

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 23913 of 2020

Between:

A.Ravi Chandra

... Petitioner

And

The Food Corporation of India
and others

... Respondents

JUDGMENT PRONOUNCED ON: 18.03.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 23913 of 2020****% 18.03.2024****Between:**

A. Ravi Chandra

... Petitioner

And

The Food Corporation of India
and others

... Respondents

< Gist:

➤ Head Note:

!Counsel for the Petitioner	:	Mr W.B.Srinivas
^counsel for Respondents	:	Mr Dr P.Bhaskara Mohan

? Cases Referred:

1. (2003) 2 SCC 111
2. (2014) 1 SCC 351
3. (2006) 1 ALD 823
4. (1994) 5 SCC 346
5. 2021 SCC Online SC 3422
6. (1954) SC 340

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 23913 of 2020

ORDER:

Heard the learned counsel for the petitioner Mr W.B.Srinivas appearing on behalf of the petitioner and the learned counsel Dr P.Bhaskara Mohan, appearing on behalf of the respondents.

2. The petitioner approached the Court seeking the prayer as under:

"to issue a writ or order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings: (a) Charge sheet Memorandum No. Vig.420/2015 dated 18/09/2015 and Order No. Vig.4(20)/2015 dated 22/12/2015 of the second respondent; (b) and the consequential Proceedings No. Vig.4(5)/2016 dated 10/09/2018 of the third respondent; and (c) further consequential Order No. Vig.4(33)/2016/SZ/1138, dated 26/10/2020 of the first respondent as illegal, arbitrary, without jurisdiction and contrary to Regulations 56, 57 and 58(2) of the Discipline and Appeal Regulations of Food Corporation of India (Staff) Regulations, 1971 and consequentially set aside the same (d) by further declaring the petitioner is entitled to all consequential monetary and service

benefits thereupon. (e) and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

3. PERUSED THE RECORD

A) The order impugned dated 18th September, 2015 of the General Manager (R) and Disciplinary Authority, Food Corporation of India, vide No.Vig.4(20)/2015, reads as under:

"MEMORANDUM Date: 18.09.2015

The undersigned proposes to hold an inquiry against Sri. A.Ravi Chandra, Manager (Elec.), under Regulation 58 of Section 5 of the Food Corporation of India (Staff) Regulations, 1971. The substance of the imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehavior in support of the articles of charge is enclosed (Annexure-II). A list of documents by which and witness by whom the articles of charge are proposed to be sustained are also enclosed (Annexure-III and Annexure-I).

Sri. A.Ravi Chandra, Manager (Elec.), is directed to submit within 10 days (ten) of the receipt of this memorandum, written statement of his defense and also to state whether he desires to be heard in person.

He is informed that an inquiry will be held only in respect of those articles of charge which are not admitted. He should therefore specifically admit or deny each article of charge.

Sri A.Ravi Chandra, Manager (Elec.), is further informed that if he does not submit his written statement of defense on or before the date specified in para two above or does not appear in person before the inquiry authority or otherwise fails or refuses to comply with the provisions of Regulation 58 of the Food Corporation of India (Staff) Regulations, 1971, or orders or directions issued in pursuance of the said Regulation, the inquiry authority may hold the inquiry against him ex-parte.

Attention of Sri.A.Ravi Chandra, Manager (Elec.), is invited to Regulation 50 of Section 4 (conduct Regulations) of Food Corporation of India (Staff) Regulations, 1971, under which no Food Corporation of India employee shall bring or attempt to bring any political or out-side influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Corporation. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Sri. A.Ravi Chandra, Manager (Elec.), is aware of such representation and that it has been made at his instance

and action will be taken against him for violation of Regulation 50 of Section 4 (Conduct Regulations) of Food Corporation of India (Staff) Regulations, 1971.

The receipt of the memorandum may be acknowledged.

ANNEXURE - I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SRI A. RAVI CHANDRA MANAGER (EE) WORKING AT FCI, REGIONAL OFFICE, HYDERABAD.

Sri A.Ravi Chanda, Manager (EE), while working at FCI Regional office, Hyderabad during the years 2013 to till date under the administrative control of General Manager (AP) has failed to maintain absolute integrity and devotion to duty, to serve the Corporation honestly and faithfully and acted in a manner unbecoming of an employee of the Corporation in as much as he was found to involve in following irregularities.

Article: I

Sri A.Ravi Chandra, Manager (EE), while working at FCI Regional office, Hyderabad under the administrative control of General Manager (AP) has released payments to AMC contractor, who are appointed to provide maintenance of electrical installation in various depots without verifying whether the contractor had satisfied all the terms and conditions of the AMC Contract or not leading to huge financial loss to the Corporation.

That the said Sri A. Ravi Chandra, Manager (EE) is therefore charged with contravention of Regulations 31, 32 and 32-A of the Food Corporation of India, (Staff) Regulations, 1971.

Article-II

Sri A, Ravi Chandra, Manager (EE), while working at FCI Regional office, Hyderabad during the said period under the administrative control of General Manager (AP) has not followed due procedure of tendering/calling quotations while processing as well as finalization of tenders/quotations and issuance of work orders to the lowest tenderer that lead to damage to the reputation of the Corporation.

That the said Sri A.Ravi Chandra, Manager (EE) is therefore charged with contravention of Regulations 31, 32 and 32-A of the Food Corporation of India, (Staff) Regulations, 1971.

Article-III

Sri A.Ravi Chandra, Manager (EE), while working at FCI Regional office, Hyderabad during the said period under the administrative control of General Manager (AP) has not conducted the Annual PVs of items pertaining to his districts which is the gross violation of standard procedure as per CPWD works manual-2012 which resulted into poor maintenance in the District offices and depots.

That the said Sri A.Ravi Chandra, Manager (EE), is therefore charged with contravention of Regulations 31, 32 and 32-A of the Food Corporation of India, (Staff) Regulations, 1971.

B) Counter affidavit filed on behalf of respondents and in particular, Paragraph 8, 11, 12 and 13, reads as under:

"8. In reply to Para 7, 8 and 9, I humbly submit that as per FCI Staff Regulations, the second respondent herein is competent to impose Minor Penalty proceedings and also duly empowered to initiate Major Disciplinary Proceedings against the Category II officer, but the case had to be finalized by the Disciplinary Authority, i.e. the Executive Director (South), FCI, ZO (South). As such the procedure as per rules of the Corporation was followed regarding offering personal hearing before deciding the Disciplinary Proceedings as per the rules. The relevant extracts are annexed herewith as Annexure - R (9). However, after the completion of the Disciplinary Proceedings but before issuing the order conveying the decision of the Disciplinary authority, the petitioner became a Cat I Officer in the circumstances narrated in previous para, therefore the penalty order was issued by the Managing Director, FCI, HQrs, New Delhi, the Respondent No.1 who is Competent Authority as per Annexure -R(9) after perusing the complete records including inquiry report of the Disciplinary proceedings.

11. In reply to Para 12, I humbly submit that the disciplinary proceedings were held as per FCI Staff Regulations 1972. As stated afore the second respondent herein i.e. GM (R) is duly empowered to initiate Major Disciplinary Proceedings against the Category II officer. However, the case had to be finalized by the Disciplinary Authority, i.e the Executive Director

(South), FCI, ZO (South), as, by the completion of the Disciplinary Proceedings, the CO became a Cat I Officer, hence, the penalty order was issued by the Managing Director, FCI, HQrs, New Delhi.

12. In reply to Para 13, I humbly submit that the Chairman and Managing Director are two different posts in FCI. At present both the posts are occupied by the same person i.e. C&MD. It is a decision of the Board of Directors. FCI is a Statutory Body. Thus, the averments / allegations made in this Para are untenable. Further, it is only an afterthought by the petitioner to claim the jurisdiction of the authorities for Disciplinary Proceedings after participating in the Disciplinary Proceedings without any objection on the Jurisdiction during the proceedings which attracts "**Doctrine of Estoppels**".

13. In reply to the remaining Paras of the affidavit of the petitioner I humbly submit that under Regulation 68 of the FCI (Staff) Regulations, 1971 an appeal lies against the order of the Managing Director to the Appellate Authority. Under Appendix-2, the Appellate Authority is the Chairman of FCI. Further, against the orders of the Chairman in the said Appeal, a Review lies to the Board of Directors of FCI, under Regulation 74. Hence, the Petitioner must exhaust the alternative remedies first. Thus, this W.P. is misconceived and premature in the light of the afore mentioned Regulations and hence not maintainable."

RELEVANT LEGAL PROVISIONS

C) Regulation 56 of the Discipline and Appeal Regulations of Food Corporation of India (staff) Regulations, 1971.

"56. Disciplinary authorities:

@The Board or the authority specified in Appendix 2 in this behalf or any other authority (higher than the authority specified in Appendix-2) empowered in this behalf by general or special order of the Board, may impose any of the penalties specified in Regulations 54 on any employee.

Provided that the penalties of reduction in rank, compulsory retirement, removal from service or dismissal from service specified in clauses (v) to (ix) of Regulation 54 shall not be imposed on any employee by an authority lower than the appointing authority.

Explanation: 'Appointing Authority' in relation to an employee for the purpose of this Regulation shall be read as under:

- (i) the authority empowered to make appointments to the post/grade which the employee for the time being holds; or
- (ii) the authority which appointed the employee to such post/grade as the case may be; whichever authority is the higher authority.

3. The existing provisions in Appendix-II of the Regulations shall be substituted by the Statement as per annexure hereto."

D) Regulation 57 of the Discipline and Appeal Regulations of Food Corporation of India (staff) Regulations, 1971

"57. Authority to institute proceedings:

*(1) The Board or the authority specified in Appendix 2 in this behalf or any other authority (higher than the authority specified in Appendix 2) empowered in this behalf by general or special order of the Board may:

(a) Institute disciplinary proceedings against any employee of the Corporation;

(b) direct a disciplinary authority to institute disciplinary proceedings against any employee of the Corporation on whom that disciplinary authority is competent to impose under these Regulations any of the penalties specified in Regulation 54.

(2) A disciplinary authority competent under these regulations to impose any of the penalties specified in clauses (i) to (iv) of Regulation 54 may institute disciplinary proceedings against any employee of the Corporation for the imposition of any of the penalties specified in clauses (v) to (ix) of Regulation 54 notwithstanding that such disciplinary authority is not competent under these regulations to impose any of the latter penalties."

E) Regulation 58(2) of the Discipline and Appeal Regulations of Food Corporation of India (staff)

Regulations, 1971:

"58. Procedure for imposing major penalties:

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee of the Corporation, it may itself inquire into or appoint under this regulation or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof."

F) Regulation 54 Discipline and Appeal Regulations of Food Corporation of India (staff) Regulations, 1971

"54. Penalties:

Notwithstanding anything contained in any other regulation, and without prejudice to such action to which an employee may become liable under any other regulation or law for the time being in force, the following penalties may (for good and sufficient reasons and as hereinafter provided) be imposed on any employee of the Corporation.

Minor Penalties:

(i) censure;

(ii) withholding of his promotion;

(iii) recovery from; his pay of the whole or part of any pecuniary loss caused by him to the Corporation by negligence or breach of orders;

(iii) (a) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years without cumulative effect and not adversely affecting his pension.

(iv) withholding of increments of pay.

Major Penalties:

(v) save as provided for in Regulation (iii)(a) above, reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the employee of the Corporation will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to a lower time-scale of pay or post which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay or post from which he was reduced, with or without further directions regarding conditions of restoration to the post from

which the employee of the Corporation was reduced and his seniority and pay on such restoration to that post;

(vii) compulsory retirement;

(viii) removal from service which shall not be disqualification for future employment under the Corporation;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Corporation

Explanation: the following shall not constitute a penalty within the meaning of this regulation.

(a) discharge of an employee for failure to pass any examination or test or a medical test prescribed for fresh appointment to any category of post; compulsory retirement of an employee in accordance with the provision relating to superannuation or retirement;

(b) compulsory retirement of an employee in accordance with the provision relating to superannuation or retirement;

(c) termination of service or reversion to a lower category or post of an employee appointed or promoted on probation either during or at the end of the period of probation;

(d) discharge of an employee under regulation 19 or as a measure of retrenchment for want of vacancy;

(e) termination of service of an employee employed under a contract or agreement in accordance with the terms of such contract or agreement or in the case of an employee appointed for a specific period, at the end of such period;

(f) reversion of an employee promoted from a lower post to a higher post to such lower post for want of vacancy;

(g) on-promotion of an employee after consideration of his case for promotion; whether on a regular or on ad-hoc basis to a post to which he is eligible for being considered;

(h) replacement of the services of an employee whose services had been borrowed at the disposal of his parent organization."

G) Appendix – II Discipline and Appeal Regulations, Statement showing Competent Authorities of the Food Corporation of India (Staff Regulations), 1971.

4	CATEGORY-I					
	Category-I	Managing Director	Chairman	Managing Director	ALL	Chairman

4. The case of the petitioner in brief, as per the averments made in the affidavit filed in support of the present writ petition:

a) The petitioner was promoted as Assistant General Manager (Electrical Engineering) which is category -I post along with two others on regular basis from the post of Manager (Elect. Engineering) which is Category – II post vide office order No.94/2015 –E.I, dated 18.08.2015 issued by the Deputy General Manager (Establishment). After petitioner's promotion orders dated 18.8.2015, the 2nd respondent has

issued a charge sheet vide memorandum No.Vig.4(20)/2015 dated 18.09.2015 framing three specific statement of articles of charge framed against the petitioner (referred to and extracted above) stating that the petitioner acted in contravention of regulations 31, 32, 32-A of the Food Corporation of India (Staff Regulation), 1971. The petitioner submitted his explanation to the said charges on 28.09.2015 denying the allegations levelled against the petitioner. The 2nd respondent vide order No. Vig.4(20)/2015, dated 22.12.2015, had appointed one Sri T.Bipin Chakravarthi, DGM, (A/CS) FCI, Regional Office, Hyderabad as Inquiry Officer to enquire into the charges framed against the petitioner vide order dated 22.12.2015. The petitioner was promoted to the post of Assistant General Manager (EE) as early as on 18.08.2015, the petitioner was relieved from the duty of the post of Manager (EE) from the office of the 2nd respondent on 14.10.2015 for enabling the petitioner to join in the promotional post at Northeast Zone.

b) It is further the case of the petitioner that while the petitioner was working as AGM (EM) at Regional Office, Chennai, the promotion orders issued in office order dated

18.08.2015 was withdrawn and the petitioner was reverted to the post of Manager (EM) vide office order No.54/2018-E.I, dated 23.07.2018. The petitioner challenged the same by filing W. P.No.19753 of 2018 on the file of the High Court of Madras and obtained interim orders in petitioner's favour and when the same was not implemented, the petitioner preferred Contempt Case No. 2480 of 2018 on the file of High Court of Madras and subsequent to the filing of the said contempt case petitioner's reversion order dated 23.07.2018 was withdrawn vide office order No.36/2019-E.I, dated 03.07.2019 and petitioner's position as AGM (EM) is restored to the petitioner.

c) It is further the case of the petitioner that, the petitioner received enquiry report on 10.12.2018 and the petitioner submitted reply to the 3rd respondent on 19.12.2018 and the 3rd respondent vide proceedings No.Vig.4(5)/2016, dated 09.04.2019 directed the petitioner to appear before the 3rd respondent on 15.04.2019 at 11.30 AM at FCI, Zonal Office(s), Chennai for personal hearing before imposing the penalty. Petitioner appeared before the 3rd respondent on the said date and explained the facts. Later, the 1st respondent passed order No.Vig.4(33)/2016/SZ/1138, dated 26.10.2020

imposing the penalty of reductions by two stages in time scale of pay for two years, which has effect of postponing future increments of petitioner's pay. Aggrieved by the same, the petitioner filed the present writ petition.

5. The learned senior Designated counsel Mr. W.B.Srinivas appearing on behalf of the petitioner mainly put forth the following submissions:

- a) As per Regulations 56, 57, and 58(2) of the Discipline and Appeal Regulations of Food Corporation of India (Staff Regulations), 1971 and since the petitioner was working as Manager (EE) in the office of the 2nd respondent which is category II post, the 2nd respondent cannot issue major penalty charge memo dated 18.09.2015 since it is only 3rd respondent who is competent for category-II post.
- b) The 2nd respondent cannot appoint the Inquiry Authority as the 2nd respondent is not the disciplinary authority for imposing major penalty upon Category II officers.
- c) On the basis of the charge memo issued to the petitioner by the 2nd respondent and on the basis of the report submitted by the Inquiry authority

appointed by the 2nd respondent, the 1st respondent cannot impose major penalty through proceedings dated 26.10.2020

- d) As per Appendix – II, Discipline and Appeal Regulations, Statement Showing Competent Authorities of the Food Corporation of India (Staff) Regulations, 1971, the post of Assistant General Manager is shown as Category – I post and the post of Manager is shown as Category – II and hence, the Executive Director (zone), who is the discipline authority for Category II post is the authority competent to impose the major penalty for Category II post and hence, the order impugned is without jurisdiction.
- e) The petitioner was not provided with an opportunity of personal hearing before passing the orders of penalty by the 1st respondent nor any notice or opportunity was provided by the 1st respondent prior to passing of orders of penalty dated 26.10.2020.
- f) The 1st respondent did not apply his mind independently and did not examine the material on record and respondent No.1 simply relied upon the findings of

the 3rd respondent without considering the petitioner's reply to the Inquiry Report.

g) There is lot of delay in concluding the disciplinary proceedings and hence, the disciplinary proceedings are vitiated.

h) The petitioner cannot avail the remedy of appeal against the orders of penalty passed by the 1st respondent, dated 26.10.2020 as both the posts of Chairman and Managing Director are held by the same person i.e. 1st respondent since Managing Director is acting as Chairman-cum-Managing Director.

Based on the aforesaid submissions learned senior counsel for the petitioner contends that the writ petition should be allowed as prayed for.

6. The learned counsel appearing on behalf of the Respondents mainly puts-forth the following submissions :

i) The 2nd Respondent is empowered to initiate major disciplinary proceedings against the Category II Officer.

ii) The case had to be finalized by the Disciplinary Authority i.e., the Executive Director (South) FCI ZO (South) since before the completion of disciplinary proceedings, the Petitioner had become a Cat.I Officer, therefore the penalty order was issued by the Managing Director, FCI, Headquarters, New Delhi, the Respondent No.1.

iii) The Chairman and Managing Director are two different posts in FCI but as on the date of filing of the counter affidavit i.e., in April 2021, both the posts are occupied by the same person and it is a decision of the Board of the Directors.

iv) The Petitioner failed to avail the alternative remedies available under law and approached this Court by filing the present writ petition.

The learned counsel appearing on behalf of the Respondents on the basis of the aforesaid submissions and placing reliance on the averments made in the counter affidavit filed by the Respondents contends that the writ petition has to be dismissed.

DISCUSSION AND CONCLUSION :

7. A bare perusal of the relevant Regulations extracted above clearly indicates that:

(a) As per Regulation 56 of the Discipline and Appeal Regulations of Food Corporation of India (staff) Regulations, 1971, the Board or the Authority specified in Appendix 2 in this behalf or any other Authority (higher than the Authority specified in Appendix-2) empowered in this behalf by general or special order of the Board, may impose any of the penalties specified in Regulation 54 on any employee.

(b) As per Regulation 57 of the Discipline and Appeal Regulations of Food Corporation of India (staff) Regulations, 1971, the Board or Authority specified in Appendix-2 in this behalf or any other Authority (higher than the Authority specified in Appendix-2) empowered in this behalf by general or special order of the Board, may institute disciplinary proceedings against any employee of the Corporation.

(c) As per Regulation 58(2) of the Discipline and Appeal Regulations of Food Corporation of India (staff) Regulations, 1971, whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against

an employee of the Corporation, it may itself inquire into or appoint under this regulation or under the provisions of the public servants (Inquiries) Act, 1850, as the case may be, an authority to enquire into the truth thereof.

8. A bare perusal of Appendix-II Discipline and Appeal Regulations, Statement Showing Competent Authorities of the Food Corporation of India (staff regulations), 1971 (referred to and extracted above) indicates that the post of Assistant General Manager is shown as Category-I post and the post of the Manager is shown as Category-II post. A bare perusal of Appendix-II, of The Food Corporation of India (staff regulations) 1971, clearly indicates that the 1st Respondent i.e., the Managing Director is the Authority Competent to impose all penalties for Category-I posts and the Executive Director (Zone) 3rd Respondent as Authority Competent to impose the major penalties for Category-II posts. Admittedly in the present case as borne on record the Petitioner was working as Manager (EE) in the Office of the 2nd Respondent which Category-II post, it is only the 3rd Respondent who is

the Authority Competent to issue Charge Memo and the 2nd Respondent cannot initiate and issue major penalty charge memo dated 18.09.2015. This Court opines that the 2nd Respondent cannot appoint the Inquiry Authority as he is not the Disciplinary Authority for imposing major penalties upon Category-II Officers.

9. The Apex Court in judgment reported in (2003) 2 SCC 111 in Bhavnagar University vs. Palitana Sugar Mill Private Limited and Others observed that the State and Authorities while acting under the statute, are the creators of the statute and they must act within the four corners of the statute.

10. The Apex Court in the judgment reported in Union of India vs. B.V. Gopinath in (2014) 1 SCC 351 held that the Charge Sheet/Charge Memo having not been approved by the Disciplinary Authority was nonest in the eye of law. In the present case on the basis of the charge memo issued by the 2nd Respondent and on the basis of the report submitted by the Inquiry Authority appointed by the 2nd Respondent, the 1st Respondent

cannot impose major penalty through proceedings dated 26.10.2020 since the 2nd Respondent is not the Competent Authority to impose the penalties for Category-2 posts and it is the 3rd Respondent who is the Authority competent under the Rules to approve and initiate Disciplinary proceedings against the Petitioner herein.

11. In the judgment of the Andhra Pradesh High Court in the Government of Andhra Pradesh vs. M.A. Majeed and Another reported in (2006) 1 ALD 823 it was observed that the charge memo drawn by an officer other than the Specified Authority was wholly without jurisdiction and hence vitiated the whole Disciplinary Enquiry.

12. This Court opines that the very initiation of charge memo was done by an incompetent authority lacking jurisdiction, therefore, the consequential orders of the 3rd respondent and the 1st respondent are also vitiated since they are based on proceedings which were *ab-initio* void and therefore, the orders of the 1st

respondent dated 26.10.2020, and all the consequential orders in pursuance thereto are also *ab-initio* void and hence liable to be set aside. The record also does not indicate any special order of the Board authorizing the 2nd Respondent to initiate disciplinary action against the Petitioner by issuing a charge memo on 18.09.2015 to the Petitioner since it is only the 3rd Respondent who is competent to issue a charge memo to the Category-2 post.

13. The law is well settled that in accordance with the maxim delegates non protest delegare, a statutory power must be exercised only by the body or officer in whom it has been confided, unless sub-delegation of the power is authorised by express words or necessary implication. (The Berrium Chemicals Ltd and others v The Company Law Board and others reported in AIR 1967 Sc 295 at pp. 306-07 and Sahni Silk Mills (P) Ltd., v. Employees State Insurance Corporation, (1994) 5 SCC 346, at pp. 350-51 : (1994 AIR SCW 3832, at p. 3836)).

14. It is settled law when a statute describes or requires a thing to be done in a particular manner it should be done in that manner or not at all.

(M.Shankara Reddy Vs. Amara Ramakoteswara Rao reported in (2017) SCC Online Hyd. 426).

The Division Bench of Apex Court in its judgment dated 04.10.2021 in Supertech Ltd., Vs. Emerald Court Owner Resident Welfare Association and Ors., reported in 2021 SCC Online SC 3422, referring to Taylor Vs. Taylor, 1875 (1) Ch D426, Nazir Ahmed Vs. King Emperor reported in (1936) L.R.63 Ind Ap372 and Parbhani Transport Co-operative Society Ltd., Vs. The Regional Transport Authority, Aurangabad & Ors., reported in AIR 1960 SC 801 at para 13 observed as under :

“It is that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. Hence when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all and other methods of performance are necessarily forbidden. This Court too, as adopted this maxim. This rule provides

that an expressly laid down mode of doing something necessarily implies a prohibition on doing it in any other way.”

15. The Apex Court in the judgment reported in AIR (1954) SC 340, in Kiran Singh & Others Vs. Chaman Paswan at para 6 observed as under :

“6. The answer to these contentions must depend on what the position in law is when a Court entertain a suit or an appeal over which it has no jurisdiction and what the effect of Section 11 of the Suit Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. **A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.** If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District, Court of Monghyr was coram non iudice, and that its judgment

and decree would be nullities. The question is what is the effect of Section 11 of the Suits Valuation Act on this position."

16. Taking into consideration the aforesaid facts and circumstances of the case and the law laid down by the Apex Court and other Courts in the various judgments, (referred to and extracted above) and again enlisted herein,

1. The Apex Court in judgment in Bhavnagar University v Palitana Sugar Mill Pvt.Ltd. and others reported in (2003)2 SCC 111.

2. The Apex Court in the judgment in Union of India v B.V.Gopinath reported in (2014) 1 SCC 351.

3. In the judgment of the A.P. High Court in the Government of Andhra Pradesh v M.A.Majeed and another reported in (2006) 1 ALD 823.

4. The Apex Court judgment in Sahni Silk Mills (P) Ltd., v Employees State Insurance Corporation reported in (1994) 5 SCC 346.

5. The Division Bench of Apex Court in its judgment in Supertech Ltd. V Emerald Court Owner Resident Welfare Association and others reported in 2021 SCC Online SC 3422.

6. The Apex Court judgment in Kiran Singh and others v Chaman Paswan reported in AIR (1954) sc 340.

the writ petition is allowed as prayed for. However there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated 18.03.2024

Note: L.R.Copy to be marked
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