

(1982) 09 KAR CK 0026
In the Karnataka High Court
Case No : W.P. 23149 of 82

V.R. Katarki

APPELLANT

Vs

High Court of Karnataka and Others

RESPONDENT

Date of Decision : 15-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1983) 1 KarLJ 211

Hon'ble Judges : K. A. Swami, J

Judgement

1. The petitioner is a judicial Officer of the Judicial Department of the State of Karnataka. He belongs to the cadre of a Civil Judge. He is facing serious charges of misconduct alleged to have been committed by him in the course of discharge of his duties and performance of his functions as a Civil Judge. He has now been served with the Articles of charge as per Annexure-A under the provisions of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 [hereinafter referred to as "the Rules"].

2. In this petition, under Article 226 of the Constitution, the petitioner has sought for quashing the articles of charge-Annexure "A". The petit oner has also sought for a mandamus directing the first respondent to reinstate him with all consequential benefits to which he would otherwise have been entitled to. Of course, he has also prayed for the records, mentioned in Prayer para 26(1) and (ii) of the writ petition to be called for. Similar prayer to call for the records has also been made in the application I.A. No. 1 filed by him, which will be dealt with at the appropriate stage.

3. The aforesaid reliefs are sought for on the following three principal grounds i.e., Articles of charge are vitiated (i) because of legal malice on the part of the first respondent; (ii) because they are based upon the report made by the 2nd respondent which, according to the petitioner, is malicious; (iii) because they do not disclose misconduct.

4. Respondents 1 and 2 have filed separate statement of objections. In the

statement of objections filed by the 1st respondent, apart from denying the allegations of legal malice, it has also been specifically stated that the first respondent as a disciplinary authority, has taken a decision to hold a disciplinary enquiry against the petitioner into the charges of commissions and omissions which amount to grave misconduct and conduct unbecoming of a judicial officer as per the articles of charge served upon him. I will refer to the case put forth by the 1st respondent in greater detail at the appropriate stage. One of the contentions raised is that the petition is premature because a mere serving of articles of charge does not result in any penal consequence, therefore no right of the petitioner has been infringed; hence the petitioner is not entitled to the reliefs sought for by him. It is also further stated by the 1st respondent in its statement of objections that the articles of charge do disclose misconduct and the same have been framed after due deliberation. In the statement of objections filed by the 2nd respondent, the allegations of mala fides made against him by the petitioner have been denied and he has further stated that the report has been submitted by him in the bona fide discharge of his duties and in obedience to the directions of the disciplinary authority.

5. 1) I will first take up the second contention that the report made by the 2nd respondent is a malicious one. It has to be noticed that the 2nd respondent is the Registrar of the first respondent disciplinary authority. He has to carry out the directions of the disciplinary authority.

5. 2) On the basis of the information received by the High Court, as stated in the statement of objections, after finding that the report made by the then Additional Registrar was not satisfactory and after the learned Administrative Judge made a report which, prima facie, disclosed grave irregularity in the disposal of land acquisition cases by the petitioner, the Full Court, on 30.7.1981 resolved to request him to formulate the points on which the explanation of the petitioner should be called for. In order to do so, the 2nd respondent was directed to go to Bagalkot and other places and collect the requisite information and submit a report. Accordingly, the 2nd respondent, after visiting Bagalkot and a few other places has submitted a report of the information which he had gathered. The case of the petitioner in this regard is that the 2nd respondent has gone on from place to place and has examined the officials of the Court and some of the members of the Bar and has even gone to the native place of the petitioner, and has enquired with some of the Sharogs of Belgaum and has gone to Jamkhandi where the petitioner had served as Munsiff; therefore, the report made by him is malicious. It is not the case of the petitioner that the 2nd respondent had an axe to grind against him nor he had at any time served under the 2nd respondent in his career as a Judicial Officer so as to say that the 2nd respondent had an occasion or an opportunity to bear ill-will against the petitioner. Learned Counsel for the petitioner was specifically asked in this regard as to what was the reason for the 2nd respondent to entertain malice against the petitioner. But, the learned Counsel was unable to disclose any fact or circumstance attributable to or to provide a cause or motive for the 2nd respondent to entertain malice

against the petitioner. In a case where malice in fact, *malus animus*, is set up, the party setting it up is required to plead and prove the particulars and circumstances which must be such as to establish that the person or authority against whom it is set up was actuated either by spite or ill-will or indirect or improper motives against the party pleading it. But, in the instant case, the malice that is pleaded against the 2nd respondent is that in the discharge of his duty, the 2nd respondent pursuant to the direction of the disciplinary authority has collected the material against the petitioner and has submitted the report. An act done in the discharge of duties however much it is adverse to the interest of the party aggrieved, cannot become malicious as long as it is not proved to have been actuated either by ill-will or spite or improper or indirect motives. No such actuation is either pleaded or proved.

5. 3) It is also further stated that the 2nd respondent has kept the level of the enquiry to the level of the officials of the Court, therefore, it is malicious. It is not possible to accept this as sufficient to hold that the 2nd respondent was actuated by malice against the petitioner; therefore, he has made the report against him. There is nothing wrong in collecting the information from the staff members of the Court and from the members of the Bar and other persons who are in a position to disclose the facts which have a bearing on the alleged misconduct of the petitioner committed in the discharge of his duties as a Judicial Officer. Therefore, there is nothing wrong or improper, if, with a view to collect the material which will have a bearing on the alleged misconduct, the 2nd respondent has examined some of the members of the staff of the Court and the members of the Bar, who in the normal course come in contact with the petitioner in the course of discharge of his duties. Similarly, there is nothing wrong or improper in ascertaining the, information from other persons from various places as stated in the petition. On the contrary, it only-shows that the 2nd respondent has discharged his duties with sincerity. Acts done in the sincere discharge of duties cannot be held to amount to mala fide exercise of power-in the instant case, conducting of preliminary investigation or inquiry.

5. 4) If at all the 2nd respondent has collected the material during the course of preliminary inquiry, is directed by the first respondent, it is only in the discharge of his duties, in order to see whether there is sufficient material for holding a disciplinary proceeding against the petitioner on thealleged misconduct. As it is already-pointed out, the 2nd respondent has specifically denied that he has submitted the report because of malice entertained by him against the petitioner. Apart from stating in the petition the manner in which the 2nd respondent has collected the material there is no other material placed before the Court in support of the plea that the 2nd respondent had entertained malice against the petitioner.

5. 5) Of course, in the petition, the petitioner has alleged that the 2nd respondent had gone on from place to place without the authority of the 1st respondent. It is also further asserted that the 1st respondent could not have

authorised the 2nd respondent to collect the material in the manner in which he has done. In the statement of objections, it has been clearly stated that the 2nd respondent has conducted the preliminary enquiry pursuant to the direction or authorisation from the disciplinary authority. Therefore, it is not possible to hold that the 2nd respondent has collected information without the authority of the first respondent. Thus, the case of the petitioner that the 2nd respondent has made the report with a view to malign the petitioner has re-mained only an assertion. There is no basis for such an assertion nor there is any proof of it. It is really surprising that the petitioner who is no other than a judicial officer of a long standing to his credit could resort to such allegations for the purpose of maintaining the petition. There is no basis whatsoever. The allegations of mala fides must be based upon clear facts and circumstances. Here, in this case, it is not even possible to infer the malice in fact alleged against the 2nd respondent, from the facts and circumstances as disclosed in the case. Therefore, it is not possible to hold that the 2nd respondent has entertained any malice against the petitioner and because of that he has made the report. As such, the report made by the 2nd respondent cannot be held to be a malicious one. Accordingly, the second contention is rejected.

6. 1) Now, I take up the first contention which relates to legal malice imputed to the first respondent. In this connection, learned counsel for the petitioner has submitted that the legal malice imputed to the first respondent is based on two things: (1) that the decision of the first respondent is based upon the report made by the 2nd respondent which is a malicious one: (2) that the first respondent has framed the articles of charge without the application of mind. As far as the first one is concerned, I have already held that it is not possible to hold that report made by the 2nd respondent is a malicious one. With regard to the second aspect of the first contention, the proved facts and circumstances of the case, and also having regard to articles of charge and statement of imputations of misconduct, it is not possible to hold that the articles of charge have been framed without, the application of mind by the first respondent. The first respondent has stated in the statement of objections, as follows:

"4. Information reached the High Court in regard to the manner in which the petitioner had conducted himself in dealing with a large number of Land Acquisition cases in the Court of Civil Judge, Bagalkot, where he was functioning as Civil Judge. In the interest of purity of administration of justice and in order to ascertain facts, a decision was taken by the Full Court on 19.4.1981 to cause a confidential enquiry to be made in regard to the petitioner's conduct in dealing with Land Acquisition Cases. In pursuance of it, the then Additional Registrar of the High Court, Sri C.N. Srinivasappa, was deputed to make an enquiry and to submit a report, which he did. The report was considered by the Full Court at its meeting held on 16.7.1981 and not being satisfied with that report, it was resolved to request the Administrative Judge in charge of Bijapur District to make a study of a few judgments rendered by the petitioner in Land Acquisition cases of Bagalkot Sub-Division and to give his opinion. The concerned Administrative

Judge accordingly studied the matter and gave a report. The report, prima facie, disclosed grave irregularities in the disposal of Land Acquisition cases by the petitioner. The matter then came up again before the Full Court on 30.7.1981, when it was decided to request the same Administrative Judge to formulate the points on which petitioner's explanations should be called for. In order to do so, the Registrar was directed to proceed to Bagalkot and other places, collect the requisite information and submit his report. The Registrar accordingly proceeded to Bagalkot and a few other places and submitted a report of the information which he had gathered.

5. The report was considered by the Full Court at its meeting held on 20.8.1981. After consideration of all aspects, the Full Court was of the opinion that, prima facie, grave irregularities and acts of omission and commission on the part of the petitioner had come to light and that, therefore, the petitioner should be placed under suspension.

6. The finalisation of the draft of the articles of charge and the statement of allegations against the petitioner, came up before the concerned Administrative Committee on 17.2.1982 which deferred the consideration and the matter came up before the Full Court on 16.4.1982 as per the meeting notice and agenda dated 15.4.1982. The Full Court finalised the articles of charge and statement of allegations. The articles of Charge with the statement of allegations dated 19.5.1982 (Annexure-A) were served on the petitioner. The petitioner was called upon to submit his written statement to the Special Officer.

7. It will be seen from the foregoing that the decision to take disciplinary action against the petitioner was taken by the disciplinary authority, after making an investigation and with due deliberation. The question whether or not these charges levelled against the petitioner are true, is a matter yet to be gone into in the disciplinary inquiry which has been commenced by the issue of the Articles of charge. The petitioner will have the requisite opportunity, according to rules, to defend himself in respect of the charges."

6. 2) Thus, from what has been stated above, it is clear that the Full Court has met on more than one occasion for consideration of the subject. In the meeting held on 16.7.1981, the report submitted by Sri C.N. Srinivasappa, was found to be unsatisfactory, therefore it was resolved to request the learned Administrative Judge in charge of Bijapur district to make a study of a few judgments rendered by the petitioner in the Land Acquisition cases. Accordingly, the learned Administrative Judge made a report. On consideration of the report which prima facie revealed irregularities in the disposal of the Land Acquisition cases by the petitioner, the Full Court on 30th July 1981 decided to request the learned Administrative Judge to formulate the points on which the petitioner's explanation should be called for. For the purpose of doing so, the 2nd respondent was authorised to proceed to Bagalkot and other places and to submit his report. It was pursuant to this direction, the 2nd respondent collected the material and made a report. After the report was submitted, the matter had again come up

before the Full Court on 20th August 1981 and on consideration of all the aspects, the Full Court was of the opinion that prima facie grave irregularities and acts of commissions and omissions amounting to misconduct on the part of the petitioner, were revealed; therefore he should be placed under suspension. Thereafter, the articles of charge had come up for consideration before the concerned administrative Committee, on 17.2.1982 which deferred the matter for the consideration of the Full Court. Therefore, the matter came to be placed before the Full Court on 16.4.1982 and as stated in the statement of objections of the first respondent, the Full Court finalised the articles of charge and the statement or allegations or otherwise known as statement of imputations of misconduct. Thereafter, it has been served upon the petitioner, as per Annexure-A. It is also further stated in para-7 of the statement of objections, that the decision to take a disciplinary action against the petitioner was taken, by the disciplinary authority after making an investigation and with due deliberation. Thus, from what has been stated, it is clear that the disciplinary authority has not taken a hurried decision to initiate a disciplinary proceeding against the petitioner. It is after due deliberation and on consideration of the report made by the learned Administrative Judge and also the report submitted by the 2nd respondent, the decision has been taken and the articles of charge have been finalised. There is no reason whatsoever for not accepting the statements made in paragraphs 4 to 7 of the statement of objections of the first respondent. If the statements made in the statement of objections are acceptable, then there is no reason whatsoever to hold that the disciplinary authority has framed the articles of charge without the application of mind.

6. 3) Connected with this contention, one other contention of the petitioner is that the articles of charge do not disclose misconduct; therefore the same are not only liable to be quashed on his ground, but it also indicates that the disciplinary authority has framed the articles of charge without the application of mind; therefore the same are liable to be quashed. Dealing with this contention, I will also consider whether it is possible to hold that the articles of charge do not disclose any mis-conduct. The charges contained in the articles of charge are as follows:

"1) That while functioning as Civil Judge at Bagalkot, between June 1979 and May 1981, you indulged in gross abuse of your position as a Judicial Officer in dealing with references for enhancement of compensation in respect of Land acquisition cases from the Upper Krishna Project (UKP) area and in discharging duties and functions in such capacity, you committed and are guilty of grave irregularities, serious acts of omission and commission (as detailed in the annexed statement of allegations) which amount to grave misconduct, and conduct unbecoming of a Judicial Officer.

2) You have amassed wealth highly disproportionate to your salary and other known sources of income in that you have sunk an irrigation well, installed an I.P. Set, constructed a farm house in stone, and raised a bund of stone-rivetment

running along the border of your dry land in Hulkund in Belgaum district at a cost exceeding a lakh of rupees and you have not reported and that you had also not taken prior permission for any of the above, by disclosing the sources from which the funds were being met, and are thus guilty of grave misconduct.

3) That in addition to the investments referred to in charge No. 2, you have held bank balances and assests to the tune of Rs. 31,142-82ps. in the Ranebennur branch of the State Bank of India and Rs. 1,152-75 in the Ranebennur branch of the Syndicate Bank, and the possession of these assests and funds are disproportionate to your known sources of income and amounts to a grave misconduct.

4) That without prior permission. you have bought/acquired moveables exceeding Rs. 2000/- in value at a time, as particularised in the statement of allegations annexed hereto.

5) You have been filing incorrect statements of assets and liabilities.

6. 4) As far as the first charge is concerned, it relates to grave irregularities, serious acts of omission and commission amounting to grave misconduct and conduct unbecoming of a Judicial Officer, alleged to have been committed by the petitioner in the discharge of his duties and functions as a Civil Judge during the period between June 1979 to May 1981 in dealing with references for enhancement of compensation in respect of Land Acquisition Cases from Upper Krishna Project area. In support of this charge the statement of allegations are found contained in paras A to Y of the statement of allegations. They refer to several cases decided by the petitioner and also the manner in which they have been disposed of by him. A mere reading of the charge along with the statement of allegations, is sufficient to hold that it discloses misconduct as it is understood in the Service jurisprudence in the context of disciplinary proceedings.

6. 5) It is however contended by Shri Karanth. learned Counsel for the petitioner, that some of the cases decided by the petitioner which have been mentioned in the statement of allegations have been affirmed by this Court; therefore the disciplinary authority while finalising articles of charge being aware of the fact that some of the Judgments have been affirmed by this Court on the Judicial side, has nevertheless included those cases also; therefore, it goes to show that there is no application of the mind in framing the articles of charge. This contention overlooks the fact that the subject matter of disciplinary proceeding is not with regard to the correctness of the decisions rendered by the petitioner, but it is with regard to the misconduct committed by him in the discharge of his duties and performance of his functions as a Judicial Officer while deciding certain cases. Therefore, the mere fact that some of the judgments which have been referred to in the statement of allegations are affirmed by this Court will not take away or wipe out the misconduct alleged to have been committed by the petitioner in deciding those cases. Similar question came up before the Supreme Court, in Govinda Menon v. Union of India, AIR 1967 SC 1274, wherein

it was held as follows:

"(7) We next proceed to examine the contention of the appellant that the commissioner was exercising a quasi judicial function in sanctioning the leases under the Act and his orders, therefore, cannot be questioned except in accordance with the provisions of the Act. The proposition put forward was that quasi judicial orders, unless vacated under the provisions of the Act, are final and binding and cannot be questioned by the executive Government through disciplinary proceedings.

8. It is apparent that the first part of charge No. 1 read with the relevant allegations is that in utter disregard of the provisions of S. 29 of the Act and the Rules and without being satisfied that the leases were beneficial to the Devaswoms the appellant sanctioned them and this action of the appellant discloses misconduct, irregularity and gross recklessness in the discharge of his Official duties. The charge is, therefore, one of misconduct and recklessness disclosed by the utter disregard of the relevant provision of S. 29 and the Rules thereunder in sanctioning the leases. On behalf of the respondents it was argued both by Mr. Sarjoo Prasad and Mr. Bindra that the commissioner was not discharging quasi judicial functions in Sanctioning leases under S. 29 of the Act, but we shall proceed on the assumption that the Commissioner was performing quasi judicial functions in granting leases under S. 29 of the Act. Even upon that assumption, we are satisfied that the Government was entitled to institute disciplinary proceedings if there was prima facie material for showing recklessness or misconduct on the part of the appellant in the discharge of his official duty. It is true that if the Provisions of S. 29 of the Act or the Rules are disregarded the order of the commissioner is illegal and such an order could be questioned in appeal under S. 99 of the Act. But in the present proceedings what is sought to be challenged is not the correctness or the legality of the decision of the Commissioner but the conduct of the appellant in the discharge of his duties as Commissioner. The appellant was proceeded against because in the discharge of his functions he acted in utter disregard of the provisions of the Act and the Rules. It is the manner in which he discharged his functions that is brought up in these proceedings. In other words, the charge and the allegations are to the effect that in exercising his Powers as Commissioner the appellant acted in abuse of his power and it was in regard to such misconduct that he is being proceeded against. It is manifest, therefore, that though the propriety and legality of the sanction to the leases may be questioned in appeal or revision under the Act, the Government is not precluded from taking disciplinary action if there is proof that the Commissioner had acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith or that he omitted to observe the prescribed conditions which are essential for the exercise of the statutory power. We see no reason why the Government cannot do so for the purpose of showing that the Commissioner acted in utter disregard of the conditions prescribed for the exercise of his power or that he was guilty of misconduct or gross negligence. We are accordingly of the opinion that the appellant has been unable

to make good his argument on this aspect of the case". (Emphasis is supplied)

In the instant case, as is pointed out above, Charge No. 1 discloses misconduct alleged to have been committed by the petitioner in the discharge of his duties as a Judicial Officer and not the correctness of the decisions rendered by him. Therefore, it is not possible to accept the contention that some of the judgments which have been referred to in the statement of imputations rendered by the petitioner have been affirmed by this Court; therefore they cannot form subject of disciplinary proceeding and the inclusion of the same in the statement of imputations amounts to non-application of mind by the disciplinary authority. It is accordingly negated.

6. 6) With reference to the 2nd charge, it is contended that nowhere it is provided in the Karnataka Civil Services (Conduct) Rules, 1966 (hereinafter referred to as the "Conduct-Rules") that an official effecting improvement to his immovable property must report to the High Court, therefore the 2nd charge does not disclose misconduct. This contention also is not well founded. Firstly all the five charges cannot at all be read in isolation. They have to be read together as the proof of charge No. 1 will have a bearing on the other charges also. Charge No. 2 states that the petitioner has amassed wealth highly disproportionate to his salary and other known sources of income, in that he has sunk an irrigation well, installed an I.P. set, constructed a farm house and raised a bund of stone revetment at a cost exceeding a lakh of rupees and that the same has not been reported to his higher authority nor he has taken prior permission for any of the above improvements by disclosing the sources from which they were being met. Of course, here it is contended that the value of the improvements is not to the tune of a lakh of rupees and there is over-estimation. But, it is not a matter to be gone into at this stage.

The question as to whether the value, mentioned in the articles of charge, of the improvements is the correct one or not, is a matter for decision by the disciplinary authority. But, the charge is that the improvements to the tune of a lakh of rupees have been effected by the petitioner which is beyond the known sources of income of the petitioner; therefore there is a misconduct. By any stretch of imagination, it is not possible to say that such a charge does not disclose misconduct. If a civil servant amasses wealth highly disproportionate to the known sources of income, if proved, that by itself is sufficient to hold that there is a misconduct. Therefore, the charge requires to be enquired into. Consequently the contention relating to the 2nd charge that it does not disclose misconduct, cannot be accepted.

6. 7) The third charge relates to the Bank balance held by the petitioner to the tune of Rs. 31,142-82 in the Ranebennur Branch of State Bank of India and Rs. 1,152-75 Ps in the Ranebennur Branch of Syndicate Bank. This is framed in addition to charges 1 and 2 and is based upon amassing of wealth disproportionate to the known sources of income of the petitioner. It is contended that the act of the petitioner in maintaining an account and holding a bank

balance are not matters which are required to be intimated to the High Court. But, the charge is not with regard to the non-intimation, but the charge is in holding bank balance disproportionate to the known sources of income. In this regard, it is also contended that in the annual returns submitted by the petitioner, he has stated about the amount held by him in the bank balance and the manner in which he has acquired the said amount. But, the amount stated in the Annual Returns submitted by the petitioner, copies of which are also produced as Annexures D and E, do not disclose the entire sum. Further, the charge is connected with charges 1 and 2. Therefore, having regard to the first charge, it cannot be held that this charge does not disclose misconduct.

6. 8) The 4th charge is that without prior permission, the petitioner has bought/acquired moveables exceeding Rs. 1,000/- in value at a time. It is contended that under the Conduct Rules, it is not necessary to obtain prior permission of the High Court for purchasing or acquiring moveables exceeding Rs. 1,000/- in value. But, the contention of the other side is that under Rule 23 (3) of the Conduct Rules, if the acquisition of moveables is otherwise than through a regular or reputed dealer, the prior permission is required to be taken. It is not the case of the petitioner that he has acquired the moveables mentioned in Charge No. 4 through a reputed dealer. Therefore, at this stage, it is not possible to hold that Charge No. 4 does not disclose misconduct.

6. 9) It is contended that Charges Nos. 3 and 4 are vague and as such they cannot be held to disclose any misconduct. In this regard, learned Counsel for the petitioner has placed reliance on a decision of the Supreme Court in *Union of India v. J. Ahmed*, AIR 1979 SC 1022 That was a case in which the service of the delinquent official was extended beyond the date of superannuation for the purpose of completing the disciplinary enquiry which was commenced before the delinquent official attained the age of superannuation. The enquiry was completed and the delinquent official was removed from service. The Supreme Court came to the conclusion that the delinquent official, who was likely to retire during the pendency of a disciplinary proceeding could be retained in service under Rule 16(2) of the All India Services (Death-cum-retirement Benefit) Rules, 1958 beyond the date of his retirement till the completion of the enquiry, provided the delinquent officer was under suspension on a charge of misconduct. On going through the charges, Supreme Court held as follows:

"As pointed out earlier, no misconduct as one would understand that word in the context of disciplinary proceeding was alleged against the respondent. There was an inquiry but before sub rule (2) of R. 16 is attracted, it had to be an inquiry on a charge of misconduct. What is alleged is not misconduct as the word is understood in service jurisprudence in the context of disciplinary proceedings. Therefore, it could not be said that an inquiry on a charge of misconduct was being held against the respondent and sub-rule (2) of Rule 16 would thus be attracted and he would be deemed to have been retained in service till the inquiry was concluded".

The principle enunciated in that decision, having regard to the conclusions reached by me that in the instant case the articles of charge do disclose misconduct as it is understood in the service jurisprudence in the context of disciplinary proceedings, alleged to have been committed by the petitioner in discharging his duties and functions as a judicial officer, is not applicable to the case of the petitioner. Therefore no assistance can be derived by the petitioner from the aforesaid decision.

6. 10) The last charge is with regard to the filing of incorrect statements of assets and liabilities. If, according to Charge No. 2, the petitioner has invested the amount for the improvement of agricultural land to the tune of a lakh of rupees, then it must have been reflected in the Annual returns submitted by the petitioner as per Annexure D and E; but nothing is stated about the income he has derived out of agricultural lands, except stating that certain amount he has received by way of compensation. As far as the income from the agricultural land is concerned, the column relating to the income from the agricultural land has been left blank even in Annexures "D" and "E" which are the returns for the years ending 1980 and 1981.

6. 11) It is also contended that charge No. 5 is not supported by any statement of allegations and it is too vague a charge because it merely says that the petitioner has been filing incorrect statements of assets and liabilities, therefore it cannot be allowed to be enquired into. Learned Counsel for the petitioner has also placed reliance on a decision of the Supreme Court in *N.R. Co-operative Credit Society Ltd., Jodhpur v. Industrial Tribunal, Rajasthan Jaipur*, AIR 1967 SC 1102. In this connection it is contended that the charge does not state that the returns pertaining to which year/years are incorrect, therefore, it is not possible to meet the charge in the statement of imputation it is stated that the charge speaks for itself. I have already pointed out that having regard to the nature of imputations made against the petitioner, all the charges have to be read together and each charge should not be read in isolation. No doubt in paras 12 and 13 of the aforesaid decision of the Supreme Court it had been found that the charges with which the Supreme Court was concerned were vague, therefore, it was held that the delinquent was fully justified in pleading that the charges were vague and he was unable to show cause against the charges served on him. As a legal proposition, it cannot be disputed that the charges must be accurate and they must disclose the necessary allegations of misconduct. If the charge is vague and it does not disclose allegations of misconduct it is not possible for the delinquent to meet such a charge. In the instant case it is already pointed out that the charges cannot be said to be vague. The charges read with the statement of imputations do disclose misconduct. No doubt, in Charge No. 5, it is not mentioned that the returns concerned in the charge are the returns pertaining to particular year/years. But, it does not present any difficulty nor does it introduce an element of vagueness in the charge inasmuch as the articles of charge itself pertains to the period from 1979 to 1981, during which the petitioner is alleged to have committed misconduct alleged against him.

Therefore, there can be no doubt that it is the returns pertaining to those years which are the subject of the charge. That being so, it cannot be said that the charge No. 5 is in any way vague. As stated in the statement of imputations, charge No. 5 does not require separate statement of imputations, as it speaks for itself. Therefore the contention of Sri Karnath, learned Counsel for the petitioner that the articles of charge do not disclose any misconduct; hence there is no application of mind by the disciplinary authority is not well founded.

6. 12) Thus, from what has been stated above, it is clear that all the three principal contentions of the petitioner fail. At this stage, we are not concerned with the question of proof of the charges as the same are yet to be enquired into. Therefore, several other assertions made in the petition with reference to the merits of the charges need not be considered.

6. 13) It is also contended on behalf of the petitioner that since the statement of allegations supplied along with the articles of charge does not accord with Rule 11 (4) of the Rules; the articles of charge are defective and as such, the same cannot be enquired into, therefore the same are liable to be quashed. Rule 11(4) of the Rules provides that the disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses on which each articles of charge is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person. The emphasis is laid by Sri Karanth learned Counsel for the petitioner on the expression "each article of charges" occurring in the Rule. It is contended that each article of charges must be accompanied by a separate statement of imputations and documents, and the list of witnesses by which it is proposed to be sustained. Whereas, it is contended in the instant case, each article of charges is not supported by a separate statement of imputations and separate list of documents and witnesses, therefore articles of charge are not in accordance with Rule 11 (4) of the Rules. It is not possible to accept this contention. Rule 11 (4) of the Rules does not permit such an interpretation. As such it cannot be read in that manner. What is necessary is that the statement of imputations of misconduct, or misbehaviour, as the case may be, and a list of witnesses and documents must accompany the articles of charge by which the charges are proposed to be established. It is not necessary that the disciplinary authority, in a case where there are more than one charge, must furnish to the delinquent a separate statement of imputations of misconduct and a list of witnesses and documents in respect of each charge. It is not at all the intendment of the Rule. It may so happen that charges may be more than one and the facts and circumstances and even the documents and witnesses may be common to all the charge. Therefore, the proper reading of the Rule would be, to hold that what is necessary is that the disciplinary authority must furnish the statement of imputations and the list of documents and witnesses by which it purposes to establish the charges framed against the delinquent official.

Therefore, it is not possible to hold that the articles of charge as served upon the petitioner, are not in accordance with Rule 11(4) of the Rules.

7. In support of the contention that the decision of the first respondent is vitiated because of legal malice, learned counsel for the petitioner has placed reliance on the following decisions of the Supreme Court.

AIR 1964 SC 72 (Partap Singh v. State of Punjab)

AIR 1972 SC 1004 (State of Haryana v. Rajendra)

AIR 1972 SC 2170 (State of Mysore v. P.R. Kulkarni)

AIR 1976 SC 1766 (The Regional Manager & Anr. v. Pawan Kumar Dubey)

It is not necessary to discuss these decisions, in view of the conclusion arrived at by me that on the facts and circumstances established in the present case, neither the legal malice nor the malice in fact alleged against the 2nd respondent is established. Therefore, the applicability of the law laid down in the aforesaid decisions of the Supreme Court is not considered.

8. (1) One of the contentions of the respondents is that the petitioner cannot maintain the writ petition because at this stage what has been done is only to serve the articles of charge which cannot be said to be a penal action; hence no right of the petitioner is infringed; therefore the petition is premature, as such the petitioner is not entitled to the reliefs sought for by him under Article 226 of the Constitution, In support of this plea, Sri S.G. Sundara Swamy. learned Counsel for the respondents, has placed reliance on a decision, of the Supreme Court in Chanan Singh v. Registrar Co. op Societies Punjab, AIR 1976 SC. 1821. That was a case in which the revival of the disciplinary proceeding was challenged. While dealing with the point raised on behalf of the respondents that the writ petition was premature, it was observed by the Supreme Court, as follows:

"4. The first point raised in objection by the second respondent is that the writ petition is premature since no action has been taken finally against the appellant, the disciplinary proceedings are still pending and the explanation of the appellant is under consideration. It is only in the event of the appellant being punished that any grievance can arise for him to be agitated in the proper forum.

5. Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult to state, apart from speculation, what the outcome of the proceedings will be. In case the appellant is punished, it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to. It is not for us, at the moment, to consider whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under

the rules is the proper remedy, although these are issues which merit serious consideration.

6. We are satisfied that enough unto the day being the evil thereof, we need not dwell on problems which do not arise in the light of the view we take that there is no present grievance of punitive action which can be ventilated in court. After all, even the question of jurisdiction to re-open what is claimed to be a closed enquiry will, and must, be considered by the Managing Director. On this score we dismiss the appeal, but, in the circumstances, without costs."

Thus, from the aforesaid enunciation, it is clear that a mere framing and serving upon the petitioner, the articles of charge will not result in punitive action. The charges are yet to be enquired into. It is not possible to forestall at this stage as to what would be the outcome of the disciplinary proceeding. If the result of the proceeding goes against the petitioner, it is certainly open for him to resort to a legal course that is available to him against such a decision. Thus, where only the articles of charge are framed by the disciplinary authority, whose competence to hold the disciplinary proceeding is not in dispute, a mere framing of articles of charge does not result in infringement of the right of the petitioner and it does not amount to penal action; therefore, the petition invoking the jurisdiction of this Court under Article 226 of the Constitution, in the absence of a plea of mala fides vitiating the action proposed, is premature. The principle of law is that, if an authority-having jurisdiction to take a particular action, or to do a certain thing, whether it be a disciplinary proceeding as it happens to be in the instant case, in the absence of lack of bona fides, in other words, if the action, is not tainted by mala fides, must be allowed to complete its course of action. To put it shortly, all things being normal, law must be allowed to take its own course. In a case like this, where the petitioner has failed to establish the mala fides alleged by him, jurisdiction under Article 226 of the Constitution is not intended to be exercised at this stage.

8. 2) But, in the instant case, as it is already pointed out, the petitioner, apart from challenging the/validity of the articles of charge on certain legal contentions, has also challenged the validity of the same on the allegation of legal malice on the part of the first respondent and also malice in fact on the part of the 2nd respondent. Therefore, to that extent, the petition is maintainable and it is because of this, I have considered the contentions of the petitioner relating to legal malice and the malice in fact.

9. It is the contention of the petitioner that for the purpose of deciding the writ petition it is necessary to call for the records mentioned in prayer para 26 (1) and (ii) of the writ petition. Similar prayer is also made in I.A. No. 1 filed by the petitioner. The records mentioned in prayers (i) and (ii) are those which pertain to the preliminary enquiry held by the first respondent for the purpose of finding out whether there is a prima facie case for initiating a disciplinary proceeding against the petitioner. In this regard it is contended on behalf of the first respondent that the petitioner has no right at this stage to look into the records

pertaining to the preliminary enquiry. It is contended that only when those records are tried to be put in as evidence during the course of disciplinary enquiry the petitioner will be entitled to inspect the same. It is contended that the rights of the petitioner in a disciplinary proceeding are governed by the provisions contained in Article 311 of the Constitution and the Rules which govern the disciplinary proceeding. In support of this contention, the learned Counsel for the respondents has placed reliance on the decisions of the Supreme Court in *Champaklal Chimanlal Shah v. The Union of India*, AIR 1964 SC 1854., *A.G. Benjamin v. Union of India*, 1967 (1) LLJ. 718. and *Krishna Chandra Tandon v. Union of India*, AIR 1974 SC 1589.

9. 2) On the contrary, the contention of the learned Counsel for the petitioner is that the power of the Court to call for the records is not regulated or circumscribed by the right of the petitioner to look into the records pertaining to the preliminary enquiry; therefore, it is submitted that for the purpose of deciding the contentions raised by the petitioner that the articles of charge suffer from the vice of legal malice and malice in fact, on the part of the first and the second respondents respectively, records of the preliminary enquiry are necessary to be looked into. This submission of the learned Counsel for the petitioner over-looks an important aspect of the matter that the power of the Court has to be exercised with reference to the relief to which the party invoking the jurisdiction of the Court, is entitled to. From the mere fact that the Court has got the power to call for the records and look into them, it does not necessarily follow that the records must be called for, because the party wants them to be called for, irrespective of the fact, whether the party wanting them to be called for is or is not in law, entitled to look into them. For the purpose of obtaining an order to call for the records pertaining to the preliminary enquiry in a disciplinary proceeding, the party seeking such relief must establish that he is, in law, entitled to have inspection of such records. Of course, it is also necessary to state that if the court finds it necessary to look into the records for the purpose of deciding the issue raised before it, it is always open to it to call for the records.

9. 3) As far as the requirement of the Court to look into the records mentioned by the petitioner is concerned, it is clear from what has been stated earlier that it is not necessary to look into the same for the purpose of deciding the issues raised in this petition. The issues raised by the petitioner are such that they can be decided from the records which have been produced in the writ petition. That being so, I will now examine the question whether, in law, the petitioner who is facing a disciplinary enquiry is entitled to look into the records pertaining to the preliminary enquiry. Rights of a delinquent civil servant in relation to a disciplinary proceeding can be gathered from Art 311 of the Constitution, and the relevant Rules governing the disciplinary proceeding. Sub-articles (1) and (2) of Art. 311 of the Constitution, which are relevant for our purpose are as follows:

"311 (1) No person who is a member of a Civil Service of the Union or an all-India service or a Civil service of a state or holds a civil post under the Union or a

State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:".

Art. 311 (2) states that no civil servant of a State or the Union as the case may be, shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The proviso further states that it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. Thus, the rights of a Civil servant who is subjected to a disciplinary enquiry with reference to the charges in respect of which the enquiry is proposed, are that he shall be informed of the charges framed against him, an inquiry into the charges be held, and he must be given a reasonable opportunity of being heard in respect of the charges. The manner in which and the procedure to be followed in a disciplinary enquiry are governed by the Rules. In this case, it is not necessary to go into the contents of the right of a reasonable opportunity to be afforded to a delinquent civil servant in a disciplinary proceeding. It is also not necessary to examine all the aspects of the relevant Rules, As per Rule 11 of the Rules, the articles of charge are to be furnished with statement of imputations of mis-conduct or misbehaviour as the case may be, along with a list of documents and witnesses by which the charge or charges are proposed to be established, the delinquent official has also to be given an opportunity to file his written statement. If the charge/charges are denied an enquiry has to be held as per the provisions contained in the Rules. Therefore, the petitioner has no right whatsoever to look into the records pertaining to the preliminary enquiry which is only intended for the satisfaction of the disciplinary authority that there is a case for initiating a disciplinary action against the delinquent official. In *Champaklal Chimanlal Shah v. Union of India*, AIR 1964 SC 1854., the Supreme Court while dealing with the object of preliminary enquiry, has stated as follows:

"12. Generally therefore a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made but, and it is very necessary that the two should not be confused. Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct, a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said

already Government does not usually take action of this kind without any reason. Therefore, when a preliminary enquiry of this nature is held in the case of a temporary employee or a government servant holding a higher rank temporarily, it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant. Therefore, so far as the preliminary enquiry is concerned there is no question of its being governed by Art. 311 (2), for that enquiry is really for the satisfaction of government to decide, whether punitive action should be taken or action should be taken under the contract, or the rules in the case of a temporary government servant or a servant holding higher rank temporarily to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Art. 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the Government and it is only when, the Government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the government servant gets the protection of Art. 311 and all the rights that, that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Art. 311 that the Government servant is entitled to the protection of that article. That is why this court emphasised in *Parshotam Lal Dhingra's case*, 1958 SCR 828: (AIR 1958=S.C. 36) and in *Shyam Lal v. State of UP.* (1955) 1 SCR 26: (AIR 1954 S.C. 369), that the motive or the inducing factor which influences the government to take action under the terms of the contract of employment or the specific service rule is irrelevant.

Same principle is reiterated by the Supreme Court, in the case of *A.G. Benjamin v. Union of India*, 1967 (1) LLJ. 718 and the aforesaid decision in *Champaklal's case* has also been referred to therein. Again in the case of *Krishna Chandra Tandon v. Union of India*, AIR 1974 SC 1589., it has been held as follows:

"16.It appears that on complaints being received about his work the Commissioner of Income-Tax had asked the Inspecting Assistant Commissioner Shri R.N. Srivastava to make a report. He made a report. It is obvious that the appellant was not entitled to a copy of the report made by Mr. Srivastava or any other officer unless the enquiry officer relied on these reports. It is very necessary for an authority which orders an enquiry to be satisfied that there are

prima-facie grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no importance unless the enquiry Officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent". Thus, from the aforesaid decisions, it is clear that at the stage of preliminary investigation, the delinquent official cannot claim a right, either to be heard, or, to have an opportunity to put forth his say in the matter. He cannot also claim a right either to have inspection or copies of the records pertaining to the preliminary enquiry even during the course of a disciplinary proceeding as long as such records or any one of them which form part of the records of a preliminary enquiry, are not sought to be relied upon by the disciplinary authority to establish the charges framed against the delinquent official. If that be so, the stage as which the petitioner has approached this Court under Article 226 off the Constitution does not entitle him to look into the records pertaining to preliminary enquiry. The petitioner, has now been served with the articles of charge. He has to file his written statement of defence. Thereafter, the charges are to be enquired into. The petitioner hag prayed for quashing the articles of charge. For this purpose, he wants this Court to look into the records pertaining to the preliminary enquiry. It has already been pointed out that for the purpose of deciding the issues raised by the petitioner, the records of the writ petition are sufficient. Further, the issues raised by the petitioner have been examined and the findings have been recorded in the preceding paras of this order. It is apparent that by this request the petitioner wants to get at the records pertaining to the preliminary enquiry which, he cannot, otherwise get at because he has, only a right to look into those records and to have copies of the same if those records are tried to be relied upon by the disciplinary authority during the course of the disciplinary enquiry. Therefore, I do not find that it is necessary to call for the records as prayed for by the petitioner. Accordingly, this prayer of the petitioner is rejected.

10. Though the petitioner has contended that the articles of charge should be quashed because they do not disclose misconduct, it has already been pointed out that this contention is not well founded, and the articles of charge do disclose misconduct. In that view of the matter, it is not necessary to consider the decisions referred to by the learned Counsel for the petitioner as well as the respondents regarding the criteria or the tests, to be applied for quashing the articles of charge.

11. Learned Counsel for the respondents has also contended that the allegations of malice a gainst the Constitutional authority are to be looked into with all seriousness and they are to be scrutinised very closely, not because that the allegations are made against the authorities like the respondents, but because the position the 1st respondent enjoys as a Constitutional authority Therefore, it

is submitted, the allegations made against such an authority must be looked into very closely. I have already held that the allegations pertaining to legal malice and malice in fact made against the 1st and the 2nd respondent respectively, are not established; therefore, it is not necessary to refer to the decisions of the Supreme Court on this point which have been referred to during the course of arguments.

12. For the reasons stated above, I am of the view that there is no case for interference at this stage; hence there is no ground to issue rule. Accordingly, the writ petition is dismissed.