

SUPREME COURT OF INDIA

State of Assam

Vs.

Mohan Chandra Kalita

C.A.No.1620 of 1967

(S. M. Sikri, C.J.I., A. N. Ray, P. Jaganmohan Reddy and K. K. Mathew, JJ)

08.08.1972

JUDGEMENT

JAGANMOHAN REDDY, J.:-

1. The High Court of Assam and Nagaland quashed an order removing the respondent from service on the ground that there was no evidence to support the charge against him. This appeal is by special leave against that judgment.

2. The respondent was a Sub Deputy Collector in the employment of the Government of Assam and in that capacity was directed to distribute sums of money to the agriculturists of Missamari as compensation for the occupation of their lands by the army authorities. It appears that the respondent had to travel from Dhekiajuli to Missamari to disburse the payments and found it difficult to obtain conveyance to reach Missamari. On September 24, 1963 the villagers of Missamari who were to be paid compensation were waiting for the respondent who however arrived in a school bus at about 12 noon. Though the respondent made payments to some of them he could not pay all of them. He informed them that if he gets a conveyance he will come the next day, but

otherwise they should come to Dhekiajuli. The people who were still to be paid said that it would be inconvenient for them to go to Dhekiajuli and later suo motu decided that they would pay the charge of conveyance known as "Garebhara" (carriage hire). The respondent arrived next day at Missamari in a taxi, went into the room of the Mauzadar and began to make payments. There was a huge crowd inside the room and it appears that there were also large crowds outside. It appears that several persons were collecting amounts from the villagers who were being paid compensation. It is in evidence that there was someone collecting arrears of land revenue, some other person was collecting pooja contribution and yet others were collecting amounts allegedly for Garibhara (carriage of the Sub Divisional Officer). There is also evidence to show that a person was collecting some fee allegedly on behalf of the respondent. While these collections were being made the Assistant District Magistrate, Shri M. R. Deka visited Missamari and was met by some villagers on the way. On their complaint that they were being made to pay Garibhara from out of the compensation amounts paid to them, he asked two of them to get into his jeep and with them arrived at Missamari. On reaching Missamari he seized Rs. 110/- collected by one Tajmudin who had also a list of persons from whom he had collected. Tajmudin was sitting outside the room and making collections of Re. 1 or Rs. 2 from each person towards Garibhara. The Additional District Magistrate then made a report to the Government on which a preliminary enquiry was held and a prima facie case being found against the respondent, an enquiry was ordered.

3. The enquiry officer framed a charge and examined 21 witnesses and as the High Court has pointed out some evidence in respect of matters extraneous to the charge was let in which it was contended was likely to prejudice the enquiry against the respondent. We shall refer to this aspect of the matter later.

4. The charge framed against the respondent was that 'he realised' from those to whom he was paying compensation amounts certain percentage of compensation money due to them (total amount realised Rs. 110/-) 'for payment of the hire charges of a vehicle by which he was reported to have visited the office of the Mauzadar from Dhekiajuli'. He was therefore charged with "illegal collection of money in the name of Garibhara which he was not authorised to collect". He was further charged with harassing the persons to whom the compensation money for requisition was due by compulsorily, unauthorisedly and illegally realising the so-called Garibhara from each of them.

5. In the statement of allegations served on him it was stated that some amounts were collected from the villagers by the Muhorrior of the Mauzadar, Missamari on his behalf towards paying the hire charges of a vehicle in which he travelled from Dhekiajuli to Missamari and a sum of Rs. 110/- thus collected on his behalf was seized by Shri M. R. Deka, the then Addl. District Magistrate Darrang in the course of a surprise visit to enquire about the irregularities reported to have been committed by him. The enquiry officer after reviewing the evidence on the charge of collecting Garibhara realised that there was a lacuna in that evidence inasmuch as it did not directly or indirectly connect the respondent with the collections made outside the room where he was distributing compensation moneys. He therefore asked himself this question; "Can it therefore be said that the S.D.C. who was inside the room does not know of this collection which was made just near the door itself?" and

immediately proceeded to answer it in the affirmative by basing his conclusion on a mere conjecture. He said :

"On a perusal of the evidence of the above four witnesses I am convinced that what they said was true. I do not believe that these witnesses deposed falsely just to implicate the S.D.C."

The enquiry officer further brushed aside the statement of the respondent as well as his witnesses who had corroborated his statement when they said that they did not hear the S.D.C. asking anybody to collect the Garibhara. Here again he posed the question; "whose statements then are to be believed, that of the S.D.C. or the prosecuting witnesses?" This question was also answered in the affirmative again on conjectures. He said :

"On a perusal of all the evidence on record I am convinced beyond reasonable doubt that the statement of the S.D.C. that the allegation is a false and concocted one is not true. I see no reason why the villagers will depose falsely against the S.D.C. and I see no reason also what grudge they will have against him. I am convinced, as I have already said, that the S.D.C. knew of the collection of 'Garibhara' otherwise no person will be so daring as to make the collection near the door itself without the express or implied consent of the S.D.C."

From the evidence recorded by the enquiry officer which we have perused and to which a reference will be made presently, it is clear beyond doubt that none of the witnesses testified to the fact that on 25th September, 1963 or earlier, neither the respondent authorised the collection of Garibhara nor did anyone say that they complained to him about the collections that were being made outside his room. The enquiry officer recorded evidence on allegations extraneous to the charge such as that certain amounts were being collected as fee to be paid to the respondent, that the respondent had disbursed amounts less than those that were payable to the persons entitled to them and concluded that the respondent must have also authorised the collection of Garibhara.

6. As we said earlier, there was no charge against the respondent that he had not paid the full amounts to those entitled to compensation or that he had authorised anyone to collect any fee. This enquiry into extraneous allegations with which the respondent was not charged must have certainly prejudiced the enquiry officer against the respondent. Even if we were to ignore this aspect, there is no evidence to connect the respondent with the allegation that he had authorised the collection of Garibhara much less can it be said, as averred in the charge, that he realised from those persons to whom compensation was being paid certain percentage of compensation money due to them for payment of hire charges of the vehicle in which he had visited the office of the Mauzadar from Dhekiajuli.

7. The learned advocate for the State submits that there is evidence in the case to connect the respondent with the collection by Tajmudin of the Garibhara charges. This evidence however does

not substantiate his contention. Mathew Kosla, witness No. 3, Jiban Deka, witness No. 4 and P.C. Deka, witness No. 5 and Rathu Kurmi, witness No. 6 though they say that amounts were collected by Bharat Chandra Das and Tajmudin, some of them had protested but they did not go to the S.D.C. to complain about the collection. None of them stated that the S.D.C. had asked for collection of the amounts. Tajmudin, witness No. 8 admitted that he had collected the money for Garibhara. He says the reason for this collection was that on a certain day before 25th September 1963, many people were waiting at Mouzadar's office for S.D.C. to come and make payment. He came at about 12 noon by bus from Dekiajuli and told them that it was a school bus and that he will not come again to Missamari to make payment and that all people should go to Dhekiajuli to receive payment. The crowd stated that it would be very inconvenient and troublesome for them to go to Dhekiajuli. As such the crowd themselves decided that they would contribute for the Garibhara of the S.D.C. to come and make payment at Missamari. As a result of the above agreement, Moni Gaonbura collected Garibhara for S.D.C. on 24th September 1963 and on 25th September the A.D.M. Shri Deka who came to Missamari found him collecting moneys. Hiren Saikia entered on a paper the names of the contributors and he collected the money and Bharat Das collected the Pooja subscription. He further says that he learnt that Mohindar Deka and Moniram Gaonbura also collected Garibhara for the S.D.C. According to him when A.D.M. Deka enquired of him as to on whose behalf he collected the money, he told him that S.D.C. Shri Kalita asked him to collect. As will be noticed this is not what A.D.M. Deka says. It was suggested to him in cross-examination that he collected the money for himself which of course he denied. Mohidar Deka who is a Moharrer of Mouzadar said he was collecting the arrears of land revenue and that Tajimudin was collecting the Garibhara for S.D.C. from the recipients money and Hiren Saikia entered their names on a paper. This collection was in pursuance of the peoples' decision the previous day to pay for the Garibhara of the S.D.C. and as such as soon as each came out of the room he willingly contributed for the Garibhara and the contributor's name was entered on a paper by Hiren Saika and that when A.D.M. asked the S.D.C. as to why Garibhara was being collected, the S.D.C. said he did not know anything. He also admits that no one informed him that the S.D.C. asked him to collect the Garibhara. Shri Paresh Chandra Sharma is the Mouzadar of Missamari. He says he heard the S.D.C. saying that he cannot come the next day and that the public would have to go to Dhekiajuli to receive payment. He admits that he did not know anything about the collection of Garibhara nor did he hear the S.D.C. demanding it nor did he complain to him that Garibhara was being collected. Hiran Chandra Saika, witness No. 14, though he admits that he did not meet S.D.C. on the 25th September 1963 nonetheless volunteers that the S.D.C. asked all people present there to pay for the taxi charge. Obviously this witness cannot be relied upon. The A.D.M. Shri Deka says that when he enquired of Tajimuddin he told him he was collecting the money at the instance of Hiren Saika who according to the A.D.M. ran away as soon as he entered. There is no mention of his ever having asked the S.D.C. as to why this amount was being collected towards Garibhara and without even getting his explanation he had reported the matter to the D.O. in writing. This he did in spite of his further admission that no person had complained to him that the S.D.C. had personally collected the money from them.

8. This evidence does not establish that the S.D.C. had either authorised the collection or that the amount was collected at his instance or that he even connived at it. On the other hand as the A.D.M. Deka admitted, when he asked Tajimudin he informed him that the amount was being collected at the instance of Hiren Saika who immediately on seeing him ran away. According to Tajimudin, two other persons, namely, Mohidar Deka and Moniram Gaonbura were also collecting Garibhara amounts. It appears to us that because compensation amounts were being paid everyone was trying

to collect whatever he could from those recipients. There was no need for the respondent to collect any money for payment of taxi charges because he could recover those from the Government and in fact he had recovered that amount from the government. There is no dispute that he did express his difficulty in finding a conveyance to come to Missamari as indeed he had to come there on that day in a school bus. He was not sure whether he could get a conveyance to come there the next day and naturally he informed those concerned that if he cannot get any conveyance and come there they should go to Dhekiajuli. It is at that stage that they suggested that he should come in a taxi and they will pay for it; but this did not imply that the S.D.C. had consented to anyone collecting moneys for the hire or much less permit them to pay for the hire on his behalf. All this merely shows that the suggestion that they should come to Dhekiajuli would seriously inconvenience them and they were even prepared to pay his taxi fare if he came to Missamari. Their earnest entreaties must have persuaded the S.D.C. to come there in a taxi. Beyond this, there is no evidence to show that he had wanted them to pay for his taxi or authorised them to collect money for it. The High Court was therefore right in quashing the order of the A.D.M. Tezpur on the ground that there was no evidence to sustain the charge. The appeal is accordingly dismissed with costs.

Appeal dismissed.