

(1971) 02 CAL CK 0011

In the Calcutta High Court

Case No : Appeal No. 183 of 1970, Matter No. 435 of 1968

The Collector of Customs, Calcutta and Others

APPELLANT

Vs

Biswanath Mukherjee

RESPONDENT

Date of Decision : 18-02-1971

Acts Referred:

Calcutta High Court Rules, 1914 — Rule 43
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 25, 151
Constitution of India, 1950 — Article 226

Citation : AIR 1972 Cal 401 : (1971) 1 CALLT 139 : 75 CWN 797 : (1972) 1 LLJ 34

Hon'ble Judges : P.B. Mukharji, C.J.;B.C. Mitra, J

Bench : Division Bench

Advocate : G.P. Kar and A.K. Banerjee, for the Appellant; S.N. Chatterjee and A. Mitter, for the Respondent

Judgement

P.B. Mukharji, C.J.—This is an appeal from an order passed by T.K. Basil J., in an application under Article 226 of the Constitution.

2. This was an application by Biswanath Mukherjee challenging the order dated February 6, 1968 passed by the Collector of Customs, Calcutta whereby the petitioner was removed from service. The only point on which the learned judge decided the whole application was whether the charge-sheet was defective or not, leaving the other points undecided. The decision appealed from was based entirely on the interpretation of two expressions "found" and "giving rise to presumption" in the charge-sheet The charge-sheet reads as follows:--

"That Sri Biswanath Mukherjee, who had been functioning as Preventive Officer, Grade I, during the period between 20-12-58 and 31-12-59, was found on 1-1-60 to be in possession of assets which are disproportionate to his known sources of income to the extent of about Rs. 61,000/- giving rise to the presumption that the aforesaid Sri Biswanath Mukherjee acquired the said disproportionate assets by obtaining pecuniary advantage to himself by corrupt

and illegal means and thereby he had failed to maintain absolute integrity and devotion to the duty as a public servant."

The learned judge came to the conclusion on an interpretation of the expressions "found" and "giving rise to the presumption" that they were indicative of the mind of the Collector of Customs who was also the punishing authority and that he had not kept an open mind. Therefore the learned Judge held that the whole proceeding was vitiated and the charge-sheet was defective, being in violation of the principles of natural justice, and vacated the entire proceedings.

3. The learned Judge expressly mentions four other points which were argued before him but on which he expressed no opinion. These are:

(1) the petitioner had been found guilty of a charge of "Benami" which was not in the charge-sheet;

(2) the findings of the Enquiring Officer were perverse as being based on no findings and on mere conjectures and surmise;

(3) certain documents were considered by the Enquiring Officer behind the back of the petitioner; and

(4) the onus of the proof was misplaced by the disciplinary authority as a result of a confusion between the law regarding disciplinary proceedings u/s 178-A of the Sea Customs Act, 1878.

The learned Judge observed: "It is not necessary for me to express any opinion on the merits of these contentions."

4. The proper way, in our view, of interpreting a charge-sheet of this nature in disciplinary proceedings is not to be technically and legalistically strict as in the case of a charge-sheet in criminal proceedings. This principle is well known. It should be fairly and reasonably interpreted in a common sense way to see that there is a plain statement of the thing complained of as wrong so that the party complained against may be put on his defence to meet the allegation.

In *Federal Trade Commission v. Gratz* (1919) 253 U.S. 421, a learned Judge of the American Supreme Court observed:--

"It does not purport to set out the elements of a crime like an indictment of information nor the elements of a cause of action like a declaration of law or a bill in equity. All that is requisite in a complaint for commission is that there be a plain statement of the thing claimed to be wrong so that the respondent may be put upon his defence."

5. Now, a question of fair interpretation of a charge-sheet in a disciplinary proceeding depends on the context of facts in which the charge is laid. The two words "found" and "giving rise to the presumption" are not, in our judgment, enough by themselves to make the charge in this case in limine bad and void on the ground of violation of the principles of natural justice. The word "found" is a

general word and it will depend on the context of the situation whether that expression means a bias or conclusion on the mind when the charge-sheet says that the officer is found to be in possession of assets disproportionate to his known sources of income. Secondly, the words "giving rise to the presumption" cannot also be conclusive in this particular context of facts because we find on examination of the records that no presumption in fact was drawn and that it was the employing authorities who led the evidence and there was no misplacing of onus of proof and there was cross-examination by the petitioner of the evidence led by the Customs authority. It was only after the Customs authorities had led their evidence and there was such cross-examination that the petitioner led his evidence. Therefore, in fact there was no misplacement of onus and nothing was presumed against the petitioner. This aspect of the problem was not considered by the learned Judge in his decision. But these considerations reflect on the question of how the charge should be read in the context.

6. Besides, if principles of natural Justice are said to be violated by the use of the two expressions abovenamed, then there are also the other questions of principles of natural justice on which the learned Judge has not come to a finding namely, (1) no evidence, and (2) documents considered by the Enquiring Officer behind the back of the petitioner. It is difficult therefore to judge piecemeal even this question of the principles of natural justice in the present context of facts. One of the four points noticed above includes the question of benami.

7. Now the question of benami does not appear to us to vitiate the proceedings because the whole point was whether the petitioner was in possession of assets disproportionate to his Known sources of income. The enquiry is implicit as to whether the assets though may be standing in the name of his mother were in reality his assets. By itself such a consideration would not in our view vitiate the enquiry. It is therefore necessary to come to certain findings on those four questions.

8. With a view to enable us to come to an appropriate conclusion whether On a total view of the present context the charge-sheet was defective on the grounds mentioned above we feel that on the present materials it is difficult to draw that conclusion which the learned Judge has drawn without having before us the findings on the four questions mentioned above.

9. We, therefore, remand the case to the learned Judge for his findings and conclusions on the four points set out above. After the learned judge comes to a finding on those four points then his findings may be placed before us or the appropriate Bench dealing with these appeals when we or the appropriate Bench dealing with these appeals will finally dispose of the appeal.

10. A point at one stage raised whether there could be a remand in an appeal from an order under Article 226 of the Constitution deciding only on one issue more or less preliminary in nature and leaving the other issues undecided. We have carefully considered the point and we think that our jurisdiction in this

respect is unquestionable. This Court has jurisdiction to make an order of remand in such cases. No doubt Article 226 of the Constitution has its own rules and procedures and no doubt it may be arguable that CPC as such may not be wholly applicable without any limitations or qualifications. We support the jurisdiction to order a remand in such cases first by reference to Rule 43 of the Rules of the High Court at Calcutta relating to applications under Article 226 of the Constitution which provides as follows:--

"Appeals from final orders in this jurisdiction shall be made in the same manner as appeals from original orders in the Original Side and appeals from orders in the Appellate Side according as they arise out of Original Side and Appellate Side applications and all rules applicable thereto in the rules of the Original and Appellate Side, respectively, shall apply thereto *mutatis mutandis*."

That means all the Original Side and Appellate Side rules will apply in these appeals. It must necessarily, therefore, follow that as both the Original and Appellate Side rules do not prevent remand orders, remand orders are within the jurisdiction of this Court in these cases relating to appeals from orders under Art. 226 of the Constitution. Secondly there is inherent jurisdiction in this Court of appeal for ends of justice to make an order of remand, quite apart from the specific provisions of the CPC under Order 41, Rule 25.

11. Regarding the applicability of the CPC we need only refer to certain decisions to make the point clear. In *Ramsingh Vs. State of Rajasthan and Others*, a Division Bench of the Rajasthan High Court came to the conclusion that even though the provisions of CPC might not directly apply, such of the provisions as were not in conflict with any particular rules of the Rajasthan High Court could apply and in that case the provisions of Order 9, Rule 9 of the CPC were applied. In that decision some of the relevant cases on the point including those of the Supreme Court are discussed and it will be unnecessary for us to repeat them. See particularly the observations at page 47 of that report. The next case to which reference may be made is *Daryao and Others Vs. The State of U.P. and Others*, which considered the applicability of Section 11 of the Civil Procedure Code. Again in *Gulabchand Chotalal Parikh v. State of Gujarat* AIR 1905 SC 1153, Section 11 of the CPC was applied. We shall conclude our citation of the authorities of this point by making a reference to the decision in *S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another*, where the Supreme Court observed at p. 1823 as follows:--

"On a careful review of the provision of the Constitution we are of the opinion that there is no ground for restricting the expression "civil proceeding" only to those proceedings which arise out of civil suits or proceedings which are tried as civil suits, nor is there any rational basis for excluding from its purview proceedings instituted and tried in the High Court in exercise of its jurisdiction under Art. 226, where the aggrieved party seeks relief against infringement of civil rights by authorities purporting to act in exercise of powers conferred upon them by revenue statutes. The preliminary objections raised by Counsel for the

assessee must therefore fail."

This authority was cited and followed in the Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others,

12. We, therefore, remand the appeal on the four specific points set out above. The costs of this proceeding will be reserved and will abide by the result of the final disposal of the appeal after it comes back from the remand and when it is finally disposed of. The parties will be at liberty to mention this matter to the learned judge for expeditious hearing and who will take it up and will deal with these four specific points according to his convenience and to the convenience of the parties.

B.C. Mitra, J.

13. I agree.