
(1959) 04 AHC CK 0019
In the Allahabad High Court
Case No : Civil Misc. Writ No. 2218 of 1958

Laxmi Narain Pande

APPELLANT

Vs

Dist. Magistrate and Another

RESPONDENT

Date of Decision : 02-04-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 310, 311
Criminal Procedure Code, 1898 (CrPC) — Section 195(2), 479A
Uttar Pradesh Government Servants (Conduct) Rules, 1956 — Rule 23, 3

Citation : AIR 1960 All 55

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant; Laxmi Saran, Addl. Junior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—This is a petition under Article 226 of the Constitution praying for the issue of a writ of mandamus directing the District Magistrate and Collector, Ballia and the Sub-Divisional Officer, Ballia not to proceed with a departmental enquiry into the conduct of the petitioner and not to enforce an order of suspension passed against the petitioner by the Collector of Ballia. The petitioner has made the following allegations in his affidavit supporting the petition.

2. He entered the service of the State of Uttar Pradesh in the year 1952 and worked as permanent Supervisor Qanungo for several years. In May 1958 lie was appointed Naib Tahsildar Taxation, He alleges that, on or about 26th July, 1958, a conspiracy was hatched to "frame" the petitioner and involve him in serious trouble. According to him the author of this conspiracy was a man called Chaturbhuj Sahai who was an officiating Sadar Qanungo and living as almost next door neighbour to the petitioner. "This man"s motive or cause of hostility to the petitioner has been detailed in several paragraphs of his affidavit.

The petitioner alleges that Chaturbhuj Sahai, though senior to the petitioner, was officiating as Sadar Qanungo with effect from February 1958. He remained under suspension for several years for "misappropriation etcetra" and came out of the clouds only recently. The petitioner further alleges that Chaturbhuj Sahai's financial condition was "far from satisfactory" as a result of his suspension and on account of his family troubles. Consequently, after he was appointed officiating Sadar Qanungo "he has been making efforts for making gains for himself in numerous ways".

But the petitioner "did not cooperate with him in his designs", with the result that he was not in the good books of Chaturbhuj Sahai. In May 1958 the petitioner was appointed Naib Tahsildar Taxation but the hopes of Chaturbhuj Sahai "in respect of the applicant (the petitioner) were belied", As far as I have been able to understand this allegation, it contains the obvious innuendo that Chaturbhuj Sahai was trying to abuse his official position for the purpose of making illegal gains but the petitioner prevented him from doing so, or at any rate, did not cooperate with him in his designs, and that this was one of the contributory causes of Chaturbhuj Sahai's hostility to the petitioner, the other being his natural hostility to a person who though his junior in years, had shot ahead of him and had been promoted Naib Tahsildar Taxation.

Another cause which, according to the petitioner, fanned Chaturbhuj Sahai's hostility to him was his (Chaturbhuj Sahai's) desire to "push up" a man called Asthana who, though junior to the petitioner, was expected to be more accommodating in the matter of helping Chaturbhuj Sahai in his financial difficulties. The petitioner's case is that for all these reasons Chaturbhuj Sahai wanted the petitioner out of the way and hatched a conspiracy to achieve his object.

3. The details of the conspiracy are given in the petitioner's affidavit. He says that Chaturbhuj Sahai made a false allegation against him that, on the night between 26th and 27th July 1958, the petitioner entered the house of Chaturbhuj Sahai for the purpose of illicit intercourse with the latter's wife. The petitioner alleges that this false allegation was manufactured in the course of that very night by Chaturbhuj Sahai. One of the reasons which may have prompted Chaturbhuj Sahai to make this allegation may be, according to the petitioner, "That he is addicted to liquor and the conspiracy related to the home affairs of the said Sri Chaturbhuj Sahai". This last allegation has been left vague and no particulars have been given.

4. The petitioner alleges that no incident happened that night. He points out that no police report was made and he was never taken to the police station. According to him, the allegation subsequently made by Chaturbhuj Sahai was a complete fabrication.

5. Chaturbhuj Sahai made a complaint to the District Magistrate and Collector. According to the petitioner, this was in furtherance of the conspiracy against him.

The District Magistrate deputed the Sub-Divisional Officer, Ballia, respondent No. 2 to make an enquiry into the matter. The petitioner makes the grave allegation that Chaturbhuj Sahai "approached the Sub-Divisional Officer Dr. Anand Raja". I take this allegation to mean that Chaturbhuj Sahai went to the Sub-Divisional Officer with a request that the enquiry should be tilted in his (Chaturbhuj Sahai's) favour.

This, according to the petitioner is borne out by the subsequent conduct of the Sub-Divisional Officer. That Officer did not record the petitioner's Statement before him correctly. The petitioner had deposed before him that the entire incident narrated by Chaturbhuj Sahai was a complete fabrication and he had further submitted that Chaturbhuj Sahai should be asked to seek his redress in the criminal courts, as the petitioner was not accused of having done anything in the course of his official duty, but this statement was not recorded by the Sub-Divisional Officer, Dr. Anand Raja for, to quote the petitioner's own words "if this statement had come up on the record Dr. Anand Raja knew very well that the entire gain (case) would be scuttled and therefore he did not record the statement of the applicant as he wanted".

If the petitioner is to be believed the Sub-Divisional officer deliberately falsified the petitioner's statement. When however the petitioner was asked to sign the statement as recorded by that officer, he refused to do so. This offended the Sub-Divisional Officer who eventually submitted his report to the Collector. The petitioner alleges that he is ignorant of the contents of that report. Subsequently, the petitioner made an application before the Collector in which he made allegations against the manner in which that officer had conducted the enquiry.

He alleged that the Sub-Divisional Officer had incorrectly recorded his statement and that when he had protested against this, he was asked to go out of the room with the result that the petitioner left the room without signing the statement. The petitioner also alleged in this complaint that the Sub-Divisional Officer had incorrectly recorded the statements of other witnesses produced by the petitioner's accuser. This complaint was made on 30th July, 1958 -- that is on the same date on which his statement was recorded by the sub-Divisional Officer.

6. According to the petitioner, the District Magistrate "did not relish the assertions" made by him and on 30th July he passed an order suspending the petitioner, a copy of which has been filed as annexure "E" of the petitioner's affidavit.

7. Aggrieved by the proceedings and by the order of suspension the petitioner filed the present petition which was admitted by Jagdish Sahai, J. on 9th August, 1958. The learned Judge observed that "this case raises an important question of law", but the petitioner's prayer for an interim order staying the departmental enquiry was refused. The Court however directed the respondents that, though the enquiry against the petitioner might continue, he shall not be dismissed from service during the pendency of this petition.

Accordingly, the departmental enquiry appears to have continued and the petitioner was served with a charge-sheet which is attached as annexure "III" of the counter-affidavit filed on behalf of the respondents. The petitioner has impugned the legality of the departmental enquiry against him on the following grounds :

8. First, he contends that, even assuming that the allegation made against him by Chaturbhuj Sahai is true, the respondents should have directed him to seek his redress in the criminal courts and file a complaint against the petitioner. According to him, there was no valid reason, for discriminating in favour of Chaturbhuj Sahai merely because the Collector or the Sub-Divisional Officer wanted to favour him. Secondly, the petitioner contends that the alleged misconduct imputed to the petitioner, even assuming the allegation to be true, was not committed in connection with duties of the petitioner and therefore not covered by any provisions of the Government Servants' Conduct Rules. Thirdly, the petitioner submits that the order of suspension passed against the petitioner is unauthorised by law as the departmental enquiry itself is without jurisdiction.

Lastly, the petitioner contends that the order of suspension was passed with the intention of reducing the petitioner in rank and promoting a junior in his place. I take this last contention to mean that the decision against him is mala fide.

9. The petitioner is opposed by the respondents and a counter-affidavit has been filed. It has been sworn by Dr. Anand Raja, Sub-Divisional Magistrate, Ballia against whom the petitioner has made personal allegations of misconduct during the enquiry against the petitioner. In paragraph 6 of his affidavit, the Sub-Divisional Officer swears that the allegation of the petitioner that Chaturbhuj Sahai ever approached him (the officer) is false. This officer also denies the allegation that he incorrectly recorded any part of the petitioner's statement made before him.

According to him, the statement was recorded in detail in the manner in which the petitioner gave it. The officer has given his version of the circumstances in which the petitioner did not sign the statement. He states that the petitioner read the recorded statement twice, then begged for pardon and went away without signing it. A true copy of the petitioner's statement, with the enquiry officer's note at the end of it is attached as annexure "I" of the counter-affidavit.

In his statement, as recorded, the petitioner admitted that he entered the house of Chaturbhuj Sahai on the night of July 26/27, 1958 at midnight. Translated into English, the statement runs as follows :

"The house of Sri Chaturbhuj Sahai Sadar Qanungo is in my neighbourhood. On the night of 26th/27th July, 1958, at or about mid-night, I entered his house and went up-stairs. At the time I was wearing a vest and a Lungi. His (Chaturbhuj Sahai's) wife was not sleeping on the roof nor did I catch hold of her hand with an evil motive. His wife raised no alarm on my holding her hand for I had not done so with any bad motive. His wife went down-stairs, and I remained up-

stairs. Almost, immediately afterwards, within two or three minutes, Sadar Qanungo came up-stairs with a lantern in his hand.

I was standing in the verandah of the roof covered by a tin shed. The Sadar Qanungo did not catch me by the hair or hand. He raised an alarm and summoned the neighbours. After sometime Sri Hari Har Pandey Rama Shankar Pandey Raj Narain Pande and Sheo Shankar Ojha came up-stairs after hearing the noise. These people scolded me. Meanwhile my wife, having been informed of the incident, came to the Qanungo's house and climbed up-stairs. She was weeping and pleading, "Please let him go; a mistake has been committed."

Thereupon I snubbed her. After some time we went down-stairs. I cannot say whether Sri Solomon, Inspector C. I. D. or Shree Kant Ojha were present on the spot or not, as it was night time. I cannot say whether these people scolded me or not. After this we went home. I cannot say when the other people left."

There is a further statement with a note by the Sub-Divisional Officer :

"He volunteers :

The Sadar Qanungo's wife took me to her house after saying to me, The Sadar Qanungo is not feeling well and he is calling for you. Please come". I went and then (she) shut the door from inside. She took me up-stairs. There she started relating her tale of woe (Dukhare rone lagi)."

The above statement is signed by the Sub-Divisional Officer, Dr. Anand Raja but not by the petitioner. There is a note by the enquiry officer :

"After giving his statement on oath and going through the same he refuses to sign and begs for pardon."

10. It is further stated in the counter-affidavit that the petitioner never made any statement before the Sub-Divisional Officer to the effect that the incident was false and fabricated and that Chaturbhuj Sahai should be directed to seek redress in the Criminal Court.

11. The Sub-Divisional Officer further states in his counter-affidavit that, after the enquiry he submitted his report to the Collector in which he had held that it was established that the petitioner entered the house of the Sadar Qanungo, went upstairs where the wife of the Sadar Qanungo was sleeping as usual and tried to catch her hand for an immoral purpose. As stated above, the petitioner claims to be completely ignorant of the findings of the Sub-Divisional Officer or the contents of the representation submitted by him. This is obviously incorrect for he has filed a copy of the order of the Collector dated 30th July, 1958, suspending him. This order is based on the finding of the Sub-Divisional Officer and contains its gist of it; the operative portion of the order is as follows : --

"On a complaint being received from Shri. Chaturbhuj Sahai the enquiry was delegated to Dr. Anand Raja S.D.O. Ballia, and from his report dated 30-7-58 it is prima facie established that the Supervisor Kanungo Shri. L.N. Pandey, had

entered the house of Sadar Kanungo on the aforesaid night, had gone upstairs where the wife of Shri. Chaturbhuj Sahai was sleeping and tried to catch her hand for an immoral purpose. Shri. L. N. Pandey is placed under suspension with immediate effect and proper disciplinary proceedings will be drawn against him. Inform Shri. Pandey Office will put up Draft charge sheet for my approval. An intimation will also be sent to the Board of Revenue intimating the action taken accordingly against the S. K.

Sd. B. D. Seth I.A.S. Collector, Ballia. 30th July, 1956."

From this paragraph it is clear that on 30th July, 1958 the petitioner was aware that the Sub-Divisional Officer had held in his report that the petitioner had made an entry into the house of Chaturbhuj Sahai on the night of 26/27 July, and molested his wife.

12. The sequence of events after the petitioner's suspension must be noted. On 30th July he was suspended, and a charge sheet was in the making. Before it could be served on him, he filed this petition on 8th August, 1958. He tried to stop the enquiry by means of a stay order, but this prayer was rejected, and the proceedings against him were allowed by this Court to continue subject to the condition that he should not be dismissed during the pendency of the petition.

On 24th August, 1958, the petitioner was served with a charge sheet, a copy of which is annexure 3 of the counter affidavit. On 13th October 1958 the counter-affidavit on behalf of the State was filed in this Court, the petitioner having been served with a copy of it on 10th October. On 3rd November the petitioner filed his affidavit in rejoinder. In it he reiterated his earlier allegation that the Sub-Divisional Officer had recorded a distorted and incorrect version, of what the petitioner had stated before him during the enquiry.

He also repeated his accusation that this Officer's mind had been prejudiced by Chaturbhuj Sahai (at will be recalled that the petitioner had alleged in his original affidavit that Chaturbhuj Sahai had "approached" this Officer. He repeated this allegation in paragraph 7 of the affidavit in rejoinder). The petitioner admits that the charge sheet has been served on him, but states that the charges have been framed as a vindictive measure and are mala fide.

13. Learned counsel for the petitioner, Mr. S. N. Misra, contended that the entire proceedings against the petitioner are without jurisdiction. His argument is that an enquiry in respect of misconduct alleged against a State servant must relate to misconduct committed in connection with his duties as a Government servant. But if the alleged act, which is the foundation for the charge of misconduct, has no relation to the servant's duties, he is not answerable to the State and any enquiry in respect of it would be without jurisdiction.

Mr. Misra pointed out that the petitioner has been accused of having entered the house of Chaturbhuj Sahai at night for an immoral purpose. Learned counsel contended that, even if this allegation had been true, it concerned the private life

of the petitioner and had no connection with his duties as an official. According to him, the State had no jurisdiction to call upon the petitioner to explain his conduct or to punish him for it.

14. Mr. Misra further contended that the charge against the petitioner amounted to an accusation that he had committed a criminal offence. In such a situation, the only course open to the Government was to direct the accuser Chaturbhuj Sahai to make a criminal complaint against the petitioner, so that his guilt could be established or negative in a court of law,

15. Mr. Misra went to the length of arguing that where the charge against a Government servant amounts to an accusation, that he has committed a criminal offence, there can be no departmental enquiry against him. In such a case, according to him, the charge must be investigated by a criminal court, and a complaint filed against him. He pointed out that in the present case no complaint had been filed against him by Chaturbhuj Sahai and he had been deprived of the opportunity of vindicating himself in a court of law.

Instead, the charge against him was being sought to be established by means of a departmental enquiry. Mr. Misra argued that the proceedings, are not only unfair but without jurisdiction. He contends that Government has no power to conduct an enquiry into a servant's conduct which, on the face of it, amounts to a criminal offence. It must refer the enquiry to a criminal court.

16. Mr. Misra relied on paragraphs 72 and 73 of the Government Manual. He pointed out that these two rules relate to misconduct alleged to have been committed by the accused in connection with his official duties. Rule 72 provides that, if the alleged misconduct is also a crime, his Superior officer may either try the Government servant departmentally or direct his prosecution under the criminal law. Rule 73 provides that if the official is acquitted by the criminal court its verdict should be "accepted by Government unless the order of the Court shows that the officer has not obtained --what is called popularly a "clean" acquittal.

17. Mr. Misra pointed out that these two rules related to misconduct alleged to have been committed by a Government servant in connection with his duties but, according to him, the significance of these rules is that if an official is accused of a crime in connection with his duties but acquitted by a court, the Government cannot try him for the same offence departmentally. He further pointed out that no provision similar to paragraphs 72 and 73 had been made in case of misconduct unconnected with a Government servant's duties, nor is such misconduct covered by any specific or implied orders of Government.

It follows therefore that no departmental proceedings can be taken against a Government servant for any misconduct done outside the scope of his duties and wholly unconnected with them. Mr. Misra argued that if there had been any intention to invest Government with powers to try Government servants for acts unconnected with their duties, there would have been a provision corresponding

to paragraphs 72 and 73 mentioned above.

18. Mr. Misra conceded that the Government had given itself the power to try Government servants for certain types of misconduct unconnected with their official duties, but those are specified in the Uttar Pradesh Government Servants Conduct Rules. For example, Rule 5 prohibits a Government servant to take part in politics or elections; Rule 10 prohibits him to ask for subscriptions for any purpose except, with the previous sanction of the Government, for a charitable purpose connected with medical relief, education or other objects of public utility; Rule 11 prohibits him to accept gifts without the previous approval of Government; Rule 22 imposes a ban on lending or borrowing money; Rule 23 contains an injunction to avoid habitual indebtedness or insolvency; and so on.

But, apart from the specific injunctions and directions, a Government servant was not answerable for his actions unconnected with his official duties. He is as free as any other citizen to conduct his private affairs subject, of course, to the limitation that he must not violate the law. If, however, he does violate it and commits an act which amounts to a criminal offence, he should be prosecuted and the verdict of the court obtained. If he is convicted, Government acquires the right to dismiss or remove him without even complying with the provisions of Article 311(2). But, Mr. Misra argued, unless he is convicted by the court, Government has no power to enquire into an official's conduct in a matter wholly unconnected with his duties.

19. Applying these principles to the case of the petitioner, Mr. Misra argued that the incident in which the petitioner was involved on the night of 26th July had no connection with his official duties. He was accused of having entered the house, of a neighbour and made immoral advances to his wife. This act had nothing to do with his duties as Sadar Kanungo, Government, therefore, had no power to institute a departmental enquiry against the petitioner as his conduct did not come within the specified categories of conduct enumerated in the U. P. Government Servants Conduct Rules. But Government had the power to dismiss or remove him if it was proved that the petitioner had committed a criminal offence. But this could only be done in a criminal trial and not in departmental proceedings. The entire proceedings therefore were misconceived and without jurisdiction.

20. I do not agree. If the petitioner's contention that a Government servant is not answerable to Government for misconduct committed in his private life is correct, the result would be that, however, reprehensible or abominable a Government servant's conduct in his private life may be, the Government would be powerless to dispense with his services, unless and until he commits a criminal offence or commits an act which is specifically prohibited by, the U. P. Government Servants Conduct Rules.

This would clothe Government servants with an immunity which would place the Government in a position worse than that of an ordinary employer. It would be

almost destructive of the principle laid down in Article 310 of the Constitution that every Government servant holds office during the pleasure of the President or the Governor, as the case may be. The power of the State to dispense with the services of any Government servant, though hedged with safeguards contained in Article 311 and other provisions of the Constitution, is real. I had the occasion to discuss the scope and extent to this power under Article 310 in the case of *Moiuddin v. State of U. P.*, Writ Petition No. 3559 of 1958 decided on 30-1-1959 and observed as follows:

"Article 310 invests the State with absolute control over the tenure of every State servant (subject to the safeguards contained in Article 311). This wide power was conferred on the State by the founders of the Constitution in their wisdom and for reasons of sound public policy. They adopted the British principle (subject to the safeguard of Article 311) under which the Crown can remove any servant at pleasure. This was no idle provision inserted in a light-hearted manner by persons who did not realise its implications. The fathers of the Constitution devoted a special chapter to the services under the Union and the State. Article 310 was woven into the fabric of the Constitution. They could have followed other Constitutions under which the State servants have been granted rights against the State. But, with their eyes open, they adopted the maxim guaranteee been plecito (with safeguards) under which the Crown can remove any servant at pleasure. They made it the most important pillar of Chapter XIV--the pillar on which rests the State's control and power of discipline over its servants. Why? Presumably because they realised that, in the peculiar conditions of India the interests of discipline and efficiency required that every State servant must know his place when "he is talking to the State" so to speak. They wanted every State employee to realise that the state is the master who holds the whip hand and that though the state in India would treat its servants generously in its bounteous liberality, the whip hand must always be there. This appears to be the purpose for which Article 310 invested the State with arbitrary powers over its employees."

21. The limitation imposed by Article 311 on the powers of the State is procedural rather than substantive. The first clause of this Article enjoins in effect that, should the State decide to dismiss or remove a Government servant, the order of dismissal or removal shall not be passed by an authority subordinate to that by which he was appointed. This clearly relates to the procedure to be followed in dismissing or removing Government servants. The second clause provides that no Government servant shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. This again is a matter concerned with the procedure to be followed when inflicting any one of the three aforesaid punishments on a Government servant. This clause ensures that no Government servant shall be condemned unheard.

22. But it is clear that Article 311 does not restrict the power of the State to.

dispense with the services of any Government servant for conduct which it considers to be unworthy or unbecoming of an official of the State, nor does it fetter the discretion of the State as what type of conduct it shall consider sufficiently blame-worthy to merit dismissal or removal. The State has been invested with absolute discretion in this respect. It can demand a certain standard of conduct from Government servants not only when performing their official duties but in their private lives as well.

For example, the State has the power to demand that no Government servant shall re-marry during the life time of his first wife. It may require its officials not to drink alcoholic liquors at social functions. The very fact that Government Servants Conduct Rules contain injunctions against, lending and borrowing and restrictions on the acquisition and disposal of any Immovable property is proof of the very wide powers of the Government in requiring a proper standard of conduct from Government servants even in private life.

In this connection Rule 23 of the U. P. Government Servants Conduct Rules deserves special attention. It says,

"A Government servant shall so manage his private affairs as to avoid habitual indebtedness or I insolvency. A Government servant who becomes a subject of legal proceeding for insolvency shall forthwith report the fall facts to the head of the office or department in which he is employed."

Now, a Government servant who is extravagant enough to run into debts commits no crime nor is he guilty of any misconduct connected with his official duties, but Government has though fit, for reasons of public policy, to warn Government servants that they must avoid habitual indebtedness.

The reason is obvious. A Government servant who is always in debt may not be able to resist the temptation to repair his fortunes by abusing his official position. Similarly, Government has the right to expect that every Government servant will observe certain standards of decency and morality in his private life and shall not go to his neighbour's house in the middle of the night for the purpose of making immoral advances to the neighbour's wife. If Government were to sit back and permit its officials to commit any outrage in their private lives provided it falls short of a criminal offence, the result may very well be a catastrophic fall in the moral prestige of the administration.

23. Mr. Misra however contended that it is always open to the Government to make rules regulating the conduct of Government servants in private life. He pointed to the Government Servants Conduct Rules which contain many injunctions, prohibitions and restrictions. But outside these rules, Mr. Misra argued, a Government servant is free to behave as he likes and is not answerable to Government for any act provided he keeps on the right side of the law. Mr. Misra further contended that Government servants are entitled to assume that the rules regulating their conduct in private life are exhaustive.

He emphasised that the alternative would be to invest Government with arbitrary powers and create a feeling of insecurity among Government servants which would not be in the public interest. I do not agree. In the first place the Government Servants Conduct Rules are not exhaustive. In addition to the Code of conduct specified in these rules, there exists what is known as an "unwritten code of conduct" which must be observed by every Government servant. The following passage from the report of the Board of Enquiry appointed by the British Government in 1928 (Comd. 3037) is relevant to the present controversy:

"His Majesty's Civil Service, unlike other great professions, is not and cannot in the nature of things be an autonomous profession. In common with the Royal Navy, the Army and the Royal Air Force, it must always be subject to rules and regulations laid down for its guidance by His Majesty's Government. This written code is, in the case of the Civil Service, to be found not only in the Statutes but also in Orders in Council, Treasury Circulars and other directions, which may from time to time be promulgated, but over and above these the Civil Service, like every other profession has its unwritten code of ethics and conduct for which the most effective sanction lies in the public opinion of the Service itself, and it is upon the maintenance of a sound and healthy public opinion within the Service that its value and efficiency chiefly depend."

This unwritten code of conduct has been partially incorporated in Rule 3 of the U. P. Government Servants Conduct Rules which runs as follows:

"(3) General-- (1) Every Government servant shall at all times maintain absolute integrity and devotion to duty,

(2) 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."

It is noteworthy that Clause (2) of this Rule requires every Government servant to conduct himself not only in accordance with any specific orders of Government regulating behaviour and conduct which may be enforced but also in accordance with any implied orders--that is to say, he must also honour the implications of the various orders of the Government taken as a whole. There is no doubt in my mind that this rule refers to the unwritten code of conduct and requires Government servants to behave like decent citizens in their private lives. But Rule 3 does not exhaust the contents of the unwritten code.

24. As regards the apprehension that such a wide interpretation of the code of conduct expected of Government servants may result in arbitrary powers being placed in the hands of Government, the simple answer is that the Constitution itself has Invested the Government with such absolute powers. But there are ample safeguards in the Constitution against a wanton abuse of these powers. These safeguards are contained in Arts. 14, 15 and 15 of the Constitution. Furthermore, the rules regulating the conditions of service of Government servants, though not justiceable, provide safeguard which have proved to be

effective in practice.

As observed by the Privy Council in *R. Venkata Rao v. Secretary of State* AIR 1937 PC 81, the rules are in the nature of a "solemn assurance that the tenure of office though at pleasure will not be subject to capricious or arbitrary action but will be regulated by Rule". There is no reason for this Court to assume that the safeguards contained in the various rules will become a dead letter unless they are made justifiable. In any case, a mala fide exercise of any power, however wide, would be open to challenge in the court of law.

25. Mr. Misra relied upon a decision of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , in support for his argument that Government cannot proceed against a civil servant for v misconduct unconnected with his official duties. In that case the Supreme Court held that

"Where a person is appointed substantively to a permanent post in Government service he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired, and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications, and appropriate proceedings are taken under the service rules read with Article 311(2)."

The Court further held that the termination of service of a Government servant who has a right to hold his post must per se be a punishment. In other words, a Government servant with a legal right to hold his post must not be condemned unheard and must be given a reasonable opportunity to show cause against any proposal to inflict the punishment of dismissal or removal or reduction on him. The Supreme Court made no observation resembling even remotely the suggestion made in the present case that the Government has no right to control the conduct of its servants in private life or that Government servants are not answerable to Government for any act unconnected with their official duties unless it is punishable by law.

26. I, therefore, hold that the State has the power, under Article 310 of the Constitution, to dismiss or remove or otherwise punish a Government servant even for acts unconnected with his official duties if Government are of the opinion that if the act in question amounts to misconduct unbecoming or unworthy of a Government official or violates the unwritten Code of conduct: provided that Government comply with the provisions of Article 311 and give a reasonable opportunity to the accused official to show cause against the action proposed to be taken against him.

27. But in the present case, the charge-sheet served on the petitioner relates not only to the conduct of the petitioner in entering the house of Chaturbhuj Sahai on the night of 26th July 1958 but to several other acts done by him which clearly relate to his conduct as a Government servant. As stated above, the petitioner filed this petition without waiting for the charge-sheet to be served on

him. It was conceded by learned counsel that it was necessary to examine the terms of the charge-sheet for the purpose of deciding whether the departmental enquiry against the petitioner is within jurisdiction. The charge-sheet (annexure 3 of the counter-affidavit) contains six charges against the petitioner.

The first relates to his conduct for having entered the house of Chaturbhuj Sahai on the night of 26th July for an immoral purpose. The second relates to his conduct in having absented himself from duty from 30th July 1958 without leave or permission. The third accuses him of having suppressed material information in his application for leave and says that the petitioner was therefore "guilty of indiscipline and dereliction of duty as an official". The fourth alleges that the petitioner filed a false medical certificate in support of his application for leave.

The fifth accuses him of having violated Rule 26 of the Government Servants Conduct Rules inasmuch as he filed a writ petition in this Court against the order of the Collector placing him under suspension, while his representation against this order was still pending with the Commissioner. The sixth states that the petitioner, in his application dated 9th August, 1958, seeking reinstatement on the basis of the order of the High Court dated 8th August, 1958, deliberately used the word "removed" within inverted commas, although this word did not find place in the Court's order, and was thus guilty of an attempt to deceive the Government,

28. A perusal of the charge-sheet shows that, of the six charges brought against the petitioner, only one relates to the incident on the night of 26th July 1955 and the remaining five relate to his conduct as a Government servant. The petitioner's contention the entire proceedings relate to the petitioner's conduct unconnected with his duties is therefore incorrect. Even according to the principles enunciated by learned counsel for the petitioner there is no patent lack of jurisdiction.

It is true that the first charge relates to an act of misconduct unconnected with the petitioner's official duties. But the proper case for the petitioner would have been to raise this point in the departmental enquiry and to contend that the first charge relates to an act of misconduct unconnected with the petitioner's official duties. But the proper course for the petitioner would have been to raise this point in the departmental enquiry and to contend that he is not answerable to Government for any thing done by him in the house of Chaturbhuj Sahai On the 26th July, 1958. If his contention had been accepted, this charge would have been dropped. If, on the other hand, it had been rejected and the finding in the enquiry was against him, it would have been open to him to impugn the legality of any punishment inflicted on him on the basis of this finding. The petitioner, however, rushed to this court in anticipation of the service of the charge-sheet on him.

The verdict of the Court is that Government can proceed against him for misconduct alleged in the first charge. Moreover, it is not possible for this Court

to anticipate the result of the enquiry and assume that the petitioner will be punished on the basis of misconduct alleged in the first charge. The Court cannot ignore the possibility that the petitioner may be acquitted of the first charge but convicted of any or all of the remaining five charges which admittedly relate to his conduct as a Government servant.

29. Thus the petition appears to be misconceived and it must be rejected. At the time of filing the petition the petitioner was under the impression that the departmental enquiry would be in respect of his alleged misconduct on 26th July 1958. He came to this court for relief without waiting for the charge-sheet. After the finalisation of the charges against him it is no longer open to the petitioner that the proceedings are without jurisdiction.

30. In his affidavit the petitioner made serious allegations against Dr. Anand Raja, Sub-Divisional Officer, Ballia, respondent No. 2, who held an enquiry into the incident of 26th July and submitted a report to the Collector of Ballia. In paragraph 13 of this affidavit the petitioner stated,

"that it appears that Sri Chaturbhuj Sahai who is Sadar Kanungo approached the said Sub-Divisional Officer, Dr. Anand Raja and some type of an enquiry was alleged to have been made by him, and when the applicant wanted an opportunity it was refused to him, so much so that the said Sub-Divisional Officer did not record the statement of the applicant as he wanted to give. The applicant had deposed that the incident was completely false and concocted and that if there was any truth in it the complainant, Sri Chaturbhuj Sahai should be directed to proceed in regular criminal Courts, as there was no allegation that the applicant had done anything in the course of his official duty. It was according to Sri Chaturbhuj Sahai after 10 or 11 O'clock in the night. If this statement had come up on the record Dr. Anand Raja knew very well that the entire "case" would be scuttled and, therefore, he did not record the statement of the applicant as he wanted. As the statement as given was not recorded, the applicant refused to sign such a statement. This offended the said Sub-Divisional Officer and he made a report to the Collector, Ballia. The applicant is not aware as to what report he made to the Collector and District Magistrate Ballia, opposite party No. 1."

31. It is noteworthy that this paragraph is sworn as true to the personal knowledge of the petitioner (in fact, the entire affidavit is sworn as true to his personal knowledge.) In it the petitioner has made the following allegations on oath against the Sub-Divisional Officer:

(i) that Chaturbhuj Sahai approached the Sub-Divisional Officer (this implies that the S. D. O. permitted Chaturbhuj Sahai to approach him);

(ii) the petitioner stated before the S. D. O. that the alleged incident on 26th July had been fabricated and was completely false;

(iii) that the S. D. O. Dr. Anand Raja did not record the aforesaid " statement of

the petitioner correctly as he knew that ""if this statement had come up on the record the entire case would be scuttled;

(iv) that the petitioner, on being shown the incorrectly recorded statement, refused to sign it"

32. After the Sub-Divisional Officer had denied these allegations in his counter-affidavit the petitioner reiterated them in his affidavit in rejoinder. In paragraph 4 of this affidavit he states,

"As regards paragraph 4 of the counter affidavit it is stated that the opposite party No. 2 made a perfunctory inquiry, that the statement of the deponent as recorded by him is a distorted and incorrect version of what the deponent had actually said."

In paragraph 6 of the same affidavit he has stated,

"As regards paragraph 6 of the counter-affidavit, it is stated that the opposite party No. 2 has denied some of the contents but all contents, which have been mentioned in the deponent's affidavit are correct. Only to save his neck the opposite party No. 2 has reported "that the deponent begged for pardon and did not sign the statement. In fact when the deponent found that the opposite party No. 2 has not written what the deponent had said, then the deponent refused to sign. There is no reason why the deponent would not have signed his statement, had it been recorded correctly. It is further stated that the improbability of the so recorded statement of the deponent annexure 1 of the counter-affidavit becomes obvious from annexure "B" of the deponent's affidavit in which he has submitted a report to his superior officer,"

33. In paragraph 7 of the same affidavit, the petitioner reiterates his accusation that the Sub-Divisional Officer was privately approached by Chaturbhuj Sahai. He states in this paragraph,

"It is further stated that the opposite party has completely misunderstood the contents of paragraph 12 (not of paragraph 13, as wrongly stated) of the deponent's writ petition. The deponent did not mean that the inquiry by opposite party was made solely at the instance of Sri Chaturbhuj Sahai. What the deponent wanted to suggest was that an impartial and independent inquiry could not possibly be made by the opposite party No. 2 as he was privately approached by Sri Chaturbhuj Sahai."

34. It is noteworthy that the petitioner has given no reason why the Sub-Divisional Officer should have favoured Chaturbhuj Sahai as against him. He states that the officer was privately approached by Chaturbhuj Sahai and has sworn this allegation as true to his personal knowledge, but gives no details as to the time and place of the meeting between Chaturbhuj Sahai and the petitioner.

35. After a perusal of the petitioner's affidavit, the respondent's counter-affidavit and the petitioner's rejoinder affidavit, I am of the opinion that the

petitioner has intentionally made false statements in his affidavits for the purpose of being used in the proceedings in writ petition No. 2218 of 1958.

36. In a number of cases this Court was compelled to observe that allegations of misconduct against Government Officials should not be included in writ petitions unless counsel has satisfied himself that the allegations appear to be true. Writ petitions are decided on the basis of affidavits and parties are not required to subject themselves to cross-examination. This appears to have created the impression among a certain type of litigants that they can make false statement and indulge in mud-flinging against officials with impunity. The petitioner appears to belong to this type. It is the duty of this Court to discourage this kind of conduct and take deterrent action. For the purpose of deciding the dispute raised by the petitioner, this Court is a Civil Court within the meaning of Section 479-A of the Code of Criminal Procedure and a Court within the meaning of Section 195 of that Act.

37. I am of the opinion that for the eradication of the evils of perjury and fabrication of false evidence and in the interest of justice, it is expedient that the petitioner Lakshmi Narain Pandey s/o Pt. Kuber Pandey, r/o. Mohalla Harpur, Ballia City, should be prosecuted u/s 193 of the Penal Code for having made false statements in his affidavit supporting this petition. But I also think fit that the aforesaid Lakshmi Narain Pandey should be given an opportunity of being heard before this Court makes a complaint u/s 193 of the Indian Penal Code against him. I, therefore, direct that a notice shall issue to the aforesaid Lakshmi Narain Pandey calling upon him to show cause why a complaint u/s 193, I. P. C. should not be made against him for having made on oath the statements specified in sub-paragraphs (i), (ii), (iii), (iv) mentioned above, knowing or believing them to be false or without believing in the truth of these statements.

38. The petition fails and is rejected with, costs.