

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 205 OF 1988.
~~Ex-Ax No.~~

DATE OF DECISION 6.6.1989

SHRI P.G. NAWANI.

Petitioner

PARTY-IN-PERSON

~~Advocate for the Petitioner(s)~~

Versus

STATE OF GUJARAT & ORS.

Respondent s.

MR. ANIL DAVE, MR. HAMID KHURESHI Advocate for the Respondent(s)
& MR. M.A. PANCHAL.

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

Shri P.G. Nawani, I.P.S. (Retd.)
61, Swapnolok Apartments,
(Flat No.1, Sixth floor)
Chitralaya Society, Panchvati Marg.,
Law Gardens, Opp. Gujarat Nursery,
Ellis Bridge,
Ahmedabad - 380 006.

.... Petitioner.

(Party-in-Person)

Versus.

1. State of Gujarat
(Notice to be served through
the Chief Secretary,
Government of Gujarat,
General Administration Department,
Sachivalaya, Gandhinagar.)
2. Shri Madhavsinh Solanki
Former Chief Minister of
State of Gujarat,
Presently residing at
Bungalow No.8, Sector No.19,
Gandhinagar.
3. Shri Prabodhbhai Raval,
Former Home Minister,
Government of Gujarat,
Presently Residing at
6-A, Maitri Flats,
Swastic Society,
Near Sardar Stadium,
Ahmedabad - 15.
4. Shri M. Sivagnanam,
The then Chief Secretary to
the Government of Gujarat and
C/o. Chief Secretary to the
Government of Gujarat, General
Administration Department,
Sachivalaya, Gandhinagar.
5. Others whom the records (in the
possession of the Government)
show to be in the chain of this
Criminal conspiracy. Respondents.

(Advocate: Mr. Anil Dave for Resp. No.1
Mr. Hamid Khureshi for Resp. No.2 & 3
Mr. M.A. Panchal for Resp. No.4)

J U D G M E N T

O.A. No. 205 OF 1988

Date: 6.6.1989

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri P.G. Nawani, I.P.S.

(Retired since 28.2.1985, a former Director General

and Inspector General of Police, Gujarat State), while in services, received a confidential letter D.O.No.IPS 1079-6374-B dated 26.2.1985 (Annexure-I) from Mr. M.Sivagnanam, Chief Secretary, Government of Gujarat, which reads as under :-

Dear Shri Navani:

An amount of Rs.50,000 was sanctioned to you vide Government Resolution, Home Department No.IPS 1079-6374-B, dated 10.10.1974 for the purchase of ready-built flat, which was drawn by you on 23.10.74. You also purchases a flat with the help of this advance in the Jasmin Cooperative Housing Society, Ahmedabad and its possession was taken by you on 1.11.79. Subsequently you sold out the flat on 26.6.80 and repaid the outstanding H.B.A. on 5.7.80. While doing so you have committed following breach of rules:

- (1) You had not executed an agreement in G.F.R. Form No.16-A before drawing the advance.
- (2) You were required to purchase the flat within three months from the date of drawal of the advance and to mortgage it in favour of Governor of Gujarat. But it was not done and you violated Condition No.8 of Government Resolution dated 10-10-1974.
- (3) You had not furnished surety bond required in G.F.R. Form No.19.
- (4) You were required to insure the flat at your own cost with the Director of Govt. Insurance but it was not done and you violated Condition No.9 of Govt. Resolution dated 10-10-1974.

The above omissions and breaches of rules have been committed by you are viewed seriously by the Government and it has been decided by Government to convey its displeasure to you.

2. The petitioner having found the contents of the letter containing adverse criticism and an attack of defamatory character for vindication of his grievance and redressal, addressed a letter dated 29th November, 1986 to the Governor of the State of Gujarat pointing out all the facts and documents shown therein as to how Shri Madhavsinh Solanki, Shri Prabodhbhai Raval, Shri M.Sivagnanam had committed offences punishable under sections

218, 193 & 500 of I.P.C. with sections 120-B & 34 of I.P.C. He requested the Governor to grant him permission under section 197 of the Cr.P.C. to enable him to lodge a complaint for prosecution of the aforesaid persons for the aforesaid offences under section 197 of the Code of Criminal Procedure, 1973 (Act 2 of 1974).

3. The petitioner having failed to receive any reply by the State Government, he considered such inaction as refusal to grant sanction which in his opinion is a breach of duty which is redressable by an order of mandamus. Thus the petitioner has filed this application under section 19 of the "Administrative Tribunals Act, 1985" (hereinafter referred to as "the Act") for the redressal of his grievance. He has prayed that the Respondents - State of Gujarat be directed to grant him sanction to take cognizance to the Court for prosecution against the aforesaid persons as requested by him in his application dated 29.11.86 as required by the All India Service (Conduct) Rules and also under section 197 of the Code of Criminal Procedure.

4. Pending admission, the notices were issued to the Respondents to show-cause why the application should not be admitted. In response thereof, Mr. Anil Dave appeared on behalf of the State of Gujarat, Mr. Hamid Kureshi for Respondents No. 2 & 3 and Mr. M.A. Panchal for Respondent No. 4. The Respondents in their counter contended inter-alia that the subject matter of the application does not involve "service matter" and the question of granting sanction or otherwise is a matter pertaining to criminal law, inasmuch as the petitioner

seeks to exercise his right to move the Criminal Court for the alleged offences.

5. We have perused and considered the materials placed on record. We have heard the petitioner party-in-person and the learned counsel appearing for the Respondents at a considerable length. During the course of arguments it was strenuously urged by the petitioner Shri Nawani, that after the establishment of the Administrative Tribunals, under "the Act", it takes away the jurisdiction and power of the High Court and other Courts for adjudication of service matters and the Administrative Tribunals being a substitute of the High Court they have necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matter including the power to deal with all question pertaining to the constitutional validity or otherwise of such laws as offending Article 14 & 16(1) of the Constitution. According to the petitioner, the words "any other matter whatsoever" mentioned as a separate residuary sub-clause (v) of Sub-Clause Q of Section 3 of the Act, covers a refusal on the part of the Governor to grant permission to the petitioner (a retired I.P.S) to file a Criminal case under section 197 of the Code of Criminal Procedure. In his submission the action to grant sanction is merely an executive act and it has nothing to do with the administration of Criminal Justice.

6. The short question therefore, for our consideration is whether the dispute raised in the application relates to the "service matter" as contended. Our answer is in the negative. At the outset it may be stated that the petitioner

Mr. Nawani had raised similar issue when he filed O.A.No. 237/87 against the Respondent No.1, 2, 3 and one Shri V.T.Shah, wherein we have observed as under :-

"In the realm of the administration of Criminal Justice every individual has a right to prosecute any person or body of persons by whom one may have been injured when such injury gives rise to an offence. This right is a common law right which can only be limited by special legislation. The right of a citizen to have his grievance adjudicated by a competent Civil or Criminal Code is a part of the fundamental right of equality before law guaranteed by Article 14 of the Constitution (see A.I.R. 1970 Bombay 385). The provision contained under section 197 of the code of Criminal Procedure embodies one of the exceptions to the general rule laid down in Section 190, that any offence may be taken cognizance of by a Magistrate enumerated therein (A.1955 S.C.196). Section 193 & 195 to 199 of the Code, regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. The object of provisions contained under section 197 of the Code is to guard against vexatious proceedings against public servants and to secure the well-considered opinion of a superior authority before a prosecution is launched against them. While granting such sanction to prosecute the appropriate Government must be satisfied that there is a prima facie case for starting the prosecution and this prima-facie satisfaction has been interposed as a safeguard before the actual prosecution commences."

7. While rejecting the petitioners' application O.A.No.237/87 it was held that the petitioner as a retired Government Servant and even as a citizen, has a right to have his grievance adjudicated by a competent Criminal Court against the public servants. But his such right is subject to the limitation provided under section 197 of the Code which enjoined upon a citizen to seek previous permission of the Central Government or the State Government as the case may be before launching prosecution against the public servants who are not removable from his office by the Government. Hence, it was held that the

question of granting sanction by the Government or otherwise, which is essentially a subject matter in dispute in this regard, does not relate to service matters as contemplated under section 14 of the Act.

8. Admittedly, in the present case the petitioner Shri P.G. Nawani, Member of the Indian Police Service, has retired on 28.2.85. A day prior to his retirement he received the confidential letter referred to above from the Respondent No.4. Nearly 20 months thereafter i.e., on 29th November, 1986, he addressed a letter to the Governor requesting him to accord sanction under section 197 to institute a complaint against the Respondent No.2,3 & 4. The petitioner, during the course of his arguments, vehemently contended that he being a Member of the Indian Police Service, he is under an obligation to obtain a previous sanction of the Government before resorting to any Court proceedings for vindication of his honour and integrity as the said letter is of a defamatory character. In support of his submission he has pressed in service Rule 17 of the All India Conduct Service Rules 1968, which reads as under :-

"..... No member of the Service shall except with the previous sanction of the Government have recourse to any Court or to the press for the vindication of official act which has been the subject matter of adverse criticism or attack of a defamatory character.

Explanation:- Nothing in this rule shall be deemed to prohibit a member of the Service from vindicating his private character or any act done by him in his private capacity, provided that he shall submit a report to the Government regarding such action."

9. Relying on the case of Badrinath V/s. Govt. of Tamil Nadu (A.I.R. 1986 Madras p.3), the petitioner vehemently contended that as he being a member of the service, it was incumbent upon him to obtain a previous sanction of the Government to vindicate the injury suffered by him as a result of the offending letter dated 26.2.85, the contents whereof are of a defamatory character and thus when such sanction as prayed for, has been refused or not considered, he has a right to move this Tribunal under Article 226 of the Constitution to seek the directions as prayed for. According to Mr. Nawani, the refusal or non-consideration of the petitioner's request for sanction under Rule 17 must be construed as wrongful, as it must be regarded as a breach of duty which is redressable by an order or mandamus. At the very outset, it may be stated that this plea of the petitioner is wholly devoid of merits. It is pertinent to note that the petitioner, in his application dated 29th November, 1986, addressed to the Governor of the State of Gujarat, has not made any reference about his request to grant sanction as required under Rule 17 of the Rules quoted above. He sought sanction for prosecution only under section 197 of the Code of Criminal Procedure 1973. Perhaps, rightly he had not sought such permission under Rule 17 of the Rules, as on that day i.e. on 29th November, 1986, he had already ceased to be a member of service. Hence, the embargo or restriction, if any, imposed by virtue of Rule 17 of the Rules for taking any recourse by the petitioner remained no more valid, when he retired from his service on 28.2.1985. The plea in this

regard is nothing but an after thought. The provisions contained under Rule 17 of the All India Service (Conduct) Rules do not place any constrain, impediment or embargo in launching prosecution against the Respondent No.2, 3 & 4. The petitioner as a retired Government servant and even as a citizen, has a right to have his grievance adjudicated by a competent criminal Court.

10. If a general power to take cognizance of an offence is vested in a Court, any prohibition to the exercise of that power, by any provision of law, must be confined to the terms of the prohibition. In enacting a law prohibiting the taking of cognizance of an offence by a Court, unless certain conditions were complied with, the legislature does not purport to condone the offence. The petitioner is a retired Government servant and even as a citizen, he has a right to have his grievance adjudicated by a competent criminal court. But his such right is restricted only in view of the provisions contained under Section 197 of the Code which enjoined upon a citizen to seek previous permission of the Central Government or the State Government as the case may be before launching prosecution against the public servant who are not removable from his office save by or with the sanction of the Government. In the instant case, the petitioner has alleged against the Respondent No. 2,3 & 4 that they have committed offences punishable under section 193 & 500 of I.P.C. r.w.sec. 120-B & 34 of I.P.C, alternatively with section 109 of I.P.C., and he has sought the sanction of the Governor as required under section 197 of Cr.P.C. The grievance of the petitioner is that no

(15)

sanction has been granted as prayed for. According to him, all that the Government is concerned to see in the case, as to whether the applicant has pointed out evidence which *prima facie* establishes the commission of offences by the aforesaid persons and can not decide the question, either on denial of the persons who are sought to be prosecuted and for whose prosecution the permission of the Government has been sought. The question of "inaction on the part of the Government to accord sanction as prayed for", is the subject matter in dispute, which in our opinion does not relate to service matters as contemplated under section 14 of "the Act". Mr. Khureshi did not dispute that the petitioner, if he has any grievance, would be without a remedy. But according to him, this Tribunal will have no jurisdiction to grant the relief as prayed for by the petitioner.

11. In this view of the matter, we hold that this Tribunal has no jurisdiction to grant the relief as prayed for by the petitioner. The application is not entertainable and it is accordingly rejected at the stage of admission.

12. Before parting with, it may be stated that the petitioner during the course of his arguments urged that we should review our own judgment in O.A. No. 237/87, as in his opinion, it is based on erroneous view held by the Tribunal and misreading of the issues involved in the application. We had, however, brought to his notice that we can not do so

in absence of proper Review Application placed before us as required under Rule 17 of the "Central Administrative Tribunal (Procedure) Rules, 1987".

Joshi
(P.M. JOSHI)
JUDICIAL MEMBER

Phewar
(P.H. TRIVEDI)
VICE CHAIRMAN