



IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 17678 of 2024

Santosh Kumar Agarwal

Petitioner

Mr. Samir Kumar Mishra,
Senior Advocate

-versus-

Orissa High Court, Cuttack
And Ors.

Opposite Parties

Mr. Rabi Narayan Mishra,
Addl. Government Advocate

CORAM:

THE HON'BLE MR. JUSTICE S.K. SAHOO
THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 08.08.2024

Chittaranjan Dash, J.

1. Heard Mr. Samir Kumar Mishra, learned Senior Advocate for the Petitioner and Mr. Rabi Narayan Mishra, the learned Additional Government Advocate and dispose of this Writ Petition at the stage of admission.
2. By means of this Writ Petition, the Petitioner, an officer of the cadre Civil Judge, Senior division seeks to quash the Departmental Proceeding initiated against him by this Court vide D.P. No. 03 of 2022. Although several grounds have been taken in the application for the purpose, the learned counsel for the Petitioner emphasised only on



the ground that the very initiation of the Departmental Proceeding is contrary to the guidelines issued by the Hon'ble Chief Justice of India for dealing with the complaints against the subordinate judiciary, circulated by the Ministry of Law and Justice.

3. The background facts of the case are that while discharging his duties as Senior Civil Judge-cum-ASJ at Khariar, Nuapada District, the Petitioner became the subject of a complaint by the Secretary of the Judicial Bar Association, Khariar, in the district of Nuapada. The Judicial Bar sent a letter dated 22.01.2022 as per Annexure-1 series addressed to the Hon'ble Chief Justice with a request to conduct an enquiry over the concerned matter and to take necessary action against the Petitioner. The said letter referred to the resolution passed by the Judicial Bar Association, Khariar, on 09.01.2022 raising serious concerns about the conduct and behaviour of the Petitioner as a Senior Civil Judge. Looking to the nature of the allegations containing verifiable material, this Court, decided to examine the authenticity of the allegation and vide Letter No. 2147 dated 08.02.2022, directed the District and Sessions Judge, Nuapada, to conduct an enquiry and submit his report. In compliance with the Court's directive, the then District Judge, Nuapada, conducted a preliminary enquiry on 03.03.2022. The Bar also unanimously resolved to boycott the Court of the Petitioner in a resolution dated 19.02.2022. In furtherance to the same, the Judicial Bar, Khariar and Khariar Bar Association vide letter dated 05.03.2022, made a collective request to the Administrative Judge for Nuapada Judgeship, for transfer of the Petitioner.

4. The learned District Judge, Nuapada having conducted a discrete enquiry, examining eight advocates including the four



signatories in the resolution vide Letter No. 21 dated 03.03.2022, submitted his report. On 21.03.2022, this Court through Special Officer (Administration), vide letter No. 4754 dated 21/22.03.2022, instructed the District Judge, Nuapada, to provide specific comments on his preliminary enquiry and to obtain a reply from the Petitioner regarding the allegations. In response, the District Judge, Nuapada, sent his comments on 29.03.2022 vide Letter No. 30/29.03.2022. The Petitioner also submitted his detailed reply to the Court's letter (No. 4754 dated 21/22.03.2022) as directed by the District Judge, Nuapada, through a confidential letter No. 07 dated 30.03.2022. In his reply, the Petitioner refuted allegations made by the members of the Judicial Bar, Khariar by calling them vague and baseless. After the response submitted by the Petitioner, this Court, relying on the preliminary enquiry report of the learned District & Sessions Judge, initiated a Departmental Proceeding bearing D.P. No. 3 of 2022 vide Memo no. 11341 dtd. 25.07.2022 and the same was forwarded to the Petitioner along with the articles of charge as per Annexure-I seeking his acknowledgement and a written statement of defence within the stipulated period of time.

5. As mentioned above, Mr. Mishra, learned Senior advocate, appearing on behalf of the Petitioner, challenged the initiation of the Disciplinary Proceeding against the Petitioner on the sole ground that the complaint basing on which the proceeding was initiated, found not supported by sworn affidavits, as required by the Hon'ble CJI's guideline in D.O. letter No. CJI/CC/Comp/2014/1405 dtd. 03.10.2014 in as much as, the resolution dated 09.01.2022 was not even properly signed and "Sd/-" was annotated over the word "President" at the foot



of the said resolution and it also did not contain any signature of any bar members, rendering the continuance of Disciplinary Proceeding untenable and liable to be quashed. He further submits that the allegations against the Petitioner that led to the enquiry culminating in the concerned charges against him are vague and baseless. Mr. Mishra has placed his reliance on two case laws, *Dhananjay Chaturvedi vs. High Court of Uttarakhand* in Writ Petition (S/B) No. 499 of 2023 and *Suchismita Misra vs. High Court of Orissa and Ors.* in Writ Petition (Civil) No. 1042 of 2021.

6. The learned AGA, Mr. Mishra, contends that although the complaint lacked sworn affidavits, its authenticity is supported by it having been sent on the official letter-head of the Judicial Bar Association, duly signed by both the President and the Secretary of the Bar Association. Mr. Mishra asserts that the Departmental Proceeding was initiated based on verifiable material and a thorough enquiry to ensure legitimacy, including the examination of relevant witnesses and gathering of sufficient evidence to support the charges. Mr. Mishra further maintains that the Enquiry Officers have conducted the proceedings in accordance with due process, ensuring both transparency and fairness. He further submits that the charges against the Petitioner are serious and clearly state that the Petitioner failed to maintain the decorum of the Court, committed dereliction of duty, and did not discharge his duties properly and the act alleged amounts to gross misconduct, which is in violation of the Odisha Government Servants' Conduct Rules, 1959, and the Orissa Superior Judicial Service and Orissa Judicial Service Rules, 2007. The learned AGA concludes his argument by affirming that the initiation of the



Departmental Proceeding is legitimate, and the charges against the Petitioner are well-founded, warranting the continuation of the Departmental Proceeding, and therefore, the writ petition is liable to be dismissed.

7. The Hon'ble Chief Justice of India, vide D.O. letter No. CJI/CC/Comp/2014/1405 dated 03-10-2014, issued a circular, that was later circulated as a guideline by the Government of India, Ministry of Law and Justice as per Annexure-3 for dealing with the complaints against the subordinate judiciary, read as –

“As you are aware, recently, Hon’ble the CJI, vide his D.O. No.CJI/CC/Comp/2014/1405 dt. 03.10.2014 addressed to the Chief Justice of all the High Courts has asked the High Courts and subordinate judiciary not to entertain any complaint against a judicial officer it is accompanied by sworn affidavits and verifiable material to substantiate the allegation. Expressing concern over the large number of complaints being filed against subordinate judiciary by people having vested interest and personal agenda, Hon’ble CJI has directed that authenticity of the complaints must be ascertained before any action is taken on it. In view of the provisions of the Article 235 of the Constitution, further action relating to the grievance/complaints against the judicial officers lies at the High Court level.”

The letter imports specific directives to the Chief Justices of all the High Courts, emphasising that complaints against judicial officers should not be entertained **unless accompanied by sworn affidavits and verifiable material to substantiate** the allegations. This guideline was issued to address the concerns over the rising



number of complaints against the subordinate judiciary, often filed by individuals with vested interests and personal agendas. The Hon'ble CJI underscored the necessity of **ensuring the authenticity of such complaints before taking any action** to prevent unwarranted harassment of judicial officers.

8. A plain reading of the guideline is sufficient to understand its object. The words “accompanied by sworn affidavits,” and “verifiable material to substantiate the allegation” have to be read together in a complete and comprehensive manner. It emerges, that, merely because a complaint is not supported by sworn affidavits, it does not automatically warrant an outright dismissal. In the complete and comprehensive reading of the said guideline, a complaint is not supposed to be ignored from its very inception without even verifying the legitimacy of the complaint as nowhere in the guideline the High Court is debarred from initiating its own enquiry over any complaint where the allegations prima facie reveals verifiable material supporting the complaint subject to an enquiry on the authenticity of the allegations against a concerned judicial officer. The object of initiating an enquiry in the first place is to ensure that serious allegations can be investigated thoroughly, even if the initial complaint lacks sworn affidavit, which underscores the High Court's authority and discretion in managing the subordinate judiciary.

While the guideline aims to protect judicial officers from unwarranted harassment, it does not eliminate the possibility of addressing genuine issues faced by individuals or communities due to the actions of a judicial officer. The High Court **retains the responsibility to ascertain the authenticity of the complaints and**



take appropriate action based on verified facts. The requirement for sworn affidavits and verifiable material ensures that the process is fair and that decisions are not arbitrary. This is a kind of precaution suggested to protect the judicial officers from unwarranted harassment.

9. The concerned guideline issued by the Hon'ble CJI is designed to balance the need to protect judicial officers from frivolous complaints with the necessity of addressing genuine grievances. It is to uphold the principles of fairness, non-arbitrariness, and judicial independence, ensuring that the judiciary function effectively and impartially. The guideline is to reinforce the importance of due process in handling complaints against judicial officers. It ensures that complaints are evaluated based on evidence and merit, thereby upholding the rule of law.

10. In view of the said guideline, it is incumbent for this Court to have a meticulous scrutiny over the initiation of the Departmental Proceeding (D.P. No. 03 of 2022) against the Petitioner. The complaint, submitted by the Judicial Bar Association, Khariar, was addressed to the Hon'ble Chief Justice vide Letter No. 02 dated 22.01.2022, accompanied by a resolution passed by it on 09.01.2022. This resolution, which raised significant concerns about the conduct and behaviour of the Petitioner in his capacity as a Senior Civil Judge, was duly signed by several members of the Bar, thus providing verifiable material to substantiate the allegations.

11. Furthermore, it is essential to address the issue regarding the notation "Sd/-" on the resolution document. The notation "Sd/-"



signifies that the document is signed without the actual signature being physically present. It serves as a formal acknowledgment that the person whose name appears before it has approved or authorised the document. In this case, the resolution by the Judicial Bar Association, Khariar, contains this notation, indicating approval by the signatory. Moreover, it is pertinent to note that several members of the Bar have actually signed the said resolution, reinforcing its legitimacy. Additionally, the complaint letter and all other communications sent to this Court bear the valid stamp and signature of the learned Secretaries of both the Khariar Bar Association and Judicial Bar Association, Khariar further validating the authenticity of the documents.

12. Further, even though the complaint has been sent in the official letter-head of the Judicial Bar Khariar, duly signed by the Secretary deserved to be considered, but this Court before proceeding upon the said complaint, decided to proceed with an independent enquiry first. Pursuant thereto, therefore, this Court directed the District and Sessions Judge, Nuapada, through a letter dated 08.02.2022 (No. 2147), to conduct an enquiry and submit a report. The District Judge, conducted a preliminary enquiry on 03.03.2022, during which statements from eight advocates, including four signatories of the resolution, were recorded. To ensure thoroughness, the Special Officer (Administration) instructed the District Judge, Nuapada, via letter No. 4754 dated 21/22.03.2022, to provide specific comments on his preliminary enquiry and to obtain a reply from the Petitioner. The District Judge complied and submitted his comments on 29.03.2022 (letter No. 30/29.03.2022). The Petitioner's response to the allegations was then solicited and reviewed. Although the



Petitioner refuted the allegations, his response was deemed unsatisfactory by this Court.

13. It is to be noted that, consequently, the Departmental Proceeding (D.P. No. 3) was initiated vide Memo no. 11341 and the same was forwarded to the Petitioner along with the articles of charge as per Annexure-I in D.P. No. 3 of 2022 and a memo of evidence in Annexure-III, seeking his acknowledgement and a written statement of defence within the stipulated period of time, only after a proper verification and ascertainment of the allegations made against the Petitioner in his official position of Senior Civil Judge in the district of Nuapada. The process strictly adhered to the guidelines outlined, ensuring that the authenticity of the allegations was thoroughly verified before any formal action was taken. The preliminary enquiry included recording sworn testimonies from multiple advocates and obtaining substantial documentary evidence. This process ensured that the proceedings were not influenced by vested interests or personal agendas, thereby aligning with the guideline to maintain fairness and non-arbitrariness in handling complaints against judicial officers. Therefore, the initiation of the departmental proceedings against the Petitioner was neither defective nor illegal, complying fully with the guideline issued by the Hon'ble Chief Justice of India.

14. The Petitioner cited the decisions in the matters of *Dhananjay Chaturvedi vs. High Court of Uttarakhand* in Writ Petition (S/B) No. 499 of 2023 and *Suchismita Misra vs. High Court of Orissa and Ors.* in Writ Petition (Civil) No. 1042 of 2021. However, in *Dhananjay Chaturvedi vs. High Court of Uttarakhand*, the complaint against the Petitioner was anonymous, undated, and lacked



both sworn affidavits and verifiable material, failing to meet the procedural requirements for initiating disciplinary action. The enquiry was also found to be non-compliant with the High Court Vigilance Rules, 2019, which mandated adherence to specific procedures. In contrast, the instant case involves a formally submitted complaint from the Judicial Bar Association, Khariar, and substantial evidence, aligning with the concerned guidelines on the need for credible material. Additionally, the enquiry process followed in this case adhered to the Odisha Government Servants' Conduct Rules and Orissa Judicial Service Rules, ensuring procedural correctness.

Furthermore, in *Suchismita Misra vs. High Court of Orissa and Ors.*, the issue revolved around departmental proceedings initiated against a retired officer for actions related to appointments made years prior, and the proceedings were challenged on the grounds of non-compliance with Rule 7 of the Odisha Civil Service (Pension) Rules, 1992. The case was concerned with procedural lapses specific to retirement and the timing of departmental enquiries. Conversely, the instant case involves ongoing allegations of misconduct by a serving judicial officer, with complaints substantiated by verifiable evidence and affidavits. The procedural framework and guidelines relevant to the current case are different, focusing on conduct during active service rather than post-retirement matters, making the case of *Suchismita Misra (supra)* inapplicable to the present proceedings.

15. In the present case, the complaints against the Petitioner was based on verifiable material addressed in the letter-head of the Judicial Bar Association accompanied by the signatures of the President and Secretary, as discussed above, in strict sense of the term cannot be



said to be in contrary to the directives set forth by the concerned guideline. The initiation has ensured that the enquiry process respects the integrity and independence of the judiciary, effectively safeguarding against baseless allegations and upholding the standards of fairness and due process.

16. Given the gravity of the allegations and the substantial evidence collected during the enquiry, prima facie there appeared material that the Petitioner's behaviour is inconsistent with the expectations and responsibilities of a judicial officer, undermining the integrity and reputation of the judiciary, warranting strict disciplinary action.

17. From the above discussion, the initiation of departmental proceedings in D.P. No. 03 of 2022 against the Petitioner is found to be conducted in strict compliance with the guideline laid down by the Hon'ble Chief Justice of India vide D.O. letter No. CJI/CC/Comp/2014/1405 and in accordance with the principles of natural justice and therefore, the claim of the Petitioner bereft of merit, deserves to be dismissed.

18. The Writ Petition is accordingly dismissed.

(Chittaranjan Dash)
Judge

(S.K. Sahoo)
Judge

Signature Not Verified

Digitally Signed
Signed by: BIJAY KETAN SAHOO
Designation: Jr. Stenographer
Reason: Authentication
Location: HIGH COURT OF ORISSA
Date: 08-Aug-2024 18:05:20
AKP Padman/Bijay

