High Court of Judicature at Bombay Through its Registrar

Vs

Udaysingh S/O Ganpatrao Naik Nimbalkar and Others

Civil Appeal No. 9506 of 1996

(K. Ramaswamy, D. P. Wadhwa JJ)

09.04.1997

ORDER

1. This appeal by certificate arises from the judgment of the Division Bench of the High Court of Bombay, Nagpur Bench, made on 26-4-1996 in Writ Petition No. 2210 of 1993.

2. While the respondent was working as Civil Judge, Junior Division at Nasik, an allegation was made against him that on 21-10-1989, he had sent a word through a messenger to one Smt. Kundanben, defendant in a civil suit for eviction, demanding a sum of Rs. 10,000 as illegal gratification to deliver judgment in her favour. On receipt of the information, she appears to have complained to Mr. Sathe, her advocate, who in turn appears to have complained to one Mr. Parakh, Assistant Government Pleader, who in turn alleged to have complained to one Shri N.A. Gite, the District Government Pleader. The District Government Pleader informed the District Judge of the demand of illegal gratification made by the respondent. On the bases thereof, the District Judge made adverse remarks against the respondent in his Confidential Reports for 1989-90. On coming to know of the same, the respondent made an appeal to the High Court to expunge the said remarks. The High Court, thereon, has directed the District Judge to substantiate the adverse remarks after recording the evidence of the aforesaid advocates. Subsequently, their statements came to be recorded. It is relevant to note, at this stage, that the respondent by then was transferred from Nasik by notification dated 26-4-1990, but had not been relieved by the date when a letter was sent by Mr. Gite, District Government Pleader to the District Judge on 4-5-1990. On the basis of the statements recorded from the aforesaid three persons and also Smt. Kundanben, the complainant, the High Court initiated disciplinary enquiry against the respondent. The Enquiry Officer after giving reasonable opportunity to the respondent conducted enquiry and submitted his report. The charge framed against the respondent is as under :

> "That on Sunday, the 22nd October, 1989, at about 10.00 a.m. you made a demand of illegal gratification of Rs. 10,000 through your messengers, from Smt. Kundan Kishor Somayya (Thakkar), resident of House No. 4518, Sardar Chowki, opposite Panchavati Police Chowki, Nasik, defendant in Regular Civil Suit No. 581/81, for deciding the said suit in her favour and that you thereby indulged in corrupt practice amounting to gross misconduct."

3. The High Court after receipt of the enquiry report and consideration thereof, disagreed with the conclusion reached by the Enquiry Officer and recorded its prima facie conclusions indicating as to how it different from the findings reached by the Enquiry Officer and stated a under :

> "Taking the cumulative view of these statements recorded by the Enquiry Officer,

> Nasik, we are of the view that the same are adequate enough to hold the delinquent's culpability in the matter of demand of illegal gratification for delivering a favourable judgment. The integrity is, therefore, thrown in doubt and penal action is required to be taken to maintain judicial discipline.
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> For the reasons stated hereinabove, we disagree with the finding of the Enquiry Officer who has not analysed and appreciated the evidence and material on record in the right perspective."

4. Accordingly, opportunity was given to the delinquent officer, the respondent, to submit his explanation. The respondent submitted his explanation and on consideration thereof, the Disciplinary Committee of the High Court by its proceedings dated 31-7-1993 recommended for dismissal and the Government on consideration of the record and the recommendation of the High Court reached the following conclusion :

> "And Whereas, the Chief Justice and the Judges of the High Court of Judicature at Bombay, being the Disciplinary Authority, on considering the said report of the Enquiry Officer and evidence on record, decided not to agree with the finding of the Enquiry Officer;
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> And Whereas, thereupon, the Chief Justice and the Judges of the High Court of Judicature at Bombay, being the Disciplinary Authority, had served a show-cause notice on the said Shri Naiknimbalkar, calling upon him to show cause why the punishment of dismissal from service should not be imposed upon him;
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> And Whereas, after considering the cause shown by the said Shri Naiknimbalkar, the Disciplinary Authority have recommended to the Government to inflict the punishment of dismissal from service on the said Shri Naiknimbalkar;
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> And Whereas, on considering the report and the finding of the Enquiry Officer, the cause shown by the said Shri Naiknimbalkar and the recommendation of the Chief Justice and the Judges of the High Court of Judicature at Bombay, the Government of Maharashtra has decided to accept the said recommendation of the Chief Justice and the Judges of the High Court of Judicature at Bombay, to inflict the punishment of dismissal from service on the said Shri Naiknimbalkar;"

5. Calling in question this order of dismissal from service, the respondent filed a writ petition in the High Court. The Division Bench after noticing various decisions of this Court came to the conclusion that the District Judge was biased against the respondent; and he recorded the evidence of three witnesses, advocates and the complainant. That formed the foundation for laying the action against the respondent. The circumstances available on record do indicate that no reasonable man would reach the conclusion that the respondent was actuated with a corrupt motive to demand illegal gratification to deliver favourable judgment. The decision of the High Court dismissing the respondent is, therefore, vitiated by manifest error of law warranting interference. Accordingly, the order of dismissal came to be set aside. Thus, the appeal by certificate.

6. Shri Harish Salve, learned Senior Counsel appearing for the appellant, contends that the view taken by the Division Bench is not correct in law. Under judicial review the court cannot reappreciate the evidence of witnesses and reach its own conclusion. The Court could have seen on

the basis of evidence on record whether a reasonable man would reach the conclusion that the respondent was actuated with the corrupt motive in making demand for illegal gratification for discharge of official duty; the High Court, therefore, has overstepped its limits of judicial review and the conclusion reached cannot be supported either by principle of law or any of the law laid down by this Court. Shri Lambat, learned counsel appearing for the respondent, on the other hand, contends that on the basis of evidence on record, no reasonable man would reach the conclusion that the respondent has committed any act of misconduct, i.e., demand of illegal gratification. The subsequent statements of the advocates and of the complainant show that it is only a face-saving attempt made by the District Judge to substantiate the adverse remarks made by the District Judge; when the respondent brought these facts on record, the Disciplinary Committee did not consider the same from this perspective. So they cannot form a foundation for taking disciplinary action against the respondent.

7. Having regard to the respective contentions, the question that arises for consideration is whether the view taken by the Division Bench is sustainable in law. As regards the nature of the judicial review, it is not necessary to trace the entire case-law. A Bench of three Judges of this Court has considered its scope in its recent judgment in B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] in which the entire case-law was summed up in paragraphs 12, 14 and 15 thus : (SCC pp. 759-60)

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent office in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.
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14. In Union of India v. S.L. Abbas [(1993) 4 SCC 357 : 1994 SCC (L&S) 230 : (1993) 25 ATC 844] when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of

transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a government servant. In Administrator of Dadra & Nagar Haveli v. H.P. Vora [(1994) 2 SCC 537 : 1994 SCC (L&S) 687 : (1994) 27 ATC 149] it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently in State Bank of India v. Samarendra Kishore Endow [1993 Supp (1) SCC 551 : 1993 SCC (L&S) 281 : (1993) 23 ATC 672] a Bench of this Court of which two of us (B.P. Jeevan Reddy and B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

15. It is, therefore, difficult to go into the question whether the appellant was in possession of property disproportionate to the known sources of his income. The findings of the disciplinary authority and that of the Enquiry Officer are based on evidence collected during the inquiry. They reached the findings that the appellant was in possession of Rs. 30,000 in excess of his satisfactorily accounted for assets from his known sources of income. The alleged gifts to his wife as stridhana and to his children on their birthdays were disbelieved. It is within the exclusive domain of the disciplinary authority to reach that conclusion. There is evidence in that behalf."

8. The law on the nature of the imposition of the penalties, has been summed up in paragraph 18 thus : (SCC p. 762)

> "A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

9. Accordingly, the order of the Tribunal in reversing the imposition of the penalty was set aside. In another judgment in State of T.N. v. S. Subramaniam [(1996) 7 SCC 509 : 1996 SCC (L&S) 627 : (1996) 33 ATC 317], this Court has considered the scope of the power of judicial review vis-a-vis reappreciation of evidence and concluded as under : (SCC pp. 511-12, paras 4-5)

> "4. The Tribunal appreciated the evidence of the complainant and according to it the evidence of the complainant was discrepant and held that the appellant had not satisfactorily proved that the respondent had demanded and accepted illegal gratification. The Tribunal trenched upon appreciation of evidence of the complaint, did not rely on it to prove the above charges. On that basis, it set aside the order of removal. Thus this appeal by special leave.

> 5. The only question is whether the Tribunal was right in its conclusion to appreciate the evidence and to reach its own finding that the charge has not been proved. The Tribunal is not a court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken away by the power under Article 323-A and invested the same in the Tribunal by Central Administrative Tribunals Act. It is settled law that the Tribunal has only power of judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or not. It is equally settled law that technical rules of evidence have no application for the disciplinary proceedings and the authority is to consider the material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to reappreciate the evidence and would (sic) come to its own conclusion on the proof of the charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. This is the consistent view of this Court vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44], State of T.N. v. T.V. Venugopalan [(1994) 6 SCC 302 : 1994 SCC (L&S) 1385 : (1994) 28 ATC 294] (SCC para 7), Union of India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200], (SCC para 6), Govt. of T.N. v. A. Rajapandian [(1995) 1 SCC 216 : 1995 SCC (L&S) 292 : (1995) 29 ATC 89] (SCC para 4) and B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] (SCC at pp. 759-60). In view of the settled legal position, the Tribunal has committed serious error of law in appreciation of the evidence and in coming to its own conclusion that the charge had not been proved. Thus we hold that the view of the Tribunal is ex facie illegal. The order is accordingly set aside. OA/TP/WP stands dismissed."

These two judgments squarely cover the controversy in this case.

10. It is seen that the evidence came to be recorded pursuant to the complaint made by Smt. Kundanben, defendant in the suit for eviction. It is true that due to time-lag between the date of the complaint and the date of recording of evidence in 1992 by the Enquiry Officer, there are bound to be some discrepancies in evidence. But the disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. The test laid down by various judgments of this Court is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether a reasonable man, in the circumstances, would be justified in reaching that conclusion. The question, therefore, is whether on the basis of the evidence on record, the charge of misconduct of demanding an illegal gratification for rendering a

judgment favourable to a party has been proved. In that behalf, since the evidence by Kundanben, the aggrieved defendant against whom a decree for eviction was passed by the respondent alone is on record, perhaps it would be difficult to reach the safe conclusion that the charge has been proved. But there is a contemporaneous conduct on her part, who complained immediately to her advocate, who in turn complained to Assistant Government Pleader and the Assistant Government Pleader in turn complained to the District Government Pleader, who in turn informed the District Judge. The fact that the District Judge made adverse remarks on the basis of the complaint was established and cannot be disputed. It is true that the High Court has directed the District Judge to substantiate the adverse remarks made by the District Judge on the basis of the statements to be recorded from the advocates and the complaint. At that stage, the respondent was not working at that station since he had already been transferred. But one important factor to be taken note of is that he admitted in the cross-examination that Shri Gite, District Government Pleader, Nasik had no hostility against the respondent. Under these circumstances, contemporaneously when Gite and written a letter to the District Judge stating that he got information about the respondent demanding illegal gratification from some parties, there is some foundation for the District Judge to form an opinion that the respondent was actuated with proclivity to commit corruption; conduct of the respondent needs to be condemned. Under these circumstances, he appears to have reached the conclusion that the conduct of the respondent required adverse comments. But when enquiry was done, the statements of the aforesaid persons were recorded; supplied to the respondent; and were duly cross-examined, the question arises whether their evidence is acceptable or not. In view of the admitted position that the respondent himself did admit that Gite had no axe to grind against him and the District Judge having acted upon that statement, it is difficult to accept the contention that the District Judge was biased against the respondent and that he fabricated false evidence against the respondent of the three advocates and the complainant. When that evidence was available before the disciplinary authority, namely, the High Court, it cannot be said that it is not a case of no evidence; nor could it be said that no reasonable person like the Committee of five Judges and thereafter the Government could reach the conclusion that the charge was proved. So, the conclusion reached by the High Court on reconsideration of the evidence that the charges prima facie were proved against the respondent and opportunity was given to him to explain why disciplinary action of dismissal from service could not be taken, is well justified.

11. Under these circumstances, the question arises whether the view taken by the High Court could be supported by the evidence on record or whether it is based on no evidence at all. From the narration of the above facts, it would be difficult to reach a conclusion that the finding reached by the High Court is based on no evidence at all. The necessary conclusion is that the misconduct alleged against the respondent stands proved. The question then is what would be the nature of punishment to be imposed in the circumstances ? Since the respondent is a judicial officer and the maintenance of discipline in the judicial service is a paramount matter and since the acceptability of the judgment depends upon the credibility of the conduct, honesty, integrity and character of the office and since the confidence of the litigant public gets affected or shaken by the lack of integrity and character of the judicial officer, we think that the imposition of penalty of dismissal from service is well justified. It does not warrant interference.

12. The appeal is accordingly allowed. The judgment of the Division Bench of the High Court stands set aside and that of the High Court dismissing the respondent from service stands upheld. No costs.