

PETITIONER:
SHRI NAJAMAL HUSSAIN MEHADI

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 09/08/1996

BENCH:
G.B. PATTANAIK (J)
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G.B. PATTANAIK (J)
RAMASWAMY, K.

CITATION:
JT 1996 (7) 247 1996 SCALE (5)856

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

PATTANAIK, J.

Leave granted.

Though this appeal is directed against the order of the Administrative Tribunal, Bombay dated 24.3.1994, wherein the legality of the Government order transferring the appellant from one place to the other within Bombay and the consequential direction to vacate the quarter is under challenge, on going through the materials on record this Court on being satisfied that a straight forward police officer was being harassed by his superior officers at the behest of the proprietor of a hotel and bar issued notice to the Senior Inspectors Shri Tike and Shri Raghuvanshi, as well as to the Deputy Commissioner of Police Shri K, Ramachandran to file their show cause as to why appropriate strictures should not be made against them. The Court had also issued notice to the State of Maharashtra to indicate why government action of imposing penalty and punishment on the appellant should not be considered to be illegal.

The appellant's case in nutshell is that as Police Inspector he was attached to Kurla Police Station in 1976 and had been allotted a quarter in Kurla West in Block No. 2 in the year 1979. Between 1979 to 1990 though the appellant had been transferred to various Police Stations within Bombay but his residential quarter remained the same in accordance with the government policy for allotment of quarters. In 1990 he was posted at Nehru Nagar Police Station, Kurla East and near the Police Station lies Hotel Naina, The said hotel and its proprietor Shri Arun Shetty was indulging in several illegal acts in flagrant violation of the rules. Having high connections with senior Police. Officers no action was being taken against the hotel. While the appellant was discharging his official duties as Inspector of Police Nehru Nagar Police Station, Kurla, he received certain complaints against the hotel and raided the hotel premises and had also recommended for cancellation of

the licence of the said hotel. The Manager of the Hotel then lodged a complaint against the appellant making several false allegations and on the basis of the said complaint the appellant was fined, which of course, ultimately was set aside by the Maharashtra Government on an application being filed by the appellant. To prevent the appellant from discharging his official duties an order was passed by the Senior Inspector of Police Shri Tike that the hotel in question will be checked only by the officers above the rank of Police Inspector. Shri Arun Shetty, the Manager of the hotel again made a complaint against the appellant in July 1993 which complaint was referred to Lokayukta. Said Lokayukta conducted an ex-parte enquiry and after recording the statements of the senior Inspector of Police and the Assistant Commissioner of Police who were against the appellant, a report was given by Lokayukta on the basis of which the appellant was transferred from Kurla to Bhoyawala Police Station. The appellant submitted his representation against the aforesaid transfer but was of no consequence. On 28.12.1993 the Assistant Commissioner of Police asked the appellant to vacate his quarter by 31.12.1993. The appellant apprehending dispossession from the quarter filed an application before Central Administrative Tribunal challenging the order on the ground of mala fides. The Tribunal by the impugned order dated 24.3.1994 dismissed the same and thus this Appeal by Special Leave.

In the meantime, the appellant had filed an application against the order of the Assistant Commissioner of Police imposing a fine of Rs.100/- and that appeal was disposed of by the State Government by order dated 23.6.1994. In the aforesaid order the Appellate Authority came to the conclusion that there is substance in the points raised by the applicant that the charge put up against him is with biased and prejudiced mind and in this matter the then Senior Inspector of Police, Nehru Nagar Police Station Shri Tike had played an active role for supporting the hotel owner. The Appellate Authority further held in the aforesaid order that though Shri Tike was having note of previous record of the hotel that Nehru Nagar Police Station had taken action against hotel for 55 times and vigilance branch had also raided the hotel on 27.4.1991 for illegal business still he shielded the person who has no regards for law and submitted a false report against the officer who had taken action. This order of the Appellate Authority was passed subsequent to the impugned order of the Tribunal dated 24.3.1994.

Pursuant to the notice issued by this Court Shri Vijaysinh Balaramsinh Raghuvanshi filed his show cause stating therein that after the transfer of Shri Tike he took over as Senior Inspector of Police, Nehru Nagar Police Station. He was the Senior Inspector of Nehru Nagar Police Station from 1.3.1999 to 30.8.1994 and during this period as many as 13 cases had been filed against the Naina Hotel owner. It was further stated that he had not submitted any report to Hon'ble Lokayukta as alleged by the appellant and in fact one Shri Bobde had submitted a report on the complaint lodged by Shri Arun Shetty and Lokayukta recommended to the Police Commissioner to shift the appellant from the premises to control and minimise the conflict between the hotel owner and the appellant. He also denied the allegations of the mala fides and any conspiracy between him and the hotel owner.

Shri Laxmikant Parvati Tike in his show cause had stated that he had also taken action against the hotel owner for keeping the hotel open beyond the stipulated time but on

27.10.1991 one KJA Padmanabh made a complaint against the appellant for his misbehaviour and ill-treatment in connection with arrest and detention of Shri Daulat, the Hotel Manager, for keeping hotel open beyond 0.30 hours on 26.10.1991. The aforesaid complaint was accompanied by medical reports of Municipal Hospital stating that said Daulat had suffered mental harassment and nervous break down. It was also alleged in the complaint that the Manager was not released on bail by the officer concerned i.e the appellant despite the fact they were prepared to deposit bail amount for offence of keeping open Hotel beyond certain time. The Senior Inspector, therefore, recorded the statement of all concerned and submitted his report to his superiors and he felt that the appellant had exceeded his function and authority beyond required limits. It was also stated by Shri Tike in his affidavit that out of the medical report one could see the seriousness of the treatment meted out to the accused. Shri Tike also denied the allegation against him for shielding the hotel Manager and indicated the action taken by him against the Manager from time to time. He also denied the allegation that Shri Arun Shetty, the owner of the Hotel Naina, was very friendly with him. Shri Bobde, the Deputy Commissioner of Police (security) has filed his affidavit stating therein that he was incharge of Zone V from 5th June 1993 to October 10, 1993 and during that period the complaint lodged by Arun Shetty against the appellant was pending before the Hon'ble Lokayukta. The Commissioner of Police discussed the case with him and assigned the case to him to attend the court behalf of the Commissioner. The report which he had given before the Lokayukta merely stated facts and he had not recommended any action against the appellant. On the contrary, he had given a report which was in favour of the appellant Shri Mehedi. So far as shifting of the appellant from his quarter at Kurla to a quarter at Central Bombay is concerned, Shri Bobde stated that to avoid any dispute between Shri Mehedi and the hotel owner and since Shri Mehedi had been transferred from Kurla, he had suggested that Shri Mehedi should leave the quarter at Kurla. In fact the report of said Shri Bobde dated 28.8.93 to Hon'ble Lokayukta, Maharashtra, which has been annexed as Annexure 'B' to his show cause clearly indicates that he supported the action of Shri Mehedi and further indicated that the hotel owner was in the habit of making applications against the Police Officer with whom he was having grudges. It will be appropriate at this stage to extract a portion from the aforesaid report of Shri Bobde:

"It is seen from the application made by the applicant from time to time that the hotel was charged in all 55 times, out of which only 9 times were charged by the P.S.I. Mehendi and the rest 46 times were charged by other officers of Nehru Nagar Police Station. Hence there is no need for the applicant to have grudge against P.S.I Mehedi.

It appears that the applicant is in habit of making applications against the Police Officer with whom he is having grudges."

It is thus clear that Shri Bobde at no point of time had even suggested any action against Shri Mehendi and the apprehension of Shri Mehendi is wholly misconceived so far as Shri Bobde is concerned.

Shri K. Ramachandran, the Deputy Commissioner CID (Intelligence) who was Deputy Commissioner of time in his affidavit denied allegations made by the appellant in this Court. He further indicated that on the recommendation of Mr. Tike, the then Senior Police Inspector, he had sanctioned 5 rewards to the appellant from 30th August, 1991 to 9th September, 1991. He had also stated in his affidavit that record of the appellant revealed that he had been punished 6 times and was reprimanded once for disobeying the senior officers and now he is posing to be a crusader against illegality. It was also stated that the enquiry conducted by Shri Tike clearly revealed the ill-treatment given by the appellant to Mr. Daulat and Mr. Padmanabha which lead him to believe that the appellant had really ill-treated Shri Daulat and Shri Padmanabha and therefore, he issued a notice to the appellant to show cause why fine should not be imposed upon him and after considering the appellant's reply and finding the same to be unsatisfactory and relying upon Mr. Tike's report he awarded the punishment in question. So far as the episode culminating in the report of Lokayukta is concerned, Shri Ramachandran stated that he was nowhere in the picture as he left Zone V on 5th December 1992 and the complaint of the hotel owner to the Lokayukta, was made on 21.3.1993. According to him there was no reason either for him or for Mr. Tike to shield the hotel and was forced to leave his quarter. The transfer of the appellant from Kurla is nothing but a mala fide action on the part of the Appellate Authority and the direction by the Authority to the appellant to vacate his quarter at Kurla is the outcome of such malice and the Tribunal, therefore, committed gross error in dismissing the application. The learned counsel also urged that the findings of the Appellate Authority, namely, the State Government while allowing the appeal and setting aside the order of punishment unequivocally vindicates the stand of the appellant and in no uncertain term it has been found that the senior officers have shielded the illegal acts of the hotel owner and have imposed the punishment on the appellant with a biased mind. In the circumstances the learned counsel urged that the Court should issue strictures against those police officers.

Shri KTS Tulsi, learned Additional Solicitor General appearing for the State of Maharashtra, on the other hand submitted, that the records would reveal that the appellant had been obsessed with the feeling that every senior police officer has been trying to protect the hotel owner and in the process the appellant has been harassed. According to Mr. Tulsi when many police officers like Shri Tike recommended in favour of the appellant on the basis of which the appellant was given 5 awards it is difficult to comprehend that the senior police officer had any animus against the appellant. The learned Additional Solicitor General however, fairly stated that any direction the Court thinks fit and proper in the circumstances of the case can be given in the matter of allotment of quarter and the government would try to accommodate the appellant as far as possible.

Shri Agrawala, learned counsel appearing for Mr. Tike and Shri Ramachandran, on the other hand, argued that the entire allegations made by the appellant against his clients are out-come of an abnormal mind and according to him the appellant thinks himself to be the only honest officer while rest of the world around him are either corrupt or are trying to shield the hotel owner and in the process the appellant has been harassed. Shri Agrawala, learned counsel took us through affidavits filed both by Shri Tike and Shri

Ramachandran and urged that the material on record only reveals an honest assessment of situation and, therefore, a senior officer Shri Tike thought that it was not proper on the part of the appellant to misbehave or illtreat the hotel Manager while in Police lock-up, According to Shri Agrawala neither this conclusion is said to be mala fide nor can it be said that senior officer shielded the hotel owner. According to Shri Agrawala the appellant is taking advantage of the findings of the Appellate Authority but the said findings were not known to either Shri Tike or Shri Ramachandran and, therefore, no steps have been taken by them in this regard. The learned counsel urged that in the facts and circumstances of the case no strictures from this Court is called for as against the two police officers particularly when they themselves have booked the hotel owner on several occasions as indicated in different annexures and affidavits.

After considering the rival submissions and after going through the affidavits of different police officers as well as all other connected and relevant documents on record, we have no doubt in our mind that Shri Bobde and Shri Raghuvanshi have not acted either against the appellant nor have done anything which could give any impression of shielding the owner of the hotel Naina. At the same time we have no hesitation to come to the conclusion that Shri Tike, the senior inspector of police has been instrumental in making false and frivolous report against the appellant which ultimately became the basis for initiation of departmental proceeding wherein appellant was punished. It is of course true that in the meantime the State Government had set aside the orders of all the departmental authorities and the punishment awarded against the appellant. Shri Ramachandran though is not directly involved in any way in pursuing the appellant but he has tried to support Shri Tike which has emboldened the senior inspector Shri Tike to make false and frivolous report against the appellant. The mere fact that Shri Tike had also challenged the hotel owner on earlier occasions, cannot be a ground to come to a conclusion that he had not supported the hotel owner as against the appellant. Similarly merely because of Shri Tike's recommendation appellant has been rewarded on some occasions, it cannot be said that in the instant case there was no reason for Shri Tike to go against the appellant. The entire episode emanated from the action of the appellant on 27.10.91 at 1.15 hrs. when it was found that hotel Naina was still open contrary to the rules. A customer was found drinking in the hotel and, therefore, the appellant brought the Manager Shri Daulat to the Police Station and the action taken by Shri Mehedi - appellant against the hotel owner for keeping the hotel open beyond the prescribed time is wholly justified as has been found not only by Shri Bobde and Shri Raghuvanshi but also by Shri Tike himself in his report dated 21.11.1991. But unfortunately Shri Tike in his report dated 21.11.1991 also stated that the treatment given to the Manager at the Police Station was disgraceful to the police department and According to him Shri Mehedi needs to amend his conduct with public. The aforesaid conclusion of Shri Tike is supposed to have been based upon the statements recorded by him of different police officers on receiving a complaint from the hotel Manager Shri Daulat. We have carefully considered the statements recorded and to our utter surprise we could not find a word in any of those statements which could even remotely support the ultimate conclusion of Shri Tike that Mehedi at any point of time had misbehaved with Shri Daulat, the Manager of the

Hotel at the Police Station. On the other hand, records clearly indicate that Shri Mehedi after bringing the hotel Manager Shri Daulat to the Police Station and putting him in lock up left the Police Station immediately. Shri Tike also in his report indicated that hotel Manager Shri Daulat is an educated person and hails from a respectable family and, therefore, the treatment given to him by PSI Shri Mehedi was horrible. In spite of our best efforts to find any supporting materials on the basis of which a man could come to the conclusion we are unable to find any such material. Even in the show cause filed by Shri Tike in this Court he has not indicated what were the materials, available to him on the basis of which he could reasonably come to the aforesaid conclusion. The so-called complaint made by the hotel owner Shri Shetty is also a false one in as much as the statements recorded by Shri Tike in the course of enquiry reveal that Shri Daulat was called on to go on bail by furnishing the necessary bail bond but he refused to go with the sole object of harassing the appellant who had brought him from the hotel and put him in the lock up. It may be noticed that when Shri Daulat had been produced before the Magistrate no complaint had been made by him of any ill-treatment. Yet on the basis of the medical certificate furnished to Shri Daulat by the doctor on 3.11.91 was relied upon by Shri Tike to hold that appellant misbehaved with Shri Daulat. The aforesaid materials unhesitatingly indicate that Shri Daulat while inside the police lock up during the night of 27th October, 1991 conceived the idea of harassing a sincere and honest officer, like the appellant and Shri Tike the Senior police Inspector in promoting the said object of the hotel owner submitted a false and frivolous report about the so called ill treatment of Shri Daulat at the Police Station by the appellant which not only ultimately became the source of great mental agony and harassment to the appellant but also was responsible for shifting of the appellant from the Police Station and ultimately dispossession from his quarter at Kurla and the entire family including school going children suffered miserably. When a sincere and honest police officer is harassed by the senior officers like Shri Tike at the behest of a wealthy hotel owner, one can well imagine the mental torture and agony of the concerned officer. That Shri Tike wanted to shield the restaurant owner is apparent from the order passed by him on 28.10.91 prohibiting the Inspector of Police like the appellant from checking the restaurant and only permitting the Senior Inspector of Police to check the restaurant even if the hotel contravened the provisions of law and indulged in nefarious activities. No justifiable reason has been advanced for passing such order, and to us it appears, that it was purposely passed to prevent the appellant from discharging his lawful duties in the matter of checking the hotel. Shri Ramachandran who was the Senior Police Officer did not check the correctness of the report submitted by Shri Tike and on the other hand blindly accepted the same and pursued the appellant by initiating departmental proceedings. The materials on record persuade us to accept the contentions of the learned counsel appearing for the appellant that Shri Ramachandran, the Deputy Commissioner of Police joined hands with Shri Tike and supported action taken by Shri Tike against the appellant which ultimately resulted in serious harassment to the appellant. We really fail to understand how a senior police officer like Shri Ramachandran could accept the report of Shri Tike without verifying the correctness of the facts mentioned therein.

Even the Appellate Authority, namely, the State Government has found while disposing the appeal filed by the appellant against the order of punishment -

"the then Senior Inspector of Police, Nehru Nagar Police Station, Shri Tike has played an active role for supporting the hotel owner and has shielded the person who has no regard for law and submitted a false report against the officer (present appellant) who has taken the legal action."

In the facts and circumstances of the present case we are not in a position to sustain the arguments advanced by Shri KTS Tulsi, learned Additional Solicitor General that the conduct of the appellant exhibits a state of mind of the appellant himself that he is the only honest officer and all other officers around him are either out to harassing or supporting and shielding the illegal activities of the hotel owner. On going through the entire materials on record we have no doubt in our mind that Shri Tike has pursued the appellant a Junior officer and by submitting a false report on nonexistent material has caused enough harassment to the appellant. The conduct of the Senior Police Inspector Shri Tike is highly reprehensible and we cannot but condemn the same particularly when we find that the appellant was trying to enforce the law but Shri Tike has tried to malign him of misbehaviour with the Manager of the hotel inside the police lock up which obviously must have been at the behest of the hotel owner Shri Shetty and/or the Manager Shri Daulat. The conduct of the Deputy Commissioner Shri Ramachandran also cannot but be depreciated in view of his approach to shield and support the report of Shri Tike without examining the relevant material and initiating the departmental proceeding. A departmental proceeding for a government servant brings untold misery, and in the case in hand not only the servant concerned was fined and thereby humiliated in the eyes of his colleagues, friends and relations which he could vindicate only when the Government set aside the same in appeal. It is not expected from a Deputy Commissioner of Police like Shri Ramachandran to blindly accept the report of Shri Tike without even examining the statements recorded by Shri Tike in course of enquiry and had he examined the same, we have no doubt in our mind that he would not have relied upon the false and frivolous report submitted by Shri Tike. In the circumstances though we exonerate Shri Bobde and Shri Raghuvanshi but we condemn the role of Shri Tike and Shri Ramachandran for having illegally pursued an honest police officer to protect the interest of a wealthy hotelier. Our condemnation of these two police officers should be entered in their respective Character-rolls which will be a message to other errant police officers in the organization who would amend their behaviour.

Notwithstanding our aforesaid direction and observations, so far as the role of Shri Tike and Ramachandran is concerned is concerned, we are not inclined to interfere with the impugned order of the Administrative Tribunal since the order of transfer of the appellant from Kurla was in 1993 and 3 years have passed in the meantime. Besides the transfer in question is within the Bombay city itself and not to any other place in the, State of Maharashtra. While we decline to interfere with the order of transfer of the appellant, we would recommend the Government of Maharashtra to provide a residential quarter to the appellant near the place of his posting so that he can discharge his duties as a police officer faithfully and sincerely and his family members will not be put to any

further harassment. We are not inclined to issue any direction to the State to allow the appellant to re-occupy the quarter at Kurla since some other police officer now posted at Kurla will be occupying the same and it will cause a serious dislocation.

With these observations and directions the appeal is disposed of and the Registry is directed to send a copy of the order to the Chief Secretary to the Government of Maharashtra and Commissioner of Police, Bombay for appropriate action at their end.

JUDIS