District Morena and Anr. Vs. Shyam Singh and others)

&

R.P. No.579/2017

(Shriram Sharma Vs. Shyam Singh and others)

Shri Ankur Mody, learned Additional Advocate General for the appellant in W.A. No.1125/2017.

Shri Prashant Sharma, learned counsel for the petitioner in R.P. No.579/2017.

Shri S.S. Bhadoriya, learned counsel for respondent No.1 in W.A. No.1125/2017.

Shri Ankur Mody, learned Additional Advocate General and Shri S.S. Bhadoriya, learned counsel for respondent in R.P. No.579/2017.

WHETHER REPORTABLE : Yes No

Law Laid Down:

1. The jurisdiction of the High Court under Article 226 of Constitution of India is wide enough to include within its ambit the ancillary power of issuing remedial and penal directions to not only render justice but also to mould the relief and give directions to do complete justice.

Significant Paragraph Numbers: 10.3

ORDER

(06.03.2020)

Per : Sheel Nagu, J.

1. Present common order shall dispose of W.A. No.1125/2017 (*JMFC Jaura, District Morena and Anr. Vs. Shyam Singh and others*) and R.P. No.579/2017 (*Shriram Sharma Vs. Shyam Singh and others*).

2. Instant intra Court appeal assails the final order passed by learned Single Judge on 27.06.2017 while exercising writ jurisdiction u/A.226 of Constitution disposed of W.P. No.5831/2011 by holding the action of JMFC Jaura, District Morena to be suspicious and thus directing the Registrar General of this Court to conduct an enquiry against JMFC Jaura as to what compelled JMFC Jaura on 14.02.1994 to insert a slip as to the purity of article (gold) which was recovered in a case of theft and sealed after being seized on 10.11.1978. A further direction has been issued by learned Single Judge to the CID to register appropriate offence against accused persons to investigate into the role of each of the persons including respondent No.1 herein (the alleged owner of seized gold) involved in the alleged replacing of gold items with artificial items as revealed by order sheet dated 16.03.2011 of ACJM Jaura, District Morena.

3. Learned AAG on behalf of appellant in W.A. No.1125/2017 and Shri Prashant Sharma, learned counsel on behalf of review petitioner in R.P. No.579/2017 are heard at length.

4. Learned Additional Advocate General for the writ appellant submits that aspersions cast upon the conduct of JMFC Jaura by the learned Single Judge are perverse as there was no material for expressing grave suspicion at the conduct of JMFC Jaura. It is submitted that JMFC Jaura in due discharge of his official administrative duties carried out inspection of items preserved in the Malkhana at the Sub-Treasury Jaura and on finding one of the

articles which was labelled as gold, to be artificial gold, JMFC Jaura rightly noted the observation of gold being artificial by inserting an endorsement to that effect on a chit and placing it in the packet containing seized gold on 14.02.1994. It is thereafter submitted that with utmost promptitude on 17.02.1994, JMFC Jaura informed District Judge, Morena in writing about the said revelation during inspection. It is also submitted that District Judge, Morena thereafter vide letter dated 26.03.1994 directed the concerned Police Station to register offence which led to lodging of FIR on 29.03.1994 bearing Crime No.90/97 registered at Police Station Jaura, District Morena alleging offences punishable u/S.409 r/w.120-B of IPC. In the aforesaid factual background, it is submitted that JMFC Jaura, District Morena right from the inspection carried out by him on 14.02.1994 till the matter was reported by him to the District Judge, Morena, on 17.02.1994 acted in due discharge of his administrative duties without transgressing his jurisdictional limits or violating any law. Reliance is placed on Sec.3 of Judges Protection Act, 1985 and the decision of Apex Court in **Union of India and Ors. Vs. K.K. Dhawan, (1993) 2 SCC 56** to finally contend that direction contained in operative para 1 and 2 of the impugned judgment are not only perverse, unjustified but have also been passed exceeding the limits set by Article 226 of Constitution. Therefore, it is submitted that the impugned directions issued in para 1 and 2 of the impugned order

be set aside.

5. Learned counsel for the writ appellant and review petitioner have also contended that the learned Single Judge has travelled beyond his brief in W.P. No.5832/2011.

6. Similar grounds as raised in writ appeal are canvassed by the review petitioner, Shriram Sharma, who was the JMFC Jaura when the incident took place but is presently retired.

7. For ready reference and convenience, relevant directions contained in para 1 and 2 of order impugned are reproduced below:-

“1) What was the occasion for JMFC to prepare a slip and insert in the sealed envelope on 14.02.1994 when the said articles were admittedly seized on 10.11.1978. Therefore, the role of JMFC, who was holding the office at Jaura on 14.02.1994, becomes suspicious. In this regard, the Registrar General of this High Court is directed to conduct an enquiry against said JMFC and enquire as to what was the occasion for him on 14.02.1994 to insert a slip as to purity of the article and on what basis he had put that slip in the sealed envelope on 14.02.1994. Let a copy of this order for this purpose be forwarded to the Registrar General of the High Court immediately.

2) As far as the role of Sub-Registry, Jaura is concerned, that also needs to be investigated and for this purpose, this Court is of the opinion that let appropriate case be registered by the Crime Investigation Department of Police against the accused persons and let CID enquire into the role of each of the persons including the petitioner in replacement of the gold items with artificial items as have been mentioned in ordersheet dated 16.03.2011 by the Court of ACJM Jaura, District Morena.”

7.1 Taking up direction contained in para 1, it is seen that the

same relates to direction to the disciplinary authority (the High Court of M.P.) of the then JMFC Jaura, to conduct enquiry into his conduct to ascertain real reason for JMFC Jaura to have inserted a slip (mentioning that article gold is artificial) in the sealed packet containing seized gold.

7.2 Thus, the aforesaid direction has been given by the learned Single Judge after perusing the record and findings that the conduct of JMFC Jaura of inserting the said slip mentioning the gold item to be artificial raises suspicion that gold which was allegedly pure at the time of its seizure on 10.11.1978 could have been replaced by an artificial look alike metallic object between the date of seizure i.e.10.11.1978 till 14.02.1994 when the appellant /JMFC/ review petitioner carried out the inspection and inserted a slip. Arising of this suspicion in the mind of learned Single Judge was truly understandable. When the learned Single Judge found from the record that gold which was allegedly real at the time of seizure has been misappropriated by replacing the same with artificial gold the least that was expected of the learned Single Judge was to direct conduction of deeper probe by way of fact finding enquiry to ascertain the truth. Since a fact finding enquiry ordinarily is not conducted during exercise of writ jurisdiction, the learned Single Judge obviously and most appropriately directed the disciplinary authority (the High Court of M.P.) to enquire into the conduct of the then JMFC Jaura by means of a preliminary enquiry which is ordinarily conducted by any disciplinary authority to ascertain as to

whether the employee has prima facie committed any misconduct or not?

7.3 Thus, the learned Single Judge was well within his jurisdiction to have directed for a fact finding enquiry by the disciplinary authority.

7.4 However, by doing so the learned Single Judge has cast serious suspicion on the conduct of the then JMFC/appellant/review petitioner. This grave suspicion expressed by the learned Single Judge has the potentiality to prejudice the mind of the disciplinary authority preventing it from acting in a free, fair and impartial manner while conducting the fact finding preliminary enquiry.

7.5 It is in the interest of the employer and as well as the employee that whenever a preliminary enquiry is conducted to ascertain whether a misconduct on a prima facie basis is made out or not and whether such misconduct is serious enough to enable initiation of disciplinary proceeding or not, that the employer/disciplinary authority ought to be left unprejudiced and uninfluenced by any factor which may dissuade it to act in free, fair, impartial and unprejudiced manner.

8. In terms of above discussion, this Court is of the considered view that the observations in page 2, para 1 of the impugned order from “What was the occasion.....at Jaura on 14.02.1994, becomes suspicious”, can adversely prejudice the mind of disciplinary authority obstructing in the free and fair conduction of fact finding preliminary enquiry to ascertain as to whether any

misconduct has been committed by the then JMFC Jaura or not?

9. Consequently, this Court is inclined to interfere in the matter so far as direction No.1 is concerned to the extent indicated above.

10. Coming to direction No.2 of the impugned order, it is seen that since the seized gold was preserved at Sub-Treasury Jaura, ever since it was seized in 1978, the learned Single Judge directed the CID to investigate by registering an offence against accused persons to enquire into the role of each of the accused persons including Shyam Singh (the alleged owner of the seized gold).

10.1 The direction to register an offence and conducting investigation is based on the order sheet dated 16.03.2011 of ACJM Jaura, District Morena. None of the rival parties herein objected to direction No.2 in the impugned order on the ground that they are not the true reflection of the contents of the order dated 16.03.2011 of ACJM Jaura, District Morena. Thus, this Court treating the said order dated 16.03.2011 of ACJM Jaura to be true proceeds to decide the tenability of the direction contained in para 2.

10.2 The objection raised against direction in para 2 is primarily founded on the ground that there was no occasion for the writ Court to have directed for registration of offence, as W.P. No5831/2011 was filed for quashing the order dated 16.03.2011 (Annexure P/1) wherein ACJM Jaura, District Morena had noted the contents of packet containing the seized gold including the chit inserted by the then JMFC/review petitioner/appellant and therefore the alleged owner of the seized gold, Shyam Singh, had declined to accept the

fake gold despite earlier judicial order of releasing the seized gold in favour of the owner. W.P. No.5831/2011 besides seeking quashment of Annexure P/1 as aforesaid sought a direction that the real gold which was stolen from the owner, (Shaym Singh) and recovered by the police, seized and sealed, should be returned to the owner or the owner be paid adequate suitable compensation equal to market price of the seized gold. It is thus submitted that on the anvil of subject matter of W.P. No.5831/2011 and relief claimed the direction for conduction of enquiry into the conduct of JMFC and also of registration of offence were *de hors* the brief in W.P. No.5831/2011.

10.3 The aforesaid objection of the review petitioner and as well as the writ appellant of learned Single Judge having transgressed his jurisdiction, is heard to be dismissed at the very outset. The High Court as a superior Court while exercising writ jurisdiction under Article 226 of Constitution has the powers to issue writ, order or any direction which are either directly or indirectly related to the subject matter in question. More so, the High Court under Article 226 of Constitution does so not only for enforcement of any fundamental right but also for any other purpose. The expression “any other purpose” is generic enough to expand the jurisdiction of the High Court under Article 226 of Constitution so as to reach all those places or causes where injustice is found and do everything possible within its powers to remedy the same by issuing suitable writ, order or direction of any nature. Thus, the power of issuing

direction with the High Court under Article 226 can be exercised not only by curative, but also by punitive means as the case may be. The High Court cannot be a silent spectator by turning a Nelson's Eye to injustice by hesitating to pass complete and composite orders and directions not only by striking at injustice but also ensuring that the perpetrators of injustice are brought to the book by giving suitable direction without stepping into the shoes of the executive disciplinary authority.

10.4 These plenary powers of the High Court u/A.226 of Constitution have been succinctly described and elaborated by the decision of the Apex Court in and this Court *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and others*, (1999) 6 SCC 464, *Gram Panchayat Parei Vs. State of M.P.*, (2002) 2 MPLJ 401 (para 17), *Sri Justice S.K. Ray Vs. State of Orissa and others*, (2003) 4 SCC 21, *Employees' State Insurance Corpn. and Ors. Vs. Jardine Henderson Staff Association and Ors.*, (2006) 6 SCC 581 (63) and *RBF RIG Corporation, Mumbai Vs. Commissioner of customs (Imports)*, (2011) 3 SCC 573, relevant portions of which are reproduced below for ready reference and convenience:-

M.I. Builders Pvt. Ltd. (supra)

44. Reference was made to *Wade on Administrative Law*, 7th Edition, page 720 and to *De Smith on Judicial Review of Administrative Action*, 5th Edition, page 271 to support the contention that relief could be moulded in law. In *Wade's treatise* the following part is relevant: -

"The freedom with which the court can use its discretion to mould its remedies to suit special situations is shown by two decisions already encountered. One was the case where the House of Lords refused mandamus to

a police probationer wrongly induced to resign, although he made out a good case for that remedy, in order not to usurp the powers of the chief constable, and instead granted him an unusual form of declaration to the effect that he was entitled to the remedies of unlawful removal from office except for reinstatement. The other was the case of the Take-over Panel, where in fact no relief was granted but the Court of Appeal explained the novel way in which remedies should be employed in future cases, with the emphasis on declaration rather than certiorari and on 'historic rather than contemporaneous' relief. The same freedom to mould remedies exists in European Community law, where the European Court of Justice may declare non-retroactivity when holding some act or regulation to be void."

Gram Panchayat Parei (supra)

17.It is apposite to state here that in the aforesaid case reference was made in the decisions rendered in the cases of Charanjit Lal Chowdhury vs. The Union of India and others, AIR 1951 SC 41; Satya Narain Singh vs. District Engineer, P.W.D., Ballia and another. AIR 1962 SC 1161; the State of Haryana vs. The Haryana Co-operative Transport Ltd. and others, AIR 1977 SC 237; and B.R. Ramabhadriah vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others, AIR 1981 SC 1653. I may also hasten to add that here the moulded relief does vary from for the prayer made in the petition in any manner and it cannot be said that by any stretch of imagination that if prayer is allowed it would be in excess of what has been prayed for. I am conscious that a writ Court can mould the relief but should not transgress the territories for grant of relief which, if fact, does not flow from the pleadings and if granted, would be in excess of the prayer made. Quite apart from the above, learned counsel for the parties have fairly agreed before this Court that final adjudication should be by this Court and in my considered opinion the finality can only be attained if the inter se rights of the parties are determined keeping the submissions in view.

Sri Justice S.K. Ray (supra)

11. The learned counsel for the respondents further submitted that the appellant had not presented his case or claimed compensation for loss of future employment but has claimed only the loss for the present tenure and, therefore, we

should not grant any relief to him. A writ petition, which is filed under Article 226 of the Constitution, sets out the facts and the claims arising thereto. May be in a given case, the reliefs set forth may not clearly set out the reliefs arising out of the facts and circumstances of the case. However, the courts always have the power to mould the reliefs and grant the same.

Employees' State Insurance Corpn. (supra)

63. The High Court under Article 226 and this Court under Article 136 read with Article 142 of the Constitution of India have the power to mould the relief in the facts of the case.

RBF RIG Corporation, Mumbai (supra)

“19. Article 226 of the Constitution confers powers on the High Court to issue certain writs for the enforcement of fundamental rights conferred by Part-III of the Constitution or for any other purpose. The question, whether any particular relief should be granted under Article 226 of the Constitution, depends on the facts of each case. The guiding principle in all cases is promotion of justice and prevention of injustice.

20. In Comptroller and Auditor-General of India v. K.S. Jagannathan, (1986) 2 SCC 679, this Court has held:

"20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

21. In Dwarkanath v. ITO, AIR 1966 SC 81, this Court pointed out that Article 226 is designedly couched in a wide language in order not to confine the power conferred by it only

to the power to issue prerogative writs as understood in England, such wide language being used to enable the High Courts "to reach injustice wherever it is found" and "to mould the reliefs to meet the peculiar and complicated requirements of this country."

22. *In Halsbury's Laws of England, 4th Edn., Vol. I, para 89, it is stated that the purpose of an order of mandamus*

89. Nature of mandamus.--.....is to remedy defects of justice; and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right and no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual."

10.5 Testing direction No.2 on the anvil of the aforesaid discussion, this Court is of the firm view that direction No.2 has been rightly issued and does not need any interference.

11. In view of above analysis, W.A. No.1125/2017 and R.P. No.579/2017 are disposed of with the following directions:-

(i) Direction No.1 at page 2 of the impugned order dated 27.06.2017 (W.P. No.5831/2011) stands amended by deleting the sentence from "What was the occasion.....at Jaura on 14.02.1994, becomes suspicious". Thus, direction No.1 shall be read in its modified form as under:-

"In this regard , the Registrar General of this High Court is directed to conduct an enquiry against said JMFC and enquire as to what was the occasion for him on 14.02.1994 to insert a slip as to purity of the article and on what basis he had put that slip in the sealed envelop on 14.02.1994. Let a copy of this order for this purpose be forwarded to the Registrar General of the High Court immediately."

- (ii) As regards direction No.2 at page 2-3 in the impugned order, this Court rejecting the contention of petitioner upholds the said direction and leaves it intact.
- (iii) Remaining part of the impugned order dated 27.06.2017 passed in W.P. No.5831/2011 shall remain intact.

No cost.

(Sheel Nagu)
Judge

(Rajeev Kumar Shrivastava)
Judge

SS