High Court Of Judicature At Bombay Throu ... vs Shashikant S, Patil And Anr on 28 October, 1999

Equivalent citations: AIR 2000 SUPREME COURT 22, 2000 (1) SCC 416, 1999 AIR SCW 4137, 1999 LAB. I. C. 3833, 2000 (1) UPLBEC 158, (1999) 4 ALLMR 500 (SC), (1999) 8 JT 493 (SC), 2000 (1) UJ (SC) 134, 2000 UJ(SC) 1 134, 2000 (2) SERVLJ 98 SC, 2000 (1) LRI 532, 1999 (8) JT 493, 1999 (4) ALL MR 500, 1999 (6) SCALE 673, 1999 (9) ADSC 49, (1999) 83 FACLR 1001, (2000) 1 LAB LN 317, (2000) 1 MAD LW 1, (2000) 1 MAH LJ 794, (2000) 1 MAHLR 343, (1999) 4 SCT 770, (2000) 1 SCJ 10, (1999) 5 SERVLR 615, (2000) 1 UPLBEC 158, (1999) 9 SUPREME 42, (1999) 6 SCALE 673, (2000) 1 ESC 8, (2000) 1 ALL WC 99, (1999) 2 CURLR 1158, 2000 SCC (L&S) 144, 2000 (1) BOM LR 682, 2000 BOM LR 1 682

Bench: K.T. Thomas, A.P. Misra

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           CASE NO.:
Appeal (civil)  1656 of 1998

PETITIONER:
HIGH COURT OF JUDICATURE AT BOMBAY THROU ITS REGISTRAR

RESPONDENT:
SHASHIKANT S, PATIL AND ANR.

DATE OF JUDGMENT: 28/10/1999

BENCH:
K.T. THOMAS & A.P. MISRA & SYED SHAH MOHAMMED QUADRl

JUDGMENT:
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JUDGMENT 1999 Supp(4) SCR 205 The Judgment of the Court was delivered by THOMAS, J. A judicial magistrate has been disrobed of his judicial vestment by a panel of five judges of the Bombay High Court on the administrative side. This was sequel to an innocent litigant being wrongfully arrested, handcuffed and paraded in public. But two other judges of the same High Court, on the judicial side, ordered him to be re-robed with full chasuble. That judgment of the Division Bench is now being challenged by the Registrar of the High Court of Bombay (on behalf of the said High Court) by special leave.

First respondent was Joint Civil Judge (Junior Division) of the Maharashtra Judicial Service. While functioning as a Judicial Magistrate of First Class at Ahmadnagar he had to deal with a criminal case instituted on a police report in which the complainant was one Ranchhoddas Govinddas Gandhi (hereinafter referred to as `the complainant'). First respondent magistrate pronounced judgment in

the case acquitting the accused on 7.11.1985. But the complainant sent a petition to the District and Sessions Judge, Ahmadnagar on 4.1.1986, alleging that he was wrongfully arrested by the police on 15.10.1985 as per a warrant of arrest issued by the magistrate; and that he was handcuffed and paraded through the streets of his locality; and that he was kept in the lock-up during the night; and that on the next day (16.10.1985) he was produced before the magistrate. It was further alleged that the first respondent magistrate, when the complainant was produced in open court, retired to his chambers and ordered release of the complainant. It was further alleged in the complaint that the said arrest was Knavishly manipulated at the behest of the accused in the criminal case through an illegal warrant of arrest surreptitiously stage managed.

After holding a preliminary enquiry the High Court framed charges against the first respondent and appointed Shri K.J. Rohee, Joint District Judge (as the inquiry officer) to conduct a formal inquiry into the charges. He submitted a report on 1.3.1994 exonerating the first respondent of the charges. But the Disciplinary Committee of the High Court (consisting of five judges of the Bombay High Court) after a scrutiny of the report of the inquiry officer, was not disposed to approve the findings therein. The Committee differed from the findings and proposed to proceed into the matter. A notice was thereupon issued to the first respondent calling upon him to show cause as to why the findings of the inquiry officer on the crucial points be not repudiated, and a major penalty of dismissal from service be not imposed on him.

First respondent submitted his representation to the aforesaid notice. The Disciplinary Committee of the High Court considered the said representation and decided to reject the same as it arrived at the conclusion that the charges framed against him stood proved. So the Committee decided to recommend imposition of punishment of compulsory retirement on the first respondent. The Governor later issued orders on the said recommendation compulsorily retiring the first respondent.

The Division Bench of the High Court quashed the order of imposition of compulsory retirement on the first respondent mainly on the premise that the Disciplinary Committee had not put forward adequate reasons for differing from the findings of the Inquiry Officer. It was farther held that the Disciplinary Committee did not discuss how the Inquiry officer went wrong and why his findings were not acceptable to the Committee, The Division Bench has upheld the contention of the first respondent that "when the Disciplinary Authority differed from the findings entered by an Inquiry Officer, it is imperative to discuss materials in detail and contest the conclusions of the Inquiry Officer and then record their own conclusions."

The Division Bench of the High Court has propounded a legal proposition as follows:

> "It is an established principle in disciplinary jurisprudence that when the disciplinary authority differs from the findings of the Inquiry Officer, it has to discuss the entire case threadbare and establish that each finding of the Inquiry Officer was totally improbable, that in the light of the materials the only conclusion that can be arrived at by an ordinary prudent man, is the conclusion arrived at by the Disciplinary Authority,"

Dr. D.Y. Chandrachud, learned counsel who argued for the appellant has termed the aforesaid reasoning as contrary to the well established principles in service law and that the Inquiry Officer's conclusions cannot be equated with the findings of a statutory body, nor the disciplinary committee's powers be made equivalent to the powers of a revisional or appellate authority. According to the learned counsel, the Division Bench has misdirected itself on the legal premise as to the disciplinary committee's power to dissent from the conclusion of the Inquiry Officer, Before we consider the aforesaid legal aspect a few more factual details are to be delineated. Warrants of arrest were issued by the first respondent magistrate to the prosecution witnesses in the criminal case on 30th August, 1985. When the complainant appeared in court on 16.9.1985 without knowing the aforesaid order he was told by the Assistant Public Prosecutor (Smt. Jyotsna Rathod) that a non-bailable warrant of arrest was pending against him. On her advice the complainant filed an application for cancellation of the warrant and the first respondent magistrate passed orders thereon cancelling the warrant.

In spite of such order of cancellation the complainant was arrested on 15.10.1985 and was subjected to the ignominy of parading him manacled through the public road in his locality and he was produced before the court on 16.10.1985. On that day also, the Assistant Public Prosecutor Smt. Jyotsna Rathod helped him by bringing to the notice of the first respondent magistrate that the complainant was brought under arrest unnecessarily. According to the complainant the accused and his advocate were present in the court on 16.10.1985 when he was produced there, even though there was no posting of the case on that day. The complainant sent a petition to the Sessions Judge against the first respondent magistrate and the bench clerk of the court complained of the said arrest alleging that it was ordered by the magistrate under illegal influence exerted on him by the accused in the criminal case.

The consistent stand of the first respondent magistrate was that the above story of arrest of the complainant on 15.10.1985 is absolutely untrue and that neither the complainant nor any witness was produced before him on 16.10.1985 and that the complainant made a false petition against him as he would have been very much piqued by the order of acquittal of the accused in the criminal case.

The fact that the complainant was arrested on 15.10.1985 and was handcuffed and paraded through the road and was produced before the magistrate on the next day has been spoken to by the complainant in the enquiry with all vivid details. That part of the story is fully supported by Smt. Jyotsna Rathod, (by the time she was examined in the enquiry she became a judge of the Junior Division) by testifying that she too was present in the court when the complainant was produced in court under arrest on 16.10.1985 and that she herself saw the warrant of arrest under which he was taken into custody. That apart, a report forwarded by the Assistant Inspector of Police, Karmala Police Station showed that he verified the station records and found that a warrant of arrest had reached the police station on 15.10.1985 for arresting a man named Ranchhoddas Govinddas Gandhi and that he was arrested thereunder and he was produced before the court on the next day. (Shri Uday Umesh Lalit, learned counsel for the first respondent contended that the said report of the Assistant Inspector of Police was not made available to the Inquiry Officer. However, it must be pointed out that first respondent was aware of such a report as he had referred to it in his reply to

the show cause notice issued by the Disciplinary Committee), The following facts are, therefore, crystally clear: First is, that the complainant made an application on 16.9.1985 for cancellation of the warrant of arrest which he believed to have been ordered by the magistrate. Second is that a month later i.e., on 15,10.1985, the complainant was arrested by the police under a warrant of arrest issued by the first respondent and he was produced before the magistrate on 16.10.1985 who released him. Repudiation of those facts made by the first respondent is motivated to cover up the real facts.

Third is, that the warrant of arrest under which the complainant was arrested on 15.10.1985 should have been part of the records of the magistrate's court. But in spite of detailed search the aforesaid warrant could not be traced. Such a surreptitious missing of that warrant is a strong circumstance which the Disciplinary Committee had countenanced against the first respondent.

The fourth is the fact that the Roznama (Proceedings Diary of the court) maintained in the said criminal case as it is now made available is a fabricated document. We perused the original of that fabricated Roznama. It is unnecessary for us to enumerate the various broad grounds for showing that the present Roznama is a fabricated document, for, even the first respondent's counsel was unable to explain the glaring features of fabrication thereof. It was so fabricated as to suit the present stand of the first respondent that the complainant was not arrested and produced before him on 16.10.1985. It is important to point out that first respondent did not dispute that the aforesaid forged Roznama contains his signature at a number of places where the magistrate's signature should appear.

The Disciplinary Committee enumerated all the above reasons in its proceedings for dissenting from the Inquiry Officer's conclusions. In fact all such reasons have been set out in the notice issued by the Disciplinary Committee to the first respondent requiring him to show cause why the conclusions of the Inquiry officer be dissented from.

The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/ disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

In State of Andhra Pradesh v. S. Sree Rama Rao, [1964] 3 SCR 25, this Court has stated so and further observed thus;

> "The High Court is not constituted in a proceeding under Art. 226 of the Constitution as a Court of appeal over the decision of the authorities holding departmental enquiry against a public servant: it is concerned 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. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence."

The above position has been reiterated by this Court in subsequent decisions. One of them is B.C. Chaturvedi v. Union of India, [1995] 6 SCC

749. The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the Inquiry Officer it is imperative to discuss the materials in detail and contest the conclusion of the Inquiry Officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the Inquiry Officer's report. It must be borne in mind that the inquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such inquiry as well as the view expressed by the Inquiry Officer thereon. The findings of the Inquiry Officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry officer. But it is not necessary that the disciplinary authority should "discuss materials in detail and contest the conclusions of the Inquiry Officer." Otherwise the position of the disciplinary authority would get relegated to a subordinate level.

Legal position on that score has been stated by this Court in A,N. D Silva v. Union of India, [1962] Suppl 1 SCR 968, that neither the Findings of the Inquiry Officer nor his recommendations are binding on the punishing authority. The aforesaid position was settled by a Constitution Bench of this Court way back in 1963, Union of India v. H.C. Gael, [1964] 4 SCR 718. The Bench held that "the Government may agree with the report or may differ, either wholly or partially, from the conclusion recorded in the report." Their Lordships laid down the following principle:

> "If the report makes findings in favour of the public servant and the Government disagree with the said findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf."

Thus the Division Bench of the High Court has not approached the question from the correct angle which is evident when the Bench said that it is imperative for the Disciplinary Committee to discuss

materials in detail and contest conclusions of the Inquiry officer. The interference so made by the Division Bench with a well considered order passed by the High Court on the administrative side was by overstepping its jurisdiction under Article 226 of the Constitution.

It is the Fall Court of all Judges of the High Court of Bombay which has authorised the Disciplinary Committee of Five judge of that High Court to exercise the functions of the High Court in respect of punishment of judicial officers. Such functions involve exercise of the powers envisaged in Article 235 of the Constitution. It is the constitutional duty of every High Court, on administrative side, to keep guard over the subordinate judiciary functioning within its domain. While it is imperative for the High Court to protect honest judicial officers against all ill conceived or motivated complaints, the High Court cannot afford to bypass any dishonest performance of a member of the subordinate judiciary. Dishonesty is the stark antithesis of judicial probity. Any instance of a High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of the judicial foundation. Every hour we must remind ourselves that Judiciary floats only over the confidence of the people in its probity. Such confidence is the foundation on which pillars of the judiciary are built.

The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the member of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious." Dishonest judicial personage is an oxymoron. We wish to quote the following observations made by Ramaswamy, J, in High Court of Judicature at Bombay v, ShrishKumar Rangrao Patil, [1997] 6 SCC 339 :

> "The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124(6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection,"

When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the aforecited decisions. In the present case, as per the judgment under appeal the Division Bench of the Bombay High Court appears to have snipped off the decision of the Disciplinary Committee of the High Court as if the Bench had appeal powers over the decision of five judges on the administrative side. At any rate the Division Bench has clearly exceeded its jurisdictional frontiers by interfering with such an order passed by the High Court on the administrative side.

We, therefore, allow this appeal and set aside the impugned judgment of the Division Bench of the Bombay High Court.