

Muzaffar Husain vs The State Of Uttar Pradesh on 6 May, 2022

Author: Bela M. Trivedi

Bench: Bela M. Trivedi, Dhananjaya Y. Chandrachud

REP

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3613 OF 2022
(Arising Out of SLP (C) No. 21948 of 2019)

MUZAFFAR HUSAIN

... APPELLA

VERSUS

STATE OF UTTAR PRADESH
AND ANR.

.... RESPON

J U D G M E N T

BELA M. TRIVEDI, J.

1. The challenge in the instant appeal is to the Order dated 17.04.2019 passed by the High Court of judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition being no. 496 of 2017 filed by the appellant challenging the order of punishment issued by the respondent-State pursuant to the decision of the Full Court of the High Court taken on the report of the Enquiry Officer in respect of the disciplinary proceedings initiated against the appellant for the alleged misconduct committed by him as a judicial officer.

2. Factual Matrix:

i. The appellant had joined the Uttar Pradesh Judicial Services in the year 1978 and sought voluntary retirement from the said services in September 2003. Immediately after the retirement, appellant joined as a Judicial Member, Central Administrative Tribunal, Mumbai Bench, Mumbai. On 19.07.2005, the appellant was informed vide the letter dated 19.07.2005 of the O.S.D (Enquiry), Allahabad High Court, addressed to the Principal Registrar, CAT, New Delhi that the High Court had initiated a departmental enquiry, being no. 26 of 2005 against him. A copy of chargesheet was

enclosed therewith. There were twelve charges levelled against the appellant in the said chargesheet. It was alleged against the petitioner inter alia that the appellant, while posted as the 11th Additional District Judge, Agra during the period from 23.05.2001 to 19.05.2003, had decided a batch of matters under the Land Acquisition Act, 1894 and had awarded enhanced compensation which was multiple times more than the investments made by the subsequent purchasers of the acquired lands; that such subsequent purchasers had no right to claim compensation for the acquired lands; that the appellant had determined the compensation in terms of square yards and not in terms of bighas, and had awarded such compensation in flagrant violation of the cardinal principles of law and equity and against all judicial norms and propriety, with a view to unduly favour such subsequent purchasers. It was therefore alleged that the appellant had failed to maintain absolute integrity and complete devotion to duty, and thereby had committed a misconduct within the meaning of Rule-3 of U.P. Govt. Servants Conduct Rules, 1956. The charge no. 12 levelled against the appellant pertained to an undue favour shown to the son of a Counsel named Shri KC Jain, by exorbitantly enhancing the compensation in his favour.

ii. The appellant vide the letters dated 07.09.2005 and 19.09.2005 denied all the charges levelled against him. On 20.01.2006, the appellant received the written submissions submitted on behalf of the department in the departmental enquiry initiated against him and the appellant also submitted his written submissions on 10.02.2006 in the said enquiry.

iii. The Enquiry Officer vide his Enquiry report dated 05.04.2006 held charges no. 1 to 11 as “Proved” and charge no. 12 as “Not Proved”. The Enquiry Officer submitted the said report to the Chief Justice/Administrative Committee/Full Court for further consideration on the question of quantum of punishment. The appellant was called upon and he filed his response on 14.06.2006 to the said Enquiry report. The High Court of Judicature at Allahabad in its Full Court Meeting held that 02.09.2006 accepted the report of the Enquiry Officer and resolved to punish the appellant with curtailment of 90% of his pensionary benefits with immediate effect. Pursuant to the said recommendation made by the Full Court of the High Court, the respondent-State passed an order dated 22.01.2007, sanctioning withholding of 90% from the pension of the appellant in view of the provisions contained in Article 351(A) of the Civil Services Regulations. iv. The aggrieved appellant challenged the legality of the said order dated 22.01.2007 by filing a writ before the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. The Division Bench of the High Court vide the impugned order dated 17.04.2019 found that the punishment order in reference to the charge nos. 1 to 3 was not sustainable in the eye of law as the respondents could not have framed the charges for the incidences which have taken place 4 years prior to the chargesheet. However, the High Court held that there was no ground to interfere with the findings recorded in reference to the charge nos. 4 to 11. The High Court considering the overall circumstances reduced the curtailment of pensionary benefits to the extent of 70% in place of 90%. The present appeal is directed against the said order passed by the High Court.

3. The learned Senior Advocate Mr. Pradeep Kant for the appellant raised following contentions:

i. The Enquiry against the appellant was initiated on the basis of the directions issued by the High Court in Agra Development Authority, Agra Vs. State of UP and Ors.¹, though there was no complaint pending against the appellant.

ii. A mere perusal of the charges levelled against the appellant in the chargesheet on the face of it revealed that the charges did not make out even a prima facie case of misconduct and that they were neither factually nor legally substantiable. iii. The right to seek compensation is a property right and not mere a right to sue, and the same could be legally transferred 2004 SCC Online All 269 from one person to another as held by the Supreme Court and High Court in catena of decisions. In this regard, he has relied upon Union of India & Ors. Vs. Iqbal Singh²; Khorshed Shapoor Chenai Mrs Vs. Assistant Controller of Estate Duty³, Food Corporation of India Vs. Kailash Chand⁴ and Soran Singh Vs. Collector & Ors.⁵. iv. The compensation was awarded by the appellant on the market value of the land on the date of issuance of notification under Section 4(1) of the Land Acquisition Act. It had no relevance to the price offered or investments made by the subsequent purchasers in respect of the acquired lands. In this regard, Mr. Pradeep Kant relied upon UP Jal Nigam, Lucknow Vs. Kalra Properties (P) Ltd., Lucknow & Ors.⁶; Meera Sahni Vs. Lt. Governor Delhi⁷ etc. v. Many cases, in which the enhanced compensation was awarded by the appellant were upheld by the High Court, and in some cases by the Supreme Court and therefore it could not be said that the appellant was actuated by extraneous consideration as alleged.

(1976) 1 SCC 570 (1980) 2 SCC 1 2014 (1) ADJ 379 (DB) 2018 SCC Online All 5936 (1996) 3 SCC 124 (2008) 9 SCC 177 vi. There was no specific charge against the appellant that he had taken bribe or shown any undue favour to any person or group of persons. Hence, merely because an enhanced compensation was awarded, no inference of extraneous consideration could be drawn. Mere suspicion was not sufficient to prove that the appellant had acted because of extraneous consideration. In this regard, Mr. Pradeep Kant has relied upon the decisions in the case of Krishna Prasad Verma (Dead) Thr Legal Vs. State of Bihar & Ors.⁸, in case of Sadhna Chaudhary Vs. State of Uttar Pradesh⁹, and the latest decision of Supreme Court in case of Abhay Jain Vs. High Court of Judicature of Rajasthan & Anr.¹⁰.

vii. The appellant being not held guilty of any grave misconduct or having caused any loss, he could not have been awarded punishment for 'grave misconduct'.

4. Ms. Charu Ambwani, learned counsel appearing for respondent no. 2 raised the following contentions:

(i) The High Court has full control over its judicial officers in the matter of disciplinary proceedings. In the instant case, after holding a regular disciplinary inquiry and after (2019) 10 SCC 640 (2020) 11 SCC 760 (2022) SCC Online SC 319 following the due procedure of law, the Inquiry Officer had submitted his report

before the High Court. The same was placed before the Full Court and collective consciousness of the High Court was shaken, considering the manner in which the appellant had misconducted himself while working as a judicial officer.

(ii) The scope of judicial review is very limited. As per the settled legal position, the Courts cannot sit in appeal over the decision taken by the disciplinary authority and substitute its own findings, unless any perversity or patent illegality or irrationality in the process was found. The judicial review is permissible not against the decision but against the decision-making process only. In this regard, she has relied upon the decision of this Court in Sarvepalli Ramaiah (D) Tr. Lrs Vs District Collector Chittoor 11 .

(iii) The appellant was given full and fair opportunity during the enquiry proceedings conducted against him and the decision was taken by the full Court of the High Court after considering the entire material on record. The punishment imposed was also proportionate to the guilt of the appellant. (2019) 4 SCC 500

(iv) Taking the Court to the evidence recorded by the Enquiry Officer, she submitted that the appellant had enhanced the compensation manifolds in order to extend undue favour to the subsequent purchasers, who had no right to receive the compensation. She also submitted that the claimants who were the subsequent purchasers, had made a very meagre investments and purchased the right to receive compensation and right to sue in place of the original owners, which was totally prohibited under Section 6(e) of the Transfer of Property Act read with the provisions contained in the Land Acquisition Act.

(v) Lastly, she drew our attention to the observations made by this Court in case of Union of India vs. K.K. Dhawan¹² in which it has been held that the judicial officer, if acts negligently or recklessly or attempts to confer undue favour on a person or takes a decision which is actuated by corrupt motive, then he is not acting as a judge. Strict rules of evidence do not apply to the departmental inquiry.

5. At the outset, it may be noted that maintenance of high standard of conduct and character of the judicial officers has always been a (1993) 2 SCC 56 matter of great concern for this court. In C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee & Ors.¹³, this court emphasizing the need to maintain high standard of integrity, honesty and moral vigour by the judges, observed: -

“Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of

conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than expected of a layman and also higher than expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society.” (1995) 5 SCC 457

6. In *Sadhna Chaudhary Vs. State of Uttar Pradesh*¹⁴, this court reiterated that the judicial officers must aspire and adhere to a higher standard of honesty, integrity and probity.

“19. It has amply been reiterated by this Court that the judicial officers must aspire and adhere to a higher standard of honesty, integrity and probity.

Very recently in *Shrirang Yadavrao Waghmare v. State of Maharashtra* [Shrirang

Yadavrao Waghmare v. State of Maharashtra, (2019) 9 SCC 144 : (2019) 2 SCC (L&S) 582], a Division Bench of this Court very succinctly collated these principles and reiterated that: (SCC pp. 146-47, paras 5-10) ‘5. The first and foremost quality required in a Judge is integrity. The need of integrity in the judiciary is much higher than in other institutions. The judiciary is an institution whose foundations are based on honesty and integrity. It is, therefore, necessary that judicial officers should possess the sterling quality of integrity. This Court in *Tarak Singh v. Jyoti Basu* [*Tarak Singh v. Jyoti Basu*, (2005) 1 SCC 201] held as follows: (SCC p. 203) ‘Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the justice-delivery system resulting in the failure of public confidence in the system. It must be remembered that woodpeckers inside pose a larger threat than the storm outside.’

6. The behaviour of a Judge has to be of an exacting standard, both inside and outside the court. This Court in *Daya Shankar v. High Court of Allahabad* [*Daya Shankar v. High Court of Allahabad*, (1987) 3 SCC 1 : 1987 SCC (L&S) 132] held thus: (SCC pp. 4-5, para 11) ‘11. ... Judicial officers cannot have two standards, one in the court and another outside the (2020) 11 SCC 760 court. They must have only one standard of rectitude, honesty and integrity. They cannot act even remotely unworthy of the office they occupy.’

7. Judges are also public servants. A Judge should always remember that he is there to serve the public. A Judge is judged not only by his quality of judgments but also by the quality and purity of his character. Impeccable integrity should be reflected both in public and personal life of a Judge. One who stands in judgments over others should be incorruptible. That is the high standard which is expected of Judges.

8. Judges must remember that they are not merely employees but hold high public office. In *R.C. Chandel v. High Court of M.P.* [*R.C. Chandel v. High Court of M.P.*, (2012) 8 SCC 58 :

(2012) 2 SCC (Civ) 343 : (2012) 3 SCC (Cri) 782 :

(2012) 2 SCC (L&S) 469] , this Court held that the standard of conduct expected of a Judge is much higher than that of an ordinary person. The following observations of this Court are relevant: (SCC p. 70, para 29) ‘29. Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration.

The standard of conduct expected of a Judge is much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and the rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty.’

9. There can be no manner of doubt that a Judge must decide the case only on the basis of the facts on record and the law applicable to the case. If a Judge decides a case for any extraneous reasons then he is not performing his duty in accordance with law.

10. In our view the word “gratification” does not only mean monetary gratification. Gratification can be of various types. It can be gratification of money, gratification of power, gratification of lust etc., etc.”

7. It may further be noted that when a disciplinary action can be taken against the officer exercising judicial or quasi-judicial powers, has also been succinctly laid down by this court in case of *Union of India Vs. K.K. Dhawan* (supra): -

“28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the

Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago “though the bribe may be small, yet the fault is great.”

8. It is trite to say that the power of judicial review conferred on the constitutional Court is not that of an appellate authority but is confined only to the decision-making process. Interference with the decision of departmental authorities is permissible only if the proceedings were conducted in violation of the principles of natural justice or in contravention of statutory regulations regulating such proceedings or if the decision on the face of it is found to be arbitrary or capricious. The Courts would and should not act as an appellate Court and reassess the evidence led in the domestic enquiry, nor should interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly conducted, and the findings are based on evidence, the adequacy of the evidence or reliability of evidence would not be a ground to interfere with the findings recorded in the departmental enquiries.

9. In the High Court Of Judicature At Bombay Vs. Shashikant S. Patil And Anr.15, this Court held :-

“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.” (2000) 1 SCC 416

10. Again, in the State Bank of Bikaner & Jaipur Vs. Nemi Chand Nalwaya¹⁶, it was observed in para 7 as under:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”

11. Reverting to the facts of the case, it may be noted that there was a regular disciplinary proceedings conducted against the appellant after serving him the chargesheet and giving him full opportunity of hearing. Thereafter, pursuant to the enquiry report submitted by the Enquiry Officer, Full Court of the High Court had resolved on 02.09.2006 to accept the said enquiry report and punish the appellant with curtailment of 90% of pensionary benefit with immediate effect. (2011) 4 SCC 584 The order of punishment passed by the respondent-State on the basis of the said recommendation made by the full court of the High Court, was challenged by the appellant by filing a writ petition in the High Court. The High Court dropped the charge nos. 1 to 3 and upheld the charge nos. 4 to 11 against the appellant, and reduced the punishment to the curtailment of 70% in place of 90% of his pensionary benefits.

12. Pertinently, the appellant had not made any allegation with regard to violation of principles of natural justice or contravention of any statutory rules or regulations having occasioned during the course of enquiry proceedings or in the decision-making process. Therefore, in absence of any such allegations, the subjective satisfaction arrived at by the High Court on the administrative side, and the impugned order passed by the High Court on the judicial side did not warrant any interference of this court. When the Enquiry proceedings have been found to have been conducted in proper and legal manner, and when the High Court on administrative side as well as on judicial side, has accepted the findings recorded by the Enquiry Officer qua the charge nos. 4 to 11 levelled against the appellant as “proved”, holding him guilty of having committed “misconduct”, this court was not

expected to sit as an appellate authority and reevaluate the adequacy or reliability of the evidence adduced before the Enquiry Officer. Nonetheless, this court just for the sake of satisfying its conscience, had permitted the learned Senior Advocate Mr. Pradeep Kant to argue on the merits of the charges levelled against the appellant.

13. The bone of contention raised by the learned Senior Advocate Mr. Kant was that the charges levelled against the appellant were not sustainable factually or legally in as much as the appellant had decided the land reference cases as per the law prevailing at the relevant time. According to him as held in *Union of India & Ors. Vs. Iqbal Singh (supra)*, *Khorshed Shapoor Chenai Mrs Vs. Assistant Controller of Estate Duty (supra)*, *Soran Singh Vs. Collector & Ors (supra)*, the right to seek compensation is a property right and the same could be transferred. In the opinion of this court, the said decisions have been rendered considering the facts of each case, and have hardly any relevance to the facts of the cases decided by the appellant under the Land Acquisition Act. In case of *Union of India & Ors. Vs. Iqbal Singh (supra)*, this court was examining the right of the claimant as a legatee under the will executed by a displaced person under the Displaced Persons (Compensation and Rehabilitation) Rules, 1955. In case of *Khorshed Shapoor Chenai Mrs Vs. Assistant Controller of Estate Duty (supra)*, the question of legality and validity of the notices issued by the Assistant Controller of Estate Duty, Hyderabad in respect of the compensation received by the legal heirs and representatives of the deceased owner of the acquired land was under consideration. So far as the charges levelled against the appellant were concerned, it was alleged that the appellant had awarded enhanced compensation at an exorbitantly higher rate in favour of the subsequent purchasers/investors, who had no right to receive any compensation, more particularly when Section 6(e) of the Transfer of Property Act specifically prohibited the transfer of mere right to sue. The said cases were found to have been decided by the appellant in flagrant violation of the cardinal principles of law and equity, and against all judicial norms and propriety, with a view to unduly favour such subsequent purchasers who had no legal right to receive the compensation.

14. Much reliance was placed by the learned Senior Advocate Mr. Kant for the appellant on the decision of this court in case of *Krishna Prasad Singh Vs. State of Bihar (supra)*, *Sadhna Chaudhary Vs. State of Uttar Pradesh (supra)* and *Abhay Jain Vs. High Court of Judicature of Rajasthan & Anr (supra)* to buttress his submission that mere suspicion cannot constitute misconduct, and that any probability of misconduct needs to be supported with oral or documentary material. He also submitted that the disciplinary proceedings could not be initiated against the judicial officers merely because the judgment or orders passed by them were wrong. We completely agree with the submissions made by the learned Senior Counsel for the appellant and with the ratio of judgments relied upon by him. Nonetheless, in the instant case the appellant was found to have conducted the proceedings in the manner which had reflected on his reputation and integrity. There was enough evidence and material to show that the appellant had misconducted himself while discharging his duties as a judicial officer, and had passed the judicial orders in utter disregard of the specific provisions of law, to unduly favour the subsequent purchasers of the acquired lands who had no right to claim compensation, and that such orders were actuated by corrupt motive. Under the circumstances, the High Court was perfectly justified in exercising its supervisory jurisdiction under Article 235 of the Constitution.

15. In our opinion, showing undue favour to a party under the guise of passing judicial orders is the worst kind of judicial dishonesty and misconduct. The extraneous consideration for showing favour need not always be a monetary consideration. It is often said that “the public servants are like fish in the water, none can say when and how a fish drank the water”. A judge must decide the case on the basis of the facts on record and the law applicable to the case. If he decides a case for extraneous reasons, then he is not performing his duties in accordance with law. As often quoted, a judge, like Caesar’s wife, must be above suspicion.

16. In that view of the matter, we find no merit in the present appeal and the same is dismissed.

.....J.
[DR. DHANANJAYA Y. CHANDRACHUD]

NEW DELHI
06.05.2022

.....J.
[BELA M. TRIVEDI]