

A.K.K. Namibiar, Special Inspector General of Police, Hyderabad Vs. the Union of India Through Ministry of Home Affairs, New Delhi and anr.

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Court : Delhi

Decided On : Apr-17-1969

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Judge : Hardayal Hardy and; S.N. Andley, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : Civil Writ Appeal Nos. 611 of 1968

Appellant : A.K.K. Namibiar, Special Inspector General of Police, Hyderabad

Respondent : The Union of India Through Ministry of Home Affairs, New Delhi and anr.

Advocate for Pet/Ap. : M.K. Nambiar, ; N.A. Subramaniam,; A.S. Nambiar,;

Judgement :

S.N. Andley, J.

(1) This petition challenges the order dated July 5, 1968 passed by order and in the name of the President of India suspending the petitioner who was then the Special Inspector General of Police, Civil defense and Fire Services at Hyderabad in the State of Andhra Pradesh. It was passed almost a year after the initiation in July 1967 of an investigation by the Central Bureau of Investigation into various allegations against the petitioner. These investigations were continuing when this petition was filed in this Court in August, 1968. thereforee, in addition to the relief in respect of the aforesaid order of suspension, the petitioner prayed for an appropriate writ against the Union of India (Respondent No. 1) from proceeding further with the investigation. The second Respondent to the petition is the State of Andhra Pradesh.

(2) The petitioner was appointed to the Indian Police Service in 1935 when the aforesaid Service was one of the Secretary of State Services. He was appointed as Inspector General of Police, Andhra Pradesh, on November 1, 1956 and was confirmed as such in 1957. In the General Elections of 1962, Sanjiva Reddy became the Chief Minister of Andhra Pradesh and Brahmananda Reddy became the Finance Minister. In 1963, one E. V. Padmanabhan, known as Flash Padmanabhan, issued a publication containing allegations against the Chief Minister, the Chief Secretary and the petitioner. Allegations against the petitioner were in respect of the purchase by him in 1960 of a house in Begumpet for Rs. 35,000.00 and two acres of land adjoining this house for Rs. 2,000.00 These allegations, which were addressed to the Union Home Ministry, were referred to the State Government and the matter was dropped

after the petitioner had given his Explanation. In 1964, Brahmananda Reddy became the Chief Minister of Andhra Pradesh and he is referred to hereinafter as 'the Chief Minister'. In September, 1964, Malkonda Reddy, a member of the Legislative Council, sent a petition to the Union Home Ministry demanding an inquiry into the very same allegations against the petitioner and also demanding his suspension or transfer. It is alleged that after enquiring into the matter, the State Government informed the Government of India that no further action was necessary. In 1965, the petitioner's son Raghunath purchased 40 acres of land in Mansurabad from A. K. K. Radmanabhan. In answer to a question in the Andhra Pradesh Legislative Council, the Chief Minister stated that the allegations of E. V. Padmanabhan had been inquired into and dropped. The petitioner completed 55 years of age on May 15, 1966 and the Chief Minister recommended his retention in service for another three years. Up to this stage, the relations between the Chief Minister and the petitioner appear to have been cordial.

(3) The alleged hostility of the Chief Minister towards the petitioner started after September, 1966 when, as a result of the Pradesh Congress Elections in Andhra Pradesh, two groups emerged in the Congress : one headed by the Chief Minister (known as Ministerialist Group) and the other headed by A. C. Subba Reddy (known as the Dissident Group). It is alleged that the Chief Minister found fault with the petitioner for being friendly with his political opponents. The last General Elections were held in February, 1967 and Brahmananda Reddy continued to be the Chief Minister. At or about this time, certain events took place which, according to the petitioner, led to the displeasure and wrath of the Chief Minister towards him. These events were that the petitioner was being cordial and courteous to his political opponents; the petitioner did not obey the behest of the Chief Minister not to charge-sheet one Nukala Lakshma Reddy, who was working against the Dissident Group, and four others for murder; the petitioner did not arrest one Sudhakar Rao of the dissident group for an alleged shooting resulting in injuries to one Satish Kumar and the petitioner reported against Dr. M. Chenna Reddy who had abused the Superintendent of Police.

(4) The petitioner then applied for two months leave on March 10, 1967 and this leave was granted on April 11, 1967 but no orders for reposting the petitioner as Inspector General of Police were passed as was usual. During the period of this leave, the petitioner alleges that he met the Chief Minister at Ootacamund and was informed that allegations had been made against him regarding purchase of some properties by his son Raghunath. The Chief Minister is alleged to have obtained a petition from one Venugopal Reddy son of Malkonda Reddy, Member Legislative Council, alleging that the rape case foisted upon him was false. It is alleged that in spite of the finding of the Criminal Court that the Police was not responsible for foisting the case and the petitioner was not connected with it, the Chief Minister forwarded Venugopal Reddy's petition for enquiry to Mahendra Reddy, Joint Director of the State Anti Corruption Bureau and an avowed enemy of the petitioner. The Chief Minister is alleged to have asked the petitioner on June 16, 1967 to extend his leave as his colleagues were not happy with the latter. The petitioner expressed his unwillingness to do so. He was informed by the Chief Minister on June 17, 1967 that he had passed orders reposting the petitioner as Inspector General of Police and had also asked the Government of India to depute an officer of the Central Bureau of Investigation to enquire into the allegations that had been made against the petitioner.

(5) The petitioner complained to the Chief Minister about the manner in which Mahendra Reddy was compelling his subordinates, in the name of the Chief Minister, to give evidence against the petitioner and requested the Chief Minister to entrust the inquiry to some body else which the Chief Minister refused to do. Mahendra Reddy submitted his report on July 12, 1967 saying that there was no independent evidence to connect the petitioner with the rape case against Venugopal Reddy but he recommended, inter alia, that the petitioner be shifted from his post and this report was accepted. On July 14, 1967, the Chief Minister is alleged to have made a statement in the Legislative Assembly that others, meaning the dissident group, were getting more assistance from the Police.

(6) It appears from the counter-affidavit filed by M. T. Raju, Chief Secretary, Government of Andhra Pradesh, that one Narsingi Das sent to the State Government copy of a letter addressed by him to the Union Home Minister making allegations against the petitioner. The Chief Minister ordered that the Chief Secretary may make an inquiry but, upon the recommendation of the Chief Secretary, the Vigilance Commissioner in the State of Andhra Pradesh was requested to look into this matter as also another petition from Flash Padmanabhan aforesaid. The Vigilance Commissioner advised that the inquiry should be conducted by an independent agency like the Central Bureau of Investigation for collection of material for enabling the Vigilance Commissioner to submit his report and it was under these circumstances that A. R. Khan, Superintendent of Police, Central Bureau of Investigation arrived in Hyderabad in the last week of July, 1967. The petitioner informed A. R. Khan, of the political background of the inquiry and requested him to associate the local Anti-Corruption Bureau officials with the enquiry. He also offered to send all relevant documents relating to property transactions and did in fact send them to A. R. Khan on August 1, 1967. On this very date, the petitioner was appointed to the newly created post of Special Inspector General of Police for the revision of Police Standing Orders. In August, 1967 the petitioner complained, inter alia, against the parallel enquiry by the State Anti-Corruption Bureau which was not stopped.

(7) In March, 1968, D.Sen, Joint Director, Central Bureau of Investigation, handed over to the petitioner seven allegations to answer. He examined the petitioner with respect to these allegations and the petitioner submitted his Explanation Along with documents and further material.

(8) Thereafter the petitioner, on July 11, 1968, received the aforesaid order of the Government of India, Ministry of Home Affairs, placing him under suspension. He thereupon filed a writ petition in the High Court of Andhra Pradesh praying that the suspension order be quashed. In this writ petition, the allegations of mala fide which have been made 'in the present petition were not made. The writ petition filed in the High Court of Andhra Pradesh was withdrawn on July 16, 1968 with leave to file a fresh writ petition and it was then that the present writ petition was filed in this Court on August 26, 1968.

(9) The Chief Minister has filed a short counter-affidavit relying on the counter-affidavit filed on behalf of the State of Andhra Pradesh. He has asserted that he has 'no personal ill-will against the petitioner and never bore grudge against him. The petitioner's allegations about my acting allegedly on account of some personal motives or on account of political reasons are wholly incorrect and baseless. Whatever action was taken by me or by my Government has been done

dispassionately and in public interest. I have never allowed political considerations to interfere with the due administration of the State. All the allegations to the effect that I have showed anger or resentment against the petitioner are totally false. The allegations that I have tried to interfere with the course of investigation in some of the cases are also equally false. There was no question of any fear or favor and the petitioner is trying to make out a false case attributing malafide against me and my Government.' The Chief Minister has not dealt specifically with all the allegations which have been made by the petitioner against him personally.

(10) M. T. Raju, Chief Secretary Government of Andhra Pradesh, has filed a counter-affidavit on behalf of that State. He has denied the personal allegations which have been made against the Chief Minister.

(11) The counter-affidavit on behalf of the Union of India has been sworn by D. K. Guha, Deputy Secretary to the Government of India in the Ministry of Home Affairs. He has stated that the petitioner has been placed under suspension in connection with an investigation instituted into certain offences alleged to have been committed by the petitioner by the Central Bureau of Investigation and the suspension has no connection whatsoever with the alleged 'personal vendetta or political link-up'. He has asserted the power and authority of the Central Government to suspend the petitioner pending departmental or other inquiry into his conduct or pending criminal proceedings which may eventually result in departmental inquiry. According to him, the investigation carried out had resulted in collection of prima facie evidence against the petitioner to justify his suspension. He admits the receipt of the Explanation to the seven allegations given by the petitioner to D. Sen, Joint Director, Central Bureau of Investigation. One averment made in the counter-affidavit which I have not been able to appreciate, is that rule 7 of the All India Services (Discipline and Appeal) Rules in terms is not applicable. The trend of the counter-affidavit is to justify the order of suspension pending departmental judicial action and it seems to me that this deponent was not clear in his mind whether the order of suspension has been passed under rule 7 of the said rules and, if so, whether under sub-rule (1) or sub-rule (3) and whether the investigation undertaken by the Central Bureau of Investigation was in connection with a departmental proceeding as contemplated by sub-rule (1) or a trial relating to a criminal charge as contemplated by sub-rule (3).

(12) Another ground which was raised by the petitioner was to challenge the wires of the Delhi Special Police Establishment Act, 1946 and the validity of the aforesaid investigation and the order of suspension on that ground. But this ground was not pressed at the time of hearing in view of the decision dated October 18, 1968 of this Court (to which my learned brother was a party) in Civil Writ Petition No. 365 of 1968 in re : The Management of Advance Insurance Co. Ltd., v. Gurdas Mal and others (1).

(13) No argument was addressed on behalf of the respondents with respect to the alleged malafides of the Chief Minister and the argument was that even if the hostility of the Chief Minister is assumed, the order of suspension and the investigation will not be affected because these have been ordered by the Central Government and since there is no allegation of mala-fides against the persons who passed the order of suspension and caused the initiation of the investigation, these orders cannot be struck down on the ground of malafides. The argument of the petitioner is that the inquiry by the Central Bureau of Investigation was initiated at the behest and because of the influence of the Chief Minister and was not an independent and impartial inquiry. The petitioner relies upon what the Chief Minister is alleged to have

told him on June 17, 1967 about his having asked the Government of India to depute an officer from the Central Bureau of Investigation to investigate the allegations against the petitioner. He also relies upon the statement that the Central Bureau of Investigation continued to associate in the investigation the officers of the State Anti-Corruption Bureau in spite of his protest and permitted Mahendra Reddy and other officers of the Anti Corruption Bureau to tutor witnesses and taking them to the officers of the Central Bureau of Investigation for recording tutored evidence.

(14) The manner in which the Central Bureau of Investigation came into the picture has been deposed to on behalf of the State of Andhra Pradesh as mentioned above and it appears that it was not really at the behest or because of the influence of the Chief Minister but upon the recommendation of the State Vigilance Commissioner that the Central Bureau of Investigation were invited as an independent body to conduct the investigation. In these circumstances and assuming but not deciding that the Chief Minister was hostile to the petitioner, I do not find it possible to say that the order of suspension by the Central Government and the investigation by the Central Bureau of Investigation are tainted by malafides or were made at the behest or because of the influence of the Chief Minister.

(15) The next main question is whether the order of suspension had been passed without the requisite satisfaction and upon no material. Although the deponent on behalf of the Union of India has taken the stand that rule 7 of the said Rules is not in terms applicable, the argument on behalf of the respondents has rightly proceeded on the basis that the order of suspension had been passed in exercise of the power conferred by this rule. The relevant sub-rules are (1) and (3) and they read:-

'(1) If having regard to the nature of the charges and the circumstances in any case the Government which initiates any disciplinary proceedings is satisfied that it is necessary or desirable to place under suspension the member of the Service against whom such proceedings are started that Government may-

(A) if the member of the Service is serving under it pass an order placing him under suspension, or

(B) if the member of the Service is serving under another Government, request that Government to place him under suspension, pending the conclusion of the inquiry and the passing of the final order in the case :

PROVIDED that in cases where there is a difference of opinion between two State Governments, the matter shall be referred to the Central Government whose decision thereon shall be final.

(2). . . .

(3) A member of the Service in respect of, or against whom an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government under which he is serving, be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude.'

(16) The respondents contend that the expression 'disciplinary proceedings'

mentioned in sub-rule (1) is wide enough to include 'an investigation, inquiry or trial relating to a criminal charge' mentioned in sub-rule (3), and therefore the order of suspension is justifiable under sub-rule (3) which speaks only of the 'discretion of the government' and does not require the 'satisfaction' contemplated by sub-rule (1). In other words, the argument amounts to saying that there is overlapping between sub-rule (1) and sub-rule (3) and that the expression 'disciplinary proceedings' in sub-rule (1) includes 'an investigation, inquiry or trial relating to a criminal charge.' On the basis of the observations of the Supreme Court in R. P. Kapur's case (2) that suspension pending a departmental inquiry or pending a criminal proceeding is a disciplinary matter, it is urged that 'disciplinary proceeding' is also a disciplinary matter which includes a 'trial on a criminal charge.' The observations of the Supreme Court on which reliance is placed are these :-

'The words 'disciplinary matters' with which we are concerned appear in a constitutional provision and must be given their widest meaning consistent with what disciplinary matters may reasonably include. Suspension is of two kinds, namely, as a punishment, or as an interim measure pending a departmental enquiry or pending a criminal proceeding.....So far as suspension as a punishment is concerned, it is conceded that it is a disciplinary matter. The dispute is only as to suspension pending a departmental enquiry or pending a criminal proceeding. There can in our opinion be no doubt that suspension of this kind also must be comprised within the words 'disciplinary matters' as used in Art. 314.'

(17) These observations were made by the Supreme Court to repel the argument that suspension pending a departmental enquiry or pending a criminal proceeding cannot be said to be a disciplinary matter at all and, therefore, the protection of Article 314 does not extend to such suspension. In my opinion, these observations do not support the contention because even though the proceedings contemplated by sub-rule (1) and sub-rule (3) of rule 7 may be included in the expression 'disciplinary matters', it is not possible upon the construction of these two sub-rules to say that 'disciplinary proceedings' includes 'an investigation, inquiry or trial relating to a criminal charge.'

(18) Rule 7 contemplates suspension in two situations : (1) Initiation of any disciplinary proceeding or (2) the pendency of an investigation, enquiry or trial relating to a criminal charge. The requirements justifying suspension in the first case are different from the requirements justifying suspension in the second. In the first case, the Government has to take into consideration the nature of the charges and the circumstances in any case and thereupon be satisfied as to the necessity or desirability to suspend the member of the Service against whom disciplinary proceedings are started. In the second case, the Government has been given a discretion to suspend during the pendency of an investigation, enquiry or trial relating to a criminal charge if the charge is connected with the position of the person concerned as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude.

(19) In R. P. Kapur's case the Supreme Court has observed that the purpose of suspension under sub-rule (1) pending a departmental enquiry is generally to facilitate such enquiry and to ensure that while such enquiry is going on, the public servant concerned is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry. therefore, in the case of the initiation of disciplinary proceedings as contemplated by sub-rule (1), the object of suspension is to put it beyond the power of the Government servant

concerned to misuse his authority for repeating the actions in respect of which he is to be proceeded with departmentally. In the case of suspension under sub-rule (3) which is at the discretion of the Government, what has to be seen is whether the charge is in connection with his position as a Government servant and is likely to embarrass him in the discharge of his duties or involves moral turpitude.

(20) The order of suspension passed in this case is in these terms :-

'WHEREAS serious allegations of corruption and malpractices have been made against Shri A. K. K. Nambiar, I.P., formerly Inspector General of Police, Andhra Pradesh, (now the Special I.G.P., Civil defense and Fire Services, Hyderabad);

And whereas the enquiries so far made by the Central Government into these allegations have revealed that there is a prima facie case made out against him;

And whereas the Government of India after carefully considering the available material, and having regard to the nature of the allegations against him and circumstances of the case are satisfied that it is necessary and desirable to place the said Shri Nambiar under suspension;

Now, therefore, the Government of India hereby place the said Shri A. K. K. Nambiar, under suspension with immediate effect until further orders and direct that the said Nambiar shall, during the period of suspension, be paid such subsistence allowance as it is admissible under the rules.

By order and in the name of the President of India.

SD/-S. P. Mukerjee,

JOINTS secretary to the Government of India.'

(21) The language of the order shows that it has been passed under sub-rule (1) and not under sub-rule (3). I am, therefore, unable to accept the contention on behalf of the respondents that the order of suspension was passed in the exercise of discretion as contemplated by sub-rule (3) and not upon satisfaction as required by sub-rule (1).

(22) therefore, it is that the petitioner has urged by way of challenge to the suspension order that it has not been passed after the requisite satisfaction and it is based on no evidence. Reliance has been placed first on Partap Singh's case (3) where it has been observed that an action which is an infraction of the rule that every power vested in a public body or authority has to be used honestly, bona fide and reasonably is ultra vires. Then reliance is placed upon the decision of the Supreme Court in the case of Barium Chemicals(4). In this case Hidayatullah J. (as his Lordship then was) observed :-

'NO doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out. As my brother Shelat has put it trenchantly:

'It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist.'

Since the existence of 'circumstances' is a condition fundamental to the making of an opinion, the existence of the circumstances if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness. The conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct or the withholding of information of a particular kind. We have to see whether the Chairman in his affidavit has shown the existence of circumstances leading to such tentative conclusions. If he has, his action cannot be questioned because the inference is to be drawn subjectively and even if this Court would not have drawn a similar inference that fact would be irrelevant. But if the circumstances pointed out are such that no inference of the kind stated in S. 237(b) can at all be drawn the action would be ultra vires the Act and void.'

(23) Reliance is also placed on the observations of Shelat J. which have been expressed in these words :-

'Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is liable to be quashed on the ground of mala fides, dishonesty or corrupt purpose. Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the powers, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.'

(24) In this case, the Supreme Court was considering an order of investigation which had been made by the Central Government through the Company Law Board under section 237(b) of the Companies Act, 1956. Inter alia, this section authorises the Central Government to appoint one or more competent persons as Inspectors to investigate the affairs of the company if in its opinion there are circumstances suggesting that the business of the company is being conducted in fraud or the management has been guilty of fraud, misfeasance or misconduct towards the company or towards any of its members or the members of the company have not been given all the information with respect to its affairs which they might reasonably expect. It is clear that before an investigation under section 237(b) is ordered, the Central Government has to form a prima facie opinion upon existing circumstances that the fraudulent acts or acts of mismanagement or failure to give information have been committed by the company. It was in the context of this section that the above quoted observations were made and it was held that action could not be taken on imaginary circumstances and the circumstances which exist should lead to the prima facie inference of the kind contemplated by this section.

(25) SUB-RULE (1) of rule 7 of the said Rules undoubtedly contemplates the satisfaction of the Government having regard to the nature of the charges and the circumstances in any case and then to decide upon the necessity or desirability to place the Government servant concerned under suspension.

(26) The allegations which have been made against the petitioner total seven and they are as follows :-

'MANSOORABADLAND : Allegation NO. 1

HAKIM Mohinuddin of Hyderabad migrated to Pakistan. His land measuring 178 acres and 32 guntas comprising survey no. 23, 24, 28, 29, 30, 36 to 42, 44 and 45 situated in village Mansoorabad was declared an evacuee property. Vide Govt. order dated 23-3-56, this land was allotted to Shri Rup Chand s/o Shri Nand Lal of Bombay, a refugee from Pakistan. At the time when this land was allotted to Shri Rupchand, it was being cultivated by the local ryots who were paying revenue to the Govt. Shri Roopchand executed a special power of attorney in favor of one Asadulla to take possession of the said land from the Government. Shri Asadulla instead of taking the actual possession, sold this land unauthorisedly to the ryots who were already cultivating this land vide sale deed dated 29-5-57. Shri Rupchand filed a civil suit on 6-1-1960 in the court of Munsif Magistrate which was decreed in his favor on 20-11-62. The ryots went in appeal in the court of Additional Chief Judge, Hyderabad, which was dismissed on 24-4-65. Against this, the ryots filed a second appeal in the High Court. While this second appeal was still pending in the High Court, and the land was in dispute, Shri Rupchand managed to obtain permission u/s 47 and 48 of the Hyderabad Tenancy and Agricultural lands Act for the sale of the said land from the Tahsildar and sold the said land on 5-4-64 to the following 4 persons as under:-

Name of the person	Land sold	Amount -----	for which Acres	Guntas sold (Rs.)
1. Shri A.K.K. Padmanabhan,	49	32	2,750.00	brother-in-law of Shri A.K.K. Nambiar, I.G.P.
2. Shri R. Srinivasa Reddy,	40	00	2,250.00	s/o R. Rama Reddy, Advocate, Hyderabad.
3. Shri D. Dharma Reddy,	40	00	2,250.00	Chemical Examiner, Government of Andhra Pradesh.
4. Smt. Lakshminarayanamma,	49	00	2,750.00	mother-in-law of Shri M. E. Reddy, S.P., Hyderabad.

The amount of Rs. 2,750.00 for which Shri Padmanabhan, brother-in-law of Shri A. K. K. Nambiar, purchased the land, was in fact paid by Shri A. Raghunath s/o Shri A. K. K. Nambiar.

(27) The ryots who had earlier purchased the land from Shri Asadulla and were cultivating the same, were not prepared to hand over the possession of the land to the purchasers. They were harassed by the Police under the instructions of Shri A. K. K. Nambiar, I.G.P. to leave the possession. To achieve this, the police force was also deployed at the site and in the village and two criminal cases were also registered against the ryots. Besides one case u/s 376, 511 Indian Penal Code . was also registered against Shri Venugopal Reddy who was supporting the cause of the ryots.

(28) As a result of the pressure, brought on the ryots as above, they were compelled to enter into a compromise with the purchasers of the said land including Shri Padamanabhan brother-in-law of Shri Nambiar and vacate the said land after getting Rs. 6,000.00.

(29) But even before the actual compromise deed was executed, Shri Raghunath s/o of Shri Nambiar got 40 acres of land transferred in his name from Padmanabhan on 26-5-65 in consideration of Rs. 2,500.00 only. The actual compromise with the ryots was effected on 9-7-65.

(30) Shri Raghunath, thereafter, sold this 40 acres of land to one Shri Venkateswara Rao for Rs. 1,35,000.00, thereby obtained a pecuniary advantage of Rs.1,32,500.00.

(31) Had the ryots been not forcibly evicted in the manner as above, Shri A. Raghunath could not have made the aforesaid profit. Thus, Shri A. K. K. Nambiar by abusing his position as public servant got the land vacated through police force which was then purchased by his son who made profit of Rs. 1,32,500.00.

(32) Begumpet HOUSE-ALLEGATION NO. Ii House No. 1-10-121, Begumpet, Hyderabad, belonging to Sardar Fazel-e-Ahmed Khan, son-in-law of Nawab Mansabjung of Hyderabad was declared an evacuee property. In January, 1953, its value was assessed by the department at Rs. 1,29,000.00. On 9-12-55, this house was put to auction when Shri B. D. Sood, who held the power of attorney from Smt. Bhagirathi Bai of Bombay, offered the highest bid for Rs. 1,04,000.00. This sale, however, could not materialise as claims purchased by Smt. Bhagirathi Bai to pay up to the sale price of Rs. 1,04,000.00 were not accepted. This house was re-auctioned on 14-6-60 when Shri B. Gopalakrishna, who managed to get power of attorney from Shri Budh Singh, a displaced person, offered the highest bid for Rs. 60,000.00. Shri Budh Singh had verified claim of Rs. 4,976.00 only.

(33) The auction held on 14-6-60 was not given due publicity and was attended by 7/8 persons only including Shri A. Raghunath s/o Shri A. K. K. Nambiar and one Dy. S.P. Some persons were also prevented, from attending the auction by the police. Before the bid offered by Shri B. Gopalakrishna was accepted, the Rehabilitation Department re-assessed the value of the house at Rs. 63,400.00. The bid offered by Shri B. Gopalakrishna was accepted on 3/9-8-60.

(34) On 14-6-60, when Shri Gopalakrishna offered the bid in the public auction, Shri A. K. K. Nambiar applied to Government for an advance of Rs. 36,000.00 from his G.P. Fund to purchase a house at Hyderabad. On 24-8-1960, Shri B. Gopalakrishna agreed in writing to sell the said house to Shri A. K. K. Nambiar for Rs. 35,000.00 even when he had not been given the provisional possession of the house and had arranged claims for the value of Rs. 9,000.00 only against the payment of Rs. 60,000.00 to be made to the department. The claimants from whom the claims were purchased were approached by the police and not by Shri B. Gopalakrishna.

(35) Two police officers went to Bombay to arrange the purchase of remaining verified claims of Rs. 51,896.00 and got the sale finalised. Although they were shown to have been sent on duty, these Deputy S.Ps. arranged for the remaining claims and one of them who was known to Major Chetty, Assistant Settlement Commissioner, in the office of the Regional Settlement Commissioner, Bombay, received the letter of sale in favor of B. Gopalakrishna from the office of the Regional Settlement Commissioner.

(36) The sale deed in favor of Shri A. K. K. Nambiar was executed by Shri B. Gopalakrishna on 14-11-60. Even before the sale deed was executed and afterwards, repairs to the said house were carried out by using Police personnel and government vehicles.

(37) Shri Nambiar thus by abuse of his official position got for himself the house at Begumpet at a rate cheaper than the market rate and used police personnel and government vehicles for its repairs.

(38) Begumpet LAND-ALLEGATION NO. Iii Shri Mansabjung owned 2 acres and 22 guntas of land in survey No. 182/9 in Begumpet, Secunderabad. He and his daughter Razia Begum applied for passport to go to Pakistan in April, 1960. The purpose of journey was given by him to be the marriage of his grand daughter. The Commissioner of Police did not recommend the application to the Government as it appeared to him that the purpose was not urgent and genuine one. Shri G. N. Tampi, Assistant Secretary to Government, Home (Passport) Department, sent a memo No. 2709/PPTC/60-1, dated 4-7-1960 to S.P., Special Branch, C.I.D., Hyderabad, inquiring of him if he had any objection to the issue of India, Pakistan passport to Shri Mansabjung. He sent letter dated 14-8-1960 wherein he recommended the passport to him as the journey was considered to be genuine one. There is a noting in the S.P., C.I.D.'s file in which there is a note under dated 14-8-1960 of Shri Satoor, the then Supdt. of Police, wherein he has recorded, 'Put up a note to Igp with a draft reply.' The Addl. I.G.P. was in charge of this work but as per record the draft was sent to I.G. for his approval, and as such, favorable recommendations were made. Consequently, passport was granted to him by Government. Had there been no favorable recommendation, the Government would not have in the ordinary course issued the passport as the Commissioner had already recorded an adverse note to this effect. He went to Pakistan along with his daughter Razia Begum on 16-8-1960. He came back to India after a stay of fortnight in Pakistan.

(39) Now Shri A. K. K. Nambiar contacted the said Shri Mansabjung and submitted an application dated 9-9-1960 to the Government for seeking permission to purchase a piece of land measuring about 2 acres for Rs. 2,000.00 from the said Mansabjung. This piece of land was situated adjoining to the house of Shri A. K. K. Nambiar which property he had managed to purchase through his Benamidar, Shri B. Gopalakrishna. An advance of Rs. 500.00 was paid to Shri Mansabjung on 15-9-1960 as earnest money for the sale of above referred land. The possession of the land was delivered to Shri A. Raghunath. The sale deed dated 31-10-1960 relating to this land was registered on 1-11-1960 in the name of Shri A. Raghunath, his son. The registration proceedings were recorded at the residence of Shri Mansabjung who was bed-ridden and a further sum of Rs. 2,000.00 was paid to him towards the sale proceeds. This amount was paid by Shri A. K. K. Nambiar.

(40) The prevalent market price of land during the said period was Rs. 5.00 per square yard. Whereas, the price at which this land was purchased by Shri A. K. K. Nambiar in the name of his son works out at the rate of 5 square yards per rupee.

(41) Thus Shri A. K. K. Nambiar being a public servant obtained for himself/his son A. Raghunath, the aforesaid land for a consideration which he knew to be grossly inadequate from Shri Mansabjung who had been concerned in official proceedings regarding the grant of his passport to Pakistan.

(42) Vikarabad LAND-ALLEGATION NO. Iv Shri Hanumantha Rao and his two brothers S/Shri Bhima Rao and Manika Rao of village Ghattapally, Taluka Vikarabad, Hyderabad, inherited 915 acres of land from their father Shri Sitarama Rao. This land had been attached by the Govt. and was under the supervision of the Forest Department for the last several years for realisation of excise arrears. Shri A. K. K. Nambiar wanted to purchase 1/3 of the said land from Shri Hanumantha Rao and his brothers in the name of his son Shri A. Raghunath which they were not willing to sell. Shri Hanumantha Rao and his brothers were approached by some police officer and compelled to sell 1/3rd of their land to Shri A. Raghunath s/o Shri A. K. K. Nambiar.

Igg and others. Shri A. Raghunath also undertook to get this land released from the Government through his father's influence. On 30-1-1967 an agreement was executed between Shri Hanumantha Rao and his two brothers and Shri A. Raghunath s/o Shri A. K. K. Nambiar at the house of Shri P. V. Pavitran, S.P., Hyderabad for the sale of 1/3rd of the said land to Shri Raghunath for Rs. 50,000.00. The agreement was drafted by Shri P. V. Pavitran in consultation with Shri A. K. K. Nambiar who corrected the draft in his own hand. At the time of execution of the agreement a sum of Rs. 15,000.00 was paid to Shri Hanumantha Rao and his brothers by Shri A. Raghunath as earnest money.

(43) On the day when the said agreement was executed Shri A. Raghunath entered into another agreement with one Mangi Lal Jain of Hyderabad and Shri Ajit Kumar, brother-in-law of Shri P. V. Pavitran, S.P., whereby it was agreed that the agreement of sale entered into between the owners of the land and Shri Raghunath shall be deemed to be one entered into between the owners of the land on the one hand and S/Shri A. Raghunath, Mangi Lal and Ajit Kumar on the other hand and that 1/2 of the land to be purchased will be purchased by Shri A. Raghunath and the remaining half by S/Shri Mangi Lal and Ajit Kumar.

(44) Out of Rs. 15,000.00 paid as earnest money by Shri A. Raghunath to Shri Hanumantha Rao and his brothers, a sum of Rs. 10,000.00 was paid by Shri Mangi Lal.

(45) Shri Nambiar thus by abuse of his official position tried to obtain land from Shri Hanumantha Rao and his brothers which they were nto willing to sell.

(46) Shaikpet LAND-ALLEGATION NO. V Shri Baquer Khan s/o Subedar Mohd. Abdul Basir Saheb r/o Sahibabad was in possession of non-agricultural land comprising survey No. 129/34 and bearing Municipal No. 8-2-120/110/1 situated at Shaikpet Banjara Hills, Road No. 11, Municipal limits of Hyderabad.

(47) In January 1966, Shri Nageswar Rao the then Sub Inspector of Police Station Panjagutta was instructed by Dy. S.P. Shri Hanumantha Naidu to keep a watch over the aforesaid land as the same was being purchased by Shri A. K. K. Nambiar, I.G.P. Accordingly the said Sub Inspector deputed police constables and head constables who constructed a hut there and started keeping a regular watch over the land there. The said Bequer Khan strongly resented the said action and claimed the property as having been inherited by his father. Under the instructions of Shri Mohd. Baquer Khan a protest telegram was sent by Manohar Lal Saxena, Advocate, Hyderabad to the I.G.P. Shri A. K. K. Nambiar but no action was taken.

(48) On 2/4th February 1966, a sale deed was executed registered indicating the sale of the aforesaid land by one Mir Eqbal Ali Khan in favor of Shri A. Raghunath s/o Shri A. K. K. Nambiar for a sum of Rs. 10,000.00 as sale price. The said sale deed further reveals that the amount of Rs. 10,000.00 was nto paid 'in the presence of the said Registrar but was mentioned as having been paid earlier. Mir Eqbal Ali Khan appears to be a fictitious person and his whereabouts are nto known. The survey No. mentioned in the registration deed as 129/34/1 is nto borne on Government revenue records nor the ownership of this survey number in the name of Mir Eqbal Ali Khan in the revenue records.

(49) After forcibly taken possession of the aforesaid land the police constabulary was

deployed on the said land for a period of 11/2 years in order to prevent the real owner from coming to take possession.

(50) Shri A. K. K. Nambiar thus abused his position as a public servant and connived with his son Shri A. Raghunath, in whose name, the sale deed was executed, and obtained the said immovable property without any consideration or for inadequate consideration and took its possession by deploying police force.

(51) Narayanaguda Land : Allegation No. Vi A piece of land measuring 6111.08 sq. yards situated in Narayanaguda locality, adjacent to Taj Mahal Hotel, Hyderabad city, was a disputed land as it was a subject matter of civil litigation in regard to the title of ownership between Smt. P. C. Sethamma on the one hand and Smt. Moinisa Begum and 62 hutment dwellers on this land on other hand. The hutment dwellers were in occupation of the said land for the last about 20 years. On 16-10-1963, Smt. P. C. Sitamma and Moinisa Begum filed compromise petition in the Court under which both of them were to be declared owners of the land, having equal shares. An ex-parte decree was passed by the Court against the other defendants who were the hutment dwellers, occupying the said land. It became a problem with the ladies to get the aforesaid land vacated from the hutment dwellers.

(52) Shri B. Gopalakrishna, who had earlier in the year 1960 acted as a benamidar for Shri A. K. K. Nambiar, Igp, for the purchase of a house situated in Begumpet, Hyderabad city, approached P.C. Sitamma in the first instance and negotiated with her for the purchase of her share of the said land. Thereafter, he approached Smt. Moinisa Begum and her husband Sajad Ali Jenedi to purchase their share also. They demanded Rs. 75,000.00 for their share. Shri B. Gopalakrishna wanted to pay only Rs. 60,000.00. He warned Smt. Moinis Begum and her husband that in case their demand did nto come down to Rs. 60,000.00 he would purchase the entire land from Smt. P. C. Sitamma and would occupy it and in that case they will nto be able to take the possession of the land nor they would get any payment. Finding herself in a difficulty, for taking possession of her land, Smt. Moinisa Begum agreed to sell her share to Shri B. Gopalakrishna for Rs. 60,000.00. On 14-10-1964, both the ladies executed the sale deed in favor of Shri B. Gopalakrishna for a sum of Rs. 1,20,000.00. Shri A. Raghunath s/o Shri A. K. K. Nambiar, Igp was present in the Sub Registrar's office at the time of the registration of the sale deed.

(53) On 20-10-1964, an agreement was entered into between Shri B. Gopalakrishna and Shri A. Raghunath s/o Shri A. K. K. Nambiar, Igp, whereby both of them became partners in equal share in the purchase of the aforesaid land. As mentioned in this agreement deed, out of the total sum of Rs. 1,20,000.00 was paid to the original owners, a sum of Rs. 60,000.00 was contributed by Shri A. Raghunath and the cost of stamp papers and registration expenses for the sale deed executed on 14-10-1964 were also borne by Shri B. Gopalakrishna and A. Raghunath in equal shares.

(54) The land in question was in the possession of the hutment dwellers for the last about 20 years. As per instructions from above, police force was used to secure possession of the said land from the hutment dwellers. An armed reserve was also posted near the site for about a month or so. By use of police force pressure was brought on the hutment dwellers who were ultimately compelled to enter into a compromise and vacate the land.

(55) Thus, Shri A. K. K. Nambiar, I.G.P. by abuse of his official position enabled his son

to take possession of the disputed land which the owners had to sell to Shri Raghunath under duress.

(56) Palace TALKIES-ALLEGATION NO. Vii The building of Palace Talkies, Hyderabad, belonged to one Shri Evans and was on lease with Shri Indu Bhai Patel who had been running the cinema for the last twenty five years. Shri Evans advertised for the sale of cinema building including five shops for Rs. 3 lakhs and gave the first option for purchase to Shri Indu Bhai. The latter offered Rs. 7 lakhs to which Shri Evans did not agree. therefore, Shri A. Raghunath in partnership with Shri B. Gopalakrishna, entered into an agreement on 30-1-1965 with Shri Evans for the purchase of the Talkies for Rs. 8 lakhs and paid Rs. 1 lakhs as advance to Shri Evans. The balance of Rs. 7 lakhs was to be paid by August, 1965 and in default a sum of Rs. 85,000.00 was to be forfeited out of the amount advanced. The agreement deed executed on 30-1-1965 was modified on 13-4-1965, affording facilities for payment of the agreed price at the extended time. S/Shri A. Raghunath and B. Gopalakrishna did not have ready money to pay the balance amount to Shri Evans. Shri A. K. K. Nambiar then brought pressure on Shri Indu Bhai Patel himself and also through Shri B. R. Malhotra D.I.G. of Police to vacate the premises or to purchase the property from his son and Gopalakrishna at Rs. 9 lakhs. Under pressure, Shri Indu Bhai Patel was made to purchase this property for Rs. 9 lakhs though he was not prepared earlier to purchase it for more than Rs. 7' lakhs. Out of 9' lakhs received from Indu Bhai Patel, S/Shri A. Raghunath and B. Gopalakrishna paid the balance of Rs. 7 lacs to Shri Evans.

The sale deed in favor of Shri Indu Patel was executed on 27-4-1966. It has been agreed that a sum of Rs. 12,500.00 was to be paid by Shri A. Raghunath to a broker, Shri Saghir Ahmed. Shri Raghunath did not pay this amount to the broker and prepared a Kacha Receipt showing this amount as having been spent on account of legal expenses. Shri Evans got perturbed and threatened to go to the Court against B. Gopalakrishna and A. Raghunath. Shri Nambiar then got this matter settled.

At the time of agreement executed between S/Shri A. Raghunath and Gopalakrishna and Indu Bhai Patel on 27-4-1968, it was undertaken by Shri Raghunath that he will obtain the necessary permission for Shri Indu Bhai Patel to open a gate on the northern side of the cinema. Shri Nambiar then intervened and got this matter settled.

SHRI Nambiar, thus, obtained pecuniary advantage of Rs. one lac for his son Shri A. Raghunath and his partner B. Gopalakrishna by abuse of his official position.

(57) In view of the decision of the Supreme Court in Govinda Menon's case (5), it cannot now be disputed that the word 'charges' in Rule 7 (1) is to be given a wider meaning as denoting the accusations or imputations against the member of the Service and they would, therefore, include the aforesaid allegations which were made against the petitioner.

(58) A mere look at the allegations would show that if the allegations are true, they will constitute cognizable offences under section 5(1)(d) and section 5(2) of the Prevention of Corruption Act and some of the allegations will constitute offences under section 165 and other sections of the Indian Penal Code. therefore, as regard to the nature of the charges would justify satisfaction as to the necessity or desirability to place the petitioner under suspension pending disciplinary proceedings because the charges, if true, are, apart from anything else, a clear abuse of official

position. But Mr. Nambiar, learned counsel for the petitioner, urges and rightly that before a valid satisfaction as contemplated by sub-rule (1) of rule 7 can be arrived at, it is not merely the nature of the charges which has to be taken into consideration but also the circumstances in the case. He contends that the circumstances in this case which had to be taken into consideration would include the Explanation and the documents submitted by the petitioner to D. Sen and inasmuch as neither does the order of suspension disclose ex-facie nor is there any averment in the counter-affidavits that these or any other circumstances were taken into consideration, the order of suspension is vitiated as having been passed without complying with the requirements of sub-rule (1) and upon no evidence.

(59) Rule 7(1) deals with suspension during departmental proceedings. This suspension is not by way of punishment. The suspension is to prevent the Government servant concerned from indulging in activities in which he had been indulging while holding the post. Normally such suspension are at the stage of initiation of disciplinary proceedings and can be based upon the nature of the charges or accusations. In the generality of cases, the occasion for taking an Explanation from the Government servant with respect to the charges, prior to or at the time of passing the order of suspension, does not arise. In such cases the circumstances in the case regard to which is contemplated will be pertaining to the post held by the Government servant concerned and the possibility of recurrence of the acts if the Government servant concerned is allowed to continue to hold the post. These circumstances do not comprehend or include the defense or possible defense of the Government servant or the truth or falsity of the charges. So far as the charges are concerned, it is only their 'nature' to which regard is to be had and nothing more. therefore, I am unable to find any similarity between the requirements of sub-rule (1) or rule 7 and the requirements of section 237(b) of the Companies Act. No conclusion as to the existence of a prima facie case is necessary when considering the necessity or desirability of placing a Government Servant under suspension. It is more a consideration whether a Government servant against whom the charges or allegations have been made should, in view of the post that he is holding and the possibility of recurrence, be allowed to continue in service or should be suspended during disciplinary proceedings.

(60) In my view, therefore, it was not necessary for the Government to consider the fact of the previous enquiries against the petitioner at the instance of the State of Andhra Pradesh; the fact that he had been previously found free of blame either by the Courts or by the State authorities and the Explanation and documents submitted by him to the Central Bureau of investigation. The order of suspension is not, therefore, vitiated because of noncompliance with the provisions of sub-rule (1) of Rule 7. In the view that I have taken as to the meaning and object of the the expression 'circumstances in any case', it is not possible to say that the fact that the order of suspension was passed only a few months before the retirement of the petitioner constitutes an element in the consideration of the question that the order of suspension was mala-fide. If the object is to prevent the recurrence of the acts, it would not only be desirable but necessary to suspend the Government servant concerned pending departmental proceedings.

(61) Then I come to the last prayer of the petitioner that the investigation being carried on by the Central Bureau of Investigation against him should be prohibited. Mr. Nambiar has drawn our attention to the sections in the Code of Criminal Procedure relating to investigations. These sections have been considered by the

Supreme Court in H.N. Rishbud's case (6) where it has been observed :-

'THUS,under the Code investigation consists generally of the following steps : (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinking fit, (b) the search of places or seizures of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173.'

(62) It is true that investigation includes examination of the accused and the formation of an opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial. But I do not think the law requires the Investigating Officer to determine the truth or falsity of the case as if he were Court. Upon gathering the material as a result of the investigation, the Investigating Officer has to form an opinion as to whether there is a case to be tried and no more.

(63) In the present case the petitioner was not suspended upon the initiation of investigation by the Central Bureau of Investigation. In fact it was after prolonged enquiries that the seven allegations were given to the petitioner to which he gave his Explanation. In view of the nature of the charges and even considering the background which led to the investigation, I find it difficult to say that the investigation is either mala-fide or illegal or ultra vires. The authority concerned has formed an opinion that there is a case to be tried. That opinion cannot be interfered with merely on the ground that the petitioner has, in his Explanation, satisfactorily explained the allegations. If this Court were to do it while exercising jurisdiction under Article 226, it would really amount to an adjudication as to the correctness of the opinion of the Government as if this Court were a Court of appeal which it is not.

(64) In the circumstances, the writ petition is dismissed but in the circumstances of the case the parties are left to bear their own costs.

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