

मध्यप्रदेश शासन
सामान्य प्रशासन विभाग

क्रमांक 445/591/1(3)81
प्रति,

भोपाल, दिनांक 18 सितम्बर 1981

शासन के समस्त विभाग,
अध्यक्ष, राजस्व मण्डल, मध्यप्रदेश ग्वालियर,
समस्त संभागीय आयुक्त,
समस्त विभागाध्यक्ष,
समस्त कलेक्टर,
मध्यप्रदेश.

विषय.— शासकीय सेवकों को निलंबन में रखने के संबंध में सर्वोच्च न्यायालय का अभिमत.

सर्वोच्च न्यायालय ने निरंजन सिंह तथा अन्य विरुद्ध प्रभाकर राजाराम खरोटे तथा अन्य (एस. एल. पी. क्र. 393 सन् 1980) के मामले में शासकीय सेवकों को, जिनके विरुद्ध न्यायालय द्वारा गंभीर आरोप लगाये जाते हैं, निलंबन में रखने की आवश्यकता पर अपना अभिमत व्यक्त किया है. सर्वोच्च न्यायालय ने इस निर्णय में विशेष रूप से निदिष्ट की गई गलतियों की भविष्य में पुनरावृत्ति न हो, इसलिये राज्य सरकारों को समुचित उपाय करने की भी सलाह दी है. उक्त निर्णय की प्रति संलग्न है.

2. मध्यप्रदेश सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1966 के नियम 9 (एक) (ख) में यह व्यवस्था की गई है कि सक्षम प्राधिकारी किसी शासकीय सेवक को, जहां उसके विरुद्ध किसी भी दाण्डिक अपराध के संबंध में कोई मामला अन्वेषण, जांच या परीक्षण के अधीन हो, निलंबित कर सकेगा. पुस्तक परिपत्र भाग-एक क्रमांक 13 के पैरा 8 (दो) में शासन ने यह निर्देश जारी किया है कि किसी ऐसे शासकीय कर्मचारी को भी, जिसके विरुद्ध विचारण के पूर्व किसी अपराध का अन्वेषण किया जा रहा है या जिसके विरुद्ध आपराधिक आरोप या ऋण के लिए गिरफ्तारी हेतु कार्यवाही लंबित हो, तथा जिसे अड़तालीस घंटे से अधिक की अवधि का कारावास दिया गया हो, इस आशय के विनिर्दिष्ट आदेश जारी करके निलंबित किया जाना चाहिए बशर्ते कि अन्वेषण या विचारण प्रारंभ हो गया हो या उसके विरुद्ध लगाये गये आरोप या की गई कार्यवाही शासकीय कर्मचारी के रूप में उसकी स्थिति से संबंधित हो या उसके द्वारा अपने कर्तव्यों का निर्वहन करने में उलझन पड़ने की संभावना हो या उसमें उसकी नैतिक अधमता अंतर्निहित हो. इस प्रकार यह स्पष्ट हो जाता है कि सर्वोच्च न्यायालय ने अपने निर्णय में जिस प्रकार के आरोपों में शासकीय कर्मचारियों को निलंबन में रखने की आवश्यकता पर बल दिया है, उसके संबंध में वर्तमान नियमों एवं अनुदेशों में आवश्यक मार्गदर्शन विद्यमान है. तथापि, सभी का ध्यान सर्वोच्च न्यायालय द्वारा उपर्युक्त मामले में व्यक्त किये गये अभिमत एवं सुझावों तथा इस संबंध में विद्यमान नियम तथा शासन के उपर्युक्त निर्देशों की ओर आकृष्ट किया जाता है.

3. जब भी किसी शासकीय सेवक के विरुद्ध आपराधिक आरोप लगाए जाए, सक्षम प्राधिकारी को यह विचार कर निर्णय लेना चाहिए कि क्या विद्यमान नियमों तथा शासन के निर्देशों के अनुसार उस शासकीय सेवक को निलंबन में रखने की आवश्यकता है या नहीं? यदि ऐसा शासकीय सेवक निलंबन में हो, या निलंबन में रखा जाए, तो सक्षम प्राधिकारी को शासन द्वारा इस संबंध में जारी किये गये अनुदेशों के अनुसार समय-समय पर उसके मामले की पुनरीक्षा की जानी चाहिए तथा उसे उस मामले पर अंतिम निपटारा होने तक निलंबन में रखने की आवश्यकता है या नहीं इस पर निर्णय लेते रहना चाहिए.

हस्ता./-
एस. के. चतुर्वेदी
उप सचिव,
मध्यप्रदेश शासन,
सामान्य प्रशासन विभाग.

क्रमांक 446/591/1(3)81
प्रतिलिपि :

भोपाल, दिनांक 18 सितम्बर 1981

1. रजिस्ट्रार, उच्च न्यायालय, मध्यप्रदेश, जबलपुर,
सचिव, लोक सेवा आयोग, मध्यप्रदेश, इन्दौर,
सचिव, राज्य सतर्कता आयोग, मध्यप्रदेश, भोपाल.

2. राज्यपाल के सचिव,
सचिव, विधान सभा सचिवालय, मध्यप्रदेश, भोपाल.

3. मुख्य मंत्री/समस्त मंत्रीगण/समस्त राज्य मंत्री के निज सचिव की ओर सूचनार्थ अग्रेषित.

हस्ता./
(के. एन. श्रीवास्तव)
अवर सचिव,
मध्यप्रदेश शासन,
सामान्य प्रशासन विभाग.

NO. 129/16/81-AVD.I

GOVERNMENT OF INDIA/ BHARAT SARKAR

Ministry of Home Affairs/Grih Mantralaya
Department of Personnel & Administrative Reforms
(Karmik aur prashashnik Sudhar Vibhag)

New Delhi, the 23rd March, 1981

OFFICE MEMORANDUM

Sub.—Circumstances in which a Government servant may be placed under suspension—Observations of the Supreme Court regarding.

The undersigned is directed to State that the Supreme Court in the case *Niranjan Singh and others Vs. Prabhakar Rajaram Kharote and others* (SLP No. 393 of 1980) have made some observations about the need/desirability of placing a Government servant under suspension against whom serious charges have been framed by a criminal court, unless exceptional circumstances suggesting a contrary course exist. The Supreme Court has further directed the Government to take suitable sensitized measures to pre-empt recurrence of the error highlighted in the judgement. A copy of the Supreme Court's judgement in the case is enclosed.

2. Rule 10 (1) (b) of the CCS (CCA) Rules, 1965, already provides that the competent disciplinary authority may place a Government servant under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Similar provision exists under the All India Services (Discipline & Appeal) Rules, 1969 and other corresponding rules. In this Departments O. M. No. 43/56/64-AVD dated the 22nd October, 1964 certain guidelines relating to the circumstances in which a disciplinary authority may consider it appropriate to place a Government servant under suspension have been broadly indicated. It will be seen therefrom that the "public interest" should be the guiding factor in deciding the question of placing a Government servant under suspension. Thus, the existing rules/instructions on the subject already cover the cases which the Supreme Court have in view. Nevertheless the Supreme Court's judgement, the existing rules/instructions on the subject and the contents of this O. M. may kindly be brought to the notice of all concerned.

3. As and when criminal charges are framed by a competent court against a Government servant, the disciplinary authority should consider and decide the desirability of placing such a Government servant under suspension in accordance with the rules, if he is already not under suspension, or otherwise. If the Government servant is already under suspension or is placed under suspension, the competent authority should also review the case from time to time, in accordance with the instructions on the subject and take a decision about the desirability of keeping him under suspension till the disposal of the case by the court.

Sd/-

K. G. Goel,

Under Secretary to the Government of India.

To,

All the Ministries and Departments of the Government of India

No. 129/16/81-AVD-I.,

New Delhi, the 23rd March, 1981

Copy forwarded to :—

- (i) Union public Service Commission.
- (ii) Central Vigilance Commission.
- (iii) Attached and subordinate offices of Ministry of Home affairs, Department of Personnel and Administrative Reforms.
- (iv) Ad. I/AIS (II)/Ad. III Sections.

Sd/-

K. G. Goel,

Under Secretary to the Government of India.

IN THE SUPREME COURT OF INDIA

Criminal Appellate Jurisdiction

Special Leave petition (Criminal) NO. 393 of 1980.

Niranjan Singh & Anr.

Petitioners

Vs.

Prabhakar Rajaram Kharote & Crs.

Respondents.

Order

KRISHNA IYER. J.

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" is a part of the Universal Declaration of Human Rights, The content of Art. 21 of our Constitution, read in the light of Art. 19 is similarly elevating. But romance about human rights and rhetoric about constitutional mandates lose credibility if, in practice, the protectors of law and minors of the State become engineers of terror and panic people into fear. We are constrained to make these observations as our conscience is in consternation when we read the facts of the case which have given rise to the order challenged before us in this petition for special leave.

The petitioner, who has appeared in person, is the complainant in a criminal case where the accused are 2 Sub Inspectors and 8 Constables attached to the city Police Station Ahmednagar. The charges against them, as disclosed in the private complaint, are of murder and allied offences under as. 302, 341, 395, 404 read with as. 34 and 120 B of the Penal Code. The blood-curdling plot disclosed in the complaint is that pursuant to a conspiracy the brother of the complainant was waylaid by the police party on August 27, 1978, as he was proceeding to Shridi. He has with him some gold ornaments and cash. He was caught and removed from the truck in which he was travelling, tied with a rope to a neem tree nearby, thus rendering him a motionless target to a Macabre shooting. One of the Sub-Inspectors fired two shots from his revolver on the chest of the deceased at close range and killed him instantaneously. The policemen, having perpetrated this vallany, vanished from the scene. No action was taken by the State against the criminals. How could they when the preservers of the peace and investigators of crime themselves become plained executors of murders? the Victim's brother was an advocate and he filed a private complaint. The learned magistrate ordered an inquiry under s. 202 Cr. P. C., took oral evidence of witnesses at some length and held. "Thus taking an overall survey of evidence produced before me, I am of the opinion that there is sufficient grounds to proceed against all the accused for the offences under as. 302, 323, 342, read with s. 34 I. P. C." Non-bailable warrants were issued for production of the accused and the magistrate who refused bail, stayed the issuance of the warrants although we are unable to find any provision to end him to do so. The police accused moved the sessions court for bail and in a elaborate order the sessions courts granted bail subject to certain directions and conditions. The High Court, which was moved by the complaint for reversal of the order enlarging the accused on bail, declined to interfere in revision but added additional conditions to ensure that the bail was not abused and the course of justice was not thwarted.

It is fair to state that the case in the complaint verified under S., 202 Cr. P. C. to have some veracity, does not make us leap to a conclusion of guilt or refusal of bail. On the contrary, the accused policemen

have a version that the victim was himself a criminal and was sought to be arrested. An encounter ensued, both sides sustained injuries and the deceased succumbed to a firearm shot even as some of the police party sustained revolver wounds but survived. May be the defence case, if reasonable true, may absolve them of the crime, although the story of encounters during arrest and unwitting injuries resulting in casual times, sometimes become a mask to hide easy liquidation of human life by heartless policeman when some one allergic to Authority resists their vices. The Police have the advantage that they prep the preliminary record which may kill the case against them. The disquieting syndrome of policemen committing crimes of killing and making up perfect paperwork cases of innocent discharge of duty should not be ruled out when courts examine rival versions. Indeed we must emphasise that the trial Judge shall not be influenced by what we have said and shall confine himself to the evidence in the case when adjudging the guilt of the accused. We were constrained to make the observations above because the Sessions Judge, quite unwarrantedly, discussed at prolix length the probabilities of the Police party's exculpatory case and held;

"So it is reasonable to hold that there was a scuffle and resistance offered by the victim Amarjeet Singh before shots were fired at his person by the accused No. 1." Detailed examination of the evidence and elaborate documentation of the merits should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in order itself.

Grant of bail is within the jurisdiction of the Sessions Judge but the court must not, in grave cases gullibly dismiss the possibility of police-accused intimidating the witnesses with cavalier ease. In our country, intimidation by policemen, when they are themselves accused of offences, is not an unknown phenomenon and the judicial process will carry credibility with the community only if it views impartially and with commonsense the pros-and cons, undeterred by the psychic pressure of police presence as indicates.

Let us now get to grips with the two legal submissions made by the petitioner. The first jurisdictional hurdle in the grant of bail, argues the petitioner, is that the accused must fulfil the two conditions specified in S.4 Cr. P. C. before they can seek bail justice. That provision reads :

439. (1) A High Court or Court of Sessions may direct—

- (a) that any persons accused of an offence and in custody be released on bail and if the offence is of the nature specified in sub-section (3) of Section 457, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;
- (b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified.

Here the respondents were accused of offences but were not in custody, argues the petitioner, so no bail, since this basic condition of being in Jail is not fulfilled. This submission has been rightly rejected by the Courts below. We agree that, in one view, an outlaw cannot ask by the benefit of law and he who flees justice cannot claim justice. But here the position is different. The accused were not absconding but had appeared and surrendered before the Sessions Judge. Judicial jurisdiction arises only when persons are already in custody and seek the process of the Court to be enlarged. We agree that no person accused of an offence can move the Court for bail under S. 439 Cr. P. C. unless he is in custody.

When is a person in custody, within the meaning of S. 439 Cr. P. C.? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to case to the realistic conclusion that he who is under the control of the court or is in the physical held of an officer with coercive power is in the custody for the purpose of S. 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocal quibblings and hide and seek-niceties sometimes heard in court that the police have taken a man into informal custody but not arrested

him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions or the straight forward-ness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

Custody, in the context of S. 439, (we are not, be it noted, dealing with anticipatory bail under S. 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the Court. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and may be, enabled the accused persons to circumvent the principle of S. 439 Cr. P. C. We might have taken a serious view of such a course, indifferent to mandatory provisions, by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned to custody, but, in the jurisdiction in favour or grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We, therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to ourselves we might not have granted bail but, sitting under Art. 136, do not feel that we should interfere with a discretion exercised by the two courts below.

We are apprehensive that the accused being police officers should not abase their freedom and emphasise that the Inspector General of Police of the State of Maharashtra will take particular care of the take two steps. He should have a close watch on the functioning of the concerned police officers least the rule of law be brought into discredit by officers of the law being allowed a larger liberty than other people, especially because the allegations in the present case are grave and, even if a fragment of it be true, does little credit to the police force. It must be remembered that the allegations are that the deceased was dragged out of a truck to a secluded place, later tied to a tree and shot and killed by the police officer concerned.

We hasten to make it clear that these are one sided allegations and the accused have a counter-version of their own and we do not wish to make any implications for or against either version. The accused policemen are entitled to an unprejudiced trial without any bias against the 'uniformed' force which has difficult tasks to perform.

We conclude this order on a note of anguish. The complainant has been protesting against the state's bias and police throats. We must remember that a democratic state is the custodian of people's interests and not only police interests. Then how come this that the team or ten policemen against whom a magistrate, after due enquiry, found a case to be proceeded with any grave charged, including for murder, were framed continue on duty without so much as being suspended from service until disposal of the pending sessions trial? on whose side is the state? The rule of law is not a one-way traffic and the authority of the State is not for the police and against the people. A responsible Government, responsive to appearances of justice, would have placed police officers against whom serious charges had been framed by a criminal court, under suspension unless exceptional circumstances suggesting a contrary course exists. After all, a gesture of justice to courts of justice is the least that a government does to the governed. We are confident that this inadvertance will be made good and the State of Maharashtra will do so by deeds Henry lays famous censure :

"The arts of powers and its names are the same in all countries and in all ages. It marks its victim denounces it; and excites the public odium and the public hatred to conceal its own abuses and encroachments."

The observations that we have made in the concluding portion of the order are of our oment, not merely to the State of Maharashtra but also to the other States in the country and to the Union of India, that we deem it necessary to direct that a copy of this judgment be sent to the Home Ministry in the Government of India for suitable sensitized measures to prevent recurrence of the error we have highlighted.

Sd/-
V. R. Krishna Iyer J.
Sd/

10/10/1980