

State Of Andhra Pradesh & Ors vs Chitra Venkata Rao on 29 August, 1975

Equivalent citations: 1975 AIR 2151, 1976 SCR (1) 521, AIR 1975 SUPREME COURT 2151, 1975 2 SCC 557, 1975 LAB. I. C. 1585, 1976 (1) SCR 521, 1976 2 SCJ 227, 1975 SERVLJ 772, 1976 (1) LABLJ 21, 1976 32 FACLR 44, 1976 (1) SERVLR 653

Author: A.N. Ray

Bench: A.N. Ray, Kuttyil Kurien Mathew, Y.V. Chandrachud

PETITIONER:

STATE OF ANDHRA PRADESH & ORS.

Vs.

RESPONDENT:

CHITRA VENKATA RAO

DATE OF JUDGMENT 29/08/1975

BENCH:

RAY, A.N. (CJ)

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RAY, A.N. (CJ)

MATHEW, KUTTYIL KURIEN

CHANDRACHUD, Y.V.

CITATION:

1975 AIR 2151 1976 SCR (1) 521

1975 SCC (2) 557

CITATOR INFO :

RF 1991 SC1070 (6)

RF 1991 SC2251 (8)

ACT:

Constitution of India, 1950, 226-Scope of High Court's power in relation to departmental enquiries to guilt of government servants.

HEADNOTE:

(1) The jurisdiction of the High Court to issue a writ of certiorari under Art. 226 is a supervisory jurisdiction, and not as an appellate court. The findings of fact reached by an inferior court or tribunal as result of the

appreciation of evidence are not reopened or questioned in these proceedings. An error of law which is apparent on the face of record can be corrected but not an error of fact, however grave it may be. In regard to a finding of fact recorded by a tribunal a writ can be issued if it is shown that the tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again, if a finding of fact is based on the evidence, that would be regarded as an error of law which can be corrected by a writ of 'certiorari', but if there is some evidence which may reasonably support the conclusion, its adequacy or sufficiency and the inference of 'fact' drawn, are within the exclusive jurisdiction of the tribunal. The Court is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Therefore, in departmental enquires relating to the guilt of delinquent officers, the High Court may interfere only where the departmental authorities have held tax proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case, or by allowing themselves to be influenced by irrelevant considerations or where the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion.

[525-E-527B]

State of Andhra Pradesh v. S. Sree Rama Rao [1963] 3 S.C.R. 25; Railway Board, representing the Union of India New Delhi & Anr. v. Niranjana Singh [1969] 3 S.C.R. 548 and Syed Yakoob v. K. S. Radhakrishnan & Ors. [1964] 5 S.C.R. 64, referred to.

(2) There is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him the rule followed in criminal trials, namely, that an offence is not established unless proved beyond reasonable doubt, must be applied. [525F G]

In the present case, charges that the respondent fraudulently claimed travelling allowance were inquired into by the Disciplinary Proceedings Tribunal. The Tribunal found him guilty and recommended dismissal. The Government accepted the recommendation and dismissed the respondent. In a writ petition challenging the order of dismissal, the High Court equated the charge of misconduct to a charge under s.5(1)(d) of the Prevention of Corruption Act, 1947 discussed the evidence and findings of the Tribunal on that basis and held that the prosecution did not adduce material and essential evidence namely; the conductor's chart which

would show whether the respondent travelled on a particular day, that a statement made by the respondent during investigation was not admissible in evidence, that it was not safe to rely on it and set aside the order of dismissal.

Allowing the appeal to this Court.

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HELD . (a) The High Court was not correct in holding that the domestic inquiry before the Tribunal was the same as prosecution is a criminal case.

[525C-D]

3-L925SupCI/75

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(b) The respondent was given full opportunity to explain the statement A made by him during investigation. Further, the Tribunal did not base its findings only on that statement. It had given its reasons for its conclusion and it is not possible for the High Court to say that no reasonable person could have arrived at that conclusion. The High Court had accepted the explanation that the conductors' charts were destroyed and therefore could not be Produced. Moreover, the conductor's chart would not show the names of the persons paying the money. The High Court reviewed and re-assessed the evidence and then rejected evidence as no evidence, and this is precisely what the High Court, in exercising jurisdiction under Art 226, should not do. [525SC; 527B-D]

(c) The respondent's contention that the Tribunal relied upon certain reports which were not available to the respondent is not correct. A reference to the inquiry report of the Tribunal shows that the Tribunal had not relied upon those documents for finding the respondent guilty. [527G-528B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2040 of 1974.

Appeal by special leave from the Judgment and order dated the 13th June, 1974 of the Andhra Pradesh High Court in W.P. No. 2145 of 1972.

Niren De, Attorney-General of India and P. P. Rao, for the appellant. r A. Subba Rao for the respondent.

The Judgment of the Court was delivered by RAY, C.J. This appeal is by special leave from the judgment dated 13 June, 1974 of the Andhra Pradesh High Court quashing an order of dismissal. The principal question canvassed by the Attorney General is that the High Court should not have interfered with the findings of the Tribunal.

The State Government in the year 1964 received certain complaints alleging misconduct against the respondent. The Director of Anti Corruption Bureau was asked to inquire and make a report. The Government in the light of advice tendered by the Vigilance Commission referred the matter to the Tribunal constituted under Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1960.

Three charges were framed against the respondent. Broadly stated the charges were that the respondent claimed false travelling allowance on certain days in the months of January, April and September, 1964. The respondent denied the charges and submitted a written statement on 4 November, 1968. The Tribunal made inquiries and on 9 December, 1968 recommended dismissal of the respondent from the service.

The Government thereafter gave a notice to the respondent on 22 February, 1969 to show cause why the penalty of dismissal from service should not be imposed on him. On 20 March, 1969 the respondent submitted his written explanation. The Government after considering the explanation of the respondent, by an order dated 24 May, 1969 dismissed the respondent from service.

The respondent challenged the order of dismissal in the Andhra Pradesh High Court. The High Court by judgment dated 27 July, 1970 set aside the order of dismissal on the ground that the recommendations of the tribunal were not communicated to the respondent alongwith the notice regarding the proposed punishment of dismissal. The High Court observed that it was open to the punishing authority to issue a fresh show cause notice regarding the proposed punishment after communicating the enquiry report and the recommendations of the Tribunal. The Government thereafter complied with the directions of the High Court. The Government cancelled the order of dismissal dated 24 May, 1969. The Government, however, ordered that the respondent shall be deemed to have been under suspension from service from 21 May, 1969 until further orders. The order of suspension was challenged by the respondent and set aside by the Andhra Pradesh High Court on 22 March, 1970.

The Government then issued fresh notices dated 16 September, 1970 and 25 September, 1970 to the respondent and communicated the report of the Tribunal and the recommendations of the Tribunal and the Vigilance Commission regarding the proposed penalty. The respondent submitted his explanation on 6 and 23 October, 1970. The Government considered the same. The Commerce Department thereafter by an order dated 5 May, 1972 dismissed the respondent from service.

The charges against the respondent were that he made three false claims for travelling allowance for three journeys. The first journey was on 3 January, 1969 from Rajahmundry to Hyderabad. The second journey was on 19 April, 1964 from Rajahmundry to Hyderabad and Hyderabad to Rajahmundry on 24 April, 1964. The third journey was from Rajahmundry to Guntur on 13 September, 1964 and Guntur to Rajahmundry on 16 September, 1964.

The respondent in his written statement filed before the Tribunal denied the charges and maintained that he travelled by first class on the days mentioned in the claim for travelling allowance. He stated that he travelled by first class from Rajahmundry to Hyderabad on 3 January,

1964 in accordance with his tour programme and claimed the travelling allowance. He also said that he travelled by first class from Rajahmundry to Hyderabad on 19 April, 1964 and from Hyderabad to Rajahmundry on 24 April, 1964 and claimed travelling allowance.

In Exhibit P-45 which was his signed statement dated 8 January, 1967, he stated that on 3 January, 1964 he went with his Joint Director from Vijayogram from Rajahmundry in a car. In that statement he said that he went from Hyderabad to Waltair on 7 January, 1964 and he claimed travelling allowance from Vijayawada to Hyderabad. In Exhibit P-45 he said that on 19 April, 1964 he travelled from Rajahmundry to Vijayawada by first class and he went to Hyderabad by first class on 19 April, 1964. In Exhibit P-45 he said that he did not travel on 24 April, 1964 from Hyderabad to Rajahmundry because. A there was no accommodation. He waited at Hyderabad. On 28 April, 1964 he got reservation and travelled to Rajahmundry.

The Tribunal on enquiry found the respondent guilty of charges 1 and 2. In the Enquiry Report dated 9 December, 1968, the Tribunal recommended dismissal of the respondent.

The respondent in the High Court challenged the order of dismissal. The High Court set aside the order of dismissal on the grounds that the prosecution did not adduce every material and essential evidence to make out the charges and that the conclusion reached by the Tribunal was not based on evidence. The High Court held that Exhibit P-45 was not admissible in evidence according to the Evidence Act and it was not safe to rely on such a statement as a matter of prudence.

The High Court said that corruption or misconduct under rule 2(b) of the Andhra Pradesh Civil Service (Disciplinary Proceedings Tribunal) Rules, has the same meaning as criminal misconduct in the discharge of official duties in section 5(1) of the Prevention of Corruption Act, 1947. The High Court in that background discussed the evidence and findings of the Tribunal as to whether the prosecution placed evidence in respect of the ingredients of the charge under section 5(1)(d) of the Prevention of Corruption Act, The High Court referred to these features in regard to the finding of the Tribunal. Four years elapsed between the journeys forming subject matter of the charge and the framing of the charge. The respondent in his evidence said that he secured accommodation through the Conductor incharge of the first class compartment after the arrival of the train. It was possible that the respondent might have converted his ticket to first class one once he found that first class accommodation was available on the train even though he had purchased a ticket of lower denomination. The conductor's chart is the only basis for showing whether a particular person travelled by first class by a particular train and not by a copy of the reservation chart kept at the starting station. Though the prosecution produced evidence to show that the respondent did not purchase or reserve first class accommodation in advance, the prosecution failed to produce the Conductor's charts relating to the trains in question. According to the High Court "The prosecution utterly failed to adduce any evidence to exclude these possibilities".

The High Court said that it was doubtful whether Exhibit P-45 was admissible in evidence. It was said to be taken during the course of investigation. The High Court said that even if the statement is accepted, it only shows that the respondent did not actually travel on the days mentioned in the tour programme according to which travelling allowance was paid.

The respondent made the statement marked Exhibit P-45 on 8 January, 1967. The charge-sheet was framed on 17 November, 1967. The respondent filed the written statement on 2 August, 1968. He filed an additional written statement on 4 November, 1968. It is apparent that the charge-sheets were framed after investigation.

It transpired on evidence before the Tribunal that one first class ticket bearing No.03834 was collected at Hyderabad on 4 January" 1964. The further evidence about ticket No. 03834 was that it was issued to one P. Ramachandra Raju who travelled from Rajahmundry to Hyderabad on the night of 3 January, 1964. The further evidence before the Tribunal was that one first class ticket bearing No. 04049 for the journey from Rajahmundry to Hyderabad was sold to one A. S. Murty for the journey an 19 April, 1964.

The Tribunal examined the respondent. The respondent was given full opportunity to deal with Exhibit P-45.

The High Court was not correct in holding that the domestic enquiry before the Tribunal was the same as prosecution in a criminal case. The High Court was also in error in holding that Conductor's chart would show whether the respondent travelled or not. The High Court accepted the explanation that Conductor's charts were burnt and, therefore, they could not be produced. Further, Conductor's. chart could not show the name of the persons paying the money. There was positive evidence before the Tribunal of tickets being purchased by persons other than respondent on 3 January, 1964 and 19 April, 1964. These features figured prominently before the Tribunal.

The High Court all throughout treated the enquiry before the Tribunal as a criminal prosecution.

The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of Andhra Pradesh v. S. Sree Rama Rao(1). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him,. the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic Tribunal o Inquiry the High Court in a petition under Article-226 of the Constitution is not competent to declare the order of the authorities holding a departmental inquiry invalid. The High Court is not a Court of Appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concern ed to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authorities entrusted with the duty to hold the enquiry has accepted and which evidence may reason ably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence (1) [1963] 3 S.C.R. 25.

and to arrive at an independent finding on the evidence. The High A Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry

or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

Again, this Court in *Railway Board, representing the Union of India, New Delhi & Anr v. Niranjan Singh*(1) said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjan Singh's case* (supra) this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. On 31 May, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the Committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an Appellate Court. The findings of fact reached by an inferior court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of facts however grave it may appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorary. A finding of fact recorded by the Tribunal cannot be chal (1) [1969] 3 S.C.R. 548.

lenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See *Syed Yakoob v. K. S. Radhakrishnan & ors*(1).

The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the

respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, re-assessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do.

The respondent raised another contention that the State did not give the respondent a document described as 'B' Report and Investigation Report of the Anti Corruption Bureau. The ground advanced by the respondent in the petition before the High Court was that 'B' Report and Investigation Report to which the reference is made by the Tribunal in its report and which are relied on to support the charges, were not made available to the respondent. The High Court did not express any opinion on this question because the High Court set aside the dismissal in the ground that there was no evidence for the Tribunal to come to that conclusion. The State in the affidavit filed in the High Court in answer to the respondent's petition said that 'B' Report and Investigation Report are secret reports which are intended for the reference of the Tribunal of Disciplinary Proceedings and the Government and, therefore, these reports are not supplied, to the officers. We need not express any opinion on that answer of the State in the affidavit. The respondent in answer to the affidavit of the State said that the Tribunal used the 'B' Report and the Investigation Report against the respondent and did not supply copies. It is because the respondent alleged in the writ petition that the Tribunal relied on 'B' Report and Investigation Report, we looked into the Inquiry Report of the Tribunal to find out whether that was a correct statement. We find that there is a reference to 'B' Report by the Tribunal only because the respondent challenged the genuineness and authenticity of Exhibit P-45. The respondent's case was that if he made a statement like Exhibit P-45, the Investigating Officer would have sent it along with his report. The Inquiry Officer says that the Investigating officer recorded the statement of the respondent. The Tribunal has not relied on 'B' Report or Investigation Report. The (1) [1964] 5 S.C.R 64.

respondent never demanded 'B' Report and Investigation Report. The A respondent was interested before the Tribunal to displace Exhibit P-45 by doubting its genuineness. The Tribunal found that Exhibit P-45 was genuine and was a statement made and signed by the respondent in the presence of the Investigating Officer. It does not appear that the Tribunal based its finding only on Exhibit P-45.

For these reasons we are of opinion that the High Court was wrong in setting aside the dismissal order by reviewing and re-assessing the evidence. The appeal is accepted. The judgment of the High Court is set aside. Parties will pay and bear their own costs.

V.P.S

Appeal allowed.