IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No.1460 /88.
~~T.A.No.~~ 199

DATE OF DECISION 11-1-1991

Shri G.V. Jhabak — Petitioner

Shri R. Kapoor — Advocate for the Petitioner(s)

Versus

Secretary, Department of Revenue, Ministry of Finance, New Delhi. — Respondent

~~Shri R.S. Aggarwal.~~ — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? —
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? —
4. Whether it needs to be circulated to other Benches of the Tribunal ? —

(AMITAV BANERJI)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 1460/88. DATE OF DECISION: 11-1-1991

Shri G.V. Jhabakh. ... Applicant.

Vs.

Secretary, Department of Revenue, Ministry of Finance, New Delhi. ... Respondent.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Applicant. ... Shri R. Kapoor, Counsel.

For the Respondent. ... Shri R.S. Aggarwal, Counsel.

(Judgement of the Bench delivered by Hon'ble Mr. Justice Amitav Banerji, Chairman)

In this Application, the applicant is aggrieved by an order of censure passed against him for allowing certain properties of a defaulter to be sold by private auction instead of public auction. The order dated 11.2.1988 passed by order in the name of the President of India. He has filed the present O.A. on 2.8.1988.

The facts in brief are as follows:

The applicant while functioning as Commissioner of Income Tax (Recovery), Madras during 1983 is said to have comitted gross misconduct and failed to maintain devotion to duty inasmuch he as against orders of sale by way of public auction of two buildings bearings Nos 423 and 424, T.H. Road, Old Washermanpet, Madras towards realisation of income-tax arrears to an extent of Rs.10.68 lakhs, allowed private sale of the same to the financial detriment of the Income-Tax Department, which resulted in collection of only a total of Rs.4.05 lakh for these two valuable properties even though a far higher amount could have been realised by way of public auction. It was charged that he has contravened

Rule 3(i)(ii) of the Central Civil Services(Conduct) Rules, 1964. The applicant denied the charge framed against him. An oral inquiry was held. The Inquiry Officer vide her report dated 29.12.1986, held the charge against the applicant as partly proved. Thereafter, the matter was referred to the Union Public Service Commission (U.P.S.C.) for advice. The findings and the advice of the U.P.S.C. were conveyed vide their letter dated 4.11.1987 in which they after taking into acount all the facts and circumstances relevant to the case advised that minor penalty of 'censure' may be imposed on the applicant. Thereafter, the impugned order dated 11.02.1988 was passed.

The relevant facts relating to the charge are as follows:

That an amount of Rs.10.68 lakhs was due from M/s Gopal Chetty and Bros. of Madras. There were repeated failure by the party to pay the outstanding demand and an auction sale of two immovable properties - Nos 423 and 424 T.H. Road, Old Washermanpet, Madras - was fixed by the Tax Recovery Officer (TRO) for 28.4.1983. On 2.4.1983, the party approached the applicant who was then Commissioner of Income-tax(Recovery), Madras, offering to effect private sale of the properties and credit proceeds to the Government account. On 26.4.1983, the applicant asked the T.R.O. to postpone the auction sale. It is stated that both the TRO and the ITO had advised the applicant against the postponement of the auction sale.

In regard to the property No. 424, its value had been determined by the Departmental Valuer in 1983 at Rs.1,52,783/-. The applicant allowed this property to be sold by private sale for an amount of Rs.1,55,000/-. The sale deed was executed on 22.6.1983. Subsequently on 6.7.1983, there was an offer from some other party that they were willing to buy

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this property for Rs.2,50,000/-. In regard to the property No. 423, its value had been determined by the Departmental Valuer in 1983 at Rs.2,63,782/-. The applicant allowed this property to be sold by private sale for an amount of Rs.2,50,000/-. However, four days before the registration of the sale deed, a tenant of this property had offered to buy it for a sum of Rs.4 lakhs. The Inquiry Officer held that the offer for purchase of the property No. 424 for Rs.2,50,000/- was received after the sale deed had already been executed. The Inquiry Officer, therefore, did not find fault with the applicant on the limited question of not having re-opened the issue of disposal of this property by private sale for a sum of Rs.1,55,000/-. However, in regard to property No. 423, the Inquiry Officer faulted the applicant for not having considered the offer of its purchase by a tenant for a sum of Rs.4 lakhs, which was received before the registration of the document.

The Inquiry Officer's finding was that the applicant allowed private sale of the properties without adequate reasons and that the postponement of the auction earlier fixed was not justified. The applicant had urged that the value of the properties fixed by the Departmental Valuer was not accepted by the Inquiry Officer. It was held that the Departmental Valuer was competent to value the properties and the valuation made by him was accepted. If it was so, the applicant could have made an attempt to make it valued. The Inquiry Officer held that the charge against the applicant was established to the extent that he had allowed the private sale of properties in an irregular manner. The charge of causing loss to revenue was not held to be established because the question of sale of the properties at a higher price was hypothetical in nature.

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The U.P.S.C. in their advice held that the applicant while permitting private sale in preference to public auction failed to exercise his discretion prudently and did not take into account all the circumstances of the case. According to the U.P.S.C., it would have been proper for the applicant to go in for public auction after fixing a minimum reserve price. The U.P.S.C., therefore, held that the applicant could be held guilty of the charge to the extent indicated above. The U.P.S.C. advised imposition of a minor penalty of censure on him.

The President thereafter passed the impugned order. It was held that the total value of the two properties as determined by the Departmental Valuer was higher than the realisation by the applicant by allowing private sale of these properties. Since the applicant was of the view that the value determined by the Departmental Valuer was not proper, he should have got a proper value of these properties determined before deciding whether a private sale should be allowed. The sale of the properties by public auction was necessary when a tenant had offered a considerable higher amount even before the registration had been made.

The respondents in their reply held that the Inquiry Officer vide her report dated 19.12.1986 held that the charge was partly proved inasmuch as he had not considered the totality of the circumstances before postponing public auction, and thus he displayed lack of devotion to duty. The Inquiry Officer further held that the other part of the charge viz., failure to maintain absolute integrity as not proved, as there was no malafide action or ommission in the order for sale. It was further stated that the charge of causing loss of revenue was not established. The only charge which was proved was regarding failure to maintain devotion to duty. The disciplinary authority had not levelled any charge regardin

lack of integrity against the applicant. It was reiterated that the applicant did not prudently handle the offer by examining its genuinness. It was also held by the Inquiry Officer that the applicant allowed private sale against orders of public auction in an irregular manner. The respondents referred to Rule 53 of IInd Schedule of the Income-Tax Act, 1961 and to the words "as fairly and accurately as possible". In the present case, the I.T.O. in his report dated 8.4.83 to the applicant had stated that there were difficulties in arriving at correct amount of arrears, but when correctly arrived at, it would not be very much lower than Rs.10,68,000/- which were then shown as arrears. The auction of the two properties fetched about Rs.5 lakhs. Thus, the stand of the applicant was that the figures of arrears were not correctly arrived at and that the proposed auction was not possible as the I.T.O. failed to furnish the details of the arrears correctly. Another plea raised by the respondents was that there was no sufficient reason to go in for private sale of the properties. Reference was made to Rule 66 of Second Schedule of the Income-Tax Act, 1961 and which could be relied upon only when the order of sale of the properties had been made under Rule 53 of Second Schedule. The applicant would not, therefore, take the plea that since the public auction was not possible, he allowed private sale under Rule 66. The respondents refuted the plea taken by the applicant that although the private sale is permitted under Rule 66, he has been made guilty and the charge has been made under the rules and what is provided in law. The stand taken by the respondents was that the penalty has been imposed on the applicant because it was found that he, while permitting private sale by postponing public auction already fixed, had failed to

exercise his discretion prudently and did not take into account all the circumstances of the case. Secondly, the penalty had been imposed because the applicant allowed private sale without any adequate reasons and thirdly because postponment of auction in this case was not justified. These circumstances led to the conclusion that the applicant failed to maintain devotion to duty. The contention of the applicant that it was admitted in paragraph 6 of the penalty order that no loss of revenue was caused, was incorrect. The respondents took the stand that what was stated in paragraph 6 was that the charge of causing loss to revenue was not held as established because the question whether the auction of sale of property would have fetched a higher price was hypothetical in nature. It was not admitted that there was no loss of revenue. It was only held that this question was hypothetical in the circumstances of the case. The respondents, therefore, justified the imposition of the penalty and submitted that the O.A. is totally devoid on merit and deserves to be rejected.

We have heard Shri R. Kapoor, the learned counsel for the applicant and Shri R.S. Aggarwal, the learned ccunsel for the respondents.

Their contentions proceeded on the lines indicated above and much of the arguments pertained to Rules 53 and 66 of the Second Schedule of the Income Tax Act, 1961. These provisions may be reproduced:

> "53. Contents of proclamation. A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible,-
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> (a) the property to be sold;
>
> (b) the revenue, if any, assessed upon the property or any part thereof;

(c) the amount for the recovery of which the sale is ordered;

(cc) the reserve price, if any, below which the property may not be sold; and

(d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property".

"66. Postponement of sale to enable defaulter to raise amount due under certificate.(1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable postpone the sale of the property comprised in the order for sale, on such terms, and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute unlil it has been confirmed by the Tax Recovery Officer".

Rule 53 pertains to the proclamation of sale of immovable property. It is to be drawn up after notice to the defaulter, and also to state the time and place of sale and specified 5 items clauses (a) to (d) indicated above in the Rules. The importance of Rule 53 is that the immovable property can be sold if a proclamation of sale

has been drawn up. Rule 54 lays down the mode of making proclamation. Rule 56 indicates that the sale has to be by public auction to the highest bidder and subject to confirmation by the Tax Recovery Officer. A proviso to Rule 53 makes it clear that no sale under this rule has to be made if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (cc) of Rule 53.

Rule 66 comes into play only after an order for the sale of immovable property has been made. A perusal of Part III of Second Schedule (Procedure for Recovery of Tax) in the Income-Tax Act, 1961 makes it clear that the order of sale of the property is made under Rule 52, which reads as follows:

> "52. Sale and Proclamation of sale.(1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold (2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language of the district".

It will thus be seen that the T.R.O. may direct the sale of immovable property and it is only after that the proclamation of sale is issued under Rule 53. Rule 66(1) speaks of an order for the sale of immovable property and not about the proclamation of sale. It is true that a sale cannot take place until a proclamation of sale of immovable property has been issued.

Rule 66 makes it clear that when a defaulter whose immovable property has been ordered for the sale, satisfies the Tax Recovery Officer that there is reason to believe that the amount of arrears can be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the T.R.O. may, on his application, postpone the sale of the property comprised in the order for sale. This has to be taken on such terms, and for such period as he thinks proper, to enable him to raise the amount. Sub-rule (2) of Rule 66 empowers the T.R.O. to grant a certificate to the defaulter, authorising him to make the proposed mortgage, lease or sale within the period mentioned in that order. It is also provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the T.R.O. and lastly, the sale under the above rule becomes absolute after it has been confirmed by the T.R.O.

What is, therefore, necessary is that the defaulter must approach the T.R.O. that there is a possibility of raising the amount mentioned as reserve price in clause (cc) of the proclamation of sale and give reasons for doing so and if the T.R.O. is satisfied, he may permit private sale of the property also. In other words, there is a discretion left in the T.R.O. to provide an opportunity to the defaulter when the defaulter satisfies the T.R.O. in this regard. Once the defaulter moves the T.R.O. for exercising of power under Rule 66(1) and if the T.R.O. is

satisfied, he may exercise his power under Rule 66(2). The applicant was the Commissioner of Income-Tax (Recovery) and hence he could have exercised the power of T.R.O. as well.

Seen in the above light, it is clear that an application had been made by the defaulter in this case and the applicant had considered it and he thought that the power under Rule 66 could be exercised by an order for private sale of property. He, therefore, exercised his power under Rule 66(2). The sale took place and would have been confirmed, but for the fact that one of the tenants of property No. 423 made an offer of Rs.4 lakhs to the T.R.O. four days before its registration. The proper course would certainly have been for the T.R.O. in consultation with the applicant to pass an order for stay of registration until it was established that there was a genuine offer of Rs.4 lakhs. It should have been verified whether the offer of Rs.4 lakhs was a genuine one or not. If it was, he should have recalled his order permitting private sale of property No. 423 and asked the person, who made the offer of Rs.4 lakhs to deposit the amount. This had not been done. The amount which was the reserve price for property No. 424 was Rs. 1.52 lakhs, but was fetched in Rs.1.55 lakhs in private sale. The property No. 423 which had the reserve price of Rs.2,63,782/-, its value

was fixed as Rs.2,50,000/- for private sale. There was a loss of about Rs.13,000/- in property No. 423, whereas Rs.3000/- was realised in property No. 424. Thus, there was a difference of Rs.10,000/-. Such variations may come when a private sale is ordered. While it is always possible to be wise after the event, but it is expected of the T.R.O. to exercise his discretion prudently. If the auction sale has taken place and the highest bid offered had been lower than the reserve price, there probably could not have been any hue and cry after the sale, as being sold for the lesser price as has happened in this case. Viewed in this light, it does not appear to us that there has been any violation in provision of law. All that has happened is that the applicant ordered for a private sale of properties without going through the process of public auction of the properties. However, in view of the fact that some of the other properties of the defaulter still remain under attachment, it cannot be concluded that the interest of the department has been jeopardised.

In this view of the matter, we are of the view that too much is being spelt out from the order directing the proper sales of the properties by the applicant, with

a clear finding that there was no malafide on the part of the applicant and he had exercised his discretionary power, we do not see as to why he should be visited with a penalty of censure. The censure entry is to be given when it is established beyond doubt that the applicant was guilty of some act which was in violation of the Central Civil Service(Conduct) Rules. If there was no malafide, would it amount to a lack of devotion to duty when no loss is suffered by the revenue. A mere caution to be careful in future could have sufficed. In our opinion, a censure entry is a punishment even though treatment is a minor one. It can affect his future promotion. In the case of NAND KISHORE PRASAD VS. STATE OF BIHAR AND ORS., AIR 1978 SC 1277, the appellant Shri Nand Kishore Prasad was a clerk of District Magistrate. He was prosecuted for embezzling certain amount. In the disciplinary proceeding, the District Magistrate held that the conduct of the appellant was highly suspicious but for insufficient evidence proceeding against him must be dropped. The Commissioner reversed the order of the District Magistrate and directed removal of the appellant from service and the order was affirmed by the Board of Revenue. The High Court dismissing the writ petition observed that though the Commissioner's order was somewhat cryptic, the order of Board of Revenue was more elaborate and there was some

evidence albeit not sufficient for conviction in a criminal court. In this case, Sarkaria J. pointed out the principles enunciated by judicial decisions. The relevant portion of para 18 of the said judgement reads as follows:

> "...The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence,i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in Union of India V. H.C. Goel, AIR 1964 SC 364, "the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules".

We are of the view that the guilt cannot be established by mere conjectures or suspicion. It had to be established by cogent evidence. In the present case, everything was on the record. The exercise of power to allow a private sale of the attached properties was within the ambit of the power of the T.R.O./C.I.T.(Recovery). Further, the exercise of that power had not been done with motivation or malafide. No loss has been caused to the revenue either. In such an event the charge that there was a lack of devotion to duty, cannot be said to have been sustained. We are, therefore, of the view that this should be quashed. Secondly, the penalty of censure against the applicant has also to be set aside.

In the result, therefore, the Application is allowed, the finding of the disciplinary authority that there was a lack of devotion to duty within the meaning of C.C.S. (Conduct) Rules, is set aside as well as the order imposing the penalty of censure is also set aside. We order accordingly.

There will be no order as to costs.

(I.K. RASGOTRA)
MEMBER(A)

11.1.91

(AMITAV BANERJI)
CHAIRMAN

'SRD'