

(1992) 01 GUJ CK 0040
In the Gujarat High Court

Dr. M.D. Indrodia

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 20-01-1992

Acts Referred:

Citation : (1992) 2 GLR 1063

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Judgement

R.A. Mehta, J.—This petition is directed against the order of suspension of the petitioner (as Medical Officer), dated 29th July, 1991. The suspension is on the allegation that the petitioner is charge-sheeted for an offence punishable under the Prevention of Corruption Act, for having accepted illegal gratification of a sum of Rs. 10/-. Ordinarily, this fact would justify suspension of a Public servant. However, in the present case, there are some extraordinary facts. The incident had taken place five years ago on 12th Jan. 1986 and the F.I.R. is lodged on 15-1-1986 by the Anti-corruption Bureau Police Inspector. It states that on the basis of some (unspecified) reliable information, the petitioner Medical Officer though receiving non-practice allowance, was indulging in private practice illegally and collecting fees ranging from Rs. 5 to Rs. 20/- from each patient and therefore, a trap was laid with a bogus patient and two panchas. The bogus patient stated to the Medical Officer that he was suffering from fever and cough and therefore, the petitioner administered two injections and prescribed medicine on a piece of paper and asked for a sum of Rs. 10/-, and when that amount was tendered by one currency note, the petitioner had asked that amount be given to his son (who is aged 3 years) and therefore, that amount was given to the petitioner's son. Thereafter, on giving the signal, the raiding party had come and the necessary tests of ultraviolet lamp showed the powder in the hands of the son of the petitioner. After this, F.I.R. is lodged and the petitioner was transferred from Amreli District to a village in Kutch.

Thereafter, it has taken more than 5 years to file the charge-sheet and to pass

the order of suspension.

2. The fact that for a period of 5 years the charge-sheet is not filed and the suspension order is not passed is a strong circumstance. A bogus patient feigning fever and the Doctor giving two injections without realising feigned fever and the bogus patient getting injected twice without any real need, and the amount paid to a child of three years are circumstances. If the Government had considered the case that much serious, in fact, the charge-sheet should have been filed much earlier. The Government does not seem to have applied its mind to all these aspects when passing the order of suspension. The suspension order is passed on a very old peculiar incident and thereafter, the person is continued in public service for 5 years. The suspending authority should have applied its mind as to the delay in these facts that has taken place and explained the delay which is unduly long. Such undue long period of delay in these facts should have been explained. The learned Counsel for the authority submitted that there is no delay after filing of the charge-sheet. The charge-sheet was filed in February, 1991 and the suspension order is passed in May, 1991. But the fact that the charge-sheet has been filed after about 5 years remains and there is no explanation for the delay of this 5 years. Therefore, the suspending authority has not applied its mind to this fact. In the affidavit-in-reply, it is stated that after "exceeding careful scrutiny" the order of suspension is passed, which has been approved by the Chief Secretary and by the concerned Minister. Merely because it has been approved at the highest level, it does not necessarily mean that it is proper and legal consideration. There is no explanation for the inordinate delay of 5 years for filing the charge-sheet. If a public servant is said to have indulged in corruption, it is a very serious offence and such a person should not be trusted in public service. However, for 5 years no action have been taken to prosecute and to suspend the petitioner and therefore, in the facts and circumstances of the case, this order of suspension cannot be justified. However, by making this observation, it is made clear that this observation is made only in the context of the action of suspension and not in the context of the action in criminal trial, which will be decided in accordance with the evidence on record and in accordance with law.

3. In the result, the petition is allowed and the order of petitioner's suspension is quashed and set aside. Rule is made absolute with no order as to costs.