

State Of Orissa & Anr vs Sangram Keshari Misra & Anr on 19 October, 2010

Equivalent citations: 2010 AIR SCW 6948, 2010 (13) SCC 311, 2011 LAB IC 625, 2011 (2) AIR JHAR R 653, (2010) 127 FACLR 902, (2010) 4 SCT 591, (2011) 7 SERVLR 283, (2010) 11 SCALE 90, (2011) 2 CLR 100 (SC), 2011 (84) ALR SOC 24 (SC)

Author: R. V. Raveendran

Bench: H.L. Gokhale, R V Raveendran

Non-Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8509-8510 OF 2003

State of Orissa & Anr.

..... Appellants

Vs.

Sangram Keshari Misra & Anr.

..... Respondents

JUDGMENT

R. V. RAVEENDRAN J.

In the year 2002 the first respondent, an officer belonging to IAS cadre, was working as a Special Secretary, Planning and Coordination Department, Government of Orissa. The State Government issued a charge memorandum dated 29.4.2002 charging him as follows :

"Hon'ble High Court of Orissa, Cuttack in their order dated 17.1.2002 in Misc. case No.238 of 2001 (arising out of original criminal Misc. Case No.578 of 2000 - P.K. Sahoo vs. S.M. Patnaik & Ors.) have been pleased to dispose of the matter with regard to stay with a direction to the State Government in G.A. Department to file counter before the Hon'ble CAT, Cuttack. Sri Debasis Das, Addl. Government Advocate was to supply the free copy of the said order dated 17.1.2002 to G.A. Department for compliance of the orders of Hon'ble court.

On 22.1.2002 Sri Sangram Keshari Mishra, IAS, Special Secretary to Government, P & C Department contacted Sri Debasis Das, Additional Govt. Advocate over phone impersonating himself as Special Secretary to Government, G.A. Department and requested to supply of the order dated 17.1.2002 to him. Sri Das requested Sri Mishra to come over to his office at 10.30 a.m. to receive the order. Accordingly, Sri Mishra reached his office and Sri Das handed over the said order to Shri Mishra.

The order is neither related to P & C Department where Sri Mishra works nor Sri Mishra felt it necessary to send the order to G.A. Department after receipt of the same from Sri Debasis Das. The post of the Special Secretary, G.A. Department remained vacant during the period from 11.1.2002 to 6.2.2002. During such period Sri Mishra has shown grave misconduct by posing and impersonating himself as Special Secretary to Government, G.A. Department over phone to the Addl. Govt. Advocate and while appearing before him in person. He has obtained the said order dated 17.1.2002 from the Addl. Government Advocate in an illegal and unfair manner posing himself as Special Secretary, G.A. department with malafide intention. He has thus violated the provisions under Rule 3 of ASI (Conduct) Rules, 1968."

(emphasis supplied) The first respondent challenged the said charge memorandum in Original Application No. 336/2002 on the file of the Central Administrative Tribunal, Cuttack. The Tribunal issued notice regarding admission on 21.5.2002 but did not grant interim relief sought for. The first respondent filed a writ petition in the High Court of Orissa on 7.6.2002 (OJC No. 6001/2002) for declaring the charge memorandum dated 29.4.2002 to be void and for an interim direction not to proceed in pursuance of the said charge memorandum, pending disposal of his application before the Tribunal and the writ petition before the High Court. On 12.6.2002 the High Court issued notice in regard to the said writ petition and stayed the enquiry in pursuance of the charge memorandum dated 29.4.2002. When the said interim stay was in operation, Government of Orissa issued a corrigendum dated 22.6.2002 to the charge memorandum dated 29.4.2002, amending the words "Misc. Case No. 238 of 2001 "wherever it appears by the words "Misc. Case No. 236 of 2001".

3. The first respondent initiated contempt proceedings (Contempt Petition No. 62/2002) alleging that issue of the corrigendum dated 22.6.2002 when there was interim stay of the enquiry in pursuance of the charge memorandum dated 29.4.2002 amounted to violation of the interim order and interference with the administration of justice.

4. The High Court heard the writ petition and the contempt petition filed by the first respondent and disposed them by orders dated 6.12.2002. By the order disposing the writ petition, the charge memorandum dated 29.4.2002 and corrigendum dated 26.2.2002 were quashed with an observation that as a consequence OA No. 336 of 2002 pending before the Tribunal also stood disposed of with a direction to Tribunal to close the said O.A. The contempt petition was disposed of by closing the contempt proceedings with the following observations:

"In the face of the stay order granted by this court, any step taken in the disciplinary proceedings, is calculated to obstruction of administration of justice. The very fact

that the opposite parties have not sought leave of this court before issuing the corrigendum indicates that they have themselves that the order of stay granted by this court is of no consequence. Issuance of corrigendum in the face of the stay order is obviously intended to frustrate or prejudice the result of the writ petition pending in this court. The stand taken by the opposite parties that the corrigendum is nothing but correction of an error and it was issued bonafide is not acceptable in as much as, the officials, who filed cause are Senior officers, of the state government and we are not prepared to accept that they do not know the consequences of the stay order. We strongly disapprove their action and warn that in future they will not venture to do any thing which may have the tendency to interfere with the administration of justice."

(emphasis supplied) The said orders dated 6.12.2002 are challenged by the State of Orissa in these appeals by special leave.

5. On 27.10.2003 this court granted leave after condoning the delay and made an interim order permitting the State to pursue the disciplinary proceedings initiated against the first respondent subject however to the condition that the orders, if any, passed will not be communicated until further orders of this Court. By further order dated 13.2.2004, it was clarified that the disciplinary proceedings shall not stand in the way of the promotion of first respondent due to him and any promotion granted will be subject to the result of these appeals. In spite of the liberty reserved to proceed with the enquiry, till now the enquiry has not been commenced. We are told that a new Enquiry officer (Dr. Aurobindo Behera, IAS, Principal Secretary to Govt. of Orissa) has been appointed. The appellant who has been serving as Officer on Special duty in the Board of Revenue has recently been promoted to the rank of Principal Secretary to the Government of Orissa. Be that as it may.

6. Two questions arise for our consideration in these appeals are :

(i) Whether the High Court was justified in quashing the charge memorandum and corrigendum thereto;

(ii) Whether the High Court was justified in making adverse remarks against the officers of the State Government in regard to issuance of corrigendum.

7. The High Court has held that the charges are to be framed by the disciplinary authority after applying its mind to the actual facts. Charge memorandum has been issued alleging that the first respondent impersonated himself as Special Secretary to the Government, General Administration Department and went to the office of the Additional Govt. Counsel (Mr. Debasis Das) and received the copy of the order dated 17.1.2002 in Misc. Case No.238/2001. Before the High Court it was conceded that the first respondent did not receive the copy of any order in Misc. Case No. 238/2001 and infact there was no such proceedings and secondly the corrigendum dated 22.6.2002 was issued ignoring the fact that there was stay of all further proceedings in regard to the enquiry and the corrigendum could not have been issued in regard to charge memorandum without the leave of the

court. The logic of the reasoning of the High Court was that if the corrigendum dated 22.6.2002 had to be ignored as it was issued in violation of the interim order of stay dated 12.6.2002, the charge dated 29.4.2002 would be false and incorrect as admittedly the first respondent did not receive the copy of the order in Misc. case No.238/2001, as there was no proceedings with the number "Misc. case No. 238/2001"; that consequently the charge obviously had no leg to stand; and the charge memorandum was ex facie erroneous and baseless and was liable to be interfered with. The High Court while so quashing the charge memorandum dated 29.4.2002 and the corrigendum dated 22.6.2002 reserved liberty to the Government to deal with the matter in accordance with the law thereby meaning that the Government can issue a proper charge memorandum in accordance with law, if it so desires.

8. We are of the view that in the peculiar factual background, it cannot be said that the order of the High Court quashing the charge memorandum and the corrigendum reserving liberty to Government to take action in accordance with law, calls for interference in exercise of jurisdiction under Article 136 of the Constitution.

9. The learned counsel for first respondent would further argue that the charge memorandum ought to have been quashed not only on a technical ground but even on merits without reserving any liberty to the State Government to proceed in accordance with law. He submitted that the following circumstances would make it clear that the said charge memorandum was mala fide and issued with ulterior motive to affect his career as a senior IAS officer: (a) The copy of the High Court order could be obtained by applying for a certified copy, and there was no need for any one, much less for him, to impersonate any one else to get a certified copy, (b) It is difficult to believe that an officer of a rank of Special Secretary would personally go to the office of an Additional Govt. Advocate just to receive a certified copy; (c) The first respondent was in no way concerned with either Misc. Case No. 238 of 2001 or Misc. Case No.236/2001 on the file of the High Court and he had nothing to do with the order dated 17.1.2002 therein. Receiving a free copy of the said order would not in any way benefit him or adversely affect anyone else; (d) The charge against him is so absurd and preposterous that it is liable to be rejected outright, and (e) The background facts would disclose the hand of one P.K. Nayak, IAS, who is inimically disposed towards the first respondent. Though there appears to be some merit in the said contentions of the first respondent, it is unnecessary to examine the correctness of these contentions as normally a charge sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous. It is well settled that the correctness or truth of the charge is the function of the disciplinary authority. (vide Union of India vs. Upendra Singh - 1994(3) SCC page 357). Therefore we reject the contention that the charge to have been quashed without reserving to the State to proceed in accordance with law.

10. The High Court has held that issue of a corrigendum without the leave of the court, when there was a stay of the enquiry in pursuance of the charge, was clearly a step taken in the disciplinary enquiry. Even if it was correction of a genuine error, it would still be technically a violation of the order of interim stay. However, we accept the explanation given by the appellant that the corrigendum was issued under a bona fide impression that correction of a typographical error in the charge memorandum could be issued when there was an order of interim stay, and therefore there was no intention to violate the interim stay. Consequently we hold that the High Court was justified

in closing the contempt proceedings. But the High Court was not justified in expressing disapproval and issuing a warning to the senior officers of the State Government. We therefore delete the later half of para 7 of the impugned order (shown in italics in Para 4 above).

11. In view of the above, we dismiss Civil Appeal No. 8509/2003 as interference with the order dated 6.12.2002 in OJC No. 6001/2002 is not warranted. We allow Civil Appeal No.8510/2003 in part by deleting the adverse remarks against the senior officers of the State (as per earlier para).

.....J.
(R V Raveendran)

New Delhi;
October 19, 2010.

.....J.
(H.L. Gokhale)