

(1980) 08 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 871 of 1978

Sri Kalandi Charan Mallick

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-08-1980

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 18(1), 18(2), 3
Constitution of India, 1950 — Article 226
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (1981) 51 CLT 67

Hon'ble Judges : P.K. Mohanti, J;N.K. Das, J

Bench : Division Bench

Advocate : P.V. Ramdas, for the Appellant; P.C. Misra, Standing Counsel (Central Govt.), for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—The Petitioner, a clerk in the office of the Departmental Telegraph Office (D.T.O.), Cuttack has filed this writ application for quashing, by the issue of a writ of certiorari, the order imposing the penalty of reduction of pay from the stage of Rs. 420/- to the stage of Rs. 300/- in the time scale of pay for a period of three years with cumulative effect.

2. The house of the Petitioner and his father-in-law were searched by officers of the C.B.I. on 12-4.1969 and movable properties worth Rs. 15,728.30 paise were seized. A criminal case u/s 5(2) read with Section 5(2)(e) of the Prevention of Corruption Act, 1947 was registered but it was subsequently dropped and a disciplinary proceeding was started.

3. The charges framed against the Petitioner were that while functioning as a clerk in the D.T.O. Cuttack on 12-4-1969 he was found to be in possession of assets to the tune of Rs. 48,058.78 paise which was disproportionate to his known sources of income and he could not render any satisfactory explanation for the same and thereby he failed to maintain absolute integrity and devotion to

duty as required under Rule 3 of the Central Civil Service (Conduct) Rules, 1964, secondly during the period between 8-7-1958 and 8-4-1969 he committed grave mis-conduct inasmuch as he acquired landed property in his own name and in the name of his wife without obtaining the previous sanction of the competent authority as required under Rule 18(2) of the said Rules and thirdly on 6-10-1969 he submitted to his authorities an incorrect statement In respect of his assets and liabilities inasmuch as he omitted to mention the lands measuring O. 66 acre purchased by his wife under sale deed Nos. 2091 of 1961, 2799 of 1967 and 2631 of 1969 and thereby violated Rule 18(1) of the said Rules.

4. The Petitioner submitted his by to the charges on 16.2.1971. The enquiry was taken up on 13-7-1971 and completed on 24.1.1976 During the enquiry, the Department Examined 25 witnesses while the Petitioner examined 10 witnesses. Documentary evidence was also adduced by both sides. The Enquiring Officer found the Petitioner guilty of all the three charges. The Disciplinary Authority (O.P. No. 4) agreed with the findings of the Enquiring Officer and issued a second show-cause notice. The Petitioner submitted his show-cause on 10-1-1977 awarded the penalty as indicated above (vide annexure 13). The appeal preferred by the Petitioner was dismissed by O.P. No. 3.

5. Petitioner's contention is that the Enquiring Officer in arriving at the finding on the first charge indulged in surmises and made a speculative estimate of the assets and liabilities by ignoring the material evidence on the record and that there is really no material in support of the finding of the Enquiring Officer. Regarding the second charge, the Petitioner contends that for acquisition of immovable property in his own name by two sale deeds dated 8-7-1958 and 10-12-1958 he has informed the authorities by Exts. D-10 and D-11 and that he was not required to give any information to the authorities about the acquisition made by his wife. As regards the third charge, the Petitioner's case is that the acquisition made by his wife were not within his knowledge.

6. The stand taken by the opposite parties is that the order imposing the penalty is based on appreciation of evidence and this Court cannot reappraise the evidence while exercising its extraordinary jurisdiction.

7. This Court in its certiorari jurisdiction under Article 226 of the Constitution cannot sit in appeal over the findings of fact rendered by domestic Tribunals. Its jurisdiction is very limited in that respect. All that this Court can do is to enquire whether the finding is based on no evidence at all or whether non-consideration of the material evidence on record has resulted in miscarriage of justice. This Court cannot go into the question of adequacy of evidence or apply its own standards of assessment of evidence.

8. Having gone through the records and having heard the learned Counsel for the parties, we are of the opinion that the Departmental Authorities have arrived at the findings of guilt upon their own suspicions or mere suppositions ignoring the evidence favourable to the Petitioner. As we shall presently show their conclusion

on the very face of it is so arbitrary and capricious that no reasonable persons can ever arrive at that conclusion.

9. As regards the first charge, the Enquiring Officer found that the Petitioner's total income during the relevant period was Rs. 64,806.92 paise and his total expenditure was Rs. 53,894.23 paise, thus leaving a balance of Rs. 11,212.69 paise, but on 12-4-1969 the Petitioner was found to be in possession of assets worth Rs. 60,769.23 P. Accordingly the Enquiring Officer held that the excess assets worth Rs. 49,566.64 paise was disproportionate to his known sources of income. The Disciplinary Authority simply agreed with the findings of the Enquiring Officer and did not refer to the evidence on record. The appellate authority without discussing the evidence on record came to hold that the Petitioner's wife did not have any independent source of income and that her father also did not have sound financial position so as to pass on the assets to his daughter.

10. According to the opposite parties, the Petitioner's income from land during the relevant period was Rs. 3,624.41 paise whereas according to the Petitioner it was Rs. 28,8001-. The Petitioner relied on a certificate dated 9-2-1968 granted by the local Tahasildar, long prior to the commencement of the disciplinary proceeding, indicating his annual income from agricultural land to be about Rs. 550000. The Enquiring Officer excluded the certificate from consideration on the ground that it had not been filed as an exhibit and the Tahasildar had not been examined at the enquiry. It appears that this certificate was seized by the Police from the house of the Petitioner on 12-4-1969 at the time of search. From the record of proceedings, it appears that on 1.11.1976 the Petitioner filed an application before the disciplinary authority stating as follows:

...the above certificate was seized by the C.B.I. officer, Bhubaneswar at the time of search of my house vide seizure list serial No. 34(F) dated 12.4.1969 (marked Mr-30(114)/1-9). Though it was demanded by me to furnish the same as an annexure at the time of enquiry, but could not be, as it was not available with them at that time. I have obtained that certificate along with some other records from the C.B.I. Office, Bhubaneswar after making correspondence for a long time.

As such I do hereby submit a certified true copy of the above mentioned certificate in support of my defence for your kind perusal and reference and which may kindly be accepted as an annexure III.

This application does not appear to have been considered by the Disciplinary Authority and no order appear to have been passed on the same. It will thus be seen that the Petitioner was not given an opportunity to prove the certificate granted by the Tahasildar. D.W. 8 Managovinda Mallick who is the brother of the Petitioner and lives with him in joint family gave evidence that the family was in possession of 7 or 8 acres of land which includes Government land measuring 3.17 acres. He filed a list of the landed properties which is marked as Ext. D-12. He also filed some rent receipts which were rejected on the ground that they

were very old. He stated that the annual yield from the landed property was about 5 to 6 thousand rupees in terms of money. He also deposed about the income certificate dated 9-2-1968 granted by the Tahasildar. This evidence has not been considered by the Enquiring Officer. It is significant to note that while the lands of the Petitioner's wife have been treated as the Petitioner's assets, the yield from those lands been left out of account in assessing the income of the Petitioner during the relevant period.

11. The lands in the name of the Petitioner's wife valued at Rs. 9,162/- have been treated as the assets of the Petitioner. The Enquiring Officer has not recorded any finding that the sale deeds stood ostensibly in the name of the wife and it was the Petitioner in whom the title vested and it was he who was the real beneficiary. The Enquiring Officer did not at all apply his mind to the question whether it was the Petitioner who had acquired the properties in the name of his wife P.W. 17 Sridhar Behera who is the scribe of the sale deeds gave evidence that Bina Mallick, the father-in-law of the Petitioner paid the consideration money under those sale deeds. He also stated that neither the Petitioner nor his wife was present at the time of the transaction under those sale deeds. His evidence shows that Bina Mallick had told him that out of his three daughters he liked the Petitioner's wife very much and wanted to acquire some lands in her name. Bina Mallick who was examined as D.W. 6 gave evidence that at the time of marriage of the Petitioner he had promised to give one acre of land and accordingly he acquired the lands in the name of the Petitioner's wife out of his own funds. D.W. 8 also deposed to the same effect. The sale deeds standing in the name of the Petitioner's wife were seized -from the custody of D.W. 6 Bina Mallick. The evidence of D.W. 6, 8 and P.W. 17 have not at all been referred to by the Enquiring Officer. No evidence whatsoever has been adduced by the Department to show that the Petitioner had acquired the properties under the aforesaid sale deeds benami in the name of his wife or that he was in possession of those lands.

12. A building at village Nilakanthpur valued at Rs. 19440/- has been included in the assets of the Petitioner. According to the Petitioner, this building, was constructed by his father-in-law on his Own land out of hit own funds D.W. 8 Bina Mallick fully supported the stand taken by the Petitioner in this respect. He stated that he constructed the building out of his own funds and he has been residing therein with his family. He denied the allegation that he is a mean of no mens and incapable of constructing a house. It is in evidence that he had advanced a loan to one Brajabandhu Swain and filed money suit No. 41 of 1966 in the Court of the Subordinate Judge, Kendrapara and obtained a decree for Rs. 1300/-. He has filed the judgment which has been marked as Ext. D-8. The Trial Court has observed in the judgment that there was absolutely no reasons to say that Bina Mallick was a man of no means at all and that he was capable of building a house. The judgment Ext. D-8 has been confirmed by the appellate Court vide Ext. D-9. The evidence of D.W. 6 shown that he owns seven to eight acets of land both in his name and in the name of his wife and that the lands are well

irrigated and fertile P.W. 20 Bhaskar Mallick has stated that Bina Mallick resides in the building at Nilakanthpur and that the entire cost of construction of the building was borne by Bina Mallick. He further stated that the Petitioner had not contributed anything for construction of the building P.W. 19 is the Revenue Inspector. His evidence shown that the building in question stands on the land which stands recorded in the name of Bina Mallick and his co-sharers. D.W. 1 Bsanta Kumar Mahapatra who is a resident of village Nilakanthpur and is a respectable witness stated that the building was constructed by Bina Mallick and that Bina Mallick owns seven to eight acres of land which are well irrigated and fertile. The evidence of the above witnesses not at all been considered by the Enquiring Officer. He has relied mainly on the evidence of P.Ws. 18 and 21 in arriving at the finding that the building was coustructed by the petitiouer. In his examination_in_chief P.W. 18 stated:

I cannot say from which source Bina Mallick got the huge amount to construct the building.

He might have some hidden treasure. But there is a gossip in the village that Bina Mllick's son-in-law Shri K.C. Mallick is a big official at Cuttack and he might be contributing money for the building." His evidence being based on village gossip was inadmissible in evidence. P.W. 21 Braja Kishare Swain appears to be on inimical terms with Bina Mallick. He admitted that he had filed a criminal case against Bina Mallick which ended in acquittal. He also admitted that Bina Mallick had obtained a decree against him and that an appeal filed by him was dismissed in this state of evidence, no reasonable man can rely upon the evidence of P.Ws. 18 and 21 for coming to a conclusion that the building was constructed by the Petitioner out of his own funds. The evidence of the Revenue Inspector (P.W. 19) shows that the l5uilding and its appurtenance stand on the plots which are recorded jointly in the name of Bina Mallick and his co-sharers. It is therefore" unlikely that the Petitioner would construct a building on the lands which are jointly owned by his father-in-law and his co-sharers. The Departmental Authorities have not at all applied their minds to this aspect of the case.

13. A rice huller valued at Rs. 7029.90 paise has been included in the assets of the Petitioner. The Petitioner's contention was that the rice huller was purchased by D.W. 1 Basanta Kumar Mahapatra through him. The Enquiring Officer has relied on the evidence of P.W. 12 and Exts. P-14 and P-15 for arriving at the conclusion that the rice hunger belongs to the Petitioner. P.W. 12 is a partner of the Orissa Machine Supply Company at Buxibazr, Cuttack. He stated with reference to the cash book entries of the firm that on 8-4-1968 the Petitioner advanced a sum of Rs. 500/- towards the purchase of the rice huller and on 8-4-1968 he also advanced a sum of Rs. 4,800/- towards the same. Ext.P-15 is the bill dated 9-4-1968 issued by the firm in favour of D.W. 1 Basanta Kumar Mahapatra for Rs. 7.01595 paise towards the cost of the rice huller. It was seized from the possession of D.W. I. It appears that in Ext. P-15 the name of purchaser was originally typed as K.C. Mallick (the Petitioner) but it was scored out and the

name of D.W. 1 was typed According to P.W. 12, the correction was made at the instance of the Petitioner. The evidence of D.W. 1 discloses that he made the advances through the Petitioner as he felt that the Petitioner being a man of Cut tack the advances paid through him would be secured. According to him, the entire amount of Rs. 7,015.95 paise was paid by him out of his own funds and that at the time of taking delivery, of the machine he got his name entered in the Ext. P-12. His evidence also reveals that he obtained a licence for the rice huller from the Grampanchayat for for the year 1970-71 in his own name and paid the licence fee of Rs. 50/-. He proved the licence Ext.D.2 which stands m his name. It is in evidence that the rice huller has been installed on the land of D.W. 1 an] that a case was started against him by the Supply Inspector for running the rice huller without a licence and that he was fined Rs. 100/- which was paid by him on 13-7-1971 as per the receipt Ext. D-4. The Enquiring Officer took the view that D.W. 1 Basant Kumar Mahapatra bad no financial status to purchase and manage a rice habere. It appears, however, from the evidence of D.W. 1 that he owns five acres of land, works as a teacher and runs a grocery shop. All these facts and circumstances have been totally ignored by the Enquiring Officer.

14. An amount of Rs. 2419.03 paise in the Saving Bank Account of the Petitioner's wife has been treated to be the assets of the Petitioner. Petitioner examined D.W. 4 to show that the money belongs to his wife. As indicated earlier, there are landed properties standing in the name of the Petitioner's wife. She might have deposited the income from the lands on the Savings Bank Account. There is absolutely no evidence on the side of the Department to show that the Petitioner had ever carried on any transaction in respect of the Savings Bank Account.

15. The gold and silver ornaments found in the house were valued at Rs. 4254/- and included in the assets of the Petitioner. The Petitioner's case was that the ornaments were brought by his wife and daughter-in-law as dowry. There is no evidence on the side of the Department to show that the Petitioner bad purchased those ornaments out of his own funds.

16. As regards the second charge, Petitioner's contention was that be had sought for permission of the authorities for purchase of lands in his own name by the two sale deeds of the year 1958. He proved copies of two applications Ext. D-10 and D-11 through D.W. 7 who is a Government servant. The Petitioner's contention was repelled by the Enquiring Officer mainly on the ground that no receipt had been obtained for filing the originals of Exts. D-10 and D-11. It appears, however, that the Department did not produce its receipt register though called for by the Petitioner. The evidence of P.W. 2 would show that some papers and note-sheets are missing from the relevant file maintained by the Superintendent. This evidence has been totally overlooked by the Enquiring Officer. Regarding the purchase of land by the Petitioner's wife, the Petitioner's contention is that acquisition by the wife of immovable property for herself will not bring the same within the mischief of Rule 18(2). We find considerable force

in this contention. Rule 18(2) is in the following terms:

(2). No Government servant shall, Except with the previous knowledge of the prescribed authority acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise either in his own name or in the name of any member of his family:

Provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is

(i) With a person having official dealing with the Government servant; or

(ii) Otherwise dealer than through a regular or reputed.

It will, thus, be seen that it is the acquisition by the Government servant on which restriction has been placed. The rule does not restrict the acquisition by a member of the family of the Government servant. It is to cover the benami transactions that it has been provided in the rule that no Government servant shall acquire any movable property in the name of any member of his family. What is implied in this rule is that the title to the property which is the subject-matter of any transaction vests in the Government servant. If the title remains with a member of the family of the Government servant and the transaction of transfer was not intended to convey any title to the Government servant than even if the transaction in the name of the family of the Government servant is brought about with his knowledge, nothing in the said rule would affect him. The Department Authorities have not applied their minds to this aspect.

17. The third charge relates to omission of certain properties standing in the name of the Petitioner's wife from return submitted by the Petitioner on 6-10-1969. Under Rule 18(1) as it stood prior to its amendment on 6-7-1976. a Government servant was required to submit a return of his assets and liabilities giving particulars regarding the immovable property inherited by him or owned or acquired by him or held by him on lease or mortgage, either in his own name or in the name of any member of his family or in the name of any persons. Admittedly, the properties omitted from return stand in the name of the Petitioner's wife. In the absence of a finding that those properties were acquired or held by the Petitioner In the name of his wife, he could be held guilty of the charge. As already stated the Departmental Authorities have not recorded a finding that the properties standing in the name of the Petitioner were acquired by the Petitioner out of his own funds and that the properties stood ostensibly in the name of the wife.

18. Non-consideration of the evidence favourable to the Petitioner, admission of inadmissible evidence and non-application of mind to the material aspects of the case have resulted in manifest injustice. This is therefore pre-eminently a fit case in which this Court instead of substituting its own findings should send back the case to the appellate authority for fresh disposal.

19. In the result, the writ petition is allowed and the orders of the Disciplinary

Authority and the appellate authority are quashed. The case is remanded to the appellate authority (O.P. No. 3) for fresh disposal according to law In the light of the observations made above after giving an opportunity to the Petitioner of being heard. We direct the parties to bear their own costs.