

(2008) 10 OHC CK 0021
In the Orissa High Court
Case No : O.J.C. No. 2603 of 1999

Pabitra Mohan Satpathy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 227(4)
Navy Act, 1957 — Section 111, 113, 117, 118, 119
Penal Code, 1860 (IPC) — Section 409
Prevention of Corruption Act, 1988 — Section 19, 25, 7

Citation : (2008) 10 OHC CK 0021

Hon'ble Judges : R.N. Biswal, J; B.P. Das, J

Bench : Division Bench

Advocate : Bijan Ray, D.P. Dhal, B.K. Panda, D.K. Das, S.K. Tripathy, M.K. Das, A.R. Mohanty and P. Uttarkabat, for the Appellant; P.K. Parhi, A.S.C., Central Government, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—The brief facts as narrated in this writ application are as follows:

2. The Petitioner being a Lieutenant Commander of the Indian Navy was posted at Indian Naval Hospital Ship Nivarini (I.N.H.S. Nivarini) during June, 1993. While working as such, he was attached to the Headquarters, Southern Naval Command/Indian Naval Ship Venduruthy during April, 1996. The Commanding Officer of Venduruthy, Mr. Shyam Kausa served him a charge sheet, which reads as follows:

The accused Lieutenant Commandant (Special Duty Writer) Pabitra Mohan Satapathy, number (09090A), Indian Navy of Indian Naval Ship Adyar, then borne on the books of Indian Naval Hospital Ship Nivarini and presently attached to Indian Naval Ship Venduruthy under the Navy Instructions 95 of 1969, being a person subject to Naval law is charged for that he

(1) Did between first day of August, 1995 and thirty first day of August, 1995

being a public servant, accept from Shri Ibrahim Khan a sum of Rs. 10,000.00 (Rupees ten thousand) only for himself, as gratification other than legal remuneration, as a motive for doing an official act namely, getting Master Suraj Khan, son of Shri Ibrahim Khan recruited in the Indian Navy and thereby committed an offence punishable u/s 7 of the Prevention of Corruption Act, 1988 read in conjunction with Section 77(2) of the Navy Act, 1957.

(2) Did on the thirteenth day of November, 1995 knowingly make false statement in two documents to be used for official purposes, namely, Indian Naval Hospital Ship Nivarini letters numbered 438/13/1 both dated thirteenth day of November, 1995 to Headquarters Southern Naval Command regarding contingent bills numbered 22 and 23 for Rs. 19,635.00 (Rupees nineteen thousand six hundred thirty five) only each for authorization for payment towards local purchase of floor covering, in that he falsely mentioned that the amount has been paid in advance to M/s. Rajib Enterprises of Bhubaneswar, from non-public fund Indian Naval Hospital Ship Nivarini, whereas no such advance payment was made to the firm from non-public fund and thereby committed an offence punishable u/s 60(d) of the Navy Act, 1957.

(3) Did on the fourth day of March, 1996 whilst being entrusted as Logistics Officer, Indian Navy Hospital Ship Nivarini, with a sum of Rs. 39,270.00 (Rupees thirty nine thousand two hundred and seventy) only for payment to M/s. Rajib Enterprises of Bhubaneswar committed criminal breach of trust for a sum of Rs. 9,670.00 (Rupees nine thousand six hundred seventy) in that whilst making payment to the said firm towards two transactions, vide bill numbers (722 and 723 dated 1st day of March, 1996 and 3rd day of March, 1996 respectively, each pertaining to local purchase of 330 square feet of floor covering, he paid a sum of Rs. 29,600.00 (Rupees twenty nine thousand six hundred) only out of the said amount of Rs. 39,270.00 (Rupees thirty nine thousand two hundred seventy) to the firm and thereby committed an offence punishable u/s 409 of the Indian Penal Code read in conjunction with. Section 7(2) of the Navy Act, 1957.

3. The Petitioner faced trial by the Court Martial at INS Chilika under the aforesaid charges and having been found guilty under charge Nos. 1 and 2 was convicted there under and dismissed from service under Annexure-2 and in Review the Chief of the Naval Staff confirmed the order of conviction and punishment as passed by the Court Martial and dismissed the Review petition under Annexure-3. However, the Petitioner was not found guilty under charge No. 3. In this writ petition, under Articles 226 and 227 of the Constitution of India the Petitioner, assails the order under Annexure-2 and Annexure-3 along with Annexure-1, the findings of the Court Martial.

4. As per the case of the Petitioner, the Investigating Officer Y.S. Sarwat, Lieutenant Regulating Officer, INS Chilika not being a competent authority to investigate into the case, investigated into it and recorded the statement of all the prosecution witnesses numbering 10, which is illegal. Furthermore, once while being appointed as President of a Board of Inquiry at Chilika, the Petitioner

probed one bus accident case and Mr. Y.S. Sarwat, who was the officiating Motor Transport Officer then was interrogated by the Petitioner, for which he bore grudge on him and to feed fat that grudge, he investigated into the case to see that the Petitioner was charged under different heads and ultimately convicted thereunder. Ex-Surgeon, Mr. Madan Gupta was the best person to depose about the falsity or otherwise of the charge, because he was the Commanding Officer, INS, Nivarini during the relevant time, but despite requests of the Petitioner, his attendance for examination was not procured by the Court Martial. It is the further case of the Petitioner that no reasons have been assigned in the order of conviction except stating that the Petitioner was guilty of charge Nos. 1 and 2. Furthermore, it is the case of the Petitioner that since prior sanction was not obtained, initiation of proceeding u/s 7 of the P.C. Act against the Petitioner is bad in law.

5. Opp. Parties filed a counter affidavit rebutting the averments of the Petitioner and taking a stand that the Court Martial conducted the case in accordance with law, observing the Principles of Natural Justice and rightly found the Petitioner guilty of the charge Nos.1 and 2 convicted and sentenced him thereunder and that the Revisional Authority rightly dismissed the Revision.

6. At the outset, it is pertinent to mention that the writ petition is filed under Articles 226 and 227 of the Constitution of India as mentioned earlier. In view of Article 227(4) of the Constitution, which envisages that Article 227 does not confer on a High Court power of superintendence over any Court or Tribunal constituted by or under any law relating to the Armed Forces this Court cannot interfere with the impugned order under Article 227 of the Constitution. However, in appropriate case, orders passed by Court Martial can be interfere with by this Court under Article 226 of the Constitution. In this regard, we may refer to the decision of the Apex Court in Union of India and Ors. v. Himmat Singh Chahar AIR 1989 SC 1980 wherein the Apex Court held:

...It is of course true that notwithstanding the finality attached to the orders of the competent authority in the Court Martial proceeding the High Court is entitled to exercise its power of judicial review by invoking jurisdiction under Article 226 but that would be for a limited purpose of finding out whether there has been infraction of any mandatory provisions of the Act prescribing the procedure which has caused gross miscarriage of justice or for finding out that whether there has been violation of the Principles of Natural Justice which vitiates the entries proceeding or that authority exercising the jurisdiction had not been vested with jurisdiction, under the Act. The said power of review cannot be a power of an Appellate Authority to re-appreciate the evidence and coming to a conclusion that the evidence is sufficient for the conclusion arrived at by a competent authority in Court Martial Proceedings.

7. Mr. Ray, learned senior counsel appearing for the Petitioner submitted that since there was ill blood between the Petitioner and the Investigating Officer, Mr. Satwar, the latter ought not have been engaged to investigate into the case. As

found from the pleadings of the Petitioner, he was appointed as President of a Board of Inquiry at Chilikia to probe into a bus accident case and in that capacity interrogated Mr. Satwar, who was the officiating Motor Transport Officer then. There is nothing to show that Mr. Satwar was an accused in that case. It does not satisfy the conscience that only because he was interrogated by the Petitioner in an accident case, Mr. Satwar became antagonistic to the Petitioner. As required under Para-24 of the Guide on Naval Law before proceeding to make an application for trial by Court Martial, a commanding officer, is required to investigate into the case either by himself or appoint a suitable person to investigate into the case. The words "suitable person" is not defined. Mr. Satwar was the Lieutenant Commanding Regulating Officer at INS Chilika. Only because he was interrogated by the Petitioner in the capacity of President of a Board of Inquiry, it cannot be said that he became unsuitable to investigate into the case against the Petitioner.

8. Mr. Ray next submitted that no sanction was obtained to initiate a proceeding u/s 7 of the Prevention of Corruption Act against the Petitioner as required u/s 19 of the said Act and as such the order of conviction and sentence passed thereunder is liable to be quashed. As envisaged u/s 25 of the Prevention of Corruption said Act, nothing in the said Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under the Army Act, the Air Force Act, the Navy Act etc. So, in our considered opinion, sanction u/s 19 of the Prevention of Corruption Act is not required for a proceeding by Court Martial.

9. Mr. Ray next submitted that despite requests of the Petitioner since the attendance of Mr. Gupta, a competent witness was not procured before either Court Martial, the entire proceeding was vitiated. As found from the counter affidavit filed by the Opp. Parties, several steps were taken to procure the attendance of Mr. Gupta, but to no avail. This version had not been rebutted by the Petitioner. The Petitioner was also given a chance to secure the attendance of Mr. Gupta. Moreover, as found from the record besides Mr. Gupta, six other persons were cited as witnesses on behalf of the Petitioner. The Defending Officer submitted that if Mr. Gupta was examined then the other six witnesses were not required to be examined. When, the attendance of Mr. Gupta could not be procured despite sincere efforts, the Petitioner ought to have examined the other six witnesses, particularly when they were in attendance before the Court Martial, but he preferred not to examine them. Under such circumstances, the defence can not take advantage of non-examination of Mr. Gupta.

10. Mr. Roy, next contended that the finding of the Court Martial was not supported by any reason, as such the same required to be quashed. In support of his submission he relied upon several decisions, all of which relate to civil appeals. It would suffice to cite two such decisions. In Smt. Swaran Lata Ghosh Vs. H.K. Banerjee and Others, the apex Court in relation to a civil appeal held:

A judicial determination of a disputed claim where substantial questions of law or

fact arise is satisfactorily reached, only if it be supported by the most cogent reason that suggest themselves to the judge; a mere order deciding the matter in dispute not supported by reasons is no Judgment at all. Recording of reasons in support of a decision of a disputed claim serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy, but of a judicial approach to the matter in contest; it is also intended to ensure adjudication of the matter according to law and the procedure established by law. A party to the dispute is ordinarily entitled to know the grounds on which the Court has decided against him, and more so, when the Judgment is subject to appeal.

In *Balraj Taneja and Another Vs. Sunil Madan and Another*, again the apex Court in a civil appeal held:

Whether it is a case which is contested by the Defendants by filing a written statement, or a case which proceeds ex parte and is ultimately decided as an ex parte case, or is a case in which the written statement is not filed and the case is decided under Order 8, Rule 10, the Court has to write a Judgment which must be in conformity with the provisions of the Code or at least set out the reasoning by which the controversy is resolved.

So, as per the aforesaid two decisions the Judgments should be supported by reasonings.

11. In the case of *S.N. Mukherjee Vs. Union of India*, a case relating to Army Act, the apex Court held:

38. xx xx xx

With regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to record the reasons. The said requirement can not, therefore, be insisted upon in such a case.

39. For the reasons aforesaid, it must be concluded that except in case where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

Coming to the case at hand, it is seen that Chapter XIII of the Navy Act deals with the procedure of Court Martial. As per Section 106 of the said chapter, if the accused pleads not guilty, the Court Martial will proceed with the case. The prosecutor shall open the case by reading the circumstantial letter, so also the description of the offence charged and stating shortly by what evidence he expects to prove the guilt of the accused. Then he shall examine his witness. As per Section 111 of the said Act the accused may apply for summoning defence witnesses and examine them. After closure of evidence from the side of the defence the accused or his advocate sums up the defence case and prosecutor is to reply the same. Then as per Section 113, the trial judge advocate shall sum up in open Court the evidence for the prosecution and the defence and lay down the law by which the Court is to be guided. After the trial judge advocate has finished his summing up, the Court will be cleared to consider the findings. As per Section 117, when the Court has considered the finding, it shall be reassembled and the president shall inform the trial judge advocate in open Court as to the finding of the Court. Then as required u/s 118, the trial judge advocate draws up the finding as announced by the Court. The finding so drawn up shall be signed by all the members of the Court by way of attestation notwithstanding any difference of opinion if any. Where the finding on any charge is one of not guilty the Court shall acquit the accused of that charge. As required u/s 119 if the accused is found guilty on any or all of the charges, before awarding punishment the Court may call evidence as to the previous character or qualification of the accused and any oral evidence of general character that may be adduced, then the accused may make a statement in mitigation of punishment and lead any evidence of character if not done earlier. As required u/s 120, the Court shall then retire and consider and determine on the punishment to be inflicted in conformity with the finding and decide what punishment is proper to be awarded for the offence of which the accused has been found guilty. Then u/s 121 of the Navy Act the trial judge advocate shall draw up the sentence in the prescribed form which shall be signed by every member of the Court by way of attestation. The Court shall then reassemble and the accused brought in, and the trial judge advocate shall by direction of the Court pronounce the sentence.

12. As discussed above, there is no provision in the Navy Act to give reasons by the Court Martial for its finding. Learned Counsel for the Petitioner drawing our attention to Regulation 185A of the Regulations for the Navy Part-II (Statutory) contended that the Court Martial ought to have assigned the reasons for its findings. The said provision reads as follows:

185A. Reason for Finding in Navigational Cases. The reasons for finding of "guilty" or "not guilty" including cases where the Court accepts the "plea of no case to answer" on charges u/s 55 and 55A shall be recorded.

This provision refers to navigational cases and that too in respect of Sections 55 and 55A of the Navy Act only. These two Sections read as follows:

55. Losing ship or aircraft-(1) Every person subject to naval law who wilfully loses, strands or hazards or suffers to be lost, stranded or hazarded any ship of the Indian Navy or in the service of the Government, or loses or suffers to be lost any aircraft of the Indian Navy or in the service of the Government shall be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned.

(2) Every person subject to naval law who negligently or by any default loses, strands or hazards or suffers to be lost, stranded or hazarded any ship of the Indian Navy or in the service of the Government, or loses or suffers to be lost any aircraft of the Indian Navy or in the service of the Government shall be punished with imprisonment for a term which may extend to two years or such other punishment as is hereinafter mentioned.

55A. Dangerous authorized flying Every person subject to naval law, who is guilty of any act or neglect in flying or in the use of any aircraft of the Indian Navy or in relation to any such aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person shall:

(a) if he acts wilfully or with willful neglect, be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned; and

(b) in any other case be punished with imprisonment for a term which may extend to five years or such other punishment as is hereinafter mentioned.

The case at hand does not relate either to Section 55 or 55A quoted above. The aforesaid regulation, rather excludes recording reasons of the findings arrived at by the Court Martial in cases other than the case under Sections 55 and 55A of the Navy Act by necessary implication. So, we are not in one of the submission of the learned Counsel for the Petitioner, Mr. Roy that since no reasons were recorded by the Court Martial in support of its finding Ext.1 to 3 deserve to be quashed. As found from record the Court" Martial proceeded with the present case in conformity with the procedure laid down in Chapter XIII of the Navy Act and that the order of conviction and the punishment do not suffer from perversity leading to miscarriage of justice.

13. Accordingly, the writ petition, being devoid of merit stands dismissed. In the fact and circumstances of the case, parties to bear their own cost.

B.P. Das, J.

14. I agree.