

**(2003) 01 GAU CK 0007**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 5687 of 2002**

Anju Rani Baishya

APPELLANT

Vs

State of Assam and Others

RESPONDENT

**Date of Decision :** 07-01-2003

**Acts Referred:**

Assam Services (Discipline and Appeal) Rules, 1964 — Rule 6, 6(1), 6(5)  
Constitution of India, 1950 — Article 226

**Citation :** (2003) 3 GLT 522

**Hon'ble Judges :** Amitava Roy, J

**Bench :** Single Bench

**Advocate :** P.G. Baruah, R. Baruah, A. Senapati, S.H. Borah, J. Singh and A. Gogoi, for the Appellant; H.K. Mahanta, for the Respondent

**Final Decision :** Dismissed

## Judgement

Amitava Roy, J.—This application under Article 226 of the Constitution of India presents a challenge to the notification dated 3.9.02 passed by the Respondent No. 2 placing the Petitioner under suspension in exercise of powers under Rule 6(1) of the Assam Services (Discipline and Appeals) Rules, 1964 (hereinafter referred to as the "Rules")

2. I have heard Mr. P.G. Baruah, Sr. Advocate assisted by Mr. R. Baruah learned Counsel for the Petitioner and Mr. H.K. Mahanta, learned State Counsel for the Respondents.

3. The fasccule of facts can be presented thus. The Petitioner on being selected by the Assam Public Service Commission was appointed as Superintendent of Taxes and she joined the said post on 26.5.92 and was initially attached to the Office of the Commissioner of Taxes, Dispur, Guwahati. She was thereafter transferred to Barpeta Road where she joined on 2.4.93. Thereafter she was transferred to Barpeta Town on 6.6.97. According to her, she rendered her duties honestly and sincerely resulting in augmentation of State revenue. While the matter rested at that by the impugned notification dated 3.9.02 the Petitioner

was placed under suspension in contemplation of a disciplinary proceeding against her. With reference to the impugned order of suspension the stand taken by the Petitioner is that the purported enquiry on the basis of which the same has been passed was conducted behind her back and no opportunity of hearing was provided to her. She has maintained that there is no factual basis in support of the impugned order and that the same is also violative of Rule 6(1) of the Rules as it does not contain reasons in support of the decision of placing her under suspension. It has been further contended that for not being communicated with the reasons in support of the impugned order of suspension she has been deprived of her right under Rule 6(5) of the Rules to move the appropriate authorities to review the decision.

4. In the counter filed on behalf of the State Respondents, they while supporting the impugned action contended that on receiving certain informations from different sources that the Petitioner was indulging in malpractices and irregular activities pertaining to the registration of fictitious dealers and issuance of statutory forms to such unscrupulous dealers in violation of the standing instructions, a preliminary enquiry was conducted which revealed that the Petitioner had acted against the requirements of law not only in the case of registration of dealers under the Assam General Sales Tax Act, 1993 but also in the matter of cancellation of the certificate of Registration. They asserted that there was sufficient evidence against the Petitioner regarding her collusion with fictitious dealers in the matter of granting of registration to them which prima facie established a case of malpractice and corruption against her. The Government, therefore, in the above premises considered it fit to initiate a departmental proceeding against her. Their categorical stand is that in order to conduct a further enquiry for the purpose of framing exact charged it was necessary to place the Petitioner under suspension. The suspension of the Petitioner was also necessary to debar her from attending office to obviate the possibility of manipulation or tempering of evidence against her. According to the answering Respondents, the suspension of the Petitioner was necessary to conduct a further enquiry more particularly in view of the fact that the Petitioner was found engaged in such vicious activities. It was necessary to find out the complete facts with regard to the allegations levelled against her. In the affidavit the answering Respondents referred to some facts relating to one dealer, namely, M/s. Ritika Traders which according to them was a fictitious dealer. It was alleged that the Petitioner misused her official power for the gain of the fictitious dealers which amounted to her personal gain as well. They contended that M/s. Ritika Traders was one of such fictitious dealers and that there were several other cases for which further enquiry was necessary to collect particulars thereof. A copy of the enquiry report has been annexed as (Annexure 1) to the counter of the State Respondents.

5. The Petitioner in reply has filed additional affidavits as well as an affidavit in reply denying the allegations made against her. Basically the contents thereof are with regard to the findings of the report of the preliminary enquiry which referred

to a dealer M/s. Punam Traders of Barpeta Road. Referring to the report which inter alia mentioned that the Petitioner had registered the said dealer on the basis of a report submitted by the Inspector of Taxes on erroneous and fabricated facts, the Petitioner has contended in her affidavits that M/s. Punam Traders had paid the taxes as required and that the apprehension of loss of revenue as expressed in the report had no factual basis. She also tried to explain the circumstances under which the said dealer was registered under the Assam General Sales Tax Act., 1993 and the Rules thereunder. According to her, the facts and the allegations recorded in the report were incorrect and vague and could not have formed the basis of the decision to suspend her. It was contended that there was no whisper about the dealer M/s. Ritika Traders in the preliminary enquiry report and the reference to the said dealer in the affidavit filed by the State Respondents clearly indicated a shift in their stand which could not be said to be bonafide. According to her, on that ground alone the impugned order of suspension was liable to be set aside. Without prejudice to the above, the Petitioner in her last affidavit filed on 18.11.02 with reference to the facts narrated therein contended, that in any view of the matter M/s. Ritika Traders was not a fictitious dealer as alleged. Lastly, it has been contended that though the impugned order of suspension had been passed on 3.9.02, no disciplinary proceeding had been initiated as on 3.12.02 though in the meantime, 3 months had expired from the date of passing of the impugned order.

6. An affidavit filed by M/s. Punam Traders is also available on record. However, as the said firm is not a party to the instant proceeding, I am not inclined to take into consideration the same for the purpose of adjudicating the issue in hand.

7. The learned senior Counsel for the Petitioner has strenuously argued that as no disciplinary proceeding has been initiated before the expiry of 3 months from the date of the order of suspension, in terms of Clause 2.1.8 (ii) of the office memorandum dtd 5.9.79 the Petitioner was entitled to be reinstated by revoking the order of suspension. He contended that the above office memorandum embodies the principle and procedure to be mandatorily observed in matters relating to suspension and as the charges and the statements of allegations have not been served on the Petitioner within 3 months from the date of suspension, the Petitioner ought to have been reinstated in compliance with Clause 2.1.8(ii) thereof. According to the learned senior Counsel on this plain ground alone the impugned order of suspension is liable to be set aside.

8. Mr. Baruah, learned senior Counsel for the Petitioner further contended with reference to the enquiry report and the pleadings of the parties that there was no factual basis in support of the impugned order and the same was clearly based on non-existent grounds and, therefore, continuance of the order of suspension was an abuse of the executive power. He maintained that the impugned order of suspension had been passed on the allegation that the Petitioner was responsible for illegal registration of a firm, namely, Punam Traders, but according to the answering Respondents some other firm, namely,

Ms. Ritika Traders was involved. According to the learned senior Counsel this is sufficient to indicate the falseness of the allegations as well as the total non application of mind of the Respondents in the matter of passing the impugned order. Without prejudice to the above, Mr. Baruah argued that even if it is assumed that there are some materials against the Petitioner justifying initiation of a departmental proceeding neither the same nor the attending facts and circumstances warrant suspension of the Petitioner and on that ground as well continuance of the suspension of the Petitioner is liable to be adjudged, illegal and unconstitutional.

9. Learned senior Counsel has placed reliance on the following decisions of this Court in support of his submission.

1. Dhirendra Kumar Barthakur v. The State of Assam and Ors. (1983) 2 GLR 459.
2. Sadou Asom Rajyik Paribahan Nigam Chalak Santha v. The State of Assam and Ors. Respondents (1988) 2 GLR 315.
3. Dr. B.C. Lahkar v. The State of Assam and Ors. (1989) 2 GLR (NOC) 30.
4. Sahabuddin v. The State of Assam and Ors. Respondents (1990) 1 GLR 276 . Per contra Mr. Mahanta learned State Counsel for the Respondents has argued that the report of the preliminary enquiry as well as the other materials on record are sufficient to initiate a disciplinary proceeding against the Petitioner on the allegations referred to in the impugned order of suspension. According to him, considering the nature of the allegations it is necessary to keep the Petitioner under suspension for conducting the disciplinary proceeding effectively and smoothly. He has argued that necessary steps are being taken to initiate the proceeding shortly and if at this stage the order of suspension is interfered with there is every possibility of the evidence collected against the Petitioner be manipulated and wiped off. While admitting that the departmental proceeding against the Petitioner could not be initiated within a period of 3 months from the date of order of suspension, the learned State Counsel argued that, by itself that was not sufficient to quash the same with reference to Clause 2.1.8 of the office memorandum dated 5.9.79. He argued that the continuance of the order of suspension was in the public interest and that the official Respondents are prepared to initiate and complete the proceedings as early as possible and within a fixed time if so directed by this Court. The learned State Counsel in support of his submissions has placed reliance on a decision of the Apex Court in U.P. Rajya Krishi Utpadan Mandi Parishad and Others Vs. Sanjiv Rajan,

10. I have extended my anxious consideration to the rival contentions of the parties. Under Clause 2.1.8 (ii) of the office memorandum dated 5.9.79 if the charges and statements of allegations are not served within 3 months from the date of suspension, the Government servant concerned should be reinstated. Sub-clause (iii) of Clause 2.1.8. contemplates a situation where it may not be reasonably practicable to prepare the charges for service within 3 months from the date of suspension. In such a case the authority concerned should move the

Personnel Department through the Administrative Department well before the expiry of the period of 3 months detailing the nature of the allegations and the reasons for which charges could not be prepared within the time specified. A conjoint reading of Sub-clause (ii) and (iii) of Clause 2.1.8 therefore predicates that reinstatement of a Government servant under suspension on account of failure of the authorities concerned to serve the charges and statements of allegations on him within 3 months from the date of suspension was not intended to be accepted an absolute proposition. Some flexibility has been provided by Sub-clause (iii) of Clause 2.1.8 which permits the authority concerned to take appropriate steps in case a departmental proceeding cannot be initiated within the period of 3 months from the date of suspension. As an order of suspension is passed considering inter alia the gravity of the allegations and the adverse consequences likely to follow if the person concerned is allowed to continue in office till a final decision is taken to initiate a departmental proceeding on the basis of the said allegations, the justification of incorporating the said Sub-clause (iii) is understandable. In a given case it may not be reasonably practicable, keeping in view the nature of the allegations, to collect all materials to enable the authority concerned to finally decide on the issue of initiation of a proceeding against him. In such a case if the authority is rigorously held to the requirement of Sub-clause (ii), the very purpose of placing the Government servant under suspension may be frustrated. It thus cannot be concluded that the moment 3 months after the order of suspension elapsed the Government servant under suspension has to be reinstated. Whether or not under sub-clause(ii), the suspended Govt. servant should be reinstated has to be tested on the touch stone of the facts relevant to the situation.

11. In this context a brief reference to the decision of this Court in *Sadou Asom Rajyik Paribahan Nigam Chalak Santha v. The State of Assam and Ors.* (supra) would be necessary. In that case some drivers of the Assam Transport Corporation resorted to a strike between 7 to 9 of February of 1987. This Court while entertaining their challenge to the order of suspension with reference to the instructions issued by the State Govt. Directed their reinstatement as charges were not served on them within a period of 3 months from the date of their suspension. This decision appears to turn on the facts of the case involved therein. The drivers concerned had been suspended in February 1987 and the case was decided on 7.7.88 i.e. more than a year after the suspension order was passed. The allegations against the drivers involved therein was that they had gone on strike by disobeying a proclamation to the contrary. The decision, however, does not lay down a proposition of law of general application that in all cases where the charges and the statements of allegations cannot be served on the Government servant within 3 months from the date of his suspension, he should be reinstated irrespective of the attending facts and circumstances. In my view, therefore, this decision does not clinch the issue in favour of the Petitioner.

12. The official Respondents in their affidavit have categorically stated that continuance of the suspension of the Petitioner is necessary to conduct further

enquiries for the purpose of framing the exact charges as well as to debar her from attending the office to avoid the possibility of manipulation or tempering of evidence against her. Considering the nature of the allegations made against the Petitioner and the categorical stand of the official Respondents coupled with the fact that the order of suspension had been passed only on 3.9.2002,<sup>1</sup> I am inclined to concur with the contention raised on behalf of the Respondents in this regard. I, therefore, do not consider, in the facts and circumstances of the case, that interference with the order of suspension would be justified only on the ground that the disciplinary proceedings could not be initiated against the Petitioner within a period of 3 months from the date of order of suspension.

13. Turning to the rival contentions on the merit of the allegations levelled against the Petitioner, suffice it to mention that the same cannot be said to be wholly based on non-existent facts. The report of the preliminary enquiry indicates that the Petitioner had registered M/s. Punam Traders on the basis of a report submitted on erroneous and fabricated facts and that allegations of careless and perfunctory activities had been levelled against the Petitioner. The order of suspension indicates the Petitioner with malpractice and irregular activities in the matters of registration of fictitious dealers and issuance of statutory forms to such unscrupulous dealers in violation of standing instructions. Allegations of collusion with the fictitious dealers for the purpose of evading tax has also been levelled against her. The order of suspension further records that the Government was satisfied that the allegations against her require a thorough enquiry and continuance of the Petitioner in service was detrimental thereto. The Petitioner was thus placed under suspension pending drawal of the departmental proceeding.

14. After a careful examination of the pleadings of the parties, I am not in a position to persuade myself to uphold the contention of the learned senior Counsel for the Petitioner that the impugned order of suspension is based wholly on non-existent facts. The main thrust of the argument advanced by the learned senior Counsel for the Petitioner in this regard has been that though the preliminary enquiry report refers to alleged malpractice and irregular activities of the Petitioner involving the firm M/s. Punam Traders, there is no whisper about the said firm in the affidavit filed by the State Respondents and instead a distinctly different firm M/s. Ritika Traders had been dragged into the picture to justify the impugned order and that therefore, it was clear that the order of suspension was based on non-existent facts and was an outcome of mechanical exercise of power. On a careful reading of the affidavit filed by the Respondents along with the preliminary enquiry report and the order of suspension it is not possible to uphold the said contention. Though the preliminary enquiry report refers to M/s. Punam Traders, the impugned order of suspension does not disclose that the allegations are confined wholly to the said firm, On the other hand, it indicates that there are more than one fictitious dealers with which the Petitioner is allegedly involved in commission of malpractice and irregular activities. The categorical stand of the Respondents in their affidavit is that the

instance of M/s. Ritika Traders was not the solitary one and that there are several other cases which required further enquiry to collect detailed particulars for framing the exact charges against the Petitioner.

15. In the above premises having regard to the rival contentions of the parties, it cannot thus be decisively held at this stage that the order of suspension is based on non-existent or irrelevant and extraneous facts and materials.

16. Further, keeping in view the assertive stand of the official Respondents that the suspension of the Petitioner was necessary to conduct a thorough enquiry for collecting materials to frame the exact charges against her and the continuance of her suspension is called, for to prevent the possibility of manipulation or tempering evidence against her, I am not inclined, in the exercise of the power of judicial review to make an exercise of delving into the disputed questions of facts at this stage of the enquiry initiated by the official Respondents. The authorities concerned being the best judge of the situation, in absence of any pleading and proof of malafide I am not inclined to uphold the contention raised on behalf of the Petitioner that the impugned order of suspension is liable to be quashed forthwith.

17. A brief reference to the authorities cited at the bar would be apposite at this stage. In *Dhirendra Kumar Barthakur v. The State of Assam and Ors.* (supra), it was inter alia observed that while passing the order of suspension under Rule 6 the authority concerned is to keep in view several factors such as whether continuance in the office of the Government servant would prejudice the investigation, trial or an enquiry, or where the allegations against him are such that in the interest of maintenance of purity of the administration or the upkeep of proper standards of discipline and moral in the service and should come to a bonafide conclusion that a disciplinary proceeding against him is under contemplation. It held that the idea behind placing an officer under suspension is not to inflict punishment but to safeguard against further loss to the Government, manipulation of records, intimidation of witnesses or embarrassment to Government in the public eye as in the case where moral turpitude is involved. It was further held that the order of suspension should record reasons in support thereof. It may be relevant to notice that in that case the impugned order of suspension did not record any reason whatsoever and by the order impugned therein the Petitioner was simply placed under suspension. It is not the same in the case in hand. The order of suspension in the instant case, records reasons in support of the action of the authority concerned. The decisions of this Court rendered in *Dr. B.C. Lahkar v. The State of Assam and Ors.* (supra) was to the effect that if the reasons and grounds for passing the order of suspension are apparently non-existent and the power to suspend has been exercised arbitrarily or if there is no prima facie case to place the employee under suspension, appropriate relief cannot be denied under Article 226 of the Constitution of India.

18. This Court in *Sahabuddin v. State of Assam and Ors.* (supra) emphasised

that suspension from service is a very serious matter and should be for as minimum period as may only be necessary:

19. The Apex Court in *State of Orissa Vs. Bimal Kumar Mohanty*, while dwelling on the subject and after making a detailed survey of its earlier decisions authoritatively held that an order of suspension should be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority, it held that the appointing authority or the disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending enquiry or contemplated enquiry or pending investigation into the charges. It was further laid down therein that suspension is resorted to for restraining the employee concerned from availing further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the enquiry or investigation or to win over the witness or the delinquent having had the opportunity in office, to impede the progress of the investigation or enquiry etc. The suspension must be a step in aid to the ultimate result of the investigation or enquiry, it observed.

20. The decision, of the Apex Court in *U.P. Rajya Krishi Utpandan Mandi Parishad and Ors (supra)* relied upon by the learned state Counsel was in connection with a charge of defalcation of money. The order of suspension against the Respondent therein had been interfered with by the High Court disapproving the approach of the High Court, the Apex Court inter alia observed that ordinarily, when there is an accusation of defalcation of the money, the delinquent employee is to be kept away from the establishment till the charges are finally disposed of. It is possible that in some cases, the authorities do not proceed with the matter as expeditiously as they ought to, which results in prolongation of the sufferings of the delinquent employee. But the remedy in such cases is either to call for an explanation from the authorities in the matter, and if it is found unsatisfactory to direct them to complete the inquiry within a stipulated period and to increase the suspension allowance adequately. It was held that whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question.

21. As alluded above, having regard to the materials on record it cannot be held at this stage that the allegations levelled against the Petitioner are based on non-existent facts so as to dub the decision of the official Respondents to place the Petitioner under suspension as ex facie, illegal, arbitrary, whimsical and mala fide.

The satisfaction of an authority in this regard has to be dominantly a subjective one. However it is to be based on objective materials. Even, if, two views are possible on the materials on record, in support of the allegations and the view taken by the authority concerned is plausible one, this Court while exercising its power of judicial review would not sit in appeal on the view taken and substitute the same by its own view. So long as the discretion exercised by the authority is within the permissible limits of flexibility and the parameters of law any decision based thereon cannot be denounced as ultra vires. This Court in exercise of the power of judicial review is concerned only with the decision making process and not the merit of the decision. The concerned authority has to be granted a play in the joints" in the process of decision making unless the decision is vitiated by consideration of factors which are irrelevant and extraneous or if in arriving at the same, materials and/or factors which are relevant and germane have been overlooked rendering the same to be totally absurd and in defiance of logic, this Court would not step in and adjudge the decision as illegal and unconstitutional.

22. From the above narrative, I am inclined to conclude that the impugned order of suspension do not suffer from such infirmities warranting interference therewith by this Court, I would hasten to add that this should not be construed to mean that the official Respondents are at liberty to prolong the enquiry indefinitely keeping the Petitioner under suspension. As a matter of fact, the Government has evolved a guideline fixing the time limit for completion of a departmental proceeding and therefore it is premoitory incumbent upon the official Respondents to adhere to the same. The learned State Counsel in course of the hearing submitted that the Respondents are willing to complete the proceeding as early as possible and if a period, therefore, is fixed by this Court they would make all possible endeavours to complete the proceeding within the time fixed. In view of above, while upholding the order of suspension, I direct the Respondents that if they are inclined to initiate a departmental proceeding against the Petitioner they would do so within a period of 2 weeks here from and if the same is done, the proceedings should be completed within a period of three and half months from the initiation thereof. Needless to say, in that case the Petitioner would cooperate with the proceedings. Further it would always be open to the Petitioner to approach the appropriate authorities in the meantime, with a request to review the order of suspension and if the same is done, the concerned authority would consider the request on its merit and pass appropriate orders thereon without undue delay. During the period of suspension the Petitioner would be paid her subsistence allowance as permissible under the extant rules.

23. In the light of the above discussion it has to be held that the Petitioner has failed to make out a case justifying interference with the impugned order of suspension.

The petition fails and is thus dismissed with the above observations and directions. There would be no order as to costs.