Supreme Court of India
Chandigarh Administration, ... vs Ajay Manchanda Etc on 26 March, 1996
Equivalent citations: 1996 SCC (3) 753, JT 1996 (4) 113
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
CHANDIGARH ADMINISTRATION, UNIONTERRITORY, CHANDIGARH & ORS.

Vs.

RESPONDENT:
AJAY MANCHANDA ETC.

DATE OF JUDGMENT: 26/03/1996

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1996 SCC (3) 753 JT 1996 (4) 113
1996 SCALE (3)419

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P. JEEVAN REDDY,J.

Leave granted. Heard counsel for the parties. Clause (2) of Article 311 of the Constitution of India declares that no person who holds a civil post under the Union or the State "shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges". The second proviso to clause (2), however, specifies three situations in which the requirements in clause (2) do not apply. Clause (b) of the second proviso states that "where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such an inquiry", the enquiry and the opportunity provided by clause (2) can be dispensed with and punishment imposed straightaway. Clause (3) of Article 311 is really a continuation of clause (b) af the second proviso. Clause (3) says, "if, in respect of any such person as aforesaid, a question arises whether it is

reasonably practicable to hold such an inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

In Union of India v. Tulsiram Patel (1985 (3) S.C.C.398), it has been held by the Constitution Bench that the second proviso to Article 311 is based on public policy, is conceived in public interest and is to be employed for public good. The Constitution Bench has pointed out that the paramount thing to bear in mind is that the second apply only where the conduct of the government servant is such that he deserves the punishment of dismissal or removal or reduction in rank. It was further pointed out that once the above test is satisfied and the conditions specified in the relevant clause in the second proviso are satisfied, the said proviso is attracted and it would not be necessary to comply with the requirements specified in clause (2). That was a case where a large number of railway employees had participated in an illegal All-India strike and the Government had responded by ordering their dismissal en masse. The action was held to be justified in the circumstances. At the same time, it was held that recording of reasons for forming the requisite satisfaction is mandatory. Though it is not necessary that those reasons must find a place in the order of punishment, it was held, the authority must produce the same when called upon to do so by the Court. The desirability of incorporating the said reasons in the order imposing punishment was emphasized. It has been held by this Court in Collector of Monghyr v. Keshav Prasad Goenka [1963 (1) S.C.R.98] that where the statute requires the recording of reasons, any action taken without recording the reasons is invalid. Here, of course, the requirement is contained in the constitutional provision itself.

It is true that clause (3) of Article 311 declares further that when a question arises whether it is reasonably practicable to hold an inquiry, the decision of the competent authority shall be final on that question. But that does not mean that the scope of judicial review is excluded altogether. In State of Rajasthan v. Union of India (1977 (3) S.C C.592), it was held that clause (5) of Article 356 (introduced by Constitution 38th Amendment Act and deleted by the 44th Amendment Act, which provided that "notwithstanding anything in this Constitutions, the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any court on any ground") does not preclude the court from entertaining the challenge to a notification under Article 356 (1) on the ground that the requisite satisfaction was formed malafide or that it was founded on extraneous grounds, because it was pointed out, in either of those cases, there is in law no satisfaction as contemplated by clause (1) of Article 356. It has been held by this Court in S.R.Bommai v Union of India (1994 (3) SCC I) that even in the matter of exercise of power under Article 356 of the Constitution, the satisfaction of the President, while undoubtedly subjective, is not beyond the judicial scrutiny of the courts under Article 32 or Article 226, as the case may be. The parameters of judicial review enunciated in S.R.Bommai have been held applicable in A.K.Kaul v. Union of India (1995 (4) S.C.C.73) to a matter arising under proviso

(c) to Article 311(2). A reading of clauses (b) and (c) of the second proviso would establish that, if at all, the power under clause (b) is more circumscribed than the power under clause (c).

Until recently, Punjab was in the throes of a serious internal disturbance. Armed groups had created a situation where the State was obliged to deploy police and other armed forces in substantial number to suppress the militancy. In the very nature of the situation, vast powers had to be veted in

the police to deal with the emerging situations and they did ultimately overcome the separatist forces. They had to pay a substantial price in the process. A large number of policemen and members of the para-military and armed forces paid with their lives. The nation feels grateful for their performance and remembers the sacrifices made by them. Unfortunately, the transition to a peace-time situation has not proved easy. A few among the police force yet want to lord it over the citizenry. Some of them do not hesitate to indulge in those very acts of which the militants were accused of, viz., extortion, abduction and worse. It was natural in such a situation that the higher and responsible officers of the police should try to curb these excesses. In appropriate cases, they are obliged to resort to the provision contained in clause (b) of the second proviso to Article 311(2) to dispense with the services of such bad elements without an inquiry. The Chandigarh Administration, appellant in these two appeals, says that acts and deeds of the two respondents herein did call for the exercise of the extraordinary power under proviso (b) to Article 311(2) which it did invoke. It says that the Central Administrative Tribunal, Chandigarh was in error in interdicting its orders dismissing the respondents.

Ajay Manchanda, respondent in civil appeal [arising from Special Leave Petition (C) No.26926 of 1995] was a Sub-Inspector of Police attached to Sector-11 Police Station. F.I.R. No.125 was registered in the said police station on July 31, 1993 under Sections 420/468/471 of the Indian Penal Code concerning issuance/preparation of fake passports. The respondent was associated with the investigation of the said case. In the course of the investigation, certain persons including one Swaran Singh & Makhan Singh were arrested and remanded to police custody. Sometime later, Makhan Singh filed a complaint before the higher police officers stating that the respondent took him away from his shop on the evening of December ,7, 1993 and placed him in the lock up and that the respondent demanded a sum of Rupees three lakhs to release him and to delete his name from the said case. Because of the pressure exerted by the respondent and the threats held out by him, he said, he agreed to pay a sum of Rupees one lakh, out of which Rupees fifty thousand was paid through his brother). He complained that the respondent was pressing for the balance Rupees fifty thousand. On the basis of the said complaint, the Senior Superintendent of Police [S.S.P.] ordered an enquiry to be conducted by Sri S.C.Sagar, Deputy Superintendent of Police [D.S.P.] (Central) who submitted a detailed report on March 11, 1994 affirming the contents of the said complaint. He also reported that the complainant and the witnesses were terrorized by the respondent and on that account, they were not prepared to proceed with the complaint or the case further. After examining the report, the S.S.P. was satisfied that the respondent had extorted Rupees fifty thousand from the said Swaran Singh & Makhan Singh and that he was further demanding a sum of Rupees fifty thousand and that he had also threatened and intimidated Makhan Singh and the witnesses with dire consequences. He was satisfied that the witnesses were so terrorized that they expensed their inability to pursue the matter. On the above basis, he held that it was not reasonably practicable to hold an inquiry against the respondent and accordingly dismissed him invoking the power under Article 311(2)(b). The relevant portion of the order reads thus:

> "Makhan Singh & Swaran Singh made a complaint which was marked to Sh.S.C. Sagar DSP/Central, who submitted detailed report dated 11.3.94 whereby he found truth in the allegations of Makhan Singh & Swaran Singh against S.I. Ajay Manchanda. S.I. Ajay Manchanda has extorted Rs.50,000/- and was further

demanding Rs.50,000/- more from the accused. He threatened the accused to such an extent that the accused and the witnesses refused to make any statement before DSP S.C.Sagar.

Shri S.C.Sagar, DSP has reported that the witnesses are so terrorized by the threats of S.I. Ajay Manchanda that they have expressed their inability to pursue the matter in the court of law or in any other enquiry against him and more so they refused to make any statement before him. Whereas after going through the report of DSP S.C.Sagar, the complaint of Makhan Singh & Swaran Singh and my oral examination of Makhan Singh Swaran Singh it has been proved to my subjective satisfaction that S.I. Ajay Manchanda has extorted, Rs.50,000/- from accused Makhan Singh @ Swaran Singh and he was further demanding Rs.50,000/- more and he threatened him with dire consequences and the witnesses are so terrorized that they expressed their inability to pursue the matter.

The judicial prosecution is not ordered in the case. The regular departmental enquire is also not reasonably practicable in view of threats and witnesses inability to come forward to depose against the delinquent official due to threats of elimination. Therefore, I dispense with regular departmental enquiry in exercise of power vested in me under Article 311(2) (B) of the Constitution of India."

The respondent challenged the order of dismissal before the Central Administrative Tribunal, Chandigarh. The Tribunal found that the impugned order does not state that the respondent has given any threats to any of the witnesses or the complainant and that in fact there is no reference to the act of terrorizing by the respondent. The Tribunal opined that merely because a police officer is the accused, it cannot be presumed that no one will come forward to depose against him. It observed that the Senior Superintendent of Police "has taken the matter in a very casual manner without giving due consideration and applying his dispassionate discretion in the issuance of the impugned order and coming of the conclusion to dispense with the regular enquiry."

Kuldip singh, respondent in civil appeal (arising from Special Leave Petition (C) 25970 of 1995) was also a Sub- Inspector of Police under the Chandigarh Administration. One Sri K.B.Raheja, Advocate, Ferozepur complained to the S.S.P., Chandigarh that the respondent extorted an amount of Rupees nine hundred from him on the pretext of minor traffic violation while he was driving his car on the wrong side near cricket stadium on March 9, 1993. An enquiry was ordered into he said complaint to be conducted by Sri Arvind Deep, SP (Headquarters). The said officer reported that the respondent has "committed gross misuse of his official position and extorted money from an innocent victim Sri Kulbhushan Raheja as a fine for violation of traffic regulation but he misappropriated a major part of the amount to himself and misbehaved with him and also impounded the car". He reported that while the respondent collected Rupees nine hundred from Sri Raheja, he issued a receipt to him only for Rupees four hundred and remitted only a sum of Rupees one hundred into the Government account. He reported that while in the receipt issued to the said advocate, the amount collected from him was mentioned as Rupees four hundred both in words and figures, the counterfoil of the said receipt contained only a figure of Rupees one hundred in figures. It is significant to notice that the

S.P.(Headquarters) did not report that the respondent had either terrorized the complainant or the witnesses, if any. On this report, the S.S.P. made the following endorsement on 29th March, 1993:

> "Enough and sufficient indications that witness is being pressurized and compelled to withdraw his statement. In fact his reluctance to appear before me is clear vide his letter dated 25.3.93. His mention of a compromise in his letter dated 28.3.93 are clear indications of no chance of free deposition by the witness in the enquiry.
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> The obvious fact is that witness has been won over under the threat of injury to his person and property and threat may be to the extent of elimination of the witness, the delinquent official being in uniform. The fact finding enquiry conducted by SP/HQ found truth in the allegation in the complaint regarding misappropriation of money. The judicial prosecution is not ordered in the case. The regular departmental enquiry is also not reasonably practicable in view of the letter of the complainant. Therefore, I dispense with regular departmental enquiry in exercise of power vested in me under Article 311(2)(B)." On the same day, i.e., 29th March, 1993, the S.S.P.

passed an order dismissing the respondent from the service reporting to proviso (b) to Article 311(2)- Before proceeding further, it is necessary it is necessary to noticed a few facts for a proper appreciation of the aforesaid endorsement made by the S.S.P on 29th March, 1993. It appears that after receiving the enquiry report of the S.P,(Headquarters) on 22nd March, 1993 the S.S.P. sent a message to Sri Raheja, Advocate to come 2nd meet him in connection with his complaint. On 25th March, 1993 Sri Raheja wrote to the S.S.P. that on account of his engagements in the sessions courts, he would not be able to meet the S.S.P. in his office on 26th March 1993 and that he may be called on some other day, preferably a Saturday or Sunday. lt appears that he was called again in response to which Sri RaheJa addressed another letter (dated 28th March, 1993) that since a compromise has been effected between him and the respondent. It is from this complaint against the respondent. It is from this second letter that the S.S.P, seems to have inferred and concluded that the advocate was being terrorized by the respondent and has been won over by holding out threats. On that basis, he concluded that it was not reasonably practicable to hold an enquiry against the respondent.

When the matter went before the Central Administrative Tribunals Chandigarh, it allowed the original application filed by the respondent holding that there was no material before the S.S.P. on the basis of which he could have been reasonably satisfied that it was not reasonably practicable to hold a disciplinary enquiry against the respondent. The Tribunal noted that the complainant is not an ordinary person but an advocate practising in the sessions courts and that there was no basis upon which the S.S.P. could have arrived at the conclusion that the said advocate was won over by threats or that he was being terrorized or that he was afraid of being 'eliminated' by the respondent.

Ms.Kamini, Jaiswal, learned counsel for the appellants assailed the reasoning and conclusion of the Tribunal in both the matters whereas S/Sri P.P.Rao and. D.V.Sehgal, appearing for the respondents respectively supported the reasoning and conclusion of the Tribunal.

We shall first take up the case against Ajay Manchanda. It was Decembers, 1993. The complainant Swaran Singh a &,Malkhan Singh was one of the person as accused in the F.I.R. He was arrested. Admittedly, the respondent was one of the officers investigating the said case. Swaran Singh complained to the S.S.P. of extortion and the continuing harassment by the respondent. The S.S.P. ordered an enquiry through D.S.P. who reported that the complaint is true. The D.S.P. reported expressly that the complainant and other witnesses "are so terrorized by the threats given by SI Ajay Manchanda that they have expressed their inability to pursue the matter in the court of law or in any other enquiry against him. They are so terrorized that they have even explained their inability to make any formal statement before me. Keeping in view the above circumstances when complainant and other witnesses are so terrorized and panic- striken that they are not willing to come forward the departmental enquiry shall also not serve any purpose." On the basis cf the said report, the S.S.P. was satisfied that it was "not reasonably practicable in view of threats and witnesses inability to come forward to depose against the delinquent officer due to threats of elimination" and accordingly passed the order of dismissal. On the basis of the material placed before us - we have also perused the original record which was placed before us by Ms.Kamini Jaiswal pursuant to our direction - it is not possible for us to say that there were no reasonable grounds or relevant material before the S.S.P. for being satisfied that in the circumstances and the situation then obtaining, it was not reasonably practicable to hold a disciplinary enquiry against the respondent. No one would come forward to depose. The requirement of recording of reasons is also-satisfied in this case. Indeed, the dismissal order itself incorporates the reasons. We have also looked into the report of the D.S.P. and the relevant record.

Sri P.P.Rao, learned counsel for the respondent, submitted that there was no relevant material on the basis of which the S.S.P. could form the requisite satisfaction. He submitted that only a minor penalty has been imposed upon the Station House Officer, Inspector Jagbir Singh who too is alleged to have extorted a sum of Rupees fifteen thousand from the said complainant as against his demand for Rupees thirty thousand. The learned counsel complained that the respondent is being made the scapegoat for the wrong done by his superiors and that the action taken against him is not bonafide. Counsel further submitted that the ~ who conducted the preliminary enquiry and submitted the report was himself involved in the alleged extortion. This, the learned counsel says, is established from the statement of Sri Swaran Singh & Makhan Singh wherein he had stated after some days, Deputy Superintendent of Police Subhash Sagar himself called us and told Ajay Manchanda and Jagbir Singh that my remand will have to be extended by two more days. On that, Ajay Manchanda and Jagbir Singh in a satirical note said that "Makhan to makhan laga chuke hai" (in other words, money has already been taken from him)." From this statement, Sri P.P.Rao seeks to infer that D.S.P. Subhash Sagar [who had conducted the enquiry against the respondent and submitted the enquiry report] was in the know of and was a party to the entire episode and, therefore, could not have been appointed as the enquiry officer against the respondent. He was in the nature of a witness, it is contended. Learned counsel further submitted that if the complainant was so terrorized, he would not have gone to the S.S.P. complaining of harassment in writing nor would he have deposed before the D.S.P. (enquiry officer). The said facts learned counsel submitted, negatived the plea of terrorising or intimidation. The learned Counsel finally submitted that in such matters the courts/tribunals are the only protection for the persons proceeded against and that unless strict standards are adopted for judging the "satisfaction", the government officials will have

no protection against the arbitrary acts and orders of the superior officers who may succumb to the temptation of adopting the easier course of dismissing/removing/reducing in rank the lower officers without holding an enquiry instead of following the regular procedures prescribed by the rules.

We agree with and share the concern of the learned contained in his last submission. At the same times we have to judge each case on its own each case on its own merits, keeping in mind the relevant provisions of Article 311(2) and the interpretation placed upon it by this Court in Tulsiram Patel. We must say immediately that the learned counsel is not right in inferring from the statement of the complainant extracted hereinabove that the D.S.P. (enquiry officer) was also a party to the extortion. The statement extracted hereinabove does not establish that the said words were addressed to or were meant for the benefit of the D.S.P Moreover, the words "Makhan to makhan laga chuke hai" do not mean what the complainant thought they meant. So far as the allegation against Jagbir Singh is concerned, it is equally unacceptable. Ms.Kamini Jaiswal has produced the file relating to the proceedings taken against Jagbir Singh was not one of extortion from the complainant or anyone else, but one of laxity and negligence in carrying out the investigation. May be that the complainant had made an allegation against Jagbir Singh but there is no reference to it in the D.S.P.(enquiry officer's) report and we do not know the circumstances in which Jagbir Singh was not proceeded against for extortion. This plea was not raised by the respondent before the Tribunal. It has been raised for the first time before us. Since the allegation is factual in nature, we are not inclined to entertain the same at this stage. In any event, as stated above, we have perused the file concerning Jagbir Singh also, and are satisfied that the charge against Jagbir Singh was altogether different.

We are, therefore, unable to agree with Sri P.P.Rao that there was no material upon which the S.S.P. could be satisfied that it is not reasonably practicable to hold a disciplinary enquiry against the respondent. One has to keep in mind the situation obtaining in Punjab in the year 1993 and must appreciate the orders passed by the S.S.P. in that context. We see no reason not to believe that the aforesaid power under clause (b) was invoked by the S.S.P. for proper reasons. The comments made against him by the Tribunal to the effect that he acted casually, is unacceptable besides being uncharitable. The Tribunal does not say that the respondent was responsible for intimidating and terrorizing the complainant and the witnesses. It was an hypertechnical objection. The order read as a whole and the accompanying report of the D.S.P. and the endorsement of S.S.P. on the report do clearly establish that it was respondent who was intimidating and terrorizing the said persons. The judgment and order of the Tribunal in O.A 366- Ch/94 is accordingly set aside and the appeal arising from Special Leave Petition (c) 26926 of 1995 us allowed.

No costs.

Now, coming to the case against Kuldip Singh, we are of the opinion that the conclusion arrived at by the Tribunal in this matter needs no interference at out hands. We have pointed out hereinabove while discussing the facts of this case that no one had ever stated either before the S.P.(Headquarters) [preliminary enquiry officer] or before the S.S.P. that he has been terrorized, intimidated or threatened by the respondent. Only because the complainant Sri Raheja, Advocate, mentioned in his letter that he does not wish to proceed with the complaint in view of the

compromise effected between him and the respondent by certain respectable elders, the S.S.P. inferred that the said complainant has been terrorized and intimidated. We are not satisfied that is the only inference that flows from the complainant's second letter. The S.S.P. also does not say either in the order of dismissal - or anywhere in the record - that he had information to the above effect from some other source. In such a situation, the inference drawn by the S.S.P. cannot be said to be a reasonable or relevant one. In short, there was absolutely no material upon which the S.S.P. could be satisfied that it was not reasonably practicable to hold a disciplinary enquiry against the respondent because of the intimidation and threats held out by the respondent to the complainant or other witnesses, if any. Accordingly the appeal arising from Special Leave Petition (c) 26970 of 1995 is dismissed.

No costs.