

(2008) 11 SC CK 0168

In the Supreme Court Of India

Case No : Reference No. 1 of 2003

In Re: Reference under Article 317(1) of the Constitution of India

Date of Decision : 10-11-2008

Acts Referred:

Constitution of India, 1950 — Article 124(4), 317, 317(1)
Orissa Lokpal and Lokayuktas Act, 1985 — Section 21

Citation : (2009) 1 OLR 995

Hon'ble Judges : K. G. Balakrishnan, C.J;P. Sathasivam, J;J. M. Panchal, J

Bench : Full Bench

Final Decision : Disposed Of

Judgement

J.M. Panchal, J.—This is a reference under Article 317(1) of the Constitution of India for enquiry and report on the charges levelled against Dr. H.B. Mirdha, who was the Chairman of the Orissa Public Service Commission.

2. The facts giving rise to the reference are as under:

Dr. H.B. Mirdha was appointed as member of the Orissa Public Service Commission ("OPSC", for short) on 3.4.1998. Later on, he took over as Chairman of OPSC on 30.4.1999. An advertisement inviting applications for the Orissa Civil Services Examination, 2000 was published in the newspapers on 6.11.2000. The last date for receipt of the applications was 31.1.2001. The Special Secretary of OPSC circulated a declaration to be made by all the members including the Chairman and the employees as to whether any of their near relations or persons they were interested in, were appearing in the examination. The purpose was to keep such members or the employees out of the process of conducting examination in order to ensure impartiality and fair play. Dr. Mirdha declared on 8.1.2001 that none of his relatives was appearing in the ensuing examination. Subsequent to the above declaration, two married daughters of Dr. Mirdha applied on 31.1.2001 for undertaking the ensuing examination.

3. A meeting of OPSC was held on 10.5.2001 The Special Secretary placed a proposal for condonation of certain deficiencies found in some of the applications,

which we're received. The Commission deliberated and decision in each case was taken. However, no information regarding the selection of question papers for the preliminary examination was given by the Chairman to other members of the Commission.

4. Again, in the meeting held on 30.5.2001 several important points were discussed regarding the modality to be adopted for the selection of question papers for the preliminary examination as well as declaration by the members for the purpose of maintaining secrecy and the declaration by the members and the employees regarding their close relatives appearing in the examination. In this meeting, Dr. Mirdha did not offer such declaration of interest in respect of his close relatives who were to appear in the forthcoming examination to be conducted by OPSC. The examination of the records indicates that his two married daughters, namely, Smt. Anuragini Mirdha and Smt. Sitarani Mirdha had made applications on 31.1.2001 for undertaking the examination and that they had withdrawn their applications on 31.5.2001 by sending a fax message.

5. In a meeting held on 2.6.2001, Dr. Mirdha had divulged that his two married daughters were candidates for examination but that fact was not known to him and as his daughters had withdrawn their candidature, there was no bar to his involvement in the examination process. Mr. Sarkar, member of the Commission, had pointed out that withdrawal of candidature by his daughters did not make any difference and the fact remained that as Chairman, Dr. Mirdha had involved himself with the process of selecting question papers while his daughters were candidates. Mr. Mohanty, member of the Commission endorsed Mr. Sarkar's view and added that it was impossible to believe that Dr. Mirdha was not aware of his daughters' candidature. It is alleged that these remarks infuriated Dr. Mirdha, who shouted at both the members in an uncivilised manner.

6. It was further alleged that on 5.6.2001, Dr. Mirdha had telephoned Dr. (Ms) Rayat her residence and exerted pressure on her to agree to his note on issuance of admission cards but Dr. (Ms) Ray had refused to oblige him and, therefore, on 7.6.2001, Dr. Mirdha had used vulgar and vituperative language and threatened to launch tirade against the three members of the Commission.

7. Levelling the above mentioned allegations, the three members of the Commission had addressed representation dated 11.6.2001 to His Excellency the Governor of Orissa with a request to take action against Dr. Mirdha. The Commission was kept in dark regarding the procedure to be adopted by the Chairman to settle question papers and to make a final selection.

8. Dr. Mirdha, while holding the office of member and Chairman of OPSC, which is a full-time office, was supposed to maintain utter devotion and sincerity to the office. It was alleged that an infraction of law and breach of constitutional duty was committed by him by associating himself illegally with a private coaching centre at Sambalpur known as OAS Coaching Centre, which functioned as a private high school known as Budharaja High School at Ainthapalli in Sambalpur

Town. According to the allegations, a retired IAS Officer, Mr Purna Chandra Padhi was engaged by Dr. Mirdha and the said centre thrived because of its connection with Dr. Mirdha. What was alleged was that it was planned to accommodate the candidates belonging to the aforesaid coaching centre in the examinations to be conducted by OPSC.

9. Further, a complaint was submitted by Ms Pranati Patro on 27.10.2000 against Dr. Mirdha on a serious charge of bribery. According to the said complaint, the complainant had appeared along with 37 candidates for being selected to two posts that were advertised on 26.1.1999 in the subject of Home Science. Out of 37 candidates, 10 candidates were selected for interview on the basis of written test, in which, according to the complainant, she had secured the highest marks. Ms Patro was interviewed by the Board consisting of Dr. Mirdha and Ors. . The interview was held on 12.6.2000 in which Ms Ajanta Nayak had been selected despite her having secured the lowest marks in the written test. It was alleged that the marks awarded in the interview to Ms Patro, who had secured maximum marks in the written test, were intentionally reduced at the behest of Dr. Mirdha for which, according to Ms Patro, Dr. Mirdha had received a sum of Rs. 1.5 lakhs for favouring Ms Ajanta Nayak to select her as a Junior Lecturer in Home Science.

10. Keeping in view the above allegations made by Ms Patro, a reference was made by the State Government to the Lokpal, Orissa. The Lokpal in his order dated 5.2.2002 observed that in view of the provisions of Section 21 of the Orissa Lokpal and Lokayuktas Act, 1985, the Lokpal was not authorised to investigate into the actions taken by the Chairman or a member of OPSC.

11. On the basis of the representation received, the Governor of Orissa made an initial reference to the State Government to take appropriate action. After preliminary enquiry, the State Government at the level of the Chief Minister, requested the Governor to recommend to His Excellency the President of India to make reference to the Supreme Court under Article 317(1) of the Constitution.

12. The Governor requested the State Government to obtain legal opinion on the question whether on the available material a prima facie case was made out against the chairman for action under Article 317(1) of the Constitution. The State Government obtained the opinion of the Advocate General and the Law Secretary. They opined that there existed a prima facie case for initiating action against the Chairman of OPSC under Article 317(1) of the Constitution. Therefore, the State Government reiterated its earlier request for action under Article 317(1) of the Constitution. The Governor was of the opinion that it was incumbent upon the Chairman of a State Public Service Commission to maintain an image, dignity, impartiality and integrity and that the conduct of Dr. Mirdha prima facie showed failure To maintain absolute integrity and dignity. The Governor, therefore, by letter dated 23.8.2001, recommended to the Hon'ble President to make a reference to the Supreme Court under Article 317(1) of the Constitution for necessary enquiry into the allegations made against the Chairman.

13. The Hon'ble President took into consideration the letter dated 23.8.2001, addressed by the Governor of Orissa to him, as well as the reply of Dr. Mirdha obtained by the Governor of Orissa and other materials. The Hon'ble President was satisfied from the material placed before him that a prima facie case was made out for enquiry into the first two charges in the complaint made by the members of the Commission and the charge levelled in the petition filed by Ms Patro against the Chairman of the Commission. Therefore, in exercise of the powers conferred upon him by Clause (1) of Article 317 of the Constitution, the Hon'ble President referred to the Supreme Court of India for enquiry and report as to whether Dr. Mirdha, Chairman, OPSC ought, on the grounds of misbehaviour, to be removed from the office of Chairman of the Commission. The reference received was registered as Reference No. 1 of 2003 under Article 317(1) of the Constitution and notices were issued to the interested parties.

14. The learned Counsel for Dr. Mirdha had raised three preliminary objections to the maintainability of the reference. Briefly stated they were: (i) no hearing or opportunity of showing cause was given to him by the President before making the reference and, therefore, the reference should be rejected, (ii) the reference was vague, and (iii) assuming the facts stated in the reference to be correct yet a case for proceeding ahead against him within the meaning of Clause (1) of Article 317 of the Constitution was not made out.

15. After hearing the learned Counsel for the parties this Court, by an order dated 29.3.2005, expressed the opinion that no hearing or opportunity of showing cause against the proposed reference under Article 317(1) of the Constitution was necessary before making the reference. In view of this opinion the first objection raised by Dr. Mirdha was overruled. The Court had perused the contents of the reference and the accompanying documents. The Court noticed that the reference referred to the complaints annexed with the reference wherefrom the facts constituting the ground of alleged "misbehaviour" within the meaning of Article 317(1) of the Constitution, were clearly stated. The Court, therefore, overruled second preliminary objection that the reference was vague.

16. As far as third preliminary objection was concerned, the Court had directed the learned Additional Solicitor General to file a statement setting out the charges and the facts forming basis thereof, which might need to be inquired into consistently with the procedure laid down by this Court in Reference under Article 317(1) of the Constitution, Re. In accordance with the direction of the Court, the statements of allegations and statement of charges were filed.

17. In order dated 14.7.2006 it was observed by this Court that the reference relates to three charges. OPSC had prayed to grant eight weeks' time to file the list of witnesses and the affidavits of the witnesses along with documents by which the charges were said to be proved against Dr. Mirdha. The said request was granted by the Court. It was further observed in the order that on filing of the list of witnesses, etc. further directions in respect of nominating a Judge to record the cross-examination of the witnesses, if sought for by Dr. Mirdha, would

be issued as also the place of recording the evidence.

18. Dr. Mirdha was also given liberty to file within eight weeks a list of witnesses and affidavits along with documents in defence of the charges. Accordingly, affidavits and reply-affidavit have been filed. It was agreed by the learned Counsel for the parties that the reference should be decided on the basis of the affidavits filed by the parties.

19. This Court has heard the learned Counsel for the parties at length and in great detail. This Court has also perused the affidavits, reply-affidavits and documents produced along with those affidavits.

20. From the record of the case it is evident that Dr. Mirdha was appointed as Chairman of the Commission on 30.4.1999. This was not liked by Dr. (Ms) Prativa Ray, who herself wanted to be the Chairman of the Commission and, therefore, started behaving in a manner to defy the authority of the Chairman. The atmosphere of the Commission was absolutely vitiated and the members of the Commission had approached the press hitting at the Chairman and criticising the functioning of the Commission under his leadership on a number of occasions.

21. The advertisement for conducting the Orissa Civil Services Examination was approved by the Commission on 6.11.2000. In fact there is no rule and/or order requiring that the Chairman or the members of the Commission and employees should give a declaration as to whether their near relatives are appearing in the examination. There can be no doubt that if a Selection Committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from the participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate Anr. person in his place on the Selection Committee so that the selections made are not vitiated on account of reasonable likelihood of bias.

22. In the meeting dated 20.11.2000 it was decided with the approval of Dr. Mirdha as Chairman of the Commission that the Chairman, members and the staff of the Commission should give declaration as to whether any of his near relations was a candidate for the examination. The record further shows that on 8.1.2001. Dr. Mirdha submitted his declaration that his two unmarried daughters, who were staying with him, were not appearing in the Orissa Civil Services Examination. Subsequent to the above mentioned declarations, two married daughters of Dr. Mirdha applied on 31.1.2001 for undertaking the examination. On 22.1.2001 Mr. H.S. Sarkar, a member of OPSC signed a declaration stating that none of his relatives nor any person in whom he was interested was the applicant in the ensuing recruitment. Dr. (Ms) Prativa Ray did not sign the declaration until 7.6.2001. On 11.6.2001 she made a declaration that one of her relations was appearing in the OPSC Examination. In view of the declaration made by Dr. (Ms) Ray, Mr. H.S: Sarkar was made in charge to conduct the

preliminary examination.

23. The last date for receipt of the application for Orissa Civil Services Examination was 31.1.2001. In the meeting held on 10.5.2001 the Commission unanimously resolved to hold the examination on 8.7.2001. It may be mentioned that in all 51,852 applications were received, out of which 1968 defective applications were rejected. On 31.5.2001 the two married daughters of Dr. Mirdha, who were applicants, sent a fax message withdrawing their applications. On 1.6.2001 Dr. Mirdha submitted his declaration stating that none of his near relations nor any person in whom he was interested was an applicant for the ensuing examination.

24. The matter relating to the issue of admission certificates to the candidates and the number of applications to be rejected was placed before the Commission in its meeting held on 2.6.2001. As per the affidavit filed by Mr Sarkar, in this meeting Dr. Mirdha informed that his two married daughters were candidates for the examination but that fact was not known to him and as they had withdrawn their candidature, there was no bar to his involvement in the examination process. According to Mr. Sarkar this stand of Dr. Mirdha was objected to by him. The issue of admission certificates was a routine work of the Commission. But Mr. R.C. Mohanty and Mr. H.S. Sarkar, who were present in the meeting, did not cooperate and did not sign the proposal for issue of admission certificates. Since the arrangements in consultation with coordinators i.e. Collectors, Additional District Magistrates and Sub-Collectors concerned were to be made for holding examination, it was decided on 4.6.2001 to discuss the matter with the Chief Secretary to avoid deadlock that had taken place due to non-cooperation of the members of OPSC. Ultimately, Dr. Mirdha passed an order on 5.6.2001 to issue admission certificates to the candidates.

25. The record shows that the three members of the Commission requested the Chairman to fix up a date for discussion regarding preliminary examination. The members took the stand that the examination process was vitiated in view of the fact that two married daughters of the Chairman were candidates and that withdrawal of candidature by the daughters had no effect and, therefore, the date earlier fixed for holding examination should be postponed. What is relevant to notice is that on 7.6.2001 Dr. (Ms) Pratiba Ray submitted a declaration that none of her relatives was appearing in the examination but on 11.6.2001 she submitted Anr. declaration stating that one of her relatives was appearing in the examination.

26. The principle which requires that a member of a Selection Committee, whose close relative is appearing for selection, should decline to become a member of the Selection Committee or withdraw from it leaving it to the appointing authority to nominate Anr. person in his place need not be applied in case of a constitutional authority like the Public Service Commission, whether Central or State. If a Chairman or member of the Public Service Commission were to withdraw altogether from the selection process on the ground that a close

relative of his is appearing for selection, no other person save a Chairman and/or a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such Chairman or member and the functioning of the Public Service Commission may be affected. Here in this case the married daughters of Dr. Mirdha had withdrawn their candidature before the examinations were held. They had neither appeared in the examination nor Dr. Mirdha had taken any step in selecting any of his two daughters for the Orissa Civil Services. None of the close relatives of Dr. Mirdha had appeared for interview and, therefore, no occasion arose for Dr. Mirdha to withdraw from participation in the interview, etc.

27. As noticed earlier Dr. (Ms) Prativa Ray had submitted a declaration on 7.6.2001 stating that none of her near relatives was appearing in the examination, but within few days i.e. on 11.6.2001 she had submitted Anr. declaration stating that one of her relatives was appearing in the examination. It is strange that no reference had been made under Article 317(1) of the Constitution against Dr. (Ms) Prativa Ray though on the same ground reference is made against the Chairman to this Court. It has also come on record that the Law Department of the State Government opined to refer the matter under Article 317(1) of the Constitution against the remaining members of OPSC for their acts of insubordination, non-cooperation, etc. amounting to misbehaviour on their part, but no reference is made to this Court against the remaining members of OPSC.

28. Article 317, like Article 124(4) does not define misbehaviour or enumerate what acts would constitute misbehaviour except that Clause (4), of Article 317 makes an improvement in specifying misbehaviour namely being interested in any government contract. Outside Clause (4) it is left to the Supreme Court to determine whether any particular act or conduct is of such a nature as to warrant the removal of the Chairman or member on the ground of "misbehaviour". Ordinarily bribery, corruption and the like should be regarded as such "misbehaviour". But there is no limitation prescribed by the Constitution itself.

29. In Madan Lal and Others Vs. State of Jammu and Kashmir and Others, a petition was filed to challenge the process of selection of Munsifs undertaken by the J&K Public Service Commission. One of the grounds urged was that Respondent 13 being the daughter of the Chairman of the Commission and daughter-in-law of Anr. member thereof, was given a special favourable treatment by unduly inflating her marks in viva voce test so that anyhow she would get selected for the post of Munsif and hence her selection was bad in law. It was found that the Chairman and the member had disassociated themselves from the selection process as Respondent 13 was competing. It was argued by the learned Counsel for the Petitioners that relatives of the members simpliciter were not disqualified from applying for the post advertised. The plea that other members, who were bureaucrats and would be having a liking and soft corner for each other, did not find favour with this Court and ultimately the said plea was

rejected.

30. In Article 124(4) "misbehaviour" means wrong conduct or improper conduct. It has to be construed with referenced the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or the statute under consideration. Every act or conduct or error of judgment or negligence by a constitutional authority per se does not amount to misbehaviour. Misconduct implies a creation of some degree of mens rea by the doer. Wilful abuse of constitutional office, wilful misconduct in the office, corruption, lack of integrity or any other offence involving moral turpitude would be misbehaviour. Judicial finding of guilt of grave crime is misconduct. Persistent failure to perform duties or willful abuse of the office would be misbehaviour. On the facts and in the circumstances of the case this Court is of the opinion that Charge 1 that Dr. Mirdha, who was the Chairman of OPSC, committed misbehaviour by not informing that his two married daughters were to appear in the examination is not proved.

31. As far as the second charge is concerned, this Court finds that on 12.6.2001 it was intimated that the meeting of the Commission would take place on 14.6.2001 for discussion and disposal of various cases relating to promotion, etc. and the agenda was circulated. On 13.6.2001 Dr. (Ms) Pratiba Ray alleged that the Chairman had threatened her with life and also threatened other members of the Commission on many occasions in the Commission's meetings. It was also alleged that on 7.6.2001 the Chairman had misbehaved with her and threatened to launch a tirade against the three members of the Commission. On 14.6.2001 Dr. (Ms) Ray had also filed a complaint with the police and given the same a wide publicity in the newspapers. On 14.6.2001 the Chairman fell ill and, therefore, the meeting had to be cancelled. The intimation indicating cancellation of the meeting was circulated amongst the members of the Commission. However, the members preferred to hold the meeting in the absence of the Chairman and discussed the matters which were not forming part of the agenda and decided that the examination be postponed to a later date as according to them, the examination process had vitiated.

32. The three members of the Commission thereafter requested the Chairman on 18.6.2001 to hold an emergent meeting on 19.6.2001. The said meeting was conducted under the chairmanship of Dr. Mirdha. The Chairman did not agree to the postponement of the examination because postponement would have resulted in huge loss to the Commission. However, the members with a majority decision decided to postpone the date and also decided to give wide publicity through media.

33. On 19.6.2001 there was no agenda for discussion regarding OCS (Main) Examination in the Commission's meeting. However, Mr. Sarkar brought one page note-sheet mentioning that "Discussed. Dr (Ms) Pratiba Ray, will remain in charge of OCS Examination, 2000 (Main)", which was signed by two other members also. The Chairman did not agree with the said proposal and gave his

note of dissent. The matter was not discussed as an approved agenda in the Commission's meeting.

34. The police investigated into the complaint of Dr. (Ms) Ray regarding the threatening phone call made by Dr. Mirdha on 7.6.2001 and submitted the final report stating that the case was closed for want of evidence. The record further shows that the final report of the police was accepted by the learned Magistrate and Dr. (Ms) Prativa Ray did not file the protest petition.

35. The proceedings of different meetings of the Commission would indicate that Dr. Mirdha had not acted in a manner so as to compromise the image, the dignity and the impartiality of OPSC. Therefore, the said allegation does not stand proved. Further, no credible evidence could be adduced before this Court that Dr. Mirdha, who was the then Chairman of OPSC, had been associated with a private coaching center at Sambalpur known as OAS Coaching Centre providing classes in respect of the examination 'being conducted by OPSC, even while holding the office of member/Chairman of OPSC. Therefore, it is difficult to hold that Charge 2 levelled against Dr. Mirdha is proved.

36. As far as Charge 3 is concerned it was alleged that Dr. Mirdha as Chairman, OPSC, had received Rs. 1:5 lakhs to favour one Ms Ajanta Nayak to get her selected as Junior Lecturer in Home Science for a post advertised on 26.1.1999 in respect of which written examination was held on 5.3.2000 and the oral interview was held on 12.6.2000. What was alleged was that Ms Ajanta Nayak was selected despite she having secured the lowest marks in the written test whereas the marks awarded to Ms Patro, at oral interview, who had secured the maximum marks in the written test, were intentionally reduced at the behest of Dr. Mirdha.

37. It is relevant to notice that the charge of bribery was levelled by Ms. Patro after about six months by writing a letter to the Chief Minister. According to her, she was informed by Ms Ratna Sahu, who was one of the experts in the subject that she was given a pencil in place of a pen to allot marks and that when she came down the steps after the interview she found some people discussing that a bribe of Rs. 1.5 lakhs was paid by Ms. Ajanta Nayak to the Chairman.

38. It is an admitted fact that the Lokpal had recorded the statement of two witnesses i.e. Ms Ratna Sahu and Ms Adarmani Baral, whose niece had appeared in the interview. The Lokpal did not administer the oath nor got the statements verified. As per the statement when Smt. Adarmani Baral was sitting in the waiting room, there was a discussion regarding bribe having been paid to the Chairman. The Chairman had replied that in the written test conducted, Ms Pranati Patro had secured 102 marks whereas Ms Ajanta Nayak had secured 126 marks. It was also mentioned by him that one Susmita Behera had secured 116 marks and Smt. Bharti Nayak had secured 114 marks. What was stated by the Chairman was that a viva voce test of 20 marks was held wherein Ms Patro and Smt. Bharti Nayak secured 14 marks each whereas Ms Ajanta Nayak secured 18

marks and Smt. Susmita Behera had secured 20 marks and, therefore, even if said Ms Patro had got 20 marks in the viva voce test, she would not have been selected. Having perused the record of the case, this Court finds that even on preponderance of probability the charge that the Chairman had accepted a sum of Rs. 1.5 lakhs as bribery for favouring Ms Ajanta Nayak is not established. In the absence of cogent and reliable evidence this Court finds that Charge 3 levelled against the Chairman of OPSC is not proved.

39. The net discussion made above indicates that none of the charges levelled against Dr. Mirdha stands proved. The reference is, therefore, decided in favour of Dr. Mirdha and answered in the negative.

40. The reference accordingly stands disposed of.