

**(2011) 02 AHC CK 0148**  
**In the Allahabad High Court**  
**Case No : Service Signal No. 202 of 2011**

Jaiveer Prasad Gautam and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

---

**Date of Decision :** 11-02-2011

**Acts Referred:**

Constitution of India, 1950 — Article 19, 226  
Penal Code, 1860 (IPC) — Section 292(2), 294  
Uttar Pradesh Government Servants (Conduct) Rules, 1956 — Rule 14, 3(2)  
Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999 — Rule 4, 7

**Citation :** (2011) 2 ADJ 635 : (2011) 128 FLR 1105

**Hon'ble Judges :** Ritu Raj Awasthi, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

Ritu Raj Awasthi, J.—Heard Dr. L.P. Misra, learned Counsel for the Petitioners as well as Sri Manjive Shukla, learned Standing Counsel appearing for the opposite parties and perused the record.

2. The instant writ petition has been filed challenging the impugned suspension orders dated 22.12.2010 as well as the charge sheets dated 30.12.2010, contained in Annexure Nos. 1 to 4, to the writ petition. The Petitioners are said to be the President and General Secretary of the Directorate General of Medical Health and Family Welfare Ministerial Association, Lucknow. The Petitioners are employed in the Directorate on the posts of Senior Assistant and Junior Clerk respectively. The election of the Ministerial Association was said to have been held on 1.12.2010 and the oath ceremony of the office bearers was held on 22.12.2010 in the premises of the Directorate of the Medical Health and Family Welfare, Lucknow at about 4.00 P.M. in the presence of the senior officers. It appears that after the oath ceremony was over, a cultural programme was organized at the same place in which certain dance and songs programmes were performed by the artists, who were called from outside. The said dance programme was telecasted by some News Channels indicating that some

indecent dance programme was organized in the Directorate of Medical and Health Services U.P., in which some employees were found consuming liquor and behaving indecently in intoxication state. In this regard, a news item was also published in the newspapers. Thereafter, taking a serious view to the aforesaid incident, a Three Member Committee was constituted which submitted its report dated 30.12.2010, holding the Petitioners, prima facie, guilty under the Uttar Pradesh Government Servants Conduct Rules, 1956.

3. Learned Counsel for the Petitioners submitted that the impugned suspension orders as also the impugned charge sheets are based on absolutely vague and indefinite allegations which cannot effectively be answered at all and the solitary enquiry report sought to be relied upon as solitary evidence in support of the allegation contained in the charge sheets does not have any substantial material, which could be said to be constituting any act of misconduct on the part of the Petitioners.

4. Learned Counsel for the Petitioners contends that even if the material annexed with the charge sheets is taken on its face value, there is nothing on record to indicate that the Petitioners have been party or have conducted themselves in such a manner which may be termed as "obscene" under the relevant statutory rules. He further submits that a person can only be placed under suspension if the allegation or allegations are such which, if proved, may warrant the imposition of a major penalty.

5. It is contended that the Petitioners have been subjected to deep rooted conspiracy of the Ex-President of the Association and his other associates , who had managed the telecast of the said cultural programme in a manner to harm the Petitioners.

6. The main emphasis of the counsel for the Petitioners is that a dance programme performed on a film song and which has the approval of the Film Censure Board by an artist in a cultural programme shall not be termed as "obscene" and it has to be seen under the background and the circumstances of the programme and an act may be obscene for certain persons, but the same may be an act of art for the others. As such the charge as made out in the charge sheet is vague and indefinite as it does not satisfy the alleged obscene act.

7. Learned Counsel for the Petitioner further says that if a person is not told clearly and definitely what are the allegations and on which charges preferred against him are founded he can not possibly by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

8. He further submits that Rule 7 (ii) of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, provides that for the purpose of holding a departmental enquiry for imposition of major penalties the facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge

or charges for being provided to the delinquent. Rule 7(iii) provides that the charges framed shall be so precise and clear as to give sufficient indication to the charged Government servant of the facts and circumstances against him. Since the charge sheets, in the present case, do not provide the definite and specific allegation, as such it suffers from illegality. It is also contended by the counsel for the Petitioners that Rule 4 of the aforesaid Rules 1999, provides that the suspension should not be resorted to unless the allegations against the Government servant are so serious that in the event of their being established may ordinarily warrant major penalty. However, as per the charge sheet it cannot be presumed that the Petitioners in any manner were involved in the alleged obscene activities or misbehaviour or having liquor, as such no major penalty can be inflicted on the Petitioners even if the charges stand proved against them.

9. Learned Counsel for the Petitioners also tried to emphasize that if the enquiry report dated 30.12.2010, is taken on its face value, it does not indicate any material on record on the basis of which the alleged charge can be proved against the Petitioners as in the charge sheet the only evidence relied upon is the relevant portion of the enquiry report dated 30.12.2010, on the basis of which the alleged charge cannot be proved.

10. In support of his arguments, learned Counsel for the Petitioners has relied on the judgment in the case of Surath Chandra Chakrabarty Vs. State of West Bengal, wherein the Apex Court has observed that no proper enquiry could be held if there is vagueness and indefiniteness in the charges. Learned Counsel for the Petitioners has also placed reliance on the judgment rendered in the case of State of Uttar Pradesh Vs. Mohd. Sharif (Dead) through Lrs., wherein the Hon. Apex Court observed as under:

...Admittedly, in the charge-sheet that was framed and served upon the Plaintiff no particulars with regard to the date and time of his alleged misconduct of having entered Government Forest situated in P.C. Thatia District Farrukhabad and hunting a bull in that forest and thereby having injured the feeling of one community by taking advantage of his service and rank, were not mentioned. Not only were these particulars with regard to date and time of the incident not given but even the location of the incident in the vast forest was not indicated with sufficient particularity. In the absence of these Plaintiff was obviously prejudiced in the matter of his defence at the inquiry.

11. In support of the aforesaid pleas, learned Counsel for the Petitioners also placed reliance on the following decisions:

1. Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy,
- 2 The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu,
3. (1999) 7 Supreme Court Cases 409, Zunjarrao Bhikaji Nagarkar v. Union of India and Ors..

12. The learned Standing Counsel, on the basis of the counter affidavit, submits

that the charges as set out in the suspension orders as well as in the charge sheets clearly indicate that in the cultural programme organized by the Petitioners in the Government building certain dance performances were given by the artists invited from outside and the said dance performances were in an obscene manner. Several employees had taken liquor and danced on the tune of the songs sung by the said artists. All these activities were telecasted on various T.V. Channels and the news items were published in the newspapers, which has resulted in tarnishing the image and reputation of the department. He also states that no permission or sanction for holding the said cultural programme was taken or granted by the department.

13. He further submits that such programmes should not be permitted to be organized in the Government premises by the Government employees.

14. The learned Standing Counsel has also contended that it is to be seen in the enquiry proceedings as to whether obscene dance and songs were performed by the artists in the cultural programme organized by the Petitioners.

15. It is further contended that the enquiry report dated 30.12.2010, consists of Video C. Ds. of the said programme, which clearly indicate the seriousness of the charge.

16. In support of his arguments, the learned Standing Counsel submits that Rule 3(2) of the Uttar Pradesh Government Servants Conduct Rules, 1956, provides that every Government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force. Rule 14 of the Rules, 1956, provides that no Government servant shall, except with the previous sanction of the Government receive any complimentary or verdictory address, or accept any testimonial or attend any meeting or public entertainment held in his honour or in the honour of any other Government servant.

17. In order to counter the arguments of the learned Counsel for the Petitioners with regard to the vagueness of the word "obscenity", the learned Standing Counsel relying on the judgment of the Supreme Court in the case of Ranjit D. Udeshi Vs. State of Maharashtra, submits that in order to assess as to whether the act is obscene or not is to be viewed keeping in mind the place and purpose and the circumstances under which the said act has been performed and the same is to be looked into. In the Government departments such cultural programmes cannot be permitted in which dance and songs are performed in the manner which arouse the feelings of certain sections of the employees, especially the women employees, who may feel offended in attending such programmes.

18. The learned Standing Counsel further submits that a film or song might have been granted certification by the Film Censure Board, but such certification is granted with a purpose to convey the message of social evils and wrongs prevailing in the society, but it does not mean that such songs are to be performed in public against the public decency or morality.

19. In support of his arguments the learned Standing Counsel has also placed reliance on the case of Bobby Art International, etc. Vs. Om Pal Singh Hoon and others, wherein the Hon''ble Supreme Court while considering the question as to whether the scenes contained in the film "Bandit Queen" were against decency or morality, observed that the film intended to depict consequences of social evil can show the evil itself to the extent it is relevant for the purpose of the film, the use of expletives to advance the message intended by the film by arousing a sense of revulsion against the perpetrators and pity for the victims are fully permissible, in case the theme and plot of the film so demands, however, it does not mean that such scenes or the expletives are to be performed or orated by the youths on a public platform.

20. As per Section 292(2) of the Indian Penal Code, 1860, any pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene, if it is lascivious or appeals to the prurient interest or if its effects are such as to tend to deprave and corrupt persons. The test of obscenity is as to whether the decency of the matter charged as obscenity is to deprave and grab those whose minds are open to such immemorial offences. Section 294 of the Indian Penal Code, 1860, provides that whoever, to the annoyance of others does any obscene act in any public place, or sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months or with fine, or with both.

21. In nutshell, the arguments of the learned Counsel for the Respondents is that such songs or dances which deprave the minds of the audience and viewers should not be allowed to be performed from a platform in a Government organization, as it will send a wrong message to the public at large. The Petitioners were responsible for organizing such programmes and as such they have been rightly charged for the aforesaid alleged misconduct.

22. I have considered various submissions made by the learned Counsel for the parties.

23. It is the admitted fact that the Petitioners after being elected as the President and General Secretary of the Employees Association, had organized the cultural programmes inside the premises of the Directorate of Medical and Health Services, U.P., on 22.12.2010 after the oath ceremony was over and for organizing the said programme, as aforesaid, no permission or sanction was taken from any of the higher authority. It has not been denied by the counsel for the Petitioners that the said programme was organized by the Petitioners, in which certain artists were invited to perform the dance and sing some songs.

24. So far as the argument of the learned Counsel for the Petitioners that there is vagueness and indefiniteness in the charge and as such the Petitioners cannot effectively give their reply to the charge sheets is concerned, this Court is of the opinion that the word "obscenity" is well defined in the criminal jurisprudence

and the validity of Section 292 of the Indian Penal Code, 1860, has been upheld by the Apex Court in the case of *Ranjit D. Udeshi v. The State of Maharashtra* (Supra), observing as under:

...The cherished rights of freedom of speech or expression on which our democracy rests is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality. Section 292 Penal Code manifestly embodies such a restriction because the law against obscenity, of course, correctly understood and applied, seeks no more than to promote public decency and morality. The word obscenity is really not vague because it is a word which is well understood even if persons differ in their attitude to what is obscene and what is not.

25. It is to be noted that Article 19 of the Constitution of India, guarantees complete freedom of speech and expression but it also makes an exception in favour of the existing laws which impose restrictions on the exercise of the right in the interests of public decency or morality.

26. The word "obscenity" in fact means "public decency and morality". If any act does or word spoken is against the public decency or morality, it is treated to be obscene. So far as the evidence in support of the alleged charges is concerned, suffice is to mention that the same is to be seen by the Enquiry Officer in the enquiry proceedings. It is for the prosecution to prove the charge on the basis of the evidence relied upon in support of the charges. The Court in exercise of power, under Article 226 of the Constitution of India, is not supposed to pre-judge the issues and form an opinion with respect to the charge as to whether, it would be proved or not on the basis of evidence on record? It is for the Enquiry Officer to decide whether a delinquent employee is guilty of the charge or not. This Court is of the considered opinion that the allegations of the misconduct as per the charge sheets is to be seen in the departmental enquiry and no interference is required in this regard at this stage. There is no material on record to find out as to whether the allegation made against the Petitioners in the charge sheets is due to a deep rooted conspiracy of the Ex-President of the Association and his associates as alleged by the counsel for the Petitioners.

27. Without expressing any opinion on the merits of the allegation or the charge, I am of the considered opinion that the Petitioners shall face the departmental enquiry and the enquiry proceedings shall be concluded expeditiously in accordance with law, after giving adequate opportunity of defence to the Petitioners as per the relevant rules, regulations and the Government Orders in this regard and a final decision shall be taken by the competent authority in accordance with law.

28. Accordingly, the writ petition being devoid of merits is liable to be dismissed and the same is hereby dismissed.

29. However, in the interest of justice, it is hereby provided that the enquiry shall be concluded expeditiously and a final decision shall be taken by the competent authority, as observed above, within a period of four months from the date a certified copy of this order is produced before the competent authority. The Petitioners shall cooperate in the enquiry proceedings.

30. No order as to costs.