

Delhi High Court

Wing Cdr. (Dr.) Sushil Kumar vs Union Of India (Uoi) And Ors. on 20 December, 2006

Author: M Goel

Bench: M Goel

JUDGMENT Manju Goel, J.

1. The writ petition challenges the order of suspension dated 30.5.2003 and the charge-sheet dated 28.8.2003 issued to the petitioner by the respondent No. 3 as Chairman of the respondent No. 2, his employer. The grounds on which the relief is sought is malafides on the part of the disciplinary authority. The petitioner was the Director (Research & Administration) for respondent No. 2, Indian Council of Historical Research (` ICHR' for short). M.G.S. Narayanan, respondent No. 3 in this writ petition, assumed the office of the Chairman of ICHR on 4.7.2001. He continued to be the Chairman till December, 2003. Although there are allegations in this writ petition against other functionaries of the ICHR the writ petition needs to be examined only in respect to the malafides alleged against respondent No. 3.

2. Before coming to the allegations it will be proper to give a brief resume of the charge-sheet against the petitioner which has 19 heads. Briefly stated they are as under:

Article I The petitioner made direct correspondence with the Hon'ble Prime Minister of India vide his D.O. Letter dated 10.5.1999 and 19.9.2001 in respect of his residential accommodation, by letter dated 14.9.2001 and 30.5.2002 alleging discrimination against him, by letter dated 31.12.2001 regarding irregularities in use of public fund and nefarious activities in the ICHR and with the Education Secretary vide letter dated 14.9.2001 and 30.5.2002 about housing, with the Joint Secretary (S&HE) vide letter dated 27.2.2002 making complaints against the ICHR and with the Director General of Audit, Central Revenue vide his letters dated 19.2.2002, 27.2.2002, 30.5.2002 & 27.2.2003 giving false information regarding maintenance of accounts by the ICHR for the year 2001-02. One of the letters of the petitioner caused the response of the Ministry of Human Resource Development by letter dated 24.1.2003 intimating the ICHR that no employee of the ICHR has the right or attempt to bring any political or other outside influence to bear upon any superior authority and that the acts of the petitioner in making direct correspondence were in contravention of the service regulations and, therefore, appropriate disciplinary action against him be taken.

Article II The petitioner wrote letters claiming to be the Head of Department to the Director General of Audit, Central Revenue by defying the orders of his superiors in furtherance of his self-interest making false allegations whereby he tried to prejudice the Director General of Audit against the authorities of ICHR.

Article III The petitioner was trying to run a parallel administration in defiance of the repeated orders of the competent authority by maintaining his own file guide and office order register. He issued office order No. 1/2003 dated 28.5.2003 and sent a copy to the Director (HE), Department of Secondary Education & Higher Education, Ministry of Human Resource Development with a request to communicate the same to the Director General Audit, Central Revenue. He also issued a number of letters to the Assistant Director (Grants) in ICHR office asking him to furnish details as

per his letter dated 30.5.2003 with copy to Joint Secretary (Secondary & Higher Education), Department of Education.

Article IV The petitioner is guilty of insubordination as he did not accept any letters from the authorities of the ICHR. He issued verbal instructions to his P.S. not to issue any official letter or communication from the ICHR. The ACR forms for the year 2001-02 were sent to the petitioner which he refused to receive.

Article V The petitioner misrepresented himself to be the Head of Department of ICHR in his D.O. letter No. F.ICHR/Chmn/99/Min dated 18.5.1999 addressed to then Secretary (Education) Mr. M.K. Kaw. The claim of the petitioner that he is the HOD is his wishful thinking and he has been misguiding other authorities in this respect for his personal gains.

Article VI The petitioner is guilty of insubordination as he attended the case, CWP No. 2792/1997 titled Dr. Tasneem Ahmad v. Union of India on various dates in the years 2001-02 without being asked by the ICHR and that he did so without informing the office or without submitting his leave application in violation of the instructions issued by the ICHR from time to time and thereby has also been negligent in discharge of his duties.

Article VII He attended the High Court on various dates from 17.7.2001 to 10.4.2003 in his own case filed against ICHR for which he did not submit leave applications and thereby violated the instructions and orders in this behalf.

Article VIII The petitioner kept in his custody the proposal received from the Ministry of Culture & Tourism for the cultural exchange programme vide D.O. letter dated 22.10.2002 and other letters during the period of 2001-02 but did not forward the same to the appropriate sections for further action.

Article IX The petitioner retained a letter written by Member of Lok Sabha Shri Shankar Prasad Jaiswal addressed to the Director (R & A) and did not hand over the same to the concerned authorities despite standing orders of the Government of India that the letters received from the Members of Parliament should be replied to promptly which led to the questioning of the authorities of ICHR.

Article X The petitioner received letters, proposals and projects from autonomous organizations, Government of NCT of Delhi and others during the years 2001-02 and did not forward the same to the Head of Department of the concerned Section for disposal as per rules thereby tarnishing the image of the ICHR.

Article XI The petitioner being a member of the DPC was under obligation to advise the Chairman of the DPC about the rules governing promotion but he issued orders of promotion in violation of the rules thereby making ad hoc appointment. These ad hoc appointees filed writ petition seeking regularization of their appointment. The petitioner thus used official position for personal gains.

Article XII The ICHR had provided residential phones to the petitioner for official use. As per the directions of Department of Expenditure dated 8.6.1982 the ceiling for residential telephone at Government expense is Rs. 650/- on by-monthly basis plus rent and ST charges but the bills for residential phone of the petitioner were in excess of the ceiling for which payments were made by the ICHR. These bills are for various periods from 1997 to 2000. Similarly the petitioner did not submit certain bills for payment which resulted in disconnection of the telephones. These bills were also for the periods between 1999 and 2000. Such disconnection has caused office work to suffer. The petitioner misused the residential telephone for personal use at the cost of the Exchequer.

Article XIII The petitioner granted a works contract to M/s. Hari Ram Singh for conducting the repairs to the rooms and bathrooms in the ICHR building at 35, Ferozeshah Road, New Delhi. He personally collected the quotations without any tender notice and without specifying the work to be done and subsequently favored the said Shri Hari Ram Singh with an advance of Rs. 29,000/- on 1.6.2001 without the approval of the competent authority and despite objections of the Purchase & Maintenance Committee. He did this for his personal gains.

Article XIV The petitioner appointed Ms. Neeta Gupta in a Group A post of Assistant Director (Research) on ad hoc basis on 11.6.2007 for editing the journal of ICHR called "Itihas". This appointment was illegal as there was no such post available in the ICHR and such appointment was violative of the ICHR Rules & Regulations.

Article XV The petitioner issued orders regarding the shifting of the responsibility of handling of court cases of ICHR by Shri Shabi Ahmad, Deputy Director (Research). Subsequently, Shri Shabi Ahmad reported by a confidential letter dated 5.3.2001 that the petitioner had been pressurising him to toe his line against the stand of the ICHR and Government of India. When Shri Shabi Ahmad refused to do so the petitioner threatened him with dire consequences. The matter was reported to the then Member Secretary who wrote a detailed note about the misconduct of the petitioner.

Article XVI The petitioner misused his official position when he was given the charge of administration for a brief period, i.e., 19.5.2001 to 2.7.2001. During this period he got the service of Advocate of ICHR Shri C.P. Tyagi terminated without any reason. He had his Advocate Mr. Inderjeet Sharma appointed as lawyer of ICHR in CWP No. 2523/2000 filed by the petitioner himself against the ICHR. Mr. Inderjeet Sharma was an advocate on record appointed by Dr. Sushil Kumar for defending his case in another case, CWP No. 2792/97, challenging the appointment of the petitioner. Mr. Inderjeet Sharma, however, refused to act as lawyer on behalf of the ICHR against Dr. Sushil Kumar since he was the lawyer for Dr. Sushil Kumar vide letter dated 22.6.2001. However, he agreed to get his own son, Mr. Rajan Sharma, appointed as an Advocate on behalf of the ICHR. The petitioner in this way wanted to make personal gains at the cost of ICHR.

Article XVII During the aforesaid brief period in which the petitioner was handling administration, the petitioner engaged Mrs. Shashi Kiran Advocate of the ICHR to contest his personal cases in the following manner:

1) The petitioner engaged her to defend his own service matter, CWP No. 2792/97. The petitioner agreed to pay Rs. 15,000/- for filing counter affidavit and Rs. 5,000/- for each appearance but she was only paid Rs. 5,000/- which she reported to Chairman, ICHR.

2) Mrs. Shashi Kiran, Advocate was engaged by the petitioner to file his divorce case HMA No. 121/98. He did not make any payment to the lawyer.

Mrs. Shashi Kiran, Advocate reported to the Chairman vide confidential letter dated 24.6.1999 that the petitioner was issuing oral instructions which were not in the interest of the ICHR. Further she claimed that the petitioner had been demanding definite percentage of professional fees as his share and had been pestering her for speed money which Mrs. Shashi Kiran reported in 1999 vide a letter dated 11.11.1999.

Article xviii The petitioner obtained advance of Rs. 25,000/- to defend CWP No. 2792/1997 by Dr. Tasneem Ahmad against ICHR which was against the Rules. The petitioner deposited the amount drawn by him but did not deposit the interest on the amount and thus made personal benefits at the cost of the exchequer.

Article XIX The petitioner revised his own pay without approval of the competent authority as disclosed by the Member Secretary in his note dated 13.4.1998 and 26.11.1999.

3. The petitioner's allegation of malafide in the mind of M.G.S. Narayanan is basically what is available in paragraphs 3, 4 & 5 of the writ petition. According to the petitioner's pleadings in these paragraphs M.G.S. Narayanan, respondent No. 3, acted in retaliation of the statutory audit report of the Comptroller & Auditor General of India which pointed out misuse of powers by the Chairman, Respondent No. 1 vide its letter dated 26.5.2003 addressed to the Member Secretary, ICHR required that a final reply to the audit objections be sent within a period of 15 days, i.e., by 9.6.2003. A copy of this letter was marked to the petitioner for information and for necessary compliance. The petitioner issued orders dated 28.5.2003 and 30.5.2003. This action, petitioner alleges, annoyed the respondent No. 3, M.G.S. Narayanan, Chairman, and as a cover up operation and to keep the petitioner at bay he passed the order of suspension on 30.5.2003. The statutory audit report dated 3.4.2003 indicted the Chairman M.G.S. Narayanan on various counts. They were in respect of the irregular appointment of Consultant Mr. R.N. Wali, irregular payment of mobile phone charges amounting to Rs. 50,565/- up to July, 2002, irregular expenditure of Rs. 2,33,113/- on the purchase of computer at Calicut at the office-cum-residence of the Chairman and incurring avoidable expenditure of Rs. 5,03,168/- at the residence-cum-office of the Chairman at Calicut in the year 2001-02.

4. The petitioner has also mentioned in his writ petition certain facts to show that the respondent No. 3 was not happy with the petitioner on account of certain orders and letters of the petitioner. However, it is not necessary to go into those aspects because the basic plea to make out malafides is that M.G.S. Narayanan was hurt by the audit report. The petitioner does not make any secret of the fact that he did point out to the relevant authority financial irregularities committed at the ICHR. The audit report was attributed to the petitioner's efforts. Respondent No. 3 apparently made

statements to the media in order to defend himself in respect of those alleged financial irregularities and in one interview named the petitioner as being the person behind such audit objections. A copy of the extract of The New Sunday Express, Kozhikode dated 12.5.2003 has been furnished by the petitioner. In this news item, the respondent No. 3 is reported to have said the following about the petitioner, "I had exposed Sushil Kumar's moves against the larger interests of the institution. This was the reason for his ire against me. The CAG report even blamed the staff at the ICHR for not obeying his illegal orders." Respondent No. 3 is also reported to have said that CAG report contained factual errors and that it was prepared without proper verification. He also defended the alleged avoidable expense by saying that he had no official residence at New Delhi. He also threatened the vernacular dailies which published "misleading reports" based on "exaggerated version" of the CAG report. The petitioner has cited this as a proof of the motive behind issuing the suspension order dated 30.5.2003 and the subsequent charge-sheet dated 28.8.2003.

5. On behalf of the respondents a counter affidavit is filed by Dr. P.K. Shukla, Deputy Director (Research), ICHR. The counter is described as one on behalf of respondent Nos. 1,2 & 3. It does not disclose how Dr. P.K. Shukla can represent respondent No. 3. It is contended at the time of argument that respondent No. 3 who did not file any affidavit could not have been represented by Dr. P.K. Shukla. The affidavit filed by Dr. P.K. Shukla cannot be read as defense on behalf of respondent No. 3.

6. In the counter affidavit, the action of suspension as well as of charge-sheet are defended on the ground that the charges are serious and that there was sufficient material available to proceed with the charges. It is denied that the order or suspension was an act of retaliation with malafide intentions. About the audit observations, it is submitted in the counter affidavit that the relevant audit paragraphs had been later dropped. It is further contended that proper replies to the audit paragraphs were sent to the appropriate quarters and further that the petitioner had no authority to deal with those audit paragraphs and had nothing to do to correct any irregularity. The other paragraphs in the petition suggesting animosity between the petitioner and respondent No. 3 have also been replied to in this counter affidavit. The main thrust of the reply, however, is that the court should not interfere at the very threshold of the enquiry and that the petitioner who has been served with the charge-sheet shall have adequate opportunity to defend himself during the enquiry which has been truncated by an order of stay passed by this Court on 29.9.2003.

7. The ICHR has filed a written submission in which it is submitted that the Articles 15, 16, 17 & 19 of the charge were serious and they were duly supported by documentary proof. For example, the letter written by the Ministry to the ICHR dated 24.1.2003 directing the ICHR to take action against the petitioner for writing letters to the higher authority including the Prime Minister is a proof of the petitioner's misconduct. The letter dated 24.1.2003 enclosed copies of representations addressed by the petitioner to the Secretary, Department of Secondary & Higher Education, Principal Secretary to Prime Minister of India, Minister of Human Resource Development and Cabinet Secretary regarding allotment of Central Government Pool accommodation to him. The ICHR has been required by this letter to take cognizance of the delinquency on the part of the Director (R&A) under Conduct Rules and to initiate disciplinary action against him. Article 15 is said to be supported by a note by Mrs. Madhu Arora, the then Member Secretary. This note is dated 30.5.2001. It, inter alia,

accuses the petitioner of having issued certain orders which were not in the best interest of the ICHR. The note gives examples of certain office orders passed by the petitioner. The note also indicts the petitioner for having fixed his own pay against the relevant provisions. Article 19 relates to the wrong fixation of the pay of the petitioner. Article 16 is also based on documentary proof including the letter dated 29.1.2001 written by the lawyer concerned. Article 17 is also supported by documentary proof from the concerned Advocate Smt. Sashi Kiran. It is submitted that the charges being so serious the petitioner's allegation that he was suspended out of malice cannot be heard.

8. It is further contended by respondent No. 2 that the allegations of malafide are also totally false inasmuch as the audit paragraphs had been subsequently dropped and the petitioner made the allegations in the writ petition despite having knowledge that those audit paragraphs had been dropped and that respondent No. 3 had been cleared. Mr. Jayant Bhushan also refers to a Report of the One-Man Committee to Enquire into the Affairs of the Indian Council Historical Research, New Delhi received during the pendency of the writ petition which went into the affairs of the ICHR. This report is filed only during the arguments. According to this report, it is submitted by Mr. Jayant Bhushan, Senior Advocate, M.G.S. Narayanan has been vindicated and the petitioner has been found to have been at fault.

9. The question here is not whether M.G.S. Narayanan was guilty of any financial irregularity. Nor is it the question as to whether the petitioner and M.G.S. Narayanan were correct in their respective stand over various issues in the ICHR which led to a bickering between them. The questions are, (i) whether the order of suspension and memorandum of charges were the result of a malafide intention and (ii) if it is so, whether the impugned orders can be quashed.

10. It is a fact that the petitioner wrote to Director General of Audit, Central Revenue various letters regarding financial corruption in the ICHR. One such document is a communication of a copy of note dated 15.1.2003. The note requires AD (G) of the ICHR to explain as to whether the things regarding the release of Grants-in-Aid, bills of India International Centre and the mobile phone bills are true or not. The note also advised AD (G) not to release any amount or funds which had not been specifically approved of by the Ministry of Human Resource Development. The note asked the AD (G) to account for the funds which were released in respect of certain bills of persons who were entitled to normal TA/DA only and other such alleged irregularities. Copy of this note was sent to DGACR, I.P. Estate, New Delhi and FA, MHRD, Department of Education. It is not disputed that the audit report of ICHR of 3.4.2003 had pointed out a number of financial irregularities involving M.G.S. Narayanan. On the day the impugned order of suspension was passed those audit objections had not been explained away. The respondents referring to the audit report, Annexure R-4, has submitted that all was found well in respect of the financial year ending 31.3.2002 and that all the audit paragraphs finding irregularities were dropped. Annexure R-4 is an audit certificate dated 25.2.2003 which certifies that for the year ending 31.3.2002 and balance-sheet as on 31.3.2002 had been examined and all information and explanation that was taken on record subject to the observations in the appended audit report and that accounts and balance-sheet are properly drawn up so as to exhibit a true and fair view of the state of affairs of the ICHR. This document is dated 25.02.2003 whereas the CAG report which has triggered the impugned action is dated 3.4.2003, i.e., sometime after the audit certificate dated 25.2.2003 was issued. The respondents have conveniently

withheld the appended "audit report". The audit report has not been furnished by the respondents and as such Annexure R-4 is an incomplete document. Annexed to the covering letter is a "list" of paragraphs dropped during conduction of the audit for the financial years 2002-03. The paragraphs dropped are described with reference to numbers of those paragraphs. Nothing can be made out of this list unless the corresponding paragraphs of the appended audit report is furnished to the court. As such, I find no strength in the respondents submission that M.G.S. Narayanan was able to explain all the financial irregularities attributed to him. The record, therefore, does not satisfy that the audit paragraphs indicting M.G.S. Narayanan were dropped before the impugned action of suspension of the petitioner was taken on 30.5.2003. When the order of suspension was passed on 30.5.2003 there was no let-up in the condition of these observations vis-a-vis M.G.S. Narayanan.

11. It is similarly not disputed that M.G.S. Narayanan has been attributing the exposure before the audit authorities to the petitioner. Admittedly till date not all the financial irregularities allegedly committed by M.G.S. Narayanan have been explained. The audit paragraphs put M.G.S. Narayanan in peril of his job and reputation. There was wide publicity of the irregularities causing further embarrassment to M.G.S. Narayanan. The media also focused on the happenings in the ICHR. M.G.S. Narayanan was made to defend himself before the media. He blamed the petitioner as the force behind the audit objections which he described as containing errors and made without proper verifications. Thus, there is a strong link between the audit report of 3.4.2003 and the impugned order of suspension. It may be said here at the cost of repetition that the petitioner also was served with a copy of the audit report and the petitioner on the basis of audit report issued certain orders which were being resisted by M.G.S. Narayanan and others on the plea that the petitioner did not have any authority to act on the audit report.

12. It is contended on behalf of the respondents that the allegations against the petitioner are also very serious and, therefore, these allegations cannot be said to be malafide. As already mentioned above, for some of the charges there are some strong documentary evidence like the letter received from the Ministry regarding the petitioner's method of writing letters directly to the higher authority, but out of 19 charges only a few could be shown to be of any worth. These are (a) Article I in respect of the letters written directly to higher authority, (b) Article XV of the charge which is supported by a note of the then Member Secretary Mrs. Madhu Arora, (c) Article XIX which related to the wrong fixation of the petitioner's pay, (d) Article XVI regarding the appointment of his own lawyer in the panel of ICHR (e) Article XVII regarding petitioner demanding a percentage of the professional bill of the ICHR's counsel.

13. It is to be noted that all these alleged misconducts had been committed in the earlier years, mostly up to 2001. The matter of pay fixation was older still. Respondent No. 3 joined as Chairman on 10.9.2001. However, he did not think it necessary at any earlier point of time that any disciplinary action was required to be taken against the petitioner for these offences. The respondent No. 3 would not have proceeded to take disciplinary action against the petitioner had he not been exposed by the audit report. The alleged misconducts of the petitioner which were being over-looked hithertofore were picked up for serving him with an order of suspension and later with the charge-sheet.

14. On behalf of the respondents strong reliance has been placed on the judicial opinions that courts should not interfere with the orders of suspension or with the disciplinary proceedings at the very initial stage by passing orders of stay or by quashing those orders. In *The Deputy Inspector General of Police v. K.S. Swaminathan* 1997 (1) SLR 176 it was held by the Supreme Court that the court is not justified in interfering with the charge as court cannot look into the truth or otherwise of the charge and the same had to be established by evidence. In *Union of India v. Upendra Singh* as well as in *K.S. Swaminathan (Supra)* and *Secretary to Government, Prohibition & Excise Department v. L. Srinivasan* the Supreme Court disapproved the court's order of interference with the charge and with the enquiry proceedings. While agreeing with the said proposition the Supreme Court in the case of *U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. v. Sanjiv Rajan* 1993 Supp (3) SC 483 said that the court should not ordinarily interfere with the order of suspension but made an exception in respect of malafides. It said that there should be no such interference with the order of suspension unless such order was passed malafide without their being a prima facie case connecting the delinquent with the misconduct. At the same time one should not forget that the onus is entirely on the person alleging malafides to prove the same.

15. On behalf of the petitioner strong reliance is placed on the case of *S. Pratap Singh v. State of Punjab* in which the court has held that malafides vitiates every action. The appellant Pratap Singh, Civil Surgeon of Jalandhar, was served with a charge-sheet dated 29.6.1961 after he had proceeded on leave preparatory to retirement. He challenged the action inter alia on the ground that the impugned order had been passed malafide on account of grievance that arose between the appellant and Sardar Pratap Singh Kairon, Chief Minister of Punjab. The majority judgment examined the facts of the case as evidenced by record as well as by the recorded voice of the Chief Minister and the members of his family speaking to the appellant and found that the suspension was an action of vindictiveness and as such was malafide. The judgment referred to the law as given by Lord Denning in *Lazarus Estates Ltd. v. Beasley* 1956-1 All E R 341.

No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud.

16. The judgment disagreed with the Attorney General's submission that even if malafide's is established against the Chief Minister still the impugned orders could not be set aside. The court opined that such an argument, if right, would mean that even fraud or corruption leaving aside malafides would not be examinable by the court and would not vitiate administrative orders.

17. In *State of Punjab and Anr. v. Gurdial Singh and Ors.* Justice V.R. Krishna Iyer had the following to say in para 9:

9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions - is the attainment of ends beyond the sanctioned purposes of power by stimulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by

malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat ... that all the power is a trust - that we are accountable for its exercise - that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.

18. This judgment was followed by the Supreme Court in its subsequent judgment in Collector (District Magistrate) Allahabad and Anr. v. Raja Ram Jaiswal .

19. In the case of State of Punjab v. V.K. Khanna and Ors. (2001) 2 SCC 330 a disciplinary action was challenged on the ground of malafides. The appellant had submitted certain notes on which the Chief Minister directed registration of two cases by the CBI. Soon thereafter the Government changed following the general election. The new Government withdrew the earlier Notification requiring the registration of the cases by the CBI. Now the appellant was charge-sheeted for malafide action. The Supreme Court found that the charge-sheet itself was vitiated with malafides and based on extraneous considerations. The Supreme Court accordingly quashed the charge-sheet. The court advised caution in examining a case of alleged bias. The issue of bias ought to be decided on facts and circumstances of every individual case and it was essential to understand as to whether there was a mere apprehension of bias or there was a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn there from. The allegations against the respondent V.K. Khanna was that he had processed the case against one IAS officer of amassing assets disproportionate to known means of income with undue hurry, that he anti-dated and fabricated the record, that he with malicious intentions kept the operation a closely guarded secret until the CBI had completed all formalities and registered the FIR, that he had failed in appropriate discharge of his duties while putting up to the CM the file pertaining to the appointment of the said IAS officer and certain other allegations regarding improprieties in handling the case of the said officer. On the factual matrix it was found that the action against Shri V.K. Khanna was not an action for administrative exigencies but was an action to lay a cover for certain acts and omissions. The law which governs such a situation is given by the Supreme Court in para 33 of the judgment which is as under:

33. While it is true that justifiability of the charges at the stage of initiating a disciplinary proceeding cannot possibly be delved into by any court pending inquiry but it is equally well settled that in the event there is an element of malice or mala fide, motive involved in the matter of issue of an charge-sheet or the authority concerned is so biased that the inquiry would be a mere farcical show and the conclusions are well known then and in that event law courts are otherwise justified in

interfering at the earliest stage so as to avoid the harassment and humiliation of a public official. It is not a question of shielding any misdeed that the Court would be anxious to do, it is the due process of law which should permeate in the society and in the event of there being any affection of such process of law that law courts ought to rise up to the occasion and the High Court, in the contextual facts, has delved into the issue on that score. On the basis of the findings no exception can be taken and that has been the precise reason as to why this Court dealt with the issue in so great a detail so as to examine the judicial propriety at this stage of the proceedings.

20. The law as given above clearly shows that although the court should be slow in interfering with disciplinary proceedings still underway it can quash an action which is vitiated by malafides. In the present case as mentioned above the event that led to suspension of the petitioner was the audit report of 3.4.2003 making serious allegations of financial irregularities committed by M.G.S. Narayanan which M.G.S. Narayanan attributed to false complaints made by the petitioner. Some of the complaints may have some substance but the fact remains that those alleged misconduct with some substance had become stale and had the audit fiasco not taken place would have gone unnoticed or may not have resulted in the suspension of the petitioner. Thus, the impugned action of suspension as well as impugned memorandum of charges are vitiated by malafides and cannot be allowed to stand.

21. Nonetheless, it cannot be overlooked that the petitioner did commit certain misconducts which could attract disciplinary action. It would not be proper to let the petitioner go scot free because the action taken has to be quashed for reasons of malafides as detailed above. The equities can be balanced by providing the respondents No. 1 & 2 one more opportunity to objectively examine the allegations of misconduct of the petitioner and to take appropriate action required, if any. In doing so the respondents No. 1 & 2 should also call for the comments of the petitioner and conduct a preliminary fact finding inquiry before embarking upon any full-fledged disciplinary proceeding.

22. In the circumstances as given above, the impugned orders of suspension and memorandum of charges are quashed. The respondent-ICHR now headed by the present Chairman will be entitled to make an objective assessment of allegations against the petitioner in the manner described in the previous paragraph and if required may serve him with a fresh charge-sheet, if so advised. The impugned orders will be deemed to be non est and the petitioner entitled to all consequential benefits.