Supreme Court of India
State Of Orissa & Anr vs Murlidhar Jena on 8 August, 1961
Bench: P.B. Gajendragadkar, K. Subbarao, M. Hidayatullah, J.C. Shah, R. Dayal

CASE NO.:
Appeal (civil) 129 of 1961

PETITIONER:
STATE OF ORISSA & ANR.

RESPONDENT:
MURLIDHAR JENA

DATE OF JUDGMENT: 08/08/1961

BENCH:
P.B. GAJENDRAGADKAR & K. SUBBARAO & M. HIDAYATULLAH & J.C. SHAH & R. DAYAL

JUDGMENT:

JUDGMENT 1963 AIR (SC) 404 The Judgment was delivered by : GAJENDRAGADKAR GAJENDRAGADKAR, J. : The respondent Murlidhar Jena was an officer in the Excise Department serving under appellant 1, the State of Orissa, and in course of time he rose to the rank of Senior Superintendent of Excise. Whilst he was working such Senior Superintendent in Ganjam District an enquiry was held against him in which three charges were broadly framed against him. It was alleged that he had put himself under an obligation to an excise vendor Harshabardhan Patnaik by name by receiving from him cash and gifts in kind from me to time. It was alleged that he had purchased an Austin Car 1951 Model at a concessional rate and that this transaction was done by him through Messrs. Barjorji of Balasore who were interested in the shop of Harshabardhan Patnaik. The third charge framed against him was that some gold ornaments were prepared for him by the said Patnaik through a goldsmith of Berhampur Chhotalal by name. It appears that there was a preliminary investigation conducted by the Enforcement Department in this matter and at the end of the said enquiry proceedings were formally commenced against the respondent and they were referred to the Administrative Tribunal constituted under the Disciplinary Proceedings (Administrative Tribunal) Rules, 1951. During this enquiry oral evidence was led against the respondent and documents were proceed in support of the case against him. The Tribunal found that the first two charges were proved against him but the third was not though even in respect of the third charge there was ground for serious suspicion against him. The Tribunal accordingly recommended that the respondent should be dismissed from service. The matter was then referred to the Public Service Commission which agreed with the recommendation of the Tribunal. Appellant 1 considered the whole question, a fresh notice was issued against the respondent calling upon him to show cause why he should not be dismissed and ultimately an order of dismissal was passed against him on September, 17, 1956.

2. The respondent then filed a writ petition in the Orissa High Court under Arts. 226 and 227 of the Constitution and challenged the validity of the said order. In this petition he impleaded appellant 1 and the Secretary of the appellant in the Political and Services Department (Administrative Tribunal Section), appellant 2. The High Court has in substance held that the findings made against the

respondent by the Administrative Tribunal which have been accepted by appellant 1 are based on no. evidence at all, and so purporting to exercise its jurisdiction under Arts. 226 and 227 the High Court has set aside those findings and the order of dismissal based on them. It is against this order of the High Court quashing the impugned order of dismissal that the appellants have come to this Court by special leave.

3. In the present appeal it has been urged before us by Mr. Viswanatha Sastri on behalf of the appellants that the view taken by the High Court that the findings of the Tribunal were not supported by any evidence is obviously incorrect and that the High Court has in fact purported to reappreciate the evidence which it had no. jurisdiction to do. It is common-around that in proceedings under Arts. 226 and 227 the High Court cannot sit in appeal over the findings recorded by a competent tribunal in a departmental enquiry so that if we are satisfied that in the present case the High Court has purported to reappreciate the evidence for itself that would be outside its jurisdiction. It is also common-ground that if it is shown that the impugned findings recorded by the Administrative Tribunal are not supported by any evidence the High Court would be justified in setting aside the said findings. That is how the narrow question which falls for our decision in the present appeal is : Was the High Court right in holding that there was no. evidence on which the findings of the Administrative Tribunal could be sustained?

4. Before dealing with this point it would be necessary to set out broadly the charges framed against the respondent at the enquiry and the findings recorded against him by the Tribunal. The first charge set out in six paragraphs instances of corruption. The details supplied under the charge show that on the respective specified dates the respondent either himself or through his peon received gifts either in cash or in kind. The first occasion on which such an illegal consideration was received was February 6, 1952 and the last one was March 18, 1952. The second charge was in respect of purchase of an Austin Car 1951 Model at Rs. 10, 213-2-0 from Mr. Patnaik through Messers. Barjorji of Balasore for which the respondent received a discount of' Rs. 826. It was alleged that for purchasing this car the respondent had drawn a car advance of Rs. 3, 000 in October 1951. He sold his old car for Rs. 2, 400 but the payment received by him in that behalf by cheque was encashed on November 2, 1951 which was after a fortnight after the registration of the new Austin Car on October 19, 1951. The case against the respondent was that this money could not have been utilised for purchasing the new car and that Messers. Barjorji not only gave an unusually large amount of discount but also accommodated him in regard to a substantial part of the price itself. The third charge was in respect of the gold ornaments alleged to have been got prepared for the respondent by Mr. Patnaik.

5. In regard to the first charge of receiving illegal gratification either in cash or in king the Tribunal considered the oral evidence and two documents Exs. 6 and 7 which according to the Tribunal were the account books kept by Mr. Patnaik. The first was a regular fair account book and the second a rough account book. Both these documents were attached and seized in a regular manner and their seizure was attested by Mr. Patnaik himself. On a comparison of the entries in the two books the Tribunal found that Ex. 7 contained all the entries which were regular and legitimate in character and which had been entered in Ex. 6; entire in respect of irregular and illegitimate payments made which were found in Ex. 7 were however, not copied in Ex. 6. The Tribunal considered the intrinsic

evidence thus supplied by the two documents and took into account the fact that they were seized at same time from the same place. It also held that the evidence of Biswanth Sahni who was examined before it showed that Sahni was clerk at a warehouse and that he had stated in the investigation proceedings that he had written all the entries in Ex. 1. Sahni, however, went back upon his earlier statement and told the Tribunal that he could not say who had written the statement signed by him. This statement was tendered and put on the record before the Tribunal. Sahni admitted that he had signed it blindly because he was asked to do so. The Tribunal disbelieved Sahni's evidence and considered that the effect of the circumstances and evidence produced before it was that both Exs. 6 and 7 were the account books kept by Mr. Patnaik. In dealing with the point covered by the first charge the Tribunal examined the evidence with a view to determine the identity of the person referred to as "Chatrapur Saheb" in Ex. 7. Several payments made were shown to have been made to Chatrapur Saheb and the Tribunal held that in the context Chatrapur Saheb could have meant no. one else but the respondent. Thus, according to the Tribunal all the items mentioned in the first charge were proved to have been paid either to the respondent directly or through his peon.

6. Amongst the items included in this charge was the receipt of a fan for the purchase of which money had been paid by Mr. Patnaik. In dealing with this particular item the Tribunal-exhaustively considered the evidence adduced against the respondent, took into account the pleas raised by him and came to the conclusion that the fan bad been purchased for the respondent from the Bharat Electrical Stores, Berhampur and that Rs. 143 had been paid for the said purchase by instalments, Rs. 100 on May 22, 1952 and Rs. 43 on May 27, 1952 by Mr. Patnaik These payments were proved by the cash memos issued by the vendor and they were supported by the corresponding entries made in Ex 7. The cash memos showed that the fan had been sold to the respondent because the respondent's name was shown as the purchaser. The Tribunal rejected the story set up by the respondent that he had taken the fan on approval through Sasmal, Sub-Inspector, and that he had returned it through Sasmal because he did not approve of it. The Tribunal considered the evidence of the vendor and held that the respondent was shown as the purchaser in the cash memos because he must have gone with Mr. Patnaik to purchase the fan. The alternative explanations suggested by the respondent for the mention of his name were scrutinised by the Tribunal and rejected as fantastic. Thus, all the items forming the first charge were held proved by the Tribunal.

7. Then in regard to the purchase of the car the Tribunal considered the fact that a large discount was given to the respondent. It also found the fact that the respondent purchased the car not through the dealer at Berhampur as he would have normally done if the transaction was normal, but through Messrs. Barjorji. Then it took into account the correspondence between Barjorji and the respondent, particularly the letter in which the respondent told Barjorji that he was not likely to be transferred from the place for quite some time, and another letter from Barjorji to the respondent in which he had requested the respondent ultimately to read the letter and destroy it, and it came to the conclusion that in entering into this transaction of purchase of the car the respondent had used his influence and had been given a concession and shown favour which a dealer in the ordinary course of business would not have shown to an ordinary customer. That is why, according to the Tribunal the second charge framed against the respondent was also proved.

8. The last charge was in regard to the ornaments but the Tribunal held that the evidence adduced in respect of this charge was not concrete and satisfactory enough though it observed that there is grave suspicion against the officer even in respect of that charge. It would be noticed that the findings recorded by the Tribunal on the first two charges were challenged before the High Court on the ground that they were not supported by any evidence.

9. In accepting the respondent's contention that the impugned findings were not supported by any evidence the High Court has been impressed by two considerations. The first consideration is that the High Court took the view that in relying upon the evidence adduced at the stage of investigation the Tribunal had gone back upon the assurance solemnly given by it to the respondent that the said evidence would not be relied upon against him; and the second consideration is that the Tribunal was not justified in relying on the entries in the rough account book Ex 7 alleged to have been kept by Mr. Patnaik because the said document had not been proved. It is, therefore, necessary to enquire whether these two conclusions are well-founded.

10. It appears that on December 16, 1954 the Secretary of the Tribunal told the respondent that the statements of witnesses given before the Enforcement, if any, were not in the custody of the Tribunal and would not be taken into account in the consideration of his case, and so the question of giving him copies of the evidence recorded by the Enforcement did not arise. This was in reply to the respondent's application for copies of the said statements. A similar reply was again given to him on January 4, 1955. The respondent was told that the Tribunal could not supply copies of documents which were not in its possession. It is, however, necessary to point out that on January 18, 1956 the respondent was told that though the Tribunal was unable to give him copies of documents not in the possession of the Tribunal he would be supplied with such copies if and when the original documents were exhibited before the Tribunal. Thus there can be no. doubt that what the Tribunal told the respondent was that it was not possible for the Tribunal to give him copies of documents unless the said documents were produced before it and he was in fact given an assurance that he would be given such copies as soon as the said documents were tendered before it. The High Court thought that the replies sent by the Secretary of the Tribunal to the respondent contained an assurance that the evidence recorded by the Enforcement in the course of the preliminary investigation would in no. case be used against him. Such a construction, in our opinion, is plainly inconsistent with the terms of the assurance given. In fact as we have just indicated, the Tribunal clearly told the respondent that as soon as the documents were tendered before it he would be given copies which necessarily meant that some of the evidence recorded in the investigation may be tendered and in that case copies of the same would be given to the respondent.

11. In the course of the proceedings before the Tribunal occasion did arise for tendering a previous statement of the witness Sahni. We have already seen that Sahni went back upon his earlier statement in which he had admitted that he had written Ex. 7, and so that statement was put to him and exhibited in the case. If the respondent thought it necessary to obtain its cony he could have easily obtained it and could have even asked for an adjournment to enable him to cross-examine the witness on that statement. He did not do so for the obvious reason that the witness was supporting the respondent and it was with the object of helping him that he had gone back upon his earlier statement. Therefore, in our opinion, the High Court was in error in assuming that the Tribunal had

given an unqualified assurance to the respondent and had gone back upon it. The first ground on which the High Court was thus inclined to interfere with the findings of the Tribunal is without any substance.

12. That takes us to the second ground which has reference to the proof of Ex. 7 Technically and strictly in accordance with the provisions of the Evidence Act it may be true to say that Sahni having gone back upon his earlier statement there is no. evidence to prove who wrote Ex. 7; but in dealing with this point it is necessary to bear in mind that the enquiry held by the Tribunal is not governed by the strict and technical rules of the Evidence Act. Rule 7(2) of the relevant rules provides that in conducting the enquiry the tribunal shall be guided by rules of equity and natural justice and shall not be bound by formal rules relating to procedure and evidence. Therefore, in deciding the question as to whether the Tribunal was justified in treating Ex 7 as a rough cash book kept for and at the instance of Mr. Patnaik we must take into account all the relevant facts and circumstances as the Tribunal did; the time and place of the search and seizure of the two account books, the fact that. Mr. Patnaik attested the seizure of the said books, the nature of the entries to be found in the two respective books and the nature of the evidence given by Sahni himself. Having regard to all these facts and circumstances the Tribunal came to the conclusion that Ex. 7 and Ex. 6 constituted co-related books of account and that Ex 6 copied from Ex. 7 entries in regard to legitimate dealings and did not deliberately copy other entries which had reference to illegitimate transactions. In this connection it would be relevant to recall that the search and seizure was effected because it was reported that Mr. Patnaik kept different books of account and that his kutcha books would show illegal gratifications given to the respondent. Therefore, if having regard to all the facts and circumstances the Tribunal came to the conclusion that it could rely on Ex 7 and in that connection incidentally referred to the statement made by Sahni in investigation after it was duly tendered, proved and exhibited in the case, we do not think that it was open to the High Court to hold that the impugned findings of the Tribunal were based on no. evidence.

13. In this connection we may incidentally refer to the feet that the finding of the Tribunal in regard to the purchase of the fan can in a sense be justified apart from Ex 7. The cash memos issued by the vendor on two occasions which showed the respondent to be the purchaser have been carefully examined by the Tribunal, and after rejecting the explanation offered by the respondent the Tribunal has held that the purchase was made by Mr. Patnaik for the benefit of the respondent. Proof of this charge would thus appear to be based alternatively on evidence other than Ex 7; and if that is so, even if Ex 7 is not properly proved there would be no. justification to interfere with the final conclusion of the Tribunal and with the ultimate order of dismissal passed against the respondent; but we do not think that the Tribunal has committed an illegality in holding that Ex. 7 could be taken into account having regard to the relevant circumstances and facts proved in this case.

14. There are two other considerations to which reference must be made. In its judgment the High Court has observed that the oral evidence admittedly did not support the case against the respondent. The use of the word "admittedly, in our opinion, amounts somewhat to an overstatement; and the discussion that follows this overstatement in the judgement indicates an attempt to appreciate the evidence which it would ordinarily not be open to the High Court to do in

writ proceedings. The same comment falls to be made in regard to the discussion in the judgment of the High Court where it considered the question about the interpretation of the word"Chatrapur Saheb." The High Court has observed that in the absence of a clear evidence on the point the inference drawn by the Tribunal that Chatrapur Saheb meant the respondent would not be justified."

This observation clearly indicates that the High Court was attempting to appreciate evidence. The judgment of the Tribunal shows that it considered several facts and circumstances in dealing with the question about the identity of the individual indicated by the expression "Chatrapur Saheb." Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. That in effect is the approach initially adopted by the High Court at the beginning of its judgment. However, in the subsequent part of the judgment the High Court appears to have been persuaded to appreciate the evidence for itself and that, in our opinion, is not reasonable or legitimate.

15. The High Court has also commented on the fact that the Tribunal should have examined Barjorji before relying upon statements made by him in his letter addressed to Mr. Patnaik. There is some force in this argument; but the finding of the Tribunal in regard to the purchase of the Austin car is based on several other considerations all of which have been duly proved. In fact about the main features of this transaction there was no. serious controversy between the parties. The parties were at issue on the question as to the effect of these broad features but that, clearly is a question of fact which fell within the jurisdiction of the Tribunal. We have carefully, considered the reasons given by the High Court in its judgment under appeal but we are unable to accept the contention pressed before us by Mr. Sinha, for the respondent, that the conclusion of the High Court is right when it says that the Tribunal's findings against the respondent were based on no. evidence. Whether or not the High Court or this court agrees with the conclusions of the Tribunal is another matter. The question to be considered is whether the said conclusions could be set aside on the narrow ground that they are not supported by any evidence. In our opinion, it is difficult to accept the view that there is no. evidence in support of the conclusions recorded by the Tribunal against the respondent.

16. In the result the appeal is allowed, the order passed by the High Court is set aside and the writ petition filed by the respondent is dismissed. There would be no. order as to costs.