

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**SPECIAL CIVIL APPLICATION NO. 319 of 2010**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**and**

**HONOURABLE MR.JUSTICE A.G.URAIZEE**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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L M MAKWANA

Versus

HIGH COURT OF GUJARAT & ANOTHER

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Appearance:

MR. RADHESH Y VYAS, ADVOCATE for the Petitioner

Mr Shalin Mehta, Senior Advocate, assisted by Mr Hemang M Shah for Respondent No.1

Mr Utkarsh Sharma, Assistant Government Pleader for Respondent No. 2

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**CORAM: HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**  
**and**  
**HONOURABLE MR.JUSTICE A.G.URAIZEE**

**Date : 10/05/2013**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR.JUSTICE A.G.URAIZEE)**

The petitioner – a judicial officer in the subordinate judiciary of Gujarat is before us under Articles 14, 16 and 226 of the Constitution of India to challenge the final decision dated 4th/14<sup>th</sup> September 2009 of the High Court and the Notification dated 1<sup>st</sup> December 2009 of the State of Gujarat in Legal Department whereby he came to be dismissed from the service upon recommendation of the High Court. The petitioner has made the following prayers in the petition:

- “(A) Quashing and setting aside the final decision dated 4/14.9.2009 of the High Court and the notification dt. 1.12.2009 of the State Government and to reinstate the petitioner in service with all the consequential benefits including full back wages with 10% interest.
- (B) During the pendency and final disposal, the Respondent No.2 may be directed to reinstate the petitioner in service.
- (C) To grant such and further relief as may be deemed fit and proper.”

2 The facts of the present case are that the petitioner, who was working as 3<sup>rd</sup> Joint Civil Judge (Junior Division) at Vadodara for the period from 10.6.1996 to 25.4.1997. One advocate, Mr Vijay Majmudar made a complaint on 7<sup>th</sup> July 1997 against the petitioner. Pursuant to this complaint, a preliminary enquiry came to be conducted by the Special Officer (Vigilance) of the High Court and on completion of the enquiry, report dated 3<sup>rd</sup> May 2000 was submitted, which was placed before the High Court on 29<sup>th</sup> June 2000 and it was decided to hold regular departmental enquiry against the petitioner for imposing major penalty on the following charge:

“When the delinquent was working as the 3<sup>rd</sup> Joint Civil Judge (SD), Vadodara from 10.6.1996 to 25.4.97, he was assigned Special Civil Suit No.757/95 preferred by M/s Gujarat Industries Power Company Ltd. Of Vadodara on 21.11.1995 through its advocate Mr. Vijay Majmudar for recovering the sum of Rs.1,96,80,510/- with 24% interest thereon under Order 37 of Civil Procedure Code against M/s. Sumitra Pharmaceuticals and Chemicals Ltd., Hyderabad. An application for attachment before judgment was moved under Order 38 Rule 5 of the C.P.C by the plaintiff company and the notice was issued to the defendant in response to which Mr D.S.Murthi and Mr. Anand Majmudar appeared and filed a reply on 30.12.1995. The defendant company submitted an application for leave to defend and was heard where the written arguments of the plaintiff's side were submitted on 17.2.1997 and after hearing both the sides, the said application was fixed for order on 31.3.1997. It is alleged that on 28/29.3.1997 during the recess period i.e. 2.30 to 3.30 p.m., the delinquent called the plaintiff's advocate Mr. Majmudar and demanded illegally 10% of the suit amount and on his showing inability to do so, he also asked Mr. Majmudar to employ one of his relatives in the plaintiff company.”

3 The memorandum of imputation was served on the petitioner and vide his statement of defence dated 31<sup>st</sup> July 2001, he denied the charges levelled against him and it was contended by the petitioner that Special Civil Suit in respect of which the complaint is made was never fixed on 27/28<sup>th</sup> March 1997 and that the Bench Clerk, Peon of the Court, who are the best available witnesses, were not examined during the preliminary enquiry and that except bare words of Mr Vijay Majmudar, there is no other independent witness and therefore it was ultimately urged by the petitioner that the charges may be dropped against him.

4 The Enquiry Officer came to be appointed and after recording the oral evidence the learned Enquiry Officer vide her report dated 3<sup>rd</sup> April 2002 came to the conclusion that the charges levelled against the petitioner stand proved. Pursuant to the report of the learned Enquiry Officer, final decision dated 4/14<sup>th</sup> September 2009 it was recommended to the Government in Legal Department by the High Court to dismiss the petitioner from service and consequently, by Notification dated 1<sup>st</sup> December 2009 the Government in Legal Department dismissed the present petitioner from service. That is how the petitioner is before this Court to challenge his dismissal.

5 The Departmental Enquiry came to be held against the petitioner on the sole ground that a suit being Special Civil Suit No.767 of 1995, filed by M/s Gujarat Industries Power Company Limited, Vadodara against M/s Sumitra Pharmaceuticals and Chemicals Limited, Hyderabad for recovery of Rs.1,96,80,510/- with interest at the rate of 24% was pending before the petitioner at the stage of hearing of leave to defend application. The arguments on behalf of both the sides were concluded and the advocate for the defendant had cited certain authorities. The plaintiff was represented by learned advocate Mr Vijay Majmudar, who wanted to clarify the authorities cited on behalf of the defendant. Therefore, as per the charges, the petitioner called said advocate, Mr Vijay Majmudar in his chamber during recess between 2.30 to 3.00 PM on 28<sup>th</sup> or 29<sup>th</sup> March 1997 to distinguish and explain the authorities cited on behalf of the defendant. The petitioner instructed his peon not to allow anyone inside the chamber and thereafter the petitioner demanded illegal gratification and favour from the advocate, Mr Vijay Majmudar and thereby he committed an act of grave misconduct which tantamount to a conduct unbecoming of a judicial officer.

6 It is pertinent to note at this juncture that Exhibit 14, leave to defend application was posted for orders on 31<sup>st</sup> March 1997 and though

advocate, Mr Vijay Majmudar did not oblige the petitioner by acceding to his request for illegal gratification or favour, the order below Exhibit 14 – leave to defend application was partly allowed in favour of the plaintiff, that is, client of Mr Vijay Majmudar inasmuch as the defendant was granted permission to defend the suit only on depositing 50% of the suit amount.

7 The complaint dated 7<sup>th</sup> April 1997 was, in fact, addressed to the learned District Judge, Vadodara. Needless to state that it is made after around 7 days of the pronouncement of the order below Exhibit 14 – leave to defend application and around 10 days after the alleged incident of demand of illegal gratification by the plaintiff.

8 The then District Judge, Vadodara made a discreet enquiry upon receipt of the complaint of Mr Vijay Majmudar, advocate. During the course of this discreet enquiry the statement of Mr Vijay Majmudar only was recorded. No other witnesses were examined by the learned District Judge. Mr Vijay Majmudar on being asked as to whether he wanted to examine any witness or produce any documentary evidence, he has categorically replied in the negative. The learned District Judge submitted his report to the High Court. In the said report the then learned District Judge, which was made available for our perusal by the learned advocate for the respondents, it becomes explicitly clear from this report that the statement of Mr Vijay Majmudar alone was recorded. The learned District Judge was swayed away in his opinion by the longstanding of Mr Vijay Majmudar at the Bar and his reputation as a legal practitioner and his general reputation not only as an advocate, but in the society and that he had never made a single complaint, in his entire professional career against any Judicial Officer, he had no reason to disbelieve his oral say and found that there was some grain of truth in the say of Mr Majmudar.

9 During the course of the departmental enquiry, three witnesses came to be examined. Mr Vijay Majmudar, advocate has given a statement on the line of his complaint while two other witnesses who happened to be the members of the Baroda Bar Association, namely, Mr J.M. Shah and Mr K.M. Bhatt seems to have no personal knowledge about the alleged incident on the basis of which the departmental enquiry came to be initiated against the petitioner. It appears from the statement of Mr J.M. Shah that he was exclusively practising on the civil side and had never heard anything adverse about the integrity and reputation of the petitioner. A specific question was put to him regarding the reputation of the petitioner to which he has stated that, 'the petitioner was doing his job' whereas the advocate Mr K.M. Bhatt has stated in his statement that, 'he was exclusively practising on criminal side and had no occasion to appear before the petitioner during his entire tenure at Vadodara. He came to know about the alleged incident only after it was talked about in the bar.'

10 The learned advocate for the petitioner has submitted that the petitioner is visited with the major penalty of dismissal solely on the basis of the statement of advocate, Mr Vijay Majmudar. He further submitted that there was delay of 10 days in making the complaint against the petitioner and that important witnesses i.e. Peon, Bench Clerk and Petty Clerk, who would have thrown light on the nature of the allegations made against the petitioner and would have helped the department in examining the complaint of Mr Vijay Majmudar in proper perspective have not been examined and the petitioner has specifically stated so in his statement of defence. He has also submitted that it is very difficult to understand as to what prompted Mr Vijay Majmudar to make the complaint against the petitioner because, ultimately, the order in respect of which the petitioner allegedly demanded illegal gratification came in favour of client of Mr Majmudar. Therefore,

according to the learned advocate for the petitioner, the enquiry was wrongly initiated against the petitioner on the basis of a complaint, which was belated one. Hence, he has urged that the petition may be allowed.

11 On the other hand, it is contended by learned Senior Advocate, Mr Shalin Mehta that Mr Vijay Majmudar, Advocate happens to be a senior member of Baroda Bar Association and he had no earthly reason to make a false complaint against the petitioner. The learned Enquiry Officer has considered the statement of the witnesses examined on behalf of the Department and after examining the attendant circumstances has reached a just conclusion and no interference by this Court is warranted in this petition.

12 The contention of learned advocate for the petitioner that there is a delay of around 10 days on the part of Mr Vijay Majmudar in making the complaint against the petitioner requires some serious consideration. It is true that in all cases involving allegation of malpractice or corruption, delay, *per se*, may not be fatal to the department, but such delay has to be considered in light of the facts of each case and it has to be determined as to whether delay casts any shadow of doubt about genuineness or otherwise of the complaint made against the government employee. The departmental enquiry against the petitioner was initiated in respect of an incident, which allegedly took place in the chamber of the petitioner during recess hours from 2.30 to 3.00 PM on 28<sup>th</sup> or 29<sup>th</sup> March 1997. It is a specific allegation against the petitioner that Mr Majmudar came in the chamber of the petitioner at the instance of the petitioner to distinguish and explain the judgments cited by the advocate for the defendant and the Peon was instructed by the petitioner not to allow anyone to enter the chamber and behind the closed doors it is alleged that the petitioner demanded illegal gratification proportionate

to 10% of the suit amount i.e. Rs.1,96,80,150/-. In the alternative, the petitioner asked Mr Vijay Majmudar to arrange for employment to one of his relatives in the plaintiff company. The conduct of Mr Vijay Majmudar, who is, indisputably, a senior member of Baroda Bar Association is very strange and surprising. After the alleged incident, Mr Majmudar, as per his statement before learned Enquiry Officer, did not share it with anyone though he enjoyed a cup of tea in the Bar Room and thereafter informs the President of Bar Association in writing 1-2 days thereafter. In this respect, the statement of Mr K.M. Bhatt assumes significance, which reveals that, 'no meeting of the Bar Association was convened on the basis of the written complaint made by Mr Vijay Majmudar, but on the basis of the meeting of the Executive committee the Resolution came to be passed.' This witness also states in his statement that since he was practising exclusively on criminal side, he had no occasion to attend the Court of the petitioner during his tenure of 2½ years at Vadodara. Likewise, witness Mr J.M. Shah has also stated in his statement that, 'he came to know about the incident from the Resolution passed by the Bar Association.'

13 This is the nature and quality of oral evidence against the petitioner on the basis of which the learned Enquiry Officer found that the petitioner has indulged in corrupt practices demanding gratification and his act was unbecoming of a Judicial Officer. It is very clear from the material available on the record of the petition that the learned Enquiry Officer is also swayed away by the standing of Mr Vijay Majmudar at the Bar as an advocate and his reputation as a lawyer. Except this, there does not seem to be an iota of evidence to hold that the petitioner had indulged into corrupt practices and his conduct was unbecoming of a judicial officer.

14 At the cost of repetition, the conduct of Mr Vijay Majmudar



assumes important and needs to be viewed from multiple perspectives to finally come to a conclusion as to whether the petitioner had indulged into corrupt practice as alleged. After the alleged incident on 28th/29<sup>th</sup> March 1997, as stated aforesaid, Mr Vijay Majmudar did not share it with anyone though he came to the Bar Room and had tea and two days thereafter he lodged the complaint with President of the Bar Association. It is also very strange that on receipt of a very serious complaint against a Judicial Officer, the President of Bar Association did not deem it necessary to call a General Meeting of the Bar Association and instead, convened a meeting of the Executive Committee which passed a Resolution against the petitioner. This is one aspect of the conduct of Mr Vijay Majmudar. Thereafter, he waits for the order to be pronounced on 31<sup>st</sup> March 1997, which, ultimately, comes in his favour inasmuch as the defendant was permitted to defend the suit on the condition of depositing 50% of the suit amount. Mr Majmudar went into slumber for a week and after deep thinking, decided to file a complaint with District Judge, Baroda against the present petitioner. The nature of the evidence and the standard of proof, which is required in domestic enquiry is different from the proof which is required in civil and criminal proceedings. The Honourable Supreme Court in the case of Nirmalaben J Jhala v. State of Gujarat And Another, reported in (2013) 4 SCC 301 in paragraph 6 has discussed the aspect of standard of proof required in a domestic enquiry and quoted with approval from a previous judgment in the case of M.V. Bijlani v. Union of India & Ors., AIR 2006 SC 3475, which reads as under:

“.. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the

Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures.”

Moreover, on the question of integrity of a Judicial Officer, the Honourable Supreme Court in this judgment has relied upon its earlier judgment in the case of M.S. Bindra v. Union of India & Ors., AIR 1998 SC 3058 and has reproduced the relevant passage, which runs as under:-

“While evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently. The maxim "Nemo Firut Repente Turpissimus" (no one becomes dishonest all on a sudden) is not unexceptional but still it is salutary guideline to judge human conduct, particularly in the field of Administrative Law. The authorities should not keep the eyes totally closed towards the overall estimation in which the delinquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of "doubtful integrity" it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label ‘doubtful integrity’.”

Further, the Honourable Supreme Court has in this judgment very succinctly explained the method and manner of evaluating the evidence in a domestic enquiry in the following words:

“In view of the above, the law on the issue can be summarised to the effect that the disciplinary proceedings are not a criminal trial, and in spite of the fact that the same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done. The ratio of the judgment in Prahlad Saran Gupta (supra) does not apply in this case as the said case was of professional misconduct, and not of a delinquency by the employee.”

The Honourable Supreme Court was concerned with the protection which the High Court is expected to extend to the Judicial Officers in appropriate cases and has held as under:

“Duty of Higher Judiciary to protect subordinate judicial officers:

(a) In *Ishwar Chand Jain v. High Court of Punjab and Haryana & Anr*, AIR 1988 SC 1395, it was held:

“14. Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect, judicial officers. An honest strict judicial officer is likely to

have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders ..... no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for Rule of law..... It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants.”

(b) In *Yoginath D. Bagde v. State of Maharashtra & Anr*, AIR 1999 SC 3734, it was held:

“The Presiding Officers of the Court cannot act as fugitives. They have also to face sometimes quarrelsome, unscrupulous and cantankerous litigants but they have to face them boldly without deviating from the right path. They are not expected to be overawed by such litigants or fall to their evil designs.”

(c) A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure - contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. “Judge bashing” has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and

favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys. (Vide : L.D. Jaikwal v. State of U.P, AIR 1984 SC 1374; K.P. Tiwari v. State of Madhya Pradesh, AIR 1994 SC 1031; Haridas Das v. Smt. Usha Rani Banik & Ors., etc. AIR 2007 SC 2688; and In Re : Ajay Kumar Pandey, AIR 1998 SC 3299)

(d) The subordinate judiciary works in the supervision of the High Court and it faces problems at the hands of unscrupulous litigants and lawyers, and for them “Judge bashing” becomes a favourable pastime. In case the High Court does not protect the honest judicial officers, the survivor of the judicial system would itself be in danger.”

15 The ratio and principle expounded by the Honourable Supreme Court in the above judgment and the concern expressed as to the protection to be extended by the High Court to a Medical Officer is squarely applicable to the present case. Further, the yardstick as demonstrated by the Honorable Supreme Court in the above judgment is not satisfied in the present petition and the petitioner is visited with a major penalty of dismissal solely on the ground of long standing of Mr Vijay Majmudar, as advocate at the Bar and his reputation as a lawyer and his general reputation in the society. Therefore, the evidence adduced in the departmental enquiry does not stand the judicial scrutiny. Hence, we find that the findings arrived at by the learned Enquiry Officer warrant interference in this petition and the decision of the High Court to dismiss the petitioner from the service and the consequent notification of the Government in this regard need to be quashed and set aside.

16 In the result, the petition succeeds and the same is hereby allowed. The final decision dated 4/14<sup>th</sup> September 2009 of the High Court and the Notification dated 1<sup>st</sup> December 2009 of the State Government in Legal Department are hereby quashed and set aside. Rule is made absolute with no order as to costs.

**(RAVI R. TRIPATHI, J.)**

**(A.G. URAIZEE, J.)**

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