

(1976) 11 CAL CK 0007
In the Calcutta High Court

Union of India (UOI) and Others

APPELLANT

Vs

Susanta Kumar Mukherjee

RESPONDENT

Date of Decision : 29-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 372
General Clauses Act, 1897 — Section 3
Government of India Act, 1935 — Section 94
Penal Code, 1860 (IPC) — Section 3, 4, 53

Citation : (1977) 1 CALLT 110 : (1977) 1 ILR (Cal) 77 : (1977) 2 LLJ 460

Hon'ble Judges : Sabyasachi Mukharji, J; M.M. Dutt, J

Bench : Division Bench

Judgement

M.M. Dutt, J.—This appeal is at the instance of the Union of India and the Food Corporation of India and is directed against the judgment of A.K. Mukherjea, J. discharging the Rule obtained by the appellant under Article 226 of the Constitution.

2. The respondent Susanta Mukherjee is the Zonal Public Relation Officer in the Calcutta Zonal Office of the Food Corporation of India. He had been to Switzerland on July 16, 1974 in connection with the works of some relief and religious organisation. On July 27, 1974 he was arrested by a Swiss police and was detained in a place known as "Mal". On July 31 1974 he was produced before a Municipal Magistrate, Lausanne, Switzerland, and was convicted and sentenced to imprisonment for a period of eight days including the period of detention of five days on a charge of committing repeated thefts. After serving the sentence of imprisonment he returned to Calcutta on August 4, 1974 and resumed his duties on the next day. It has been alleged by him that he was put under detention and was convicted and sentenced illegally and mala fide and was not given any opportunity to defend himself, it is alleged that at the Geneva Airport while he was proceeding to the aircraft through the security in enclosure two Swiss policemen abused him and some other Indians with abusive words like "Nigger Indians" etc. and at this he protested whereupon the said two Swiss

policemen became very much furious and forcibly dragged him to the Airport Police Office and took away from him the Baggage Ticket and Air Boarding Ticket. Thereafter, he was put under detention in the "Mal" without any warrant and without letting him know the reason for such detention. Before the Magistrate also, he did not get any opportunity to defend himself and the charge was also not explained to him.

3. The case of the appellant in that while resuming his duty on August 5, 1974, the respondent did not intimate the appellants about any incident in which he was involved during the period of his absence. It was brought to the notice of the Central Bureau of Investigation (Inter-pol, Delhi) that while the respondent was in Switzerland he committed repeated thefts and was convicted by the examining Magistrate of Lausanne, Switzerland and was ordered to undergo imprisonment for a period of eight days including the detention for live days awaiting trial. A photostat copy of the order of the Magistrate has been annexed to the affidavit-in opposition of the appellants. Upon receipt of the information regarding the conviction of the respondent by the Court of the examining Magistrate of Lausanne, the Executive Committee of the Board of Directors of the Food Corporation of India issued an order dated December 31, 1974 under Sub-rule (2)(b) or Rule 10 of the Central Civil services (Classification, Control and Appeal) Rules, 1965, hereinafter referred to as the Rules, ordering the respondent to be deemed to have been suspended with effect from the date of his conviction, that is, July 31, 1974 till further orders, Rules 10(1) and 10(2) are as follows:

10 (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President by general or special order, may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or is pending, or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(The proviso ii not relevant for our purpose and, as such, is omitted.)

10(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours
- (b) with effect from the date of his conviction, if in any event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation?The period of forty-eight hours referred to in Clause (b) of this Sub-

rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account

The respondent challenged the legality of the said order of suspension under Rule 10(2)(b) by a writ petition under Article 226 of the Constitution and obtained a Rule out of which this appeal arises. It was contended on behalf of the respondent that the order of conviction and sentence by the Municipal Magistrate of Lausanne in Switzerland could not be made a ground for suspension under Rule 10(2)(b) inasmuch as the said conviction was not made by any Indian Court for an offence punishable under any law in force in this country. Further, it was contended that "conviction" and "offence" as contemplated by Rule 10(2)(b) are conviction by an Indian Court for an offence under the Indian Law. A.K. Mukherjee, J. accepted the contention of the respondent and quashed the order of suspension and made the Rule absolute. He, however, granted liberty to the appellants to issue a fresh order of suspension in accordance with law. Hence, this appeal.

4. The point that arises for consideration is whether the words "offence", "conviction" and "imprisonment" occurring in Rule 10(2)(b) also include an "offence", "conviction" and "imprisonment" under the penal law of a foreign country. In other words, whether, when a Government servant is convicted of an offence and sentenced to a term of imprisonment exceeding forty-eight hours under the law of a foreign country, he can be suspended in accordance with Rule 10(2)(b). The Rules do not define these terms. The words "offence" and "imprisonment" have, however, been defined in the General Clauses Act. u/s 3(38) of the said Act "offence" shall mean any act or omission made punishable by any law for the time being in force. The expression "any law for the time being in force" undoubtedly refers to any Indian law for the time being in force, for it is apparent from Section 3 of the General Clauses Act that the definitions given under that section shall apply to the General Clauses Act and all Central Acts and Regulations made after the commencement of the said Act. It is unthinkable that the General Clauses Act has been enacted by Parliament not only for the interpretation of the Central Acts and Regulations but also of the provisions of any foreign law, as contended on behalf of the appellants. The word "offence" as referred to in Rule 10(2)(b) or the Rules read with Section 3(38) of the General Clauses Act means any act or omission made punishable by any Indian law for the time being in force if any act or omission which is not punishable under any Indian law it will not be an offence, although such an act or omission may be an offence under the law of a foreign country. We do not think that the decision in *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, has any bearing on the question whether the word "offence" as defined in Section 3(38) of the General Clauses Act also includes an offence under the law of another country beyond India. In that case, the Supreme Court has considered the difference between the expressions "an existing law" and "a law in force" as used in Section 94(3) of the Government of

India Act, 1935 and Article 372 of the Constitution respectively. It has been held by the Supreme Court that there is no material difference between "an existing law" and a "a law in force". It has been further observed that the words "a law in force" as used in Article 372 are wide enough to include not merely a legislative enactment but also any regulation or order which has the force of law. "As already stated, the proposition of law which has been laid down by the Supreme Court in the above decision is not relevant to the issue with which we are concerned.

5. Now we may come to the definition of the word "imprisonment" u/s 3(27) of the General Clauses Act. By that section "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code. Under clause fourthly, of Section 53 of the Indian Penal Code imprisonment is of two descriptions, namely, (1) rigorous, that is, with hard labour and (2) simple. Under this definition a man may be sentenced to either simple or rigorous imprisonment. The Indian Penal Code does not contemplate any other kind of imprisonment. The imprisonment which had been undergone by the respondent under the order of conviction and sentence of the Examining Magistrate at Lausanne, does not answer either description of imprisonment as mentioned in Section 53 of the Indian Penal Code. It was neither rigorous nor simple.

6. In view of the definitions referred to above it follows that if a Government servant is convicted of an act or omission which is an offence under any Indian law and sentenced to a term of imprisonment of either description exceeding forty-eight hours he shall be deemed to have been placed under suspension with effect from the date of his conviction under Rule 10(2)(b). Mr. Nani Coomars Chakraborti and Mr. Somendra Chandra Bose, learned advocates appearing respectively for the Food Corporation of India and the Union of India have strenuously urged that in construing the words "offence" and "imprisonment" occurring in Rule 10(2)(b), the definition section of the General Clauses Act should not be applied, for such definitions of the said words would be repugnant to the context in which Rule 10 including Rule 10(2)(b) was framed. It is contended by them that the object of Rule 10 is to maintain absolute integrity and unblemished conduct of Government servants. It is wholly undesirable that a Government servant found guilty of moral turpitude and convicted and sentenced by a Court of competent jurisdiction in another country beyond India should be allowed to perform official duties in connection with his service, for it may affect the morality of other Government servants and may also seriously prejudice the image of public service. Accordingly, it is submitted by them that if the definitions of the words under the General Clauses Act are applied for the interpretation of Rule 10(2)(a) that would frustrate the very object for which the rule has been framed.

7. There cannot be any doubt as to the object or purpose behind Rule 10 of the Rules. But it is not correct to say that the interpretation of Rule 10(2)(b) with the help of the definitions of the General Clauses Act will be repugnant to the object

or purpose of the rule or render a Government servant guilty of an act or omission in foreign land immune from being dealt with under any of the provisions of the Rules. It is not disputed that a disciplinary proceeding may be brought against a Government servant for such an act or omission and he may be put under suspension under Rule 10(1)(a) in contemplation of a disciplinary proceeding. If in such a proceeding he is found guilty of such an act or omission which is considered to be misconduct on the part of the Government servant he may be punished in accordance with the Rules. Further in view of Sections 3 and 4 of the Indian Penal Code, he may be tried by an Indian Court for acts done by him without and beyond India, provided such acts constitute an offence under the Code. Moreover, Rule 10(2)(b) does not expressly or by necessary implication include conviction under the law of a foreign country and, accordingly, it would be against the general principles of interpretation of statutes to exclude the definition of the said words under the General Clauses Act which shall be deemed to have been incorporated in the Rules. In our opinion, there is nothing in the subject or context of Rule 10(2)(b) which is repugnant to the applicability of the definition of the words "offence" and "imprisonment" as given in the General Clauses Act.

8. Rule 10(2)(b) gives ample indication that on the conviction of a Government servant for an offence and his being sentenced to a term of imprisonment exceeding forty-eight hours he may be forthwith dismissed or removed or compulsorily retired consequent to such conviction which is also borne out by Rule 19(a) of the Rules, without following any disciplinary proceeding and without giving the Government servant any opportunity of being heard. The only consideration for such consequences, namely, dismissal, removal or compulsory retirement is the conviction of the Government servant. The combined effect of Rule 10(2)(b) and Rule 19(a) is that as soon as it is brought to the notice of the appointing authority that the Government servant has been convicted of an offence and sentenced to an imprisonment of the description mentioned in Rule 10(2)(b), he may be forthwith dismissed from service or shall be deemed to have been under suspension by an order of the appointing authority with effect from the date of conviction. It has been argued by Mr. Balai Roy, learned advocate appearing on behalf of the respondent that if a conviction by a foreign Court is taken notice of for the purpose of Rule 10(2)(b), it will be giving effect to a foreign penal law which is derogatory to any sovereign country under the principles of Private "International" Law. He submits that these principles are well-established principles of Private or International law and should not be given a go-by by giving effect to a foreign penal law either directly or indirectly, notwithstanding the purpose for which the rule has been framed. It is contended by him that Rule 10(2)(b) only contemplates conviction for an offence by an Indian Court under the Indian Law and not by a foreign Court under a foreign law.

9. In Cheshire's Private International Law, 6th Edition, Page 138, it has been observed as follows:

It is well-settled that an English Court will not lend its aid to the enforcement, either directly or indirectly, of a foreign penal law. The imposition of a penalty normally reflects the exercise by a State of its sovereign power, and it is an obvious principle that act of sovereignty can have no effect in the territory of another State.

In this connection, we may refer to a decision of the Privy Council in *Huntington v. Attrill* 1893 A.C. 150. In that case, the Privy Council observed:

The rule has its foundation in the well recognized principle that crimes, including in that term all branches of public law punishable by pecuniary mullet or otherwise at the instance of the State Government or someone representing the public, are local in this sense, that they are only cognizable and punishable in the country where they are committed. Accordingly no proceeding, even in the shape of a civil suit, which has for its object the enforcement by the State, whether directly or indirectly, of punishment for such breaches imposed by the *lex fori*, ought to be admitted in the Courts of any other country.

10. In view of the above principles of Private International Law, we are of the opinion, that if the word "conviction" is construed as also including a conviction by a Court of foreign territory for an offence punishable under the Jaw of that territory, it would be giving indirect effect to a penal law of a foreign territory. In these circumstances, it cannot but be held that the conviction of a Government servant by a Court beyond the territory of India is not contemplated by Rule 10(2)(b) and cannot be taken notice of as a ground for his suspension or for his removal, dismissal or retirement from service.

11. Mr. Bose has placed reliance on a decision of the Supreme Court in *Noor Mohammad Mohd. Yusuf Momin Vs. The State of Maharashtra*, . In that case an advocate was convicted of an offence in a summary proceeding by a Magistrate in England There was an enquiry into his conduct by the disciplinary committee of the Slate Bar Council which found him not guilty The Advocate General of the State preferred an appeal to the Bar Council of India against the decision of the disciplinary committee of the State Bar Council. Hidayatullah, C. J., while holding that the Advocate General was not a "person aggrieved" within the meaning of the Advocates Act and that the appeal filed by him was incompetent observed as follows:

The advocate here explained that he was held guilty before the Magistrate in the circumstances in which he was placed. The fact of his conviction, as well as his full statement bearing on his conduct were before the disciplinary committee of the State Bar Council They had to choose between the two, that is to say, the result of a summary trial without going into merits and proof of the misconduct. Having examined the advocate and seen the record, the disciplinary committee of the State Bar Council chose to accept the plea of the advocate and held that he was not guilty. They were also satisfied that summary proceedings in the criminal trial in England offended against the principles of natural justice. They

were entitled to this view on which much can be said on both sides.

The observation of the learned Chief Justice that the State Bar Council had the option to choose between the result of the luminary trial without going into merits and proof of the misconduct, seems to be mere casual in nature. In our view, by that observation the learned Chief Justice did not in the least intend to lay down a rule of law that the State Bar Council is entitled to punish an advocate simply on the face of his conviction by a criminal Court of a foreign country which is amply borne out by the views expressed by his Lordship preceding the said observation. It was observed that it did not necessarily follow that a conviction in England showed moral turpitude in the advocate. His Lordship clearly laid down that in the disciplinary proceedings the advocate was not estopped from questioning the charge that he was guilty of corrupt practice, the reason being that in a civil proceeding the decision of a criminal Court is not *res judicata* and would not preclude him from raising this issue before the civil Court. The said observation relied on by the appellant cannot, in our opinion, be read divorced from the views expressed by his Lordship and, if they are read together, there cannot be any doubt that an advocate cannot be punished solely on the basis of his conviction by a criminal Court of a country beyond India, without proof of his misconduct. The contention of the appellants based on the said observation is, accordingly, rejected.

12. For the foregoing reasons, we uphold the judgment of the learned Judge and dismiss the appeal. There will, however, be no order as to costs. We make it clear that the appellants will be at liberty to issue a fresh order of suspension of the respondent under the provisions of the Rules other than under Rule 10(2)(b).

13. Let the interim order already granted continue for a period of six weeks from date, as prayed for on behalf of the appellants.

Sabyasachi Mukharji, J.

I agree.