

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

% Judgment Delivered on: 30.08.2012

+ WP(C) No. 3958/2012

SANCHAR NIGAM EXECUTIVES'
ASSOCIATION (INDIA)

..... Petitioner

Vs

NATIONAL COMMISSION FOR SCHEDULED
CASTES AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rajshekhar Rao, Advocate.

For the Respondent: Mr Saqib, Advocate for Respondent no. 1.

Mr P.K. Jayakrishnan, Adv. for Respondent no. 2.

Mr K.K. Rai, Sr. Advocate with Mr Rajnish Prasad, Adv. for
Respondent No. 3.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

CM 8787/2012 (interim relief), 8296/2012 (Stay) & 9674/2012 (Correction)

1. The captioned interlocutory applications (IAs) seek almost identical reliefs, in as much as, in both applications the petitioner/ applicant is seeking, in effect, stay of the proceedings initiated by respondent no. 3, i.e., Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL) and a stay on the two impugned orders of even date, i.e., 07.06.2012, one of which was dispatched to the petitioner association, while the other was dispatched to the BSNL, for due compliance, by respondent no. 1, i.e., National Commission for Scheduled Caste (in short the Commission).

2. The dispute which is raised before me, in the writ petition, is broadly on the following lines.

2.1 The petitioner, which is a registered association of “executives employees” of the BSNL, is representing the cause of the members of its association, who according to it, have got enmeshed in a disciplinary proceedings initiated by BSNL, purportedly, based on recommendations of the Commission.

2.2 It appears that the district level branch of the petitioner association at Amravati, between 2005 to 2009, had entered into intense communication with BSNL qua issues which related to transfer of its members without due regard to the circumstances of the employees.

2.3 The petitioner association was aggrieved by the fact that the transfer of employees, specially of lady officers, was made to remote and far off places, and often in the middle of academic session of their children. Grievance was also made by the petitioner association, with regard to the transfer allowance bills being sanctioned selectively and, more importantly that, in effecting transfers the waiting list evidently prepared in this regard was not scrupulously adhered to by BSNL. In other words, officers who had been in Amravati for long periods, were not subjected to transfers, while those, who would have had relatively, shorter stay at Amravati, were transferred.

2.4 It appears that respondent no. 2, the main protagonist and the complainant, at whose behest, disciplinary proceedings have been initiated against the members of the petitioner association, was issued transfer orders for the first time in 29.03.2007, whereby he was directed to be posted out of Maharashtra Circle. It is the case of the petitioner association that, respondent no. 2's posting was confirmed to Jabalpur circle and thereafter changed to Raipur on 21.04.2008. It is the case of the petitioner that, despite the communication of the BSNL that, serious note would be taken of prolonged detention of officers, who had completed their tenure and over-

stayed their postings on 05.11.2009, an order was issued whereby, respondent no. 2 was directed to be retained at Amravati till 31.03.2010, after his relieving order had already been issued on 26.09.2009. As a matter of fact, it is the case of the petitioner that even after 31.03.2010, respondent no. 2 was not relieved from his posting at Amravati, despite a communiqué of BSNL corporate office dated 21.04.2010.

2.5 This and perhaps other such instances caused a distress among other employees; the matter seems to have attained a somewhat strident note when office bearers of the petitioner association at Amravati, were posted to far off places; based on what is perceived by them, as repercussions of their representations to BSNL on behalf of its members, between 2008-2010. Protests were held by the members of the petitioner association which, as it appears resulted in a message being carried by the petitioner association on its website on 29.09.2008. Apparently the website made reference to a letter written to the CMD and CGM of Maharashtra region of Maharashtra Circle, which purportedly advert to respondent no. 2's 'biased' activity on the basis of caste and religion. The petitioner association case is that, the said communication was not published and that it was part of their internal discourse. The petitioner claims that once this fact was brought to the notice of the executive members of the petitioner association it was removed within a couple of hours of intimation.

2.6 To cut a long story short, respondent no. 2 was relieved from his posting at Amravati on 22.06.2010 and transferred to Jabalpur, perhaps, based on the representations of the members of the petitioner association.

2.7. It appears that on respondent no. 2 being transferred to Jabalpur, Madhya Pradesh, the petitioner associations' branch at Jabalpur posted a message on their website on 09.07.2011 which seemed to suggest that Secretary of the Jabalpur, Madhya Pradesh circle had offered to support the

dharna against caste based activity of respondent no. 2, who was by then posted as DGMM at Jabalpur. This was a communication which took place between the circle Secretary of the petitioner's Madhya Pradesh circle and BSNL, WTR Bhopal.

2.8 It is the case of the petitioner association that respondent no. 1 being unhappy with his transfer from Amravati to Jabalpur lodged a complaint, vide letter dated 21.08.2011, with the Commission, on the ground that the executive members of the petitioner association were attempting to defame him in the estimation of higher authorities. The incident of 2008, to which I have made a reference above, was also referred to. It was alleged that the said defamatory information with respect to him, indulging in caste based activity was published on the petitioner's website. Reference was also made to the publication made on 03.05.2010.

2.9 Based on the above allegations, the Pune office of the Commission vide communication dated 21.09.2011 directed BSNL to conduct an investigation into the alleged incident, and to achieve this end, a consequent direction was issued to constitute a three-member committee which was required to be headed by a senior level officer. It was specifically indicated that one of the members of the committee must be a person belonging to the scheduled caste category.

3. It is not in dispute that the investigation committee concluded its inquiry and submitted its report in February, 2012. Briefly, the conclusion of the Committee are as follows:

“.....The Committee is of the view that the office bearers of SNEA(I) agitated over non-relieving of Shri H.R. Lanjewar, DGM from Amravati. This was due to the fact that their office bearers had also been transferred by Amravati management, wherein Shri Janjewar was one of them. However, the transfer of office bearers were made with the approval of GMTD, Amravati. The office bearers stated that there should not be double standard in transfer of Sr. officers

and their executives. Perhaps, the office bearers were emotionally charged and they agitated over the issue. They adopted different tactics to malign the image of Shri Lanjewar. They even alleged that he was caste biased, which, however was not substantiated by the office bearers of SNEA(I), NFTE and BSNLEU.

The office bearers of SNEA(I), Amravati should be warned in writing so that they should not adopt such tactics to defame any individual officer in future. The NFTE, Amravati and SNEA(I) at Jabalpur may also be suitably advised to maintain smooth relations with the individual officers in particular and BSNL management in general.

From deliberation and statement it appears that Shri Janjewar was not harassed on caste names or calling names. The office bearers did not gheraeod him in his office nor do they did anything adverse at his residence. They only alleged that he was caste biased, i.e., biased towards his community, which however was not substantiated by the office bearers.

The Committee is of the view that there should be cordial and harmonious relations between the office bearers of all the unions/ associations and the BSNL management at all levels, i.e., division, SSA, Circle and Corporate office level for smooth functioning of the Company. All out efforts should be made by one and all for the growth, progress and betterment of the Company.

Shri Lanjewar also did not report the matter in writing to GMTD, Amravati and CGMT, MH Circle. Adverse entries in APARs of office bearers, sanction of leave etc. could have been solved through proper communication and dialogue between the office bearers and management. It appears that there were lack of proper or smooth staff relations. The office bearers of SNEA(I) stated that Shri Lanjewar had political patronage which also was not substantiated by the facts submitted by them. Everybody is free to writ for his own cause. Shri Lanjewar requested for his retention at Amkravati and the management accepted his request depending on the circumstances. From the statement of Sr. GM(HR & Admn.) it also appears that there were shortage of DGM in MH Circle and in the public interest Shri Lanjewar was retained by MH Circle.

The way of the office bearers of SNEA(I), NFTE propagated that it was due to Shri Lanjewar they had to suffer

a lot which resulted in Dharna, reporting in print media etc. was not proper. SR Cell of BSNLs Co. should suitably advise all the unions and associations to follow the ethics and MOA of their unions and associations while taking up the grievances of their unions/ associations with all levels of BSNL management....”

4. It is the petitioner's case that based on the findings of the committee action was taken. The grievance of the petitioner association is that despite the aforesaid, for reasons best known, the Pune office of the Commission forwarded the complaint to their head quarters at Delhi, under the cover of its letter dated 12.04.2012. By this letter a request was made to the Delhi office of the Commission to conduct a hearing in the matter in which the CMD of the BSNL and other persons involved in the case were sought to be summoned.

4.1 The petitioner, therefore, is aggrieved by the fact that based on this communication received from the Pune office the Delhi office of the Commission, has re-opened a concluded matter against its members, when action had already been taken and consequent thereto warning letters had been issued to the concerned persons.

4.2 What apparently agitates the petitioner association is the fact that thereafter the Commission held a hearing on 08.05.2012, which resulted in the impugned orders dated 07.06.2012. Pursuant to the impugned communication dated 07.06.2012, BSNL issued chargesheet to one Sh. K. Sebastian, the general secretary of the petitioner association, in respect of, the very incidents which were subject matter of the complaint of respondent no. 2 made to the Commission.

4.3 Notice on the said application, i.e, CM 8296/2012 was issued on 09.07.2012 which was made returnable on 03.12.2012. The petitioner, however, filed yet another application being CM 8787/2012 projecting therein that: since no ex-parte order was granted by this court, on

09.07.2012, on that very date, as well as on the next date, i.e., 10.07.2012, BSNL issued transfer orders to 18 out of the 19 accused in the complaint filed by respondent no. 2. Consequently, this application was moved before me on 18.07.2012 which resulted in notice being issued by me on the said date. No replies to the said application have been filed either by BSNL or respondent no. 2.

5. The petitioner submits that the impugned orders are erroneous in law for the following broad reasons:

(i) The Commission cannot issue binding directions as it is not an adjudicatory body. The result of deliberations made by the Commission are only recommendatory in nature, which cannot be equated with decrees/orders passed by civil courts, having a binding effect. The recommendations necessarily cannot be enforced and/or executed. Reliance in this regard is placed on the judgment of the Division Bench in the case of *LPA No. 280/2007* titled *Professor Ramesh Chandra vs. University of Delhi and Anr.* (MANU/DE/9762/2007).

(ii) The commission, as indicated above, has no power of review. The Pune office of the Commission having concluded the matter, in respect of which, consequent action having been taken, the matter could not have been re-opened.

(iii) The consequent chargesheet issued by BSNL is fraught with legal infirmities as the chargesheet is based on the recommendation of the Commission. In other words, the disciplinary proceedings are a direct result of the recommendation of the Commission and in that sense BSNL appears to have already made up its mind as to the conclusion it proposes to reach, in the said proceedings.

6. To be noted pursuant to notice being issued in CM No. 8787/2012 on 18.07.2012, the matter came up before me once again on 06.08.2012, when

the matter was adjourned to enable Mr K.K. Rai, Sr. Advocate who appears for BSNL to obtain instructions: as to whether, pending the inquiry, BSNL could stay its hand vis-a-vis two recommendations (i.e., recommendation no. 3 and 4) made by the Commission. These being: briefly, recommendation to consider immediate transfer of those employees of the BSNL, in the parent circle, who the Commission thought were perpetrators of the impugned acts, and to consider, not to conduct any meetings with the office bearers of the petitioner association, who were involved in unfair activities unless confirmation to that effect was received from the CHQ of the petitioner association.

6.1 Mr Rai, today, informs me that he had instructions not to consent to stay of the operation of recommendation nos. 3 and 4 issued by the Commission.

6.2 On the other hand learned counsel for respondent no. 2 submitted that he was the aggrieved party and, therefore, no interim orders ought to be passed is sought for in the captioned applications.

7. Having considered the matter, I am of the opinion that pending inquiry, the recommendations 3 and 4 of the Commission contained in the impugned orders should be stayed for the reasons set out hereinafter. However, before I proceed further, the said recommendations are extracted hereinbelow, for the sake of convenience:

“.....3. The management of BSNL should consider immediate transfer of these perpetrators out of the parent circle. They should not consider for posting in sensitive places in the SSA/ Circle/ BSNL head quarters in future. (The action report may be submitted within 03 weeks)

4. The management may not consider to conduct any meetings with the office bearers of the Association who involved in the unfair activities unless and conformation to this effect is received from the CHQ of SNEA....”

7.1 The reasons, which persuaded me to come to this conclusion are

broadly as follows: Admittedly, the disciplinary proceedings are on and the chargesheet has been issued to the delinquent officers. Prima facie, the transfer of the delinquent officers is being carried out at the behest of the Commission, which is, apparent from the internal communication dated 13.06.2012, exchanged between one Ram Shakal liaison officer (SCT) of BSNL and Sr. General Manager (Personal), BSNL. The communication after quoting the recommendation of the Commission in entirety, which includes the aforementioned recommendations, concludes with the following:

“...It is, therefore, to do the needful within stipulated time as prescribed by the Commission and furnish the final report to this office for appraisal of the Commission urgently....”
(emphasis supplied)

7.2 It almost appears that BSNL has made up its mind with regard to what it proposes to do in the inquiry proceedings. There is also merit in the submission of the petitioner that the impugned orders at best can be only a recommendation and, therefore, can have no binding effect on BSNL. Whether or not the delinquent officers are guilty of acts of misconduct as charged, would only be determined at the end of the inquiry. Any precipitative action taken at this stage appears to be both unfair and iniquitous. I am conscious of the fact that courts ordinarily do not interfere with matters involving transfer unless they are effectuated with malafide intent. In the present case, it is quite clear that the BSNL has proceeded to effectuate transfer if, one may say, at the diktat of the Commission.

8. In these circumstances, I am of the view that during the pendency of the writ petition, recommendation nos. 3 and 4 contained in the impugned order will not be given effect to. BSNL is, however, directed to conclude the inquiry as expeditiously as possible, preferably within a period of three months from today. Accordingly, the captioned applications stand disposed

of.

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List on 03.12.2012, on the date already fixed.

As directed on 06.08.2012, the petitioner will take steps to implead the effected individuals.

RAJIV SHAKDHER, J

AUGUST 30, 2012

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