

D. D. Suri

Vs

A. K. Barren and Others

Civil Appeal No. 679 of 1970

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

22.10.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from an order of the Orissa High Court dismissing the writ petition filed by the appellant under Article 226 of the Constitution in limine.
2. According to the appellant he joined the Indian Administration Service on August 7, 1950. He was assigned to the Orissa State. In 1952 while he was serving as an Additional District Magistrate, Cuttack, he had to issue search warrants against some of the top leaders including Biju Patnaik and Hare Krishan Mehtab on an application filed before him by the Special Police Establishment, Delhi. The orders issued by him were challenged in the High Court but were upheld. This says the appellant, was the beginning of hostility towards him among those who wielded power in Orissa State. In 1952 he was transferred on deputation to the Government of India and was posted at Delhi. In 1955 the appellant was confirmed in the Indian Administrative Service, Senior Scale and continued to serve on deputation with the Central Government. In 1961 the question of sending the appellant back to Orissa arose because he had already put in 9 years' service on deputation. As the appellant was apprehensive of the danger involved in his going back to Orissa because of hostility of the State Government and the statements made by some politicians as also by the then Chief Secretary he made a representation to the then Home Minister Shri Lal Bahadur Sastri bringing to his notice various facts and circumstances which showed that he was likely to be in serious trouble if he went to Orissa. He was granted a personal interview by the Home Minister and the order for his reversion to Orissa were cancelled. He was appointed Salt Commissioner of India with headquarters at Jaipur and was concurrently posted as Managing Director, Hindustan Salts Ltd. In 1961 owing to certain allegations made by some unknown persons the Special Police Establishment, Delhi started an investigation against the appellant. In August, 1964 a charge-sheet was served upon him in which it was stated that he was in possession of assets which were disproportionate to his known sources of income. The appellant gave the necessary explanation. After an inquiry had been held by Shri P. M. Naik, I.C.S., the appellant was exonerated of all charged on February 19, 1965 by the Central Government on the report made by Shri Naik. The appellant was sent back to Orissa in April, 1965 and on December 19, 1966 her was appointed Commissioner, Land Reforms.
3. Learned counsel for the appellant has placed before us a chronology of events subsequent to December 1966. Inter alia, it has been stated that in April, 1967 the appellant wrote to the State Government complaining about interference in his work by Ramanathan, Member of the Board of Revenue, Orissa. In the middle of 1967 the appellant was asked to make a report on the Transport Department. In his report he brought out certain matters against Ramanathan. In August, 1967 the

Chief Secretary put up a notice to the Chief Minister to constitute a committee to review the work of the appellant. One of the members of that Committee was Ramanathan. In September, 1967 the appellant made two representation against the personnel of the Committee, in particular, with regard to the appointed of Ramanathan as a member of that Committee.

4. In Para 3 of the petition it was alleged that the appellant was subjected to a series of illegal and capricious acts committed by opposite parties particularly A. K. Barren, Chief Secretary to the Government of Orissa and S. K. Ghosh, Director of Vigilance in that State. These order, according to the appellant, were actuated by "deepest malice and manifest mala fides". In Para 4 it was alleged that on November 27, 1967 the appellant's residence was surrounded by a force of about 50 police personnel and his house was searched for two days by K. C. Patnaik, Deputy Superintendent of Police on the basis of the warrant of search purported to have been issued by D. P. Sharma, Additional District Magistrate for an alleged offence under Section 5(2) of the Prevention of Corruption Act, read with Section 5(1)(d), (e) and Section 3(a) of that Act. In Para 5 it was alleged that on November 28, 1967 while the search was being conducted the appellant was served with an order of A. K. Barren, Chief Secretary, suspending the appellant under Rule 7(3) of the All India Service (Discipline and Appeal) Rules, 1955 with effect from the date of the service of the order. During the period of suspension the appellant was not allowed to leave Cuttack except with the prior permission of the Chief Secretary. In Para 6 of the petition it was stated that although the order purported to have been issued under the above-mentioned rule which contemplated suspension pending disciplinary proceedings there were no proceedings which were in fact pending and therefore the order was altogether illegal. In the writ petition in other paragraphs it was alleged that on December 7, 1967, the Additional District Magistrate, sambalpur issued a search warrant on the application of Patnaik, D.S.P., for the search of the locker which had been leased out by the appellant and his wife jointly in the Delhi Safe Deposit Ltd., Janpath, New Delhi. During the search of the appellant's residence at Cuttack as well as the locker at Delhi the personal jewellery of the appellant's wife was even seized and such articles and papers as had no connection whatsoever with the subject-matter of the allegations were taken into possession. In Para 28 quite a serious allegation was made against Ghose, the Director to Vigilance. It was said that he had with the connivance of A. K. Barren posted a number of policemen in plain clothes to watch the appellant's movements and he was subjected to a lot of harassment and humiliation. Even the letters sent by the appellant for positing were snatched from his servant and his in-coming mail was tampered with.

5. It is unnecessary to set out the other facts alleged but we may extract the following portion from Para 30 of the petition (Annexure 2) of the appellant :

"The petitioner submits that all the illegal orders relating to investigation by the Vigilance Police, searches of the petitioner's residence at Cuttack and his locker at New Delhi, his suspension, the restraint on his movement and the withdrawal of all facilities and entitlements of the petitioner were passed on or at the instance of opposite party No. 1 and with the active connivance and abetment of opposite party No. 2 both to whom have been maliciously hostile to the petitioner for a long time and have acted in collusion with the sole purpose of subjecting him to incalculable harm, harassment and mental torture for satisfaction of personal grudge."

6. We are wholly unable to understand how in the present of all the allegations which had been made in the petition including those of mala fides by a senior member of the Indian Administrative Service against other Senior Officers and the State Government the High Court was justified in dismissing the petition in limine by just writing the word "dismissed". The High Court did not even

call for affidavits in reply to the allegations contained in the petition. This court has repeatedly laid down (see Gain Chand and Others v. State of Haryana and Others (1970 (3) SCC 270) following Ram Saran Dass v. The State of Punjab (Civil Appeal No. 36 of 1963, decided on 16-9-1963), that in such circumstances the High Court ought to call upon the respondents to make a return and then consider whether allegations have been proved or not. If it is found that the appellant has made reckless allegations which are not founded on facts it would be in the fitness of things to take suitable action against him. But if on the other hand it is found that there is substance in this allegations there is no reason why the High Court should not grant him the necessary relief if a proper case is made out for doing so. It is quite possible that in a given case the proper course for a writ petitioner should be to seek relief if a proper case is made out for doing so. It is quite possible that in a given case the proper course for a writ petitioner should be to seek relief by way of a suit if there are several disputed question of fact but all these matters can be decided only if the petition is admitted and it is heard after the return has been by the respondents.

7. The appeal is, therefore, allowed and the matter is remanded to the High Court for admitting the writ petition and disposing of it in accordance with law, costs shall abide the event.

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