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R.C. SOOD

v.

HIGH COURT OF JUDICATURE AT RAJASTHAN

MAY 13, 1998

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[DR. A.S. ANAND, S.P. BHARUCHA AND B.N. KIRPAL, JJ.]

Service Law :

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Departmental Enquiry—Complaint against a member of the State Higher Judicial Service—Some of the complaints made by persons having grudge against the officer when he had acted on administrative side—Allegations were vague and general—Held, such complaints did not merit serious consideration—Initiation of disciplinary proceedings also not proper.

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Departmental Enquiry—Judicial Review—Grounds for—High Court, acting on the administrative side, initiating proceedings against a member of the State Higher Judicial Service—Writ petition challenging the initiation of departmental enquiry filed before Supreme Court—Held, the initiation of disciplinary proceedings amounted to victimisation and therefore quashed—Judiciary—Awarding of costs—When justified—Administrative Law—Colourable exercise of power—Discussed.

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Preliminary enquiry preceding the departmental enquiry—Purpose of—Held, normally enquiry committees are set up to ascertain facts—However, on facts of the case, found that the committee was set up for collecting a menageries of witnesses who had a grudge against the petitioner—Such approach criticised by this Court—Report of enquiry committed held to be biased—Administrative Law—Bias.

Constitution of India:

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Articles 235 and 227—Rules of the High Court of Judicature for Rajasthan, 1952, Chapter III, Rules 15(d) to (g) and 32(2)—Superintendence of High Court over subordinate courts—Procedure for exercising control—Reference of Full Court—When not necessary—Complaint against a judicial officer—Chief Justice got a preliminary enquiry conducted—Genuineness of the complaint not established—Thereafter it was decided not to proceed against the petitioner—Held, Chief Justice was competent under R. 32(2) to take decision at his level—Reference to Full Court could have been necessary

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under R. 15(d) to (g) only if the Chief Justice was of the view that disciplinary action was called for—Reopening of the case subsequently by reference to Full Court was not justified—More so when the complaint was not supported by an affidavit as required by Chief Justice's order—However, the question 'whether for good or sufficient reasons the Full Court can ever overrule or recall an earlier decision of the Chief Justice' kept open Superintendence of High Court over subordinate courts—Procedure for such control—Administrative directions given by the Chief Justice directing that no cognizance of a complaint against a judicial officer be taken unless it is duly supported by an affidavit—Full Court took cognizance of the Complaint ignoring such direction of the Chief Justice—Held, there was no reason why such order of the Chief Justice should have been ignored—Service Law—Departmental Enquiry Article 32—Jurisdiction of Supreme Court to enforce fundamental rights of its citizen—Unfair exercise of Disciplinary power exercised by High Court on the administrative side against a member of State Higher Judicial Service—Held : initiation of proceedings was not bona-fide—Proceedings quashed exercising writ jurisdiction under Article 32—Service Law—Departmental Enquiry.

Judiciary—Judicial forum—High Court—Acting on its administrative side—Held, fairness and objectivity expected from it even if acting on its administrative side—High Court held to be acted in the manner which could only be termed as arbitrary and unwarranted.

The petitioner had joined the Rajasthan Higher Judicial Service and w.e.f. 01.07.1989 to 01.02.1994, the petitioner was posted as Registrar of High Court. Departmental proceedings were initiated on the ground of a mistake in inviting applications to fill up the vacancies in the Higher Judicial Service by way of direct recruitment, there being an error in the publication of advertisement in mentioning the relevant cut off date as 01.01.1995 instead of 01.01.1994. The Committee of two Judges suggested the matter be placed before the Chief Justice for taking suitable action who in turn directed the matter be put up before the Full Court by circulation. The two judges Committee, constituted by the Full Court on 21.10.1994 resolved that a departmental enquiry be initiated against the petitioner and he should be placed under suspension. On 21.10.1994, the High Court suspended the petitioner and decided to hold a departmental enquiry. On 24.10.1994, this suspension was challenged before this Court by way of a writ petition and this Court issued a notice on 7.11.1994.

The second set of facts culminating the passing of the second resolution of the Full Court on 5/6th January, 1995 instituting a regular departmental

- A inquiry under Rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958, started on a complaint of one VS received by Justice K on or before 27.10.1994. This complaint had been circulated amongst all the then Judges of the High Court and in respect of which order was passed by the then Chief Justice and the matter was closed on 31.01.1994. No explanation was given as to how Justice K got this complaint when he was transferred to the High Court on 28.04.1994 whereas the complaint of VS was of September 1993. Suddenly on the High Court record, by way of letter dated 27.10.1994, Justice K forwarded this old complaint of VS to the then Chief Justice. The Chief Justice made an endorsement the same day, showing the sense of urgency. First Office note was that written on 09.11.1994 after issuance of notice by this Court in the writ petition filed by the petitioner. The Full Court fixed the matter on 30.11.1994 after the decision of this Court in the writ petition filed by the petitioner on 24.11.1994. Hence this writ petition.

- D It was contended by the petitioner that with the passing of the order dated 31.01.1994. by the then Chief Justice, the complaint of VS stood disposed off and the same could not be reopened by the Full Court or the then Chief Justice of the High Court when there were no attenuating circumstances by way of fresh evidence or material which would warrant a fresh look in the matter, and that the initiation of the disciplinary proceedings by issuing a charge-sheet because stale and an after thought and thus tainted with malice and such proceedings were liable to be quashed as being *mala fide* and malicious in law.

Allowing the writ petition, this Court

- F HELD : 1. Normally, enquiry committees are set up in order to ascertain correct facts. However, there is a situation where a Committee consisting of a local Judge and two transferred Judges was set up with the local Judge sitting alone and collecting a menagerie of witnesses who had a grudge against the petitioner and thus were sure to depose against him. Some of these witnesses were those who had not sent any complaint against the petitioner prior to 30-11-1994 and it is only the local Judge who, wanting to gather statements against the petitioner, could have known whom to approach and call for evidence. Of the two transferred Judges who were the members of the Committee, one never took part in any proceedings when evidence was recorded yet he signed the report dated 4-1-1995. The other Transferee Judge is the person who set the ball rolling with his conjuring up VS's complaint which had originally been circulated long before his

transfer to Rajasthan. The respondent's counsel was unable to explain as to how this complaint was conveniently placed in the hand of Justice K. It is evident that there was a deliberate design to bring to a premature end the judicial career of the petitioner, whose name, at that time, was being actively considered for elevation as High Court Judge. This is apparent from the fact that in the resolutions dated 30-11-1994 and 5-1-1995 it was resolved by the Full Court that the President of India and the Chief Justice of India should be informed about the holding of the departmental proceedings against the petitioner. Acting on the basis of the Committee's biased report, the Full Court continued in a similar vein and proceeded to nail the petitioner by taking a decision that lacked objectivity. Apparently stung by the judgment dated 22.11.1994 of this Court it retaliated by launching a fresh set of charges against the petitioner clearly with a view to ruin his judicial career. There is no doubt that the action taken by the Court was not *bona fide* and amounts to victimisation. This is certainly not expected from a judicial forum, least of all the High Court, which is expected to discharge its administrative duties as fairly and objectively as it is required to discharge its judicial functions. [370-G-H; 371-A-D]

2.1. Another error, which was committed, was that the Court in its resolution of 30-11-1994 took into consideration the complaint of VS even though the same was not supported by an affidavit. The Chief Justice had by his order dated 12-5-1994, decided that no complaint should be entertained unless it is supported by an affidavit. Though it was an administrative order it was passed by the Chief Justice in exercise of powers conferred on him by Rule 32(2). There was no reason as to why this order should have been ignored and the complaint of VS entertained even though it was not supported by an affidavit. The resolution of 30-11-1994 also states that some of the Judges have received fresh complaints against the petitioner making serious charges of corruption. No particulars are indicated as to which complaints were received by which Judge. It is evident from the wordings of these minutes that what those complaints were not even known to all the members of the Full Court when they passed the Resolution on 30-11-1994. There is no doubt when a valid decision had been taken by the then Chief Justice on 31-1-1994 exonerating the petitioner, there was no valid reason in law for the Full Court to revoke that decision. [366-C-E]

2.2. There is no material, which could justify the initiation of the impugned action. The allegations against the petitioner were generally vague or were such which did not show that the petitioner had committed any

A irregularity leave alone illegality. For example one of the main allegations against the petitioner was of his having committed irregularity in obtaining loan for constructing a house. Apart from the fact that this loan was sanctioned by the then Chief Justice, the petitioner has with the assistance of the loan constructed the house and is living there and the loan amount already stands returned. In such circumstances, for the Committee to come to a conclusion that the disciplinary proceeding should be initiated was clearly unwarranted.

[372-E-F]

3. Apart from the non-judicious manner in which the three-Judge Committee conducted the enquiry, the sequence of events which bears repetition shows that being piqued with this Court's Judgement quashing the first departmental enquiry the High Court, with the few functionaries playing an active role, left no stone unturned with a view to victimize the petitioner. The fact that it is only on 30.11.1994, after the decision of this Court on 22.11.1994, that the Full Court fixed up the matter lends credence to the petitioner's submission that the dates which appear on record may not be real. This is more so when none of the documents in the form of complaints allegedly received by the Judges bear any endorsement as the receipt of the same. It is obvious that a copy of complaint of September 1993 of VS was handed over to Justice K, who was transferred to High Court on 28.04.1994, by some one who was interested in harming the petitioner and thereupon the second round of action against the petitioner commenced with Justice K being made one of the members of the three Judges Committee.

[372-G; 370-D-E]

R.C. Sood v. High Court of Rajasthan [1994] Supp. 3 SCC 711, relied on.

4. There is no manner of doubt that there was a complete lack of *bona fide* on the part of the High Court when it decided on 05.01.1995 to institute disciplinary proceedings against the petitioner. On this ground alone the petitioner is entitled to succeed. [370-F]

5.1. The proceedings of the meeting of the Full Court are normally supposed to be confidential. How is it then that a number of complaints were received against the petitioner at about that time, i.e. 30.11.1994. Some of the complaints on the file of the Three Judges Committee are undated and it is not known when they were received. On two complaints the date is 26-11-1994, but they do not have the supporting affidavits. It is, therefore, possible that these complaints may have been ante-dated specially when none of these complaints bear an endorsement signifying the date of their receipt.

H The complaint of M is dated 30-11-1994 but the affidavit supporting is dated

1-12-1994. There is no doubt that all these complaints were procured solely with a view to show that apart from the original complaint of VS there were other complaints against the petitioner which represented new material justifying fresh enquiry. These complaints, some of them being made by discredited persons containing vague and general allegations could not be regarded as fresh material which required the initiating of disciplinary proceedings. The said complaints did not merit any serious consideration and reference to them by the High Court was uncalled for. The sentiments expressed by this court while allowing the petitioner's writ petition on an earlier occasion stands belied and notwithstanding such observation of this Court, the High Court acted in a manner which can only be termed as arbitrary and unwarranted, to say the least. [373-B-E]

R.C. Sood v. High Court of Rajasthan [1994] Supp. 3 SCC 711, relied on.

5.2. It appears that the Committee was only looking for a person who was ready to depose against the petitioner even if he be an imposter. This conclusion is further strengthened by the selection of four other persons by the Committee whose evidence is on record, all of whom had grudge against the petitioner. [369-D]

KIRPAL, J. The petitioner who was a member of the Rajasthan Higher Judicial Service, has by this petition under Article 32 of the Constitution of India, assailed the disciplinary proceedings which have been initiated against him pursuant to the resolution dated 5th May, 1995 of the Full Court of the Rajasthan High Court.

The petitioner had joined the Rajasthan Higher Judicial Service as a District and Sessions Judge on 31st July, 1976. He had been posted and had discharged duties at various places and in different capacities including that as an Additional Registrar, Rajasthan High Court and Registrar (Vigilance), Rajasthan High Court. With effect from 1st July, 1989 to 1st February, 1994 the petitioner was posted as Registrar of the Rajasthan High Court. After he was posted as District and Sessions Judge, Jodhpur on 2nd February, 1994 and then was transferred as District and Sessions Judge, Jaipur with effect from 6th June, 1994 but before his superannuation on attaining the age of 58 years, departmental enquiries were initiated against him on two occasions. The first departmental enquiry was initiated by a resolution of Full Court dated 21st October, 1994, which was challenged by the petitioner by filing a writ petition in this Court. By order dated 22nd November, 1994 in the

- A judgment reported as *R.C. Sood v. High Court of Rajasthan*, [1994] Suppl. 3 SCC 711, this Court quashed the said disciplinary proceedings and the Full Court's resolution in respect thereto. The second disciplinary proceeding, which has been challenged in this writ petition, has been initiated by the High Court vide its resolution dated 5/6th January, 1995. Rule nisi was issued by this Court limited to the question of legality of the initiation of disciplinary proceedings against the petitioner and not on the question of his retirement on his attaining the age of 58 years.

- There are two sets of facts leading to the passing of the aforesaid two resolutions by the High Court whereby it sought to initiate departmental proceedings against the petitioner. Even though the resolution dated 21st October, 1994, when the first departmental proceeding was initiated, has been quashed by this Court vide judgment dated 22nd November, 1994, in order, however, to deal with the contentions arising in this petition, it is necessary to first refer to the set of facts pertaining to the issuance of the first disciplinary proceedings as that has very material bearing in the present case.

First Disciplinary Proceedings :

- When the petitioner was working as the Registrar of the Rajasthan High Court the Full Court on 29th September, 1993 decided to invite applications to fill up the vacancies in the Rajasthan Higher Judicial Service by way of direct recruitment. A draft advertisement was finalised in the Registry of the Rajasthan High Court both in Hindi and in English mentioning therein the conditions of eligibility of the candidates. According to the advertisement which was published the age limit of the candidates was shown as the minimum of 35 years and maximum of 45 years on 1st January, 1995. As the last date for receipt of the application was 18th March, 1994 and 20th March, 1994 the relevant cut off date should have been 1st January, 1994. There being an error in the publication of the advertisement in mentioning the relevant date as 1st January, 1995 instead of 1st January, 1994, a Committee of two Judges was required to go into the matter. The Committee in its report suggested that fresh applications be called for and the matter should be placed before the Chief Justice for taking suitable action against the officer who was responsible for issuing the incorrect notification. The Chief Justice directed that this report should be put up before the Full Court by circulation. On 20th October, 1994 the Full Court constituted a committee of two other Judges to look into the record leading to the issuance of the notification. This committee submitted a report dated 21st October, 1994 and noted that in the

draft for publication the date was correctly mentioned as 1st January, 1994 but before the matter was sent to press for publication interpolations were made changing the year from '1994' to '1995'. The committee further observed that it was their tentative view that the petitioner was responsible for the "forgery committed in the record". It recommended that a regular enquiry be made in accordance with the rules and that the petitioner should be placed under suspension in contemplation of the enquiry.

On 21st October, 1994 the date of the report of the two Judge Committee, the Full Court met at 2 p.m. and resolved that departmental inquiry be initiated against the petitioner and he should be placed under suspension. This action was challenged by a Writ Petition (C) No. 680 of 1994 being filed by the petitioner in this Court. By judgment dated 22nd November, 1994, in the case reported as *R.C. Sood v. State of Rajasthan*, (supra), this Court quashed the proposed disciplinary proceedings as well as order placing the petitioner under suspension. While allowing the writ petition it was held that it was difficult to appreciate how the Two Judge Committee could come to the conclusion that there was a forgery in the record and/or that any person had benefited from the said error or that the petitioner was responsible for the same.

The aforesaid decision and direction of this Court did not result in an end to the petitioner's troubles. On the contrary the facts, to which we will currently refer, show how the further prospects of the petitioner in the judicial career were successfully thwarted and the disciplinary proceedings have been sought to be foisted on him, which is the subject matter of challenge in these proceedings.

Impugned Disciplinary Proceedings :

We will now refer, in some detail, to the second set of facts culminating in the passing of the impugned resolution of the Full Court on 5/6th January, 1995 instituting a regular departmental enquiry under Rule 16 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules 1958. The story in this connection starts from September, 1993 when one Vijay Singh describing himself as Chairman of the Rajasthan Judicial Liberation Front, Bar Room, Beni Park, Jaipur circulated a complaint, though described as a 'PIL - a petition under Article 226 of the Constitution', addressed to the Judges of the Rajasthan High Court and other functionaries. It appears that a copy of the same was also sent to the State's Law Secretary. Vide his letter dated 15th

A September, 1993, the Law Secretary forwarded that complaint to the Registrar of the Rajasthan High Court. On 17th September, 1993 the Chief Justice directed the Additional Registrar (Vigilance) to submit an early report in the matter. On 25th September, 1993 the Additional Registrar (Vigilance) recorded statement of one Vijay Singh Poonia, Advocate, President of the District Court, Beni Park, Jaipur who stated that there was no organisation by the name of Rajasthan Judicial Liberation Front in Beni Park, Jaipur and that he had not heard the name of such an organisation. He further stated that the signatures on the complaint were not his and that he had made no complaint against any judicial officer. The Additional Registrar had also called for the comments of the petitioner on the complaint. After receiving the reply Additional Registrar (Vigilance) recorded further statements of other persons including members of the Rajasthan Higher Judicial Service and thereupon submitted his report dated 11th January, 1994 to the Chief Justice stating therein that the complaint against the petitioner was false and fabricated. On the receipt of the report the Chief Justice passed the following order on 31st January, 1994.

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“I have gone through the report submitted by the Addl. Registrar, Vigilance, Shri Behari Lal Gupta, in the matter of complaint filed against the Registrar, Shri R.C. Sood. The report submitted by Shri Gupta appears to be clear, cogent and categorical. He has dealt with all the charges that have been levelled in the complaint against Shri Sood. All the witnesses have testified to the good conduct, integrity and rightness of Shri Sood. There is no gain of truth in the allegations levelled against Shri Sood. It appears that this complaint is filed against Shri Sood out of malice. I put it down as the handiwork of some mischief mongers. Thus the complaint is filed and no action needs be taken against Shri Sood.”

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The matter thus stood closed as far as the complaint of Vijay Singh against the petitioner was concerned.

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After the petitioner had ceased to be the Registrar of the High Court the Chief Justice issued an office note relating to complaints against the judicial officers. This note dated 12th May, 1994 which was addressed to Registrar (Vigilance) and Additional Registrar (Vigilance) read as follows :

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“A large number of complaints are being received against the Judicial Officers. It has been noticed that after Preliminary Enquiry, most of the complaints, i.e., more than 95% are found false. Sometime

P.E.'s consume a lot of time and Judicial Officers are put to embarrassment. Therefore, before initiating the P.E. against any Judicial Officer complainant may be asked to support his complaint with an affidavit. A

If the complainant does not file the requisite affidavit no action should be taken on that complaint." B

The trouble for the petitioner revived after he had, on 24th October, 1994, filed the earlier writ petition in this Court challenging his suspension and initiation of disciplinary proceedings by the court's resolution dated 21st October, 1994. From the perusal of those original records which had been placed before this Court at the time of hearing by the learned counsel for the respondents it is seen that a hand written letter dated 27th October, 1994 was written to the Chief Justice then in office by Mr. Justice Kokje which reads as follows : C

"I am enclosing a copy of PIL petition received by me some time back. As it was addressed to the Chief Justice, I did not forward it then to you. However, when in the last full court meeting the matter of Sh. R.C. Sood, Distt. Judge, came up I found no reference to the serious charges made against him in the petition by any one. As the allegations are serious they deserve to be investigated thoroughly. I would therefore request you to kindly order an inquiry in the allegations made against Sh. R.C. Sood in the petition especially when he has been proceeded against on certain other charges." D E

On this letter itself the then Chief Justice on that very day, i.e. 27th October, 1994, made the following endorsement : F

"Put up this matter in next F.C. In the meantime find out if previous C.J. has received such copy and orders passed on."

The enclosure to the letter of Justice Kokje was a cyclostyled copy of the same PIL/complaint of Vijay Singh which had been dealt with by the earlier Chief Justice vide order dated 31st January, 1994. After the judgment of this Court on 22nd November, 1994, whereby the writ petition of RC Sood was allowed with costs, the storm against the petitioner gathered momentum. On 30th November, 1994 the Full Court took up the letter of 27th October, 1994 of Justice Kokje for discussion under Agenda Item No. 3. Copy of the minutes of the said meeting pertaining to Item No.3 has been placed before us by the G H

A learned counsel for the respondents and the same reads as under :

“On being informed that the complaint of which a copy was appended to the letter dated 27.10.94 of Hon’ble Justice Shri Kokje had been received earlier by the High Court a Preliminary Enquiry into the allegations made therein had also been held, the record of Preliminary Enquiry was called and perused by the Full Court. It was noted that such a serious matter was never brought before the Full Court. It was also noted that the Preliminary Enquiry against Shri R.C. Sood then posted as Registrar was conducted by Additional Registrar (Vig) an officer subordinate to him. Proceedings of the Preliminary Enquiry show that statements of persons who were alleged to have benefitted Shri Sood were recorded and in place of Shri Vijay Singh the complainant, Shri Vijay Singh Poonia, President, Bar Association was examined. Statements of selected judicial officers and lawyers certifying Shri Sood to be a person of integrity were also recorded and relying on such a material serious charges of corruption were dropped. Some of the Hon’ble Judges have also received fresh complaints against Shri R.C. Sood making serious charges of corruption. Considering all these circumstances and the serious nature of the charges it is resolved as follows :

“RESOLVED that the order passed by the then Hon’ble Chief Justice on the report of Preliminary Enquiry against Shri R.C.Sood conducted by the Additional Registrar (Vig) be and is hereby revoked.”

FURTHER RESOLVED that Preliminary Enquiry in the matter be made afresh by a Committee of Hon’ble Judges consisting of Hon’ble Mr. Justice B.R. Arora, Hon’ble Justice Shri V.S. Kokje and Hon’ble Justice Shri B.J. Sethana. The Committee shall also enquire into various complaints forwarded to them by Hon’ble Judges against Shri R.C. Sood. It is hoped that the report of the Committee will be placed before Full Court on or before 6.1.1995.”

FURTHER RESOLVED that facts and circumstances leading to a pendency of the Preliminary Enquiry be communicated to His Excellency the President of India and Hon’ble the Chief Justice of India in view of the fact that looking to the seniority of Shri R.C. Sood his name is likely to be under consideration for elevation as a Judge of the High Court. Hon’ble the Chief Justice be and is hereby requested to do so.”

The said Three Judge Committee submitted its report on 4th January,

1995. After formulating the points for consideration and discussing the material placed before it, it came to the following conclusion : A

“The Committee, though had a short time at its disposal, has been able to collect only a part of the materials, but on the basis of the part of the materials too, as discussed above, we are of the view that prima facie Shri R.C. Sood has failed to maintain absolute integrity and to maintain devotion to the duty and dignity of his office. The Committee is, also, of the opinion that a regular enquiry under rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, may be held against Shri R.C. Sood.” B

Submissions : C

Two main contentions were urged on behalf of the petitioner. Firstly, it was contended that with the passing of the order dated 31st January, 1994 by Chief Justice K.C. Aggarwal the complaint of Vijay Sing stood disposed off. This complaint, it was submitted, could not be reopened by the Full Court or the then Chief Justice specially when there were no attenuating circumstances by way of fresh evidence or material which would warrant a fresh look in the matter - and there was no such material. D

Secondly it was submitted that the initiation of the impugned disciplinary proceedings by issuing a charge-sheet levelling charges which were stale and on materials gathered as an after thought was an action tainted with malice and such proceedings were liable to be quashed as being mala fide and malicious in law. E

First submission :

The complaint of Vijay Singh had been enquired into by the Additional Registrar (Vigilance), on being directed to do so by the Chief Justice. During the course of enquiry witnesses were examined and report was received whereupon the Chief Justice on 31st January, 1994 passed the above mentioned order. Subsequently on 12th May, 1994, the Chief Justice had directed that no complaint should be entertained which is not supported by an affidavit. F
In the resolution of 30th November, 1994 reference is made to a preliminary enquiry which had been made earlier and it was noted that such a serious matter had never been brought before the Full Court. It was also stated that statements of persons who were alleged to have been benefited by the petitioner had been recorded and in place of the complainant Vijay Singh it G H

- A is one Vijay Singh Poonia, President Bar Association, who was examined. It is because of this resolution that the earlier order of the Chief Justice and the report of the preliminary enquiry were revoked.

- B The question which arises for consideration is whether the Full Court could or was justified in revoking a decision which was taken by the then Chief Justice on 31st January, 1994. Chapter III of the Rules of the High Court of Judicature for Rajasthan, 1952, deals with the conduct of the administrative business of the court. For the purpose of this case the relevant rules are Rule 14, 15 and 32 which are as follows :

- C **“14. Administrative business relating to control over subordinate courts and to superintendance over courts and tribunals : -** All administrative business in the Court relating to the control over subordinate courts vested in the Court under Article 235 of the Constitution or otherwise and to the superintendance over the courts and tribunals vested in the Court under Article 227 of the Constitution or otherwise shall be disposed of as provided hereinafter.

- D **15. Matters on which all Judges shall be consulted -** On the following matters all the Judges of the Court shall be consulted, namely:-

- (a) proposals as to legislation or changes in the law ;
- E (b) proposals as to changes in or the issue of new Rules of Court;
- (c) proposals as to changes in or the issue of new rules for the guidance of subordinate courts;
- (d) appointment, promotion and seniority of judicial officers;
- F (e) withholding of promotion, supersession or reduction of judicial officer;
- (f) removal or dismissal of any judicial officer;
- G (g) compulsory retirement of Judicial officer otherwise than by way of punishment;
- (h) important questions of policy or those affecting the powers and status of the court laid before the Court by Chief Justice or any other Judge;
- H (i) matters connected with the Supreme Court;

(j) annual administration report;

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(k) matters upon which the Government desires the opinion of the Court, if such matter is considered fit to be laid before the Court by the Chief Justice; and

(l) any matter which the Chief Justice or the Administrative Committee, as constituted under Rule 16, may consider fit to be laid before them for consideration.

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32. Effect of any irregularity in or omission to follow the procedure laid down in this Chapter - (1) No irregularity in, or omission to follow, the procedure laid down in thin Chapter shall affect the validity of any order passed or anything done under these Rules

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(2) For the removal of doubt, it is hereby mentioned that all administrative work disposed of by the Chief Justice, the Administrative Judge or Judges to whom the work has been assigned by the Chief Justice for disposal shall be deemed to be disposed of by the Court.

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A perusal of these rules show that matters where all the Judges are required to be consulted, namely, those which have been brought to the Full Court, are enumerated in Rule 15. With regard to the judicial officers it is clauses (d) to (g) which are relevant. It is only if a judicial officer is to be removed or dismissed that the matter has to be brought before the Full Court. Under clause (i) if the Chief Justice desires then any matter can be listed before the Full Court. Every complaint received against a judicial officer is not required to be brought before the Full Court unless and until the question of removal or dismissal of the judicial officer arises. It was competent for the Chief Justice especially in view of the provision of sub rule (2) of Rule 32, while dealing with the complaint received against the petitioner, to decide that no action thereon was called for. No illegality or impropriety was, therefore, committed by the Chief Justice when he decided on 31st January, 1994 that the complaint of Vijay Singh did not call for any disciplinary action against the petitioner. It is only if the Chief Justice was of the view that disciplinary action may be called for that, by virtue of clauses (e), (f) and (g) the matter would have required to be brought before the Full Court. That apart, the Chief Justice could under clause (I) have brought the complaint to the notice of the Full Court, but he chose not to do so. This was because he was apparently satisfied about the hollowness of the complaint on the basis of the preliminary report of the Additional Registrar (Vigilance) which was received by him.

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A We express no opinion on the question whether for good and sufficient reasons the Full Court can ever over-rule or recall an earlier decision of the Chief Justice. But the fact that the preliminary report was not brought to the notice of the Full Court, which the Chief Justice was not bound to do, could not be reason for recalling the order dated 31st January, 1994 of the then Chief Justice.

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Another error which was committed was that the Court in its resolution of 30th November, 1994 took into consideration the complaint of Vijay Singh even though the same was not supported by an affidavit. The Chief Justice had by his order dated 12th May, 1994, decided that no complaint against a judicial officer should be entertained unless it is supported by an affidavit. Though this was an administrative order it was passed by the Chief Justice in exercise of the powers conferred on him by Rule 32(2) of the said Rules. There was no reason to why this order should have been ignored and the complaint of Vijay Singh entertained even though it was not supported by an affidavit. The resolution of 30th November, 1994 also states that some of the judges have received fresh complaints against the petitioner making serious charges of corruption. No particulars are indicated as to which complaints were received by which judge. It is evident from the wording of these minutes that what those complaints were, were not even known to all the members of the Full Court when they passed the resolution on 30th November, 1994. We have, therefore, no doubt that when a valid decision had been taken by the then Chief Justice on 31st January 1994 exonerating the petitioner there was no valid reason in law for the Full Court to revoke that decision.

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Second Submission :

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During the course of hearing Mr. Aruneshwar Gupta, learned counsel for the respondent produced in court the original file containing the complaints received and the proceedings of the aforesaid Three Judge Committee. We have carefully examined the said file in order to satisfy ourselves whether the Committee was fair and judicious in the task which was entrusted to it. Without going into minute details, the file reveals following facts which speak for themselves.

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On the letter dated 27th October, 1994, the Chief Justice made a note dated 27th October, 1994 calling for a report. But the first note of the registry relating to the letter dated 27th October, 1994 of Justice Kokje is dated 9th November, 1994. The suggestion made in this note was that the file be sent to vigilance cell because that dealt with the complaints received against the

judicial officers. The next note also dated 9th November, 1994 of the vigilance cell states that its report is placed along with the note. This is followed by a note also of 9th November, 1994 of the Chief Justice stating that "put up in next Full Court". Curiously enough the report mentioned in the note of the vigilance cell is not on the record filed in court though it purported to be a part of vigilance section's note. There is then an undated note which appears to be the minutes of a meeting of the Three Judge Committee which is in the file in which it is, inter alia, stated that initially it has been decided to call seven witnesses for their examination relating to various charges against the petitioner. The Committee also decided to call for the valuation of the house belonging to the petitioner from the Valuation Cell of the Income-tax Department as well as the Chief Engineer, PWD, Rajasthan, Jaipur. These minutes are signed by all the three judges of the committee. There is then a confidential note dated 9th December, 1994 signed by Justice Arora directing the registry to summon four witnesses mentioned therein for 19th December, 1994 and three other witnesses named therein for 20th December, 1994. The file discloses that as on 30th November, 1994 there were written complaints made by seven persons against the petitioner apart from the complaint of 19th September, 1993 of Vijay Singh. The other complaints are either dated 26th November, 1994 or 30th November, 1994 or are undated. Even though there were seven complainants only three of them were summoned as witnesses. There is no indication as to why four other persons were not summoned. Of these seven witnesses who were summoned only three, including two of the complainants, were examined. Two other persons who were examined were those in respect of whom no summons were ordered to be issued. Thus the Committee examined five witnesses out of which M.R. Mitruka and Vijay Singh were the two complainants, K.R. Jatav is the only other witness who was summoned vide order dated 9th December, 1994. N.K. Mahamwal and O.P. Sharma were examined even though they were neither the complainants as on 30th November, 1994 nor had been summoned vide order dated 9th December, 1994.

Before advertng to these five witnesses it is important to note that the file contains copies of the summons dated 9th December, 1994 issued to the seven witnesses but, curiously enough, not even a single copy of the summons bears an endorsement of the receipt by any witness. The file also does not contain any other document showing that the witnesses to whom summons had been issued were served at the addresses contained in the summons. This fact is important to note because it has been contended by Mr. Kailash Vasudev, learned counsel for the petitioner, which contention we will consider

- A later, that Vijay Singh who is described in the complaint and is stated to have been examined by the Committee was not a lawyer and Vijay Singh, to whom summons were alleged to have been issued at the Bar room address, was a non-existent person. The file of the Committee also includes written complaints in the form of affidavits of five other persons. Two of them are dated 31st December, 1994, one 1st January, 1995 and another is dated 2nd January, 1995.
- B When the Full Court had on 30th November, 1994 stated that the Committee was to go into the complaint of Vijay Singh and any other complaint received by the Judges, it is not understandable as to why any complaint received after 30th November, 1994 was entertained by the Committee. Another important feature to note is that apart from Vijay Singh's complaint of 1993 all the other
- C complaints are either undated or received after this Court's judgment of 22nd November, 1994.

- Another notable feature of the Enquiry Committee's report is that though a Three Judge Committee was constituted the witnesses to whom summons were issued on 9th December, 1994 appear to have been selected by the local
- D judge Justice Arora. The examination of witnesses took place on 20th and 21st December, 1994 at Jodhpur and 29th December, 1994 at Jaipur. What is, however, revealed from the file is that these witnesses were examined only by two of the Three Judges and Justice Sethna did not take part in the examination of the witnesses and was not present at the time of the examination even though he has signed the final report.
- E

- The only complaint before the Full Court on 30th November, 1994 was that of Vijay Singh. In the affidavit in rejoinder the petitioner has averred that the complaint was stated to have been made by Vijay Singh of Rajasthan Judicial Liberation Front. The person who was examined by the Committee
- F was Vijay Singh son of Madan Singh resident of 179, Kalidas Marg, Beni Park, Jaipur. It is contended by the petitioner that no person by the name of Vijay Singh resides at the said address and there is no such front called Rajasthan Judicial Liberation Front. In support of this averment reliance is placed on a report of the SHO, PS, Beni Park, Jaipur, copy of which has been filed in Court
- G along with its English translation, which *inter alia* states that on verification it has been found that there is no plot no. 179, Kalidas Marg, Beni Park, Jaipur. This report further states that plot no. 179, Sindhi Colony, Jaipur, is owned by one Tulsi Ram and plot no. 179 Indira Colony by Shambu Dayal and in both these plots Vijay Singh son of Madan Singh did not reside. The petitioner has also filed certificate from Rajasthan High Court Bar Association, Jaipur,
- H District Advocates Bar Association, Beni Park, Jaipur and the Bar Association

District Court dated 31st October, 1995, 27th October, 1995 and 17th October, 1995, respectively and in each of these certificates it has been stated that no person by the name of Vijay Singh son of Madan Singh resident of 179, Kalidas Marg, Beni Park, Jaipur, is a member of their association. Lastly an affidavit of Vijay Singh Sharma (Brahmin by caste) son of K.M. Sharma, Advocate has been filed in which he has stated that he has not filed any complaint against the petitioner and that to the best of his knowledge no other person by the name of Vijay Singh Sharma was practising in the District Court or at Jaipur. Even though this rejoinder affidavit was filed in this Court on 14th November, 1995, none of the averments contained therein in relation to Vijay Singh or other persons who spoke against the petitioner have been rebutted by the respondents either by filing a sur rejoinder or even at the time of arguments. This would clearly show that Vijay Singh who was examined by the Committee was certainly not an advocate and was in all probabilities an impostor. Who that person was who was examined by the Committee remains unexplained.

It appears that the Committee was only looking for a person who was ready to depose against the petitioner even if he be an imposter. This conclusion is further strengthened by the selection of four other persons by the Committee whose evidence is on record. Of these M.R. Mitruka had filed a complaint dated 30th November, 1994 supported by an affidavit dated 1st December, 1994 which means that on the day when the Full Court passed the resolution on 30th November, 1994 the complaint along with the affidavit could not have been on the record. This witness who had chosen to file an affidavit against the petitioner after the Full Court resolution on 30th November, 1994 was an ex member of the Rajasthan Judicial Service who had been removed from the service in 1982. The petitioner herein had conducted a preliminary enquiry in the charges which had been framed against Mitruka and it is after the receipt of the preliminary report of the petitioner that regular departmental proceedings against him were initiated culminating in awarding the punishment of removal from service by the Full Court of the Rajasthan High Court. The other person chosen to be summoned by the Committee was K.R. Jatav, also belonging to the judicial service. There were some allegations against him and the petitioner, when he was posted as Registrar (Vigilance) had conducted a preliminary enquiry as a result whereof he was awarded the penalty of censure. Subsequently some more complaints were received against K.R. Jatav and on further enquiry by the petitioner disciplinary action was taken against him and he was superseded on the basis of this report and bad ACPs. He obviously was inimical towards the petitioner. N.K. Mahamwal is

A also a member of the Rajasthan Judicial Service against whom complaints were made by the members of the Bar alleging misbehaviour towards advocates 27th October, 1994 forwarding to the then Chief Justice the old complaint of Vijay Singh. The Chief Justice makes an endorsement on this letter on the same date - thereby showing the sense of urgency. First office note is written only on 9th November, 1994, after issuance of notice by this Court in the writ

B petition filed by the petitioner. The fact that it is only on 30th November, 1994, after the decision of this Court on 22nd November, 1994, that the Full Court fixed up the matter lends credence to the petitioner's submission that the dates which appear on record may not be real. This is more so when we find that none of the documents in the form of complaints allegedly received by

C the Judges bear any endorsement as to the date of receipt of the same. To crown it all the second round started on a complaint of Vijay Singh stated to have been received by Justice Kokje on or before 27th October, 1994. This complaint had been circulated in September, 1993 amongst all the then Judges of the High Court and in respect of which order was passed by the then Chief Justice and the matter was closed on 31st January, 1994. Respondents' counsel

D could give no explanation as to how Justice Kokje got this complaint against the petitioner some time before 27th October 1994 when he was transferred to the Rajasthan High Court only on 28th April, 1994. At that time the petitioner had ceased to be the Registrar of the High Court with effect from 1st February, 1994. It is obvious that a copy of this complaint was handed

E over to Justice Kokje by some one who was interested in harming the petitioner and thereupon the second round of action against the petitioner commenced with Justice Kokje being made one of the members of the Three Judge Committee.

F We have no manner of doubt that there was a complete lack of bona fides on the part of the High Court when it decided on 5th January, 1995 to institute disciplinary proceedings against the petitioner. On this ground alone the petitioner is entitled to succeed.

Conclusions :

G Normally enquiry committees are set up in order to ascertain correct facts. Here, however, we have a situation where a committee consisting of a local judge and two transferred judges was set up with the local judge sitting alone and collecting a menagerie of witnesses who had a grudge against the petitioner and were thus sure to depose against him. Some of these witnesses were those who had not sent any complaint against the petitioner prior to

H 30th November, 1994 and it is only the local judge who, wanting to gather

statements against the petitioner, could have known whom to approach and call for evidence. Of the two transferred judges who were members of the committee, one never took part in any proceeding when evidence was recorded between 20th February and 2nd January, 1995. Yet he signs the report dated 4th January, 1995. The other transferee judge is the person who set the ball rolling with his conjuring up Vijay Singh's complaint which had originally been circulated long before the judge's transfer to Rajasthan. The respondent's counsel was unable to explain as to how this complaint was conveniently placed in this judge's hand. It is evident that there was a deliberate design to bring to a premature end the judicial career of the petitioner, whose name, at that time, was being actively considered for elevation as High Court Judge. This is apparent from the fact that in the resolutions dated 30th November, 1994 and 5th January, 1995 it was resolved by the Full Court that the President of India and the Chief Justice of India should be informed about the holding of the departmental enquiry against the petitioner. Acting on the basis of the Committee's biased report the Full Court, we are sad to note, continued in similar vein and proceeded to nail the petitioner by taking a decision which lacked objectivity. Apparently stung by the judgment dated 22nd November, 1994 of this Court it retaliated by launching a fresh set of charges against the petitioner clearly with a view to ruin his judicial career. We have no doubt that the action taken by the court was not bona fide and amounts to victimisation. This is certainly not expected from a judicial forum, least which has resulted in a preliminary enquiry being conducted by the petitioner when he was posted as Registrar (Vigilance). As a result thereof N.K. Mahamwal was transferred. Later another complaint against him was received for misbehaviour with the advocates and litigants and again on the report of the petitioner a warning was administered to Mahamwal. At the time when the petitioner was posted as District Judge, Udaipur, he had also reported against the bad behaviour of Mahamwal who was posted as Munsif Magistrate under his charge. As a result of all this N.K. Mahamwal had been superseded and many of his juniors had been promoted. He, therefore, obviously must have borne grudge against the petitioner. O.P.Sharma the last witness to be examined also belongs to the Rajasthan Higher Service against whom two complaints were received when the petitioner was posted as Registrar (Vigilance). There were serious complaints in relation to O.P. Sharma's integrity which were received by the High Court and one such complaint had been received by the petitioner when he was working as Additional District Judge, Jaipur city which was forwarded by him to the Additional Registrar (Vigilance) which had resulted in a preliminary enquiry and a subsequent disciplinary proceedings against

A him. It is further seen that of all the affidavits in the form of complaints which were received by the Committee after 30th November 1994, two of them were from those persons who were formerly members of the Rajasthan Judicial Service who had been removed. One of them had sought voluntary retirement after he had been superseded on account of poor service record and the other was compulsorily retired by the High Court. The third affidavit dated 2nd January, 1995 was of yet another judicial officer against whom disciplinary proceedings had been initiated and an FIR had been lodged in respect of the alleged murder of her husband.

C Based on such type of evidence the Committee submitted its report on 4th January, 1995 signed by all the three Judges. It is but natural that highest standard of integrity is expected of and is required to be maintained by every judicial officer. It is with this in view that even though the impugned initiation of proceedings is being alleged to be for mala fide reasons that it is proper to see whether the allegations against the petitioner were such which in any way warranted the holding of a disciplinary proceeding. We have, therefore, D carefully seen the report of the Committee and the complaints against the petitioner in order to satisfy ourselves whether there was any cogent material which warranted initiation of disciplinary proceedings. We do not find, after such examination, that any material existed which could justify the initiation of the impugned action. The allegations against the petitioner were generally E vague or were such which stood explained from the record itself or were such which did not show that the petitioner had committed any irregularity, leave alone illegality. For example one of the main allegations against the petitioner was of his having committed irregularity in obtaining loan for constructing a house. Apart from the fact that this loan was sanctioned by the then Chief Justice, the petitioner has with the assistance of the loan constructed the F house and is living there and the loan amount already stands returned. In such circumstances for the Committee to come to a conclusion that the disciplinary proceedings should be initiated was clearly unwarranted.

G Apart from the non-judicious manner in which the Three Judge Committee conducted the enquiry the sequence of events, which bears repetition, shows that being piqued with this Court's judgment quashing the first departmental enquiry the High Court, with a few functionaries playing an active role, left no stone unturned with a view to victimise the petitioner. On 21st October, 1994 the High Court suspended the petitioner and decided to hold the first departmental enquiry. On 24th October, 1994 this suspension was challenged by way of a writ petition in this Court in which this Court on 7th November, H 1994 issued show cause notice to the High Court. Suddenly we find on the

High Court record Justice Kokje's letter dated of all the High Court, which is expected to discharge its administrative duties as fairly and objectively as it is required to discharge its judicial functions. A

The proceedings of the meeting of the Full Court are normally supposed to be confidential. How is it then that a number of complaints were received against the petitioner at about that time, i.e., 30th November, 1994. Some of the complaints on the file of the Three Judge Committee are undated and it is not known when they were received. On two complaints the date is 26th November, 1994, but they do not have supporting affidavits. It is, therefore, possible that these complaints may have been ante-dated specially when none of these complaints bear an endorsement signifying the date of their receipt. The complaint of Mitruka is dated 30th November, 1994 but the affidavit supporting is dated 1st December, 1994. The fact that an enquiry was going to be conducted against the petitioner was not publicly advertised which could have resulted in complaints being filed, how is it then that after the judgment of this Court on 22nd November, 1994 and about the time the resolution dated 30th November, 1994 was passed, unsolicited complaints started coming in. We have no doubt that all these complaints were procured solely with a view to show that apart from the original complaint of Vijay Singh there were other complaints against the petitioner which represented new material justifying a fresh enquiry. These complaints, some of them being made by discredited persons containing vague and general allegations could not, in our view, be regarded as fresh material which required disciplinary proceedings being initiated. The said complaints did not merit any serious considerations and reference to them by the High Court was uncalled for. In this connection we reiterate the sentiments expressed by this Court while allowing the petitioner's writ petitions on the earlier occasion when at page 716 of the report it was observed as follows : B C D E F

"This case leaves us very sad. Entrustment of the 'control' of the subordinate judiciary to the High Courts by enactment of the relevant provisions in the Constitution of India, particularly Article 235 therein is for the purpose of ensuring their independence and protection from executive interference. At a time when fairness and non-arbitrariness are the essential requirements of every administrative State action, it is more so for any administrative act of the Judges. It is necessary that members of the subordinate judiciary get no occasion to think otherwise. We are afraid, this incident appears to shake this faith. We do hope it is an inadvertent exception." G H

A We are sorry to note that the said hope stands belied and notwithstanding the aforesaid observations the High Court acted in the manner which can only be termed as arbitrary and unwarranted, to say the least.

B For the aforesaid reasons this writ petition is allowed. The entire disciplinary proceedings initiated by the High Court against the petitioner together with the Full Court's resolutions dated 30th November, 1994; 5th January, 1995 and 6th January, 1995 are quashed. We also direct the respondents - High Court of Rajasthan to pay Rs. 20,000/- as costs to the petitioner.

C R.K.S. Petition allowed.