



A Judicial Officer Is Not An Ordinary Government Servant And Must Be Above Suspicion: Allahabad HC

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It must be noted right at the outset that in a noteworthy judgment titled *Sadhna Chaudhary v State of U.P. and others* in Writ Petition No. 170 (S/B) of 2006 by a two-Judge

Bench of Allahabad High Court comprising of Chief Justice Govind Mathur and Justice Shabihul Hasnain and delivered on 12 December 2018 has upheld the dismissal of a judicial officer on grounds of misconduct, on the basis of two orders passed by her in land acquisition cases. This has certainly sent shockwaves across Uttar Pradesh especially in judicial circles. The legal battle is still not over as she (the petitioner) still has the right to challenge this in the Apex Court which is the highest court in India! But certainly it is a big setback for her!

First and foremost, it is pointed out in para 1 that, 'Heard Sri Prashant Chandra, Senior Advocate, assisted by Ms. Mahima Pahwa, learned counsel for petitioner, learned Standing Counsel for State of U.P. as well as Sri Upendra Nath Mishra

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for High Court of Judicature at Allahabad, opposite party no. 2.' The ball is then really set rolling in para 2 wherein it is pointed out that, 'Present petition has been filed by a judicial officer against the order passed by the Appointments Department of the State Government dated 17.01.2006, by which the petitioner was dismissed from service on the recommendation of the Full Court of the Hon'ble High Court of Judicature at Allahabad.' Para 3 then brings out that, 'Petitioner was working as Additional District Judge, Ghaziabad when the impugned order was passed. Petitioner has prayed that a direction be issued for not giving effect to the dismissal order dated 17.01.2006 and thereafter allow her to discharge her duties as before.'

While striking a note of caution, it is then underscored in para 4 that, 'Great caution is required in this case because it is a matter of a high ranking judicial officer and her career, which is at stake. It will therefore be necessary to first lay down the facts of the case before dealing with the arguments and law on the subject.'

Delving deeper, para 5 then very clearly and convincingly points out that, 'The petitioner had initially joined the services as Additional Munsif in the year 1972. She was later on promoted as Civil Judge (Senior Division) in the year 1983. She was subsequently promoted to the Higher Judicial Cadre in the year 1987. While she was posted as 2nd Additional District Judge, Ghaziabad, the petitioner had decided a Land Acquisition Reference No. 193 of 2006 (Lile Singh v. State & 35 others) on 10.2.2003 and while deciding the said Land Acquisition Reference, the petitioner had relied on the rates of a compromise deed but she awarded solatium, additional amount and interest etc. over and above the said agreed rates. This rate was over and above the rate at which two other claimants had entered into the compromise deed. This compromise deed was relied by the petitioner as the exemplar in Rs. 284 per square yard was the rate agreed between the parties which was inclusive of all such benefits i.e. solatium, interest and additional amount. The petitioner relying on the same should instead of sticking to the same, enhanced the rate of Rs 74.40 per square yard



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determined by the Special Land Acquisition Officer (SLAO) to Rs 264/- per square yard i.e. Rs 20/- less than compromise rate and thereafter she allowed, addition of solatium, additional compensation and interest etc. which actually made the landing cost as Rs. 720/- per square yard. Thus the aforesaid enhancement was appear to be disproportionate and against judicial propriety and norms. It was also not justified on her part to rely on the rates of compromise deed and take it as market rate because it was barred under Section 11(3) of the Land Acquisition Act and thereafter allowing additional amount over and above that agreed rate which was completely incomprehensible.'

While continuing in the same vein, it is then added in para 6 that, 'Similarly while being posted as Additional District Judge, Court No. 1, Ghaziabad, the petitioner had decided another Land Acquisition Reference No. 91 of 2001 (Umesh Chandra v. State & 66 others) on 07.11.2003. While deciding the said reference, the petitioner had illegally disregarded all the exemplars filed by the defendants including her own award dated 16.08.1988, passed in another case only five months prior to acquisition for the land acquired in the same village and in the same area and under the same Scheme in which she herself had awarded only Rs. 108 per square yard. Thus while ignoring the aforesaid relevant material available on record, the petitioner has enhanced the rate of compensation to Rs. 100/- per square yard to Rs. 160/- per square yard. The aforesaid enhancement also appears to be disproportionate and the said reference appears to be decided against the judicial norms. In the meantime, this Court while deciding a First Appeal filed by Agra Development Authority against an order of land Acquisition Reference, passed a judgment and order dated 5.3.2004. In this judgment some far reaching observations were made with regard to the manner in which Land Acquisition References were being decided in the State of U.P. Further a direction was issued to the Registrar of the High Court to place the copy of the judgment before the Administrative Committee of the High Court for taking appropriate action against the concerned judicial officers, who appear to be in collusion with the claimants/beneficiaries.'

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Going forward, it is then added in para 7 that, 'In compliance of the aforesaid judgment, a Committee was constituted by the High Court for looking into the matter, which submitted its report on 19.9.2004, where after the Administrative Committee resolved to initiate disciplinary proceeding against certain judicial officers including the petitioner, whose actions were prima facie found to be suspicious.'

To be sure, it is then revealed in para 8 that, 'A charge sheet was issued to the petitioner on 25.10.2004 containing two separate charges in the aforementioned two separate cases about recklessly deciding the aforesaid two Land Acquisition References of Lile Singh (supra) and Umesh Chand (supra) and awarding additional amount including additional compensation, solatium and interest etc. in violation of all judicial norms and propriety, which led to the inference that the same was actuated by extraneous considerations and which indicates towards a failure of maintenance of absolute integrity and complete devotion to duty. This amounted to misconduct and, therefore, the petitioner was asked to submit a detailed reply to the said charges.'

Not stopping here, it is then elucidated in detail in para 9 that, 'The petitioner submitted her reply on 4.1.2005 followed by supplementary reply dated 19.5.2005 and 21.6.2005 wherein she tried to explain her conduct and the manner in which the aforesaid two Land Acquisition References were decided by her. Thereafter the enquiry proceedings were held after following the principles of natural justice and giving opportunity of hearing to the petitioner. Finally an enquiry report was submitted by the Enquiry Officer on 9.9.2005 in which a conclusive finding was given by the two Hon'ble Judges appointed as enquiry committee, that errors in both the aforesaid orders passed by the petitioner while deciding two Land Acquisition References are not mere error in the judgment but they are such blunders, which according to the Enquiry Judges was 'shocking'. Since the said blunders were not attributable to mere errors of judgment which can be corrected in Appeal or in Revision, but were evidently deliberate, therefore, the Enquiry officer had proved both the charges against the petitioner.'

It is then elaborated further in the same para 9 that, 'Consequent to the above enquiry report the matter was placed before the Hon'ble Chief Justice with regard to determination of question of quantum of punishment. When the aforesaid enquiry report dated 9.9.2005 was placed before the Hon'ble Chief Justice, the matter was directed to be placed before the Administrative Committee by the Hon'ble Chief Justice vide order dated 12.9.2005. Thereafter the office had put up a report dated 17.09.2005 that as per an earlier resolution of the Administrative Committee dated 28.02.1997, it would be appropriate to first call for comments of the delinquent officer to the show cause notice which may be given to her regarding the aforesaid enquiry report, with the approval of the Hon'ble Chief Justice. Thus a show cause notice was served on the petitioner on 26.09.2005, whereby the copy of the enquiry report was furnished to her and objections to the same were invited from the petitioner, who submitted her detailed reply on 22/24.10.2005. The same was placed before the Administrative Committee on 29.11.2005. The Administrative Committee, after duly considering the enquiry report dated 9.9.2005, the comments of the delinquent officer dated 22/24.10.2005, along with the office note dated 17.09.2005, resolved that the enquiry report dated 9.9.2005 of the two Hon'ble Judges be accepted and thereafter the matter was referred to the Full Court for consideration of quantum of punishment.'

As things stand, it is then disclosed in para 10 that, 'When the aforesaid matter came up for consideration before the Full Court in its meeting dated 17.12.2005, it was resolved by the Full Court that the enquiry report be accepted and that the officer be given punishment of dismissal from service. The aforesaid resolution/decision of the Full Court was thereafter communicated to the State Government and on that basis, the order of dismissal was passed by the Appointments Department of the State Government on 17.01.2006, which has been assailed by the petitioner in the instant writ petition.'

Needless to say, para 11 while presenting the petitioners version goes on to enunciate that, 'Petitioner while challenging the impugned punishment order has

mainly contended that with regard to the alleged errors in deciding the first Land Acquisition Reference i.e. Lile Singh v. State, the grant of solatium, additional amount and interest is a benefit provided by the statute to the person, whose land was acquired and the same cannot be refused by the Tribunal only on the ground that the financial burden shall increase on the Acquiring Body. Similarly with regard to the alleged errors in deciding the second charge pertaining to the Land Acquisition Reference of Umesh Chandra v. State, it was submitted that her own award passed in the case of Surendra v. State decided on 24.3.1993 was not followed by her, mainly because the said case was affected by different Notification issued under Section 4(1) and the acquisition was for the same scheme.'

Going ahead, para 12 then further goes on to add that, 'The petitioner has contended that writ petitions were filed against the two orders passed by the petitioner in the aforesaid two Land Acquisition References and both the said writ petitions filed by the Acquiring Body were subsequently dismissed by this Hon'ble Court vide judgment and orders dated 20.5.2015 and 21.5.2015 and, therefore, the award passed by the Hon'ble High Court and hence her stand is vindicated and she cannot be said to have committed any mistake in passing the two orders, as the amount decided by her in the Land Acquisition References was not changed in the writ petitions filed before the High Court. Since her decision stood affirmed even by the High Court, therefore, no punishment can be justified for passing the orders in the aforesaid two Land Acquisition References.' Finally, in para 13 also the petitioners version is described and it states that, 'The petitioner has lastly prayed for parity of treatment while claiming similarity with the case of Sanjay Kumar Goel v. State of U.P. decided on 31.5.2011 wherein the petitioner was exonerated.'

Having said this, it is time to now discuss on what point of view the High Court submits on this. Starting from the scratch, it is first and foremost observed in para 14 that, 'Per contra, the submission of the High Court is that in such matters, it is not the final decision of the judicial officer, which is relevant but

what is relevant is the 'decision making process' and if the decision making process is in violation of all judicial norms and propriety, which is not supported by consistent judicial approach and if the decision making process of a judicial officer is actuated by extraneous consideration, ulterior motives, recklessness and improper considerations, then even if the final decision may be upheld by superior courts but the decision making process being arbitrary and irrational, cannot allow the judicial officer to escape from his responsibility.'

Of course, para 15 then further states that, 'It was further submitted that in the instant case, the petitioner utterly failed to give any suitable reply to the main contention of the Charge No. 1 as to why she had placed reliance at the first place on a compromise deed entered between the two persons for fixing the rate of land for determining the market value, though there is a statutory bar under Section 11(2) & (3) of the Land Acquisition Act that rate of land fixed through agreement cannot be a criteria for determining the market value of adjoining land acquired through same or similar notification. Similarly no suitable explanation could be given by the petitioner that when she had relied on the agreement deed, which contained the rate of Rs 284/- per square yard and this amount included 30% solatium, additional compensation and interest, then why the charged officer awarded a sum of Rs. 264/- per square yard (while deducting only Rs 20 therefrom) and then awarded addition of solatium, additional compensation and interest over and above the said agreed amount. This ultimately resulted in the landing cost of Rs. 720/- per square yard as against Rs. 284/- per square yard given to the claimants of the adjoining villages even under the 'compromise agreement'. Thus a total enhancement in compensation by the order passed by the charged officer came to be more than 47 crores which was about 10 times more than the compensation of SLAO. No suitable explanation could be given by the petitioner for allowing the aforesaid wind fall gain to the claimants which was absolutely 'shocking'.'

Furthermore, it is then pointed out in para 15 that, 'Similarly with respect to the second charge, the petitioner could not explain as to why she had

ignored/disregarded the sale deed executed barely 19 days before Section 4 Notification and that too of a small piece of land, which was the best exemplar. This exemplar was actually relied upon by the SLAO, while determining the rate of compensation at Rs. 100/- per square yard. It cannot be presumed by any stretch of imagination that when in the sale deed executed barely 19 days before Section 4 Notification, the rate of land was 90 per square yard, on the basis of which the SLAO had determined the compensation at Rs. 100/- per square yard, the same could have been enhanced to Rs. 160/- per square yard. This clearly demonstrates that the enhancement of compensation in this case also was actuated evidently by extraneous considerations, which gave wind wall gains to the claimants, which was most shocking and unexplainable, especially when the charged officer/petitioner neither followed her own award given five months back in the case of Surendra v. State nor accepted the sale deed executed barely 19 days before Section 4 Notification, which was rightly relied upon by the SLAO in reaching to the amount of compensation.'

What's more, it is then explicitly laid down in para 16 that, 'It was further submitted that though the writ petitions filed by acquiring body i.e. NOIDA authorities against the orders passed in several Land Acquisition References were collectively decided by this Court vide judgment and orders dated 20.5.2015 and 21.5.2015. However, in the said judgments, it was never considered as to what was 'the decision making process' which was adopted by the petitioner and as to how the same was grossly arbitrary, reckless and bereft of judicial propriety. This Court while collectively deciding several First Appeals filed against several orders in Land Acquisition References had, while relying on several judgments of the Hon'ble Apex Court land acquisition matters laid down broad principles which should be followed in land acquisition matters, however while passing the aforesaid two orders, but individual approaches of the individual judicial officers and their individual decision making processes in reaching to the respective conclusions was never looked into by this Court and, therefore, the aforesaid judgments dated 20.5.2015 and 21.5.2015 cannot be said

to be the conclusive findings of the High Court on the decision making process of the petitioner, as no such finding is recorded in the same.'

To fortify and buttress its stand, the High Court then cites decided case by Apex Court as pointed out in para 17 which states that, 'In this regard, it was contended on behalf of High Court that the Hon'ble Apex Court in the case of Union of India v. K.K. Dhawan, reported in 1993 (2) SCC 56 has held in paras 28 and 29 that 'the officer, who exercises judicial or quasi-judicial powers if acts negligently or recklessly or attempts to confer undue favour on a person or takes decision which is actuated by corrupt motive, then he is not acting as a judge'.'

It is further pointed out in this same para 17 that, 'The Hon'ble Apex Court returned a conclusive finding that in such matters, the Courts are not concerned with the correctness or legality of the final orders with reference to the ultimate decision, because an error in judgment, can be corrected in appeal or revision, but the Government is not precluded from taking the disciplinary action against the officer concerned if there is evident violation of the Conduct Rules and if the decision making process is found to be reckless and arbitrary and actuated by corrupt motives. Thereafter the Hon'ble Apex Court has mentioned certain cases/occasions as an example, in which disciplinary actions can be taken against the judicial and quasi judicial officers in the discharge of their judicial functions.'

It cannot be lost on us that it is then noted in para 18 that, 'The aforesaid decision of the Hon'ble Apex Court passed in the case of K.K. Dhawan (supra) by the Hon'ble three Judges Bench was distinguished by another judgment of the two Judges Bench of the Hon'ble Apex Court passed in the case of Junjarao Bhikaji Nagarkar v. Union of India, reported in 1999 (7) SC 409, wherein paras 40 to 44 of the same, the initiation of disciplinary proceeding against judicial/quasi-judicial authorities was not appreciated if it is based on their discharge of judicial/quasi-judicial functions. However, the Hon'ble Apex Court in a latest judgment of Union of India v. Duli Chand, reported in 2006 (5) SCC 680 upheld the Hon'ble three Judges decision of K.K. Dhawan's case (supra) and overruled the decision of Nagarkar's case. Therefore as per the settled position of law, the legality and correctness of the decision making process and the conduct of the officers in discharge of his duties has to be considered in the matter of disciplinary proceeding initiated against him and the final decision passed by the officer has no relevance. On this basis, it was submitted on behalf of High Court that since the decision making process adopted by the petitioner while deciding both the Land Acquisition References are bereft of judicial propriety, settled judicial norms and are actuated by extraneous considerations, therefore, it amounts to misconduct, for which the petitioner has rightly been dismissed from service. The finding given by the Enquiry Officer about the wind fall gain made available to the claimants by the petitioner were absolutely shocking and since the same were not mere errors of judgment, but they are evident blunders deliberately by the petitioner, therefore, the Enquiry Officer had rightly concluded from the decision making process of the two orders of the petitioner that it was the result of extraneous considerations and the same was not mere error of the judgment therefore both the charges were rightly proved.'

More pertinently, it is then observed in para 19 that, 'The Apex Court in catena of judgments including the case of Bank of India v. Degala Suryanarayana, reported in 1999 (5) SCC 762, para-11 and Mihir Kumar Hajara Chaudhary v Life Insurance Corporation, reported in 2017 (9) SCC 404, para 30, has held that strict rules of evidence are not applicable to the departmental enquiry and the

Enquiry Officer upon analysis of document/material should give its conclusion that there had been a preponderance of probability to prove the charges on the basis of material available on record. The scope of judicial review in matters regarding disciplinary enquiry is very limited and findings arrived at in a disciplinary enquiry are interfered with only when there are no material for the said conclusion, which is not the case in hand and therefore, there is no justification for any interference in the matter.'

Simply put, para 20 then goes on to add further stating that, 'It is a settled position of law as laid down in the case of R. Ravi Chandran Ayer v. Justice A.M. Bhattacharyaji & others, reported in 1995 (5) SC 457, paras 21 to 23 and Newal Singh v. State of U.P., reported in 2003 (8) SCC 117, para-2 that a judicial officer, against whom the charges of acting against judicial norms and propriety have been proved in a departmental enquiry. A judicial officer is not an ordinary Government Servant and must be above suspicion. The conduct of the judicial officer must be beyond doubt as a Judge must be a person of high integrity, honesty and required to have moral vigour, fairness and should be impervious to corrupt or venial influences.'

Interestingly enough, it is then noted in para 21 that, 'Furthermore by virtue of Article 235 of the Constitution of India, 'control' over subordinate judiciary is vested in the High Court and the said control is exclusive in nature, comprehensive in extent and effective in operation and is to subserve a basic feature of the Constitution i.e. independence of Judiciary. The Scheme envisaged in the Constitution makes the High Court, the sole authority, which have administrative and disciplinary control and jurisdiction over the employees and officers of subordinate Courts.'

No wonder, it is then pointed out in this same para that, 'The Hon'ble Apex Court passed in the case of Rajendra Singh Verma v. Lt. Governor (NCT of Delhi), reported in 2011 (10) SCC 1 (paras 129 to 134 & para-218) has held that the High Court retains the subordinate Judiciary, which includes the power to initiate the disciplinary proceedings, place them under suspension during enquiries and to

impose appropriate punishment on them, therefore, highest credence has to be given to the decision taken by the Full Court of the Hon'ble High Court in service matters of its officers and employees under Article 235 of the Constitution of India.'

While pooh-poohing the grounds on which the petitioner relied while claiming parity, it was then observed by the High Court Bench in para 22 that, 'So far as reliance placed by the petitioner on a judgment and order dated 31.05.2011 passed by a Coordinate Bench of this Hon'ble Court in Writ Petition No. 425 (S/B) of 2016 i.e. Sanjay Kumar Goel v. State of U.P. & others is concerned, with which parity of treatment was claimed by the petitioner it may be noticed that the petitioner has tried to draw parity with the petitioner of the aforesaid writ petition by suggesting that the said officer was similarly situated and the aforesaid case was also a case of dismissal passed against a judicial officer for deciding Land Acquisition Reference under similar circumstance and since he was acquitted in the said case, therefore, parity should be given to the petitioner as well, however, it is noteworthy that the mere fact that a judicial official punished with the order of dismissal was exonerated by this Hon'ble Court in a land acquisition matter by allowing his writ petition, cannot justify that the same treatment should be given to all judicial officers so punished. In that case, the land acquisition proceedings were initiated by Ghaziabad Development Authority whereas NOIDA was the acquiring body while in the case of the petitioner the Scheme was different, the authority was different and even the exemplars were different. The entire circumstances of the 'decision making process' of that case were absolutely different than the case in hand, therefore no parity can be drawn between the two and hence the reliance placed by the petitioner on the aforesaid judgment passed in the case of Sanjay Kumar Goel (supra) was absolutely misconceived.'

It would be imperative to mention here that it is then conceded in para 23 that, 'Even from a perusal of the records of the enquiry produced by the High Court Registry it is quite evident that the reply to the show cause notice dated 26.09.2005, the detailed comments/reply of the petitioner dated 22/24.10.2005

submitted against the same have already been duly considered by the Administrative Committee and the Full Court and only thereafter the punishment order of dismissal was recommended on 17.12.2005 on the resolution dated 29.11.2005 of the Administrative Committee. The appointing authority, while considering the recommendation of the Full Court and applying its independent mind, has thereafter passed the impugned punishment order dated 17.01.2006. We do not find that there is any infirmity or illegality in the aforesaid punishment order.'

Finally and most importantly, let us now discuss the concluding paras. Para 24 envisages that, 'In view of what has been stated herein above, we are of the concerned opinion that no case is made out in favour of the petitioner. The petitioner has utterly failed in justifying her conduct in discharging her judicial functions and in deciding the two Land Acquisition References, in the most reckless and arbitrary manner, which were bereft of all judicial propriety and since it amounted to misconduct under the Conduct Rules, therefore, the finding of the Enquiry Officer in proving the aforesaid two charges cannot be negated.' Lastly, para 25 then concludes by holding that, 'The instant writ petition, being devoid of merit, deserves to be dismissed. It is ordered accordingly.'

All said and done, while the petitioner has certainly lost the legal battle in the High Court of Allahabad but she still has the option to further pursue her legal battle in the Supreme Court. The jury is still out on what the petitioner decides to do and what the outcome is finally! But certainly she has suffered a major setback but we must remember that it is not the final setback for her as all doors are still not closed on her! The Allahabad High Court certainly has sought to send out a loud and clear message that, 'A judicial officer is not an ordinary government servant and must be above suspicion.' There can be no denying this! But it would be premature to treat this as final verdict! She can still be acquitted by the Apex Court if her lawyers can prove that she been treated harshly! Let's wait and see what unfolds in the coming days on this because only time will tell

what happens and whether the Allahabad High Court will stand vindicated or the petitioner!



Sanjeev Sirohi
on 02 February 2019



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Not only Judicial Officers but also many persons are regarded as Caesar's wives. But I blame the public. They too must be above suspicion. There must be sufficient transformation in the public for happy society.

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