

Niranjan Prasad Vs. State and ors.

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Court : Allahabad

Decided On : Apr-16-1959

Reported in : AIR1960All323

Judge : S.S. Dhavan, J.

Acts : [Constitution of India](#) - Articles 20(3), 226 and 311(2)

Appeal No. : Civil Misc. Writ No. 461 of 1957

Appellant : Niranjan Prasad

Respondent : State and ors.

Advocate for Def. : Junior Standign Counsel

Advocate for Pet/Ap. : S.N. Misra, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S.S. Dhavan, J.

1. This is a petition under Article 226 of the Constitution impugning the legality of an order passed by the Commissioner, Agra Division dismissing the petitioner from service.

2. The facts as alleged in the petitioner's affidavit supporting the petition are these: He was appointed as a paid apprentice in the Collectorate at Mathura in 1948 and confirmed as a clerk in March 1951. He claims to have worked honestly and efficiently in the discharge of his duties. In February 1955 he was working as Moharrir Judicial In the Tehsil of Sadabad when the Collector of Mathura inspected the Tehsil. According to the petitioner's version, the Collector called him to his camp and enquired about the complaints of bribery which were alleged to be pending against the Tehsildar.

The petitioner states that he refused to answer any question and was transferred to the Sadar Treasury at Mathura. On 16-5-1955 the petitioner was again summoned by the Collector at his residence and was directed to explain if he had any proof that the Tehsildar had asked him (the petitioner) to accept bribes in pending cases. This directions was contained in a written order which was served on the petitioner. He was asked to note down his reply on the same order which he did. Both the order and the reply have been attached to the petitioner's affidavit. The order of the Collector runs thus:

'During by camp at Sadabad from 4th to 7-2-1955 I heard frequent complaints against your integrity. When you were asked to explain you verbally stated that you had taken bribes but that it had been done under the orders of the Tehsildar, Sri Ranbir Prasad. Please let me know if you have any specific proof that Sri Ranbir Prasad asked you to take money in cases and furnish details that you are able to give.'

The petitioner's reply was very brief and runs thus:

'Sir,

I have nothing to say in this connection. I

may kindly be pardoned.

Sd, N. Prasad.

16-5-55.'

3. The petitioner alleges that the Collector was not satisfied with his answer, and he called the petitioner to his residence once again at 8 P. M. on the same day. He dictated an order to his stenographer and forced the petitioner to put his signature. A copy of this statement has been attached as annexure 'A 3' of the petitioner's affidavit. It is in the form of questions and answers and consists of three questions. The document is as follows:

'Statement of Sri Niranjan Prasad Treasury Clerk Mathura on S. A. dated 16-5-55.

Question : When I called you today and asked you to explain about complaints of bribery against you you told me that as the Moharrir Judicial Sadabad you used to take about 25/- to 30/- per day from the litigant public? Is that true?

Answer: I may be excused. I have small children at home.

Question : This is not a reply to the question I have put above. I again ask you to reply if you said so or not?

Answer : This was a private talk. (Then he said) I had said so I may be excused.

Question : When I asked you to give this in writing did you or did not refuse to give this in writing?

Answer : (The official refused to answer and said that he begs to be excused and went on repeating this.)

Sd. B. D. Jayal. Sd. Niranjan Pd.

16-5-55. 16-5-55.

4. As stated above, the petitioner's case is that he was forced to sign this document, but he has not indicated the nature of coercion or pressure put upon him. Presumably, he means that he was over-awed or brow-beaten by the Collector into signing it. The petitioner further states that he raised a serious objection against the manner in which the Collector had compelled him to sign the aforesaid statement. As a result, the Collector became suspicious and made a bad entry in the character roll of the petitioner. A copy of this entry is attached as

annexure 'B' of the petitioner's affidavit. It is signed by the Collector and states that during his camp at Sadabad the Collector heard frequent complaints against the petitioner's integrity and that his reputation was bad. He further states that the petitioner's explanation in this regard had been taken and was a virtual confession of having taken bribes. The collector therefore directed the withholding of his integrity certificate. On 19th May, the petitioner was suspended by an order of the Collector. On 27th May, the petitioner was served with a charge-sheet which is filed as annexure 'D' of the petitioner's affidavit. He was charged with the following acts of misconduct:

(1) Accentance of illegal gratification from litigants with whom he had to deal with in his official capacity as Moharrir Judicial, Sahabad.

(2) Farzi work in connection with preparation and submision of periodical returns and statements.

5. The petitioner was asked to submit his written statement of defence in reply to each charge. The petitioner submitted a long reply which is attached as annexure 'E' of his affidavit. In this reply he gave his own version of the various interviews between him and the Collector. According to him. the Collector had never told him that he had received any complaints against his (the petitioner's) integrity, but had asked him about the integrity of the Tehsildar, He also stated in this reply that his signatures to the typed questions in annexure 'A3' were made under the threats of the Collector. On the 3rd December 1955 the petitioner received a notice from the Collector to show cause why he should not be dismissed. The notice enclosed a copy of the proceedings of the Enquiring Officer in the departmental proceedings against the petitioner. This notice together with the copy of the report of the Enquiring Officer is attached as annexure 'F' of the petitioners' affidavit, The petitioner sent his reply to the show cause notice on 15-12-1955, a copy of which is attached as annexure G of the petitioner's affidavit. He stated in it that he 'had incurred the displeasure of the Collector for refusing to come forward as witness against the then Tehsildar, against whom the Collector wanted to collect material for making bribe and against whom an enquiry had been pending.'

6. It appears that the petitioner made a representation against the Collector to the Commissioner as a result of which the latter transferred the petitioner's case to his own file. The petitioner was informed that the Commissioner had fixed 6-3-1956 for the hearing of his case and he was asked to be present. The Commissioner held the enquiry on that date and recorded the statement of the petitioner. (The petitioner states that this statement was taken on oath). A copy of this statement is attached as annexure I of the petitioner's affidavit. The Commissioner then recorded the statement of the Collector. (The petitioner states that the Collector's statement was not taken on oath).

The copy of this statement is attached as annexure J of the petitioner's affidavit. On 13-3-1956 the Commissioner passed an order in which he held the first charge against the petitioner (relating to the acceptance of illegal gratification) to be proved. He further held that, as regards the second charge, the petitioner's explanation should be accepted in the matter of sub-charge No. 1. He also held that sub-charge No. 2 need not be seriously pressed and that charge Nos. 4 and 5 be dropped. As regards Sub-charge No. 6 he held that the petitioner was negligent. As regards the sub-charge No. 3 he observed that he did not know whether the petitioner's explanation that he prepared the statements in accordance with the past practice was correct and that its correctness should be verified from the Collector's office. But in view of his finding that the charge of illegal gratification was proved against the petitioner he directed the petitioner to show cause why he should not be dismissed.

On 3-4-1956 the petitioner submitted a reply to the show cause notice in which he protested his innocence and once again denied that he had made any confession before the Collector about extorting bribes from the litigants. On 14-6-1956 the Commissioner passed an order dismissing the petitioner from service. A copy of this order is attached as annexure N of the petitioner's affidavit. The petitioner preferred an appeal to the Board of Revenue which was dismissed on 1-11-1956, though the fact of dismissal was communicated to the petitioner on 8th December. The petitioner says that his request for a copy of the Board's order was refused. His application for permission to inspect the file of the departmental proceedings was also rejected. The petitioner has now come to this Court for a relief.

7. The petition is opposed by the State and a counter affidavit was filed which was sworn by a clerk in the Collectorate at Mathura. All the material paragraphs in this affidavit were sworn by this clerk 'as based on the perusal of the records of this case,' but the record was not specified. The deponent did not even swear that the allegations in paragraphs 3 to 18 are true. By its order dated 1-9-1958 this Court rejected the affidavit as worthless in law. It also observed that the Collector Mr. B.D. Jayal I. A. S. and the Commissioner Mr. J. S. Lall. I. C. S. against whom the petitioner had made allegations should have sworn affidavits to clear themselves of the charges made against them. The Court condemned the practice prevalent among a certain type of Government officials to make use of their subordinates as Pairokars and make them swear affidavits to deny or explain allegations of misconduct or bias or mala fides made against the officer himself.

The Court passed an order directing both Mr. B. D. Jayal, I. A. S. and Sri J. S. Lall, I. C. S. to file affidavits sworn by themselves. Both these officials filed affidavits in obedience to the Order of this Court. Mr. B. D. Jayal, I. A. S. who was the Collector and District Magistrate of Mathura from January 1954 to April 1957. has stated on oath that, during his visit to Sadabad in February 1955, several persons complained to him against the lack of integrity of the petitioner. He also states that during a period of six years the petitioner was given three partial or adversely partial entries. Mr. Jayal has denied the petitioner's allegation that he (Mr. Jayal) made any enquiries from the petitioner about the complaints of bribery pending against the Tehsildar. He stated that he called the petitioner and told him that there were complaints of bribery against him and that therefore he would be transferred to the Treasury. He asserts that he made no enquiry from the petitioner about complaints of bribery against the Tehsildar. Mr. Jayal has explained that the petitioner was transferred to the Treasury of Mathura as there is not much scope there for coming into the direct contact with the members of the public. Mr. Jayal has denied the petitioner's version of the interview which took place between the petitioner and himself on 16-5-1955 at the Collector's residence. According to his version as contained in paragraph 5 of his affidavit he called the petitioner on 16-5-1955 and confronted him with certain facts against him as he was required so to do by a Government order of 1948 before making any entry withholding the petitioner's integrity certificate. According to Mr. Jayal, the petitioner admitted that

he took bribes but explained that he did so at the instance of the Tehsildar.

He was then asked by the Collector in writing if he had any specific proof that the Tehsildar had authorised him to take bribes. He was also asked to furnish details. Mr. Jayal has denied that he took the initiative in introducing the name of the Tehsildar. According to him, it was the petitioner who stated in his explanation that he had taken bribes under the orders of the Tehsildar. Mr. Jayal has admitted that the petitioner was called a second time to his residence on the same day but he states that the time was not 8 P. M. but earlier in the evening. He states that the petitioner was not forced to sign any statement and that he put his signatures voluntarily. Mr. Jayal further states that his adverse remarks withholding the petitioner's integrity certificate was made on the basis of the petitioner's admission that he had taken bribes.

8. Mr. Jayal further states that he requested the Commissioner on 27-10-1955 to transfer the petitioner's case to some other Collector. In this letter he pointed out that the petitioner had made a confession before him and that (the petitioner) had subsequently taken up the position that his admission was not voluntary but made out of fear of the Collector. Mr. Jayal therefore suggested to the Commissioner that it would not be right for him to deal with the case and that if he did, there might be some grounds for objection. A copy of Mr. Jayal's letter to the Commissioner is attached as annexure C of his affidavit. Mr. Jayal further states that his statement was recorded on oath by the Commissioner and that he took oath before giving his statement.

9. Mr. J. S. Lall, I. C. S., who was posted as Commissioner Agra Division at the material time, has also sworn an affidavit. He has frankly admitted that he does not remember whether he administered any oath either to the petitioner or Mr. Jayal when they appeared before him. He has explained that he was not being assisted by any regular Peshkar during the enquiry but that his stenographer took down the depositions of the petitioner and the Collector. Mr. Lall candidly admits the possibility that, even if the oath was administered this fact was not recorded by his stenographer who was inexperienced in the matter of recording statements of witnesses. This Court is impressed by the transparent honesty and truthfulness of

Mr. Lall.

10. In his affidavit in rejoinder the petitioner reiterated his earlier assertion that the Collector was not put on oath while the petitioner's statement was recorded on oath.

11. In his reply to the affidavit of Mr. Jayal the petitioner reaffirms his original allegation that he was called by the Collector to his camp at Sadabad for the purpose of obtaining evidence against the Tehsildar against whom certain enquiries were pending. The petitioner also denies that he made any admission about taking any bribes or doing so under the orders of the Tehsildar. He categorically states that Mr. Jayal's statement to the contrary is wrong. The petitioner also reaffirms his original allegations that he was forced to put his signatures on the typed paper which in annexure A3 of his affidavit. He states that Mr. Jayal's allegation that he (the petitioner) voluntarily gave any statement or signed any document is 'entirely false'. The petitioner re-asserts that he refused to give any statement in writing or to state what Mr. Jayal required him to state.

According to him, 'the entire thing was done under compulsion and coercion and the signatures of the applicant were likewise obtained under an official pressure'. The petitioner also stated that the Enquiring Officer (that is, the Commissioner) did not allow him any proper opportunity to meet the charges against him. He states that he was never told who the witnesses against him were. The petitioner repeats his earlier assertion that Mr. Jayal became annoyed with him immediately after the interview at Sadabad in February 1955.

12. Before I deal with the merits of the petitioner's case I consider it desirable to dispose of the petitioner's allegations of personal nature against the Collector Mr. B. P. Jayal and, to a lesser extent, against Mr. J. S. Lall the Commissioner. The petitioner virtually accused Mr. Jayal of having falsified the record of the interview which took place between the petitioner and himself at Sadabad in February, 1955. According to the petitioner, he was asked by the Collector to provide information which would implicate the Tehsildar, whereas the Collector in his order dated 16-5-1955 stated that he (the Collector) had asked the petitioner to explain the various complaints received against his own integrity and that he had admitted

the taking of bribes but he explained that he had done this under the orders of the Tehsildar.

Thus, if the petitioner is to be believed, the name of the Tehsildar was not dragged into the interview by him, but by the Collector. The petitioner also alleged that the Collector became annoyed with him on his refusal to co-operate with the Collector in implicating the Tehsildar. The petitioner's case is that all the proceedings taken by the Collector against him subsequent to the interview at Sadabad were coloured by that officer's annoyance with the petitioner. In other words, the petitioner has accused the Collector of having proceeded against him mala fide and with the motive of feeding his personal grudge or anger against the petitioner for his attitude of non-cooperation in the matter of the Tehsildar.

13. At the first hearing of this case, the Court considered the allegations serious enough to direct both the Commissioner Mr. J. B. Lall and the Collector Mr. Jayal to file affidavits in reply to these allegations. Both these officers had complied with the orders of the Court. It is in the interests of justice that the Court should give a finding as to whether the petitioner's allegations have been made out.

14. As regards the Commissioner. I have already observed that he has truthfully and honestly placed all the facts before this Court. The record of the case shows that the Commissioner conducted the enquiry against the petitioner fairly and in a judicial manner. The petitioner was given an opportunity to cross-examine the Collector. No reason has been suggested in the petitioner's affidavit why the Commissioner should have been hostile to him. I, therefore, hold that the petitioner's allegation against the Commissioner that he did not observe the formalities of law and procedure are incorrect.

15. As regards the allegations against Mr. Jayal, the foundation of petitioner's case is his allegation that the Collector was anxious to secure evidence against the Tehsildar and became annoyed with the petitioner for his attitude of non-cooperation in this matter. This allegation might have had some substance if the enquiry against the Tehsildar had been pending on the date when the Collector interviewed the petitioner at Sadabad. But the Collector deposed before the Commissioner that he had already sent to the Government his report in which he

had held that no case was made out against the Tehsildar and it was therefore not possible for him (the Collector) to ask the petitioner to co-operate with him in implicating the Tehsildar. The petitioner asked no question, in his cross-examination of the Collector, suggesting that the case against the Tehsildar was still pending at the time of the Sadabad interview. Subsequently in his reply to the show cause notice issued by the Commissioner he suggested that the Collector's oral words should not be believed and that the Commissioner should send for the Collector's report to the Government concerning the Tehsildar. It appears that the Commissioner did send for this report and satisfied himself that the Collector's statement was true. In his order dated 34-6-1956 dismissing the petitioner (Annexure 'N' of the petitioner's affidavit) he has observed.

'His (the petitioner's) first contention is that the collector was trying to get him to make a statement incriminating the Tehsildar and he suggests that the date on which the Collector sent his report to Government about the Tehsildar would be relevant from this point of view. The Collector has stated that his report to Government about the Tehsildar had already been submitted, and I have seen it myself. Consequently there is absolutely no force in Sri Niranjan Prasad's contention that the Collector was attempting to get his evidence against the Tehsildar.'

16. I must accept the finding of the Commissioner that the Collector has sent his report concerning the Tehsildar and closed the case against him before the interview. The petitioner's allegation that the Collector asked the petitioner to furnish evidence against the Tehsildar must be rejected.

17. Learned Standing Counsel urged during his arguments that, in case this Court holds that the petitioner's allegation against these two officers are not correct, it should further hold that the petitioner has misled this Court and therefore disentitled him-self to any relief under Article 226 of the Constitution. He relied on the principle laid down by a Full Bench of this Court in *Asiatic Engineering Co. v. Achhru Ram*, AIR 1951 All 746 that a petitioner who misleads the Court by making material misrepresentations becomes disentitled to have his case considered on merits. I am of the opinion that the principle laid down in that case does not apply

to the petitioner.

18. A petitioner who misleads the Court by stating facts incorrectly or suppressing material facts or stating them in the manner of half-truths will be disentitled by his own conduct from having his case considered on merits or getting any relief. But this principle cannot extend to a petitioner who does no more than state correctly before this Court his case before the enquiry tribunal. If a petitioner makes false or misleading allegations for the first time before the Court this would be misrepresentation but if he repeats to this Court the same version of facts which has been the foundation of his case before the lower tribunal, he cannot be penalised for repeating his case even if the Court prefers to accept the version of the other party.

In the present case, the petitioner deposed before the Commissioner that he made no confession before the Collector, and that the Collector asked him to provide evidence to implicate the Tehsildar which he refused to do. The Commissioner disbelieved him. But incorrect though it may be this is his case as stated in the inquiry. He repeated it in these proceedings, but also annexed all the relevant documents, keeping back none. A petitioner who, in proceedings under Article 226 does no more than repeat his version of the case as stated before the tribunal below, but places all the relevant materials to enable the Court to make its own assessment of the evidence, cannot be said to have misled the Court merely because the Court prefers to believe the version of the respondents. I, therefore, hold that the petitioner has not disentitled himself to have his case considered on merits.

19. On the merits of the case learned counsel for the petitioner urged the following argument against the legality of the proceedings which have led to the order of dismissal passed by the Commissioner on 14-6-1956 : First, he submitted that the charge sheet served on the petitioner is vague and does not give any particulars which would have enabled him to prepare his defence. Secondly, he contended that there was no evidence against the petitioner except his own so-called confession. But this confession is inadmissible under Article 20(3) of the Constitution. Thirdly, he argued that the order of dismissal is erroneous because it

is vitiated on a charge of bribery which is supported by no evidence whatsoever.

Fourthly, he argued that the annexures A1, A2 and A3, which are the documents signed by the petitioner, do not amount, in law to an admission or confession by the petitioner that he had taken bribes. Fifthly, he contended that the confession was extorted from the petitioner and therefore vitiates the entire proceedings. Sixthly, learned counsel contended that the enquiry proceedings are illegal because the petitioner was deprived of the opportunity of inspecting the file relating to the Tehsildar. Seventhly, and lastly, learned counsel argued that the petitioner was asked to show cause only against the charge of bribery but in the final order the Commissioner took into consideration other matters arising out of the charge which were dropped.

20. Before considering the petitioners attack on the order of dismissal on merits, it is necessary to clarify the position as to the facts of this case. Assuming that the Collector's version of the several interviews between him and the petitioner is correct, the following facts emerge as either proved or inferred from proved facts. In February 1958 the Collector received complaints against the integrity of the petitioner. During his official visit to Sadabad. the Collector called the petitioner to his camp and informed him of these complaints and also told him that he (the petitioner) would be transferred to the Treasury at Mathura. There was no other conversation at this interview, and the petitioner was transferred in due course to Mathura.

21. In May 1956 the Collector decided to withhold the integrity certificate of the petitioner but decided to give the petitioner an opportunity for explanation, as required by order of Government. On 16th May he summoned the petitioner and asked him if he had anything to say against the proposed decision to withhold his certificate. The petitioner in reply admitted that he had in the past made an income from illegal gratification averaging between Rs. 20/- to Rs. 25/- per day but explained that he had done it at the instance of the Tehsildar (presumably implying that he had shared the proceeds with him). The admission was made voluntarily.

22. Sometime during the day, the Collector passed an order which is Annexure A1 of the petitioner's affidavit. In it the Collector stated that during his visit to Sadabad

he had heard complaints against the petitioner's integrity. The order further states, 'when you were asked to explain you verbally stated that you had taken bribes but that it had been done under the orders of the then Tehsildar'. It is not clear from the order at what time the petitioner was asked to explain whether at the first or the second interview on 16th May. It is common ground that the Collector interviewed the petitioner twice on that day, but it is not at all clear from the Collector's order or even from his evidence in the inquiry whether the order Annexure A1 was passed at the first or the second interview. The order goes on to direct the petitioner to 'furnish specific proof that Sri Ranbir Prasad asked you to take money in cases and furnish details that you are able to give'.

It is not clear why the Collector at this stage wanted the petitioner to furnish proof that he had taken bribes under the directions of the Tehsildar. According to his version, he had already submitted a report to Government clearing the Tehsildar of the charge of bribery. The Tehsildar's conduct was not before him for inquiry on 16th May. He had only to deal with the petitioner's integrity, and it is difficult to understand how the petitioner could earn his integrity by shewing that he had taken bribes at the instance of the Tehsildar. Whether he did it of his own accord or at the instance of another corrupt official, he would lose his right to an integrity certificate in either case. The desire of the Collector to be furnished with the details of cases in which the petitioner accepted bribes under the direction of the Tehsildar is one of the puzzling features of this case.

23. To continue the narrative of events on 16th May, the petitioner refused to give any details and gave the following written reply to the order of the Collector: 'I have nothing to say in this connection. I may kindly be pardoned.' Later in the day the Collector again summoned the petitioner and put certain questions to him which the latter declined to answer. But the Collector appears to have insisted on a reply. He reduced his questions to writing and directed the petitioner to give written replies. He was evidently trying to secure a written confession from the petitioner. Earlier in the day he had attempted to get the petitioner to put his previous oral admission in writing but failed. Later in the day, he made a second attempt. The petitioner was still reluctant and the Collector's first question drew blank. The petitioner declined to give any details and merely said 'I may be excused. I have

small children at home.'

The Collector, however insisted on an answer and practically ordered him to give a reply. His second question was, 'This is not a reply to the question I have put above. I again ask you to reply if you said so or not?' By this time the petitioner's resistance had evaporated and he yielded. His reply is recorded in these words, 'This was a private talk. (Then he said) I had said so. I may be excused.' The collector, however was anxious to secure a statement which would leave no room for doubt and wanted to continue the examination. His next question was, 'When I asked you to give this in writing did you or did not refuse to give this in writing?' By this time the petitioner appears to have become thoroughly alarmed and realised that the Collector was trying to get from him a confession to be used against him. He, therefore, refused to answer any further question. The note ends with the remark, 'the official refused to answer and said that he begs to be excused and went on repeating this.' The words, 'went on repeating this', show that the Collector was pressing his questions but getting no replies.

24. On 18th May 1955 the Collector made an adverse entry in the character roll of the petitioner and directed the withholding of his integrity certificate with the following remark,

'His explanation in this regard has been taken and is a virtual confession of having taken bribes, I, therefore withhold his integrity certificate.'

On 19th May the Collector passed an order suspending the petitioner. On 27-5-1955 the petitioner was served with a charge-sheet. On 27-10-1955 the Collector wrote a letter to the Commissioner suggesting that the enquiry against the petitioner should be conducted by the Commissioner himself. On 6-3-1956 the Commissioner held the enquiry and examined the petitioner as well as the Collector. On 13th March the Commissioner issued the show cause notice to the petitioner who submitted his reply on 3-4-1956. On 14-6-1956 the Commissioner passed the order dismissing the petitioner from service. These are the facts, which are either admitted or which the Court must have presumed to have been proved, on the basis of which this petition must be decided.

25. The petitioner was charged with the offence of having accepted bribes. The Enquiring Officer (The Commissioner) held that the charge was fully proved against the petitioner. The only evidence or material on which the finding of the Commissioner is based is the statement of the Collector deposing that the petitioner had admitted before him on 15-5-1955 that he had accepted bribes in the past. This is clear from the following sentences in the charge sheet.

'He (The Collector) called you before him on 15-5-55 at the time of giving annual remarks and confronted you with the fact that you could exonerate yourself of the charge against you. You stated to him verbally that as Moharrir Judicial Sadabad you used to take about 25/-/- to Rs. 30/-per day as bribe from the order of the then Tehsildar. When you were asked by him to give this explanation in writing you refused to do so and wrote down that you had nothing to say in that connection and that you might be pardoned. Your refusal amounted to insubordination.

Then the Collector examined you and took down your statement in the form of questions and answers on the same date. You have virtually confessed that as the Moharrir Judicial Sadabad you used to take bribes amounting to Rs. 25/- to Rs. 30/-per day. This confession is a clear proof of the fact that you used to accept illegal gratifications from litigants with whom you had to deal with in your official capacity as Moharrir Judicial Sadabad in contravention of the provisions of Rule 2 of the Government Servants Conduct Rules.'

26. The charge sheet goes on to specify the evidence on which it was proposed to rely for proof of this charge. They are (1) the Collector's order dated 16-5-1955 (annexure A1), (2) the petitioner's brief reply that he had nothing to say in this connection (annexure A2) and (3) the petitioner's answers in reply to the Collector's questions (annexure A3). Therefore, the sum total of the evidence or the material against the petitioner was the petitioner's own statement, alleged to have been made to the Collector that he had taken bribes in the past, but that he had done so under the orders of the Tehsildar. The petitioner repudiated this statement before the Commissioner and denied having made it. The Collector, however, deposed that the petitioner did make it, and for the purpose of this case, the Court will presume that the Collector is telling the truth.

27. Learned counsel for the petitioner contended that the admission of the petitioner cannot be used against him as they are inadmissible under Article 20(3) of the Constitution. Counsel contended that all the statements of the petitioner are vitiated by the fact that they were either extorted from him or he was overawed into making them against his wish. He pointed out that the statement amounts to an admission that the petitioner had accepted bribes and is therefore a self-incriminating confession which is hit by Clause 3 of Article 20. This clause runs as follows:

'(3) No person accused of any offence shall be compelled to be a witness against himself.'

28. Learned counsel argued that the petitioner was accused of having taken bribes, that is, of having committed the offence of bribery which is punishable under the Indian Penal Code. He was therefore a person, 'accused of any offence', within the meaning of the aforesaid clause, and could not be compelled to be a witness against himself. But, in violation of the constitutional safeguard, the Collector had extorted from the petitioner various admissions which were subsequently used against him in the enquiry. This was forbidden by the Constitution and vitiates the finding of the Enquiry Officer which is based entirely on the statements. I shall now consider this argument on merits.

29. Clause (3) of Art, 20 imposes a ban against compelling a person accused of any offence to be a witness against himself. This ban is against compulsion; it does not forbid voluntary confession or admissions. It is well settled that if a person accused of an offence makes a confession or admission of guilt of his own accord and without any compulsion or coercion, his statement is admissible against him as proof of his guilt. I have therefore to examine whether the petitioner's admission before the Collector that he had in the past accepted money from people was voluntary or made under compulsion. The petitioner made several statements. According to the Collector, his first admission was made at the earlier interview on 16-5-1955 when the Collector asked him to explain the several complaints of bribery received against him. He is alleged to have stated, by way of explanation, that he had accepted money from persons in the past but that he had

done so at the instance of the Tehsildar, (Jawab diya ke voh logon se rupia late the par Tehsildar ke kahne par').

I have already held that the Collector's version must be believed in preference to that of the petitioner. There is nothing to show that this statement was made by the petitioner under compulsion. The Collector was following a procedure under the rules and giving an opportunity to the petitioner to explain why his integrity certificate should not be withheld. The petitioner, by way of explanation, volunteered the statement that he had in the past accepted money from people. There is no element of compulsion or coercion which will make this statement inadmissible under Article 20(3). The probative or legal value of this admission as proof of the charge against the petitioner is, however an entirely different question which shall be discussed presently.

30. The other statements used against the petitioner in the enquiry are those contained in Annexures A2 and A3. The first is a refusal to answer questions ('I have nothing to say in this connection. I may kindly be pardoned'). There is no admission or confession in this statement and the question whether it is admissible or not does not arise. The second statement consists of two answers of the petitioner contained in Annexure A3; The first answer is really a refusal to make any answer ('I may be excused. I have small children at home'). As there is nothing incriminatory in this answer, the question of its admissibility does not arise. The second answer was in reply to the Collector's question whether the petitioner had admitted earlier in the day that he 'used to take about 25/- or 30/- per day from the litigant public'. The petitioner had at first declined to answer this question but the Collector insisted on a reply and said, 'I again ask you to reply it you said so or not?' This time the petitioner admitted that he had said so ('This was a private talk (then he said) 'I had said so. I may be excused'').

31. Learned counsel for the petitioner argued vehemently, considering the circumstances and the atmosphere in which this statement was made, it is clear that it was extorted from the petitioner who was very reluctant to give it. I am inclined to agree. I have already stated that the petitioner's first statement was made voluntarily. But this cannot be said of his other statements made later in the

day. The Collector called him a second time and asked him to reduce his statement in writing, but the petitioner declined to do so. After this, the proceedings became inquisitorial, the petitioner trying to avoid giving any answers but the Collector pressing him for a reply. The tone of the questions shows that the Collector was speaking throughout as the District Magistrate commanding a subordinate official to answer his questions. There is material on record to show that the Collector was treating the petitioner's refusal to answer questions as insubordination.

This is clear from the following sentence in the charge sheet, 'when you are asked by him (The Collector) to give this explanation in writing, you refused to do so and wrote down that you have nothing to say in that connection and that you might be pardoned. Your refusal amounted to insubordination.' If the Collector on 27-5-1955 considered the petitioner's refusal to answer questions as insubordination, he must have adopted the same attitude during the interview. It is not unlikely that the Collector expressed his opinion to this effect either expressly or by his attitude or tone. He appears to have had considerable difficulty in securing from the petitioner even the solitary statement in reply to the second question in Annexure A3. The reluctance of the petitioner to answer the Collector's questions is writ large on both annexures A1 and A2.

The language of the documents shows clearly that the statement of the petitioner in annexure A3 was not made voluntarily but virtually extorted from him. He must have made it in a moment of weakness when he realised that he might have to face the charge of insubordination if he refused to answer any questions. But the Collector's next question warned him that he was being led into making confessions which would land him into a position worse than any charge of insubordination. The wretched man was quite at a loss how to steer between the devil of 'insubordination' and the deep sea of self-incriminatory admissions. He managed, however, to muster sufficient courage in the end to come out with a final refusal to answer any questions of the Collector. This is corroborated by the concluding observation of the Collector in annexure A3. ('The official refused to answer and said that he begs to be excused and went on repeating this').

In considering whether the petitioner made the answers in annexure A3 voluntarily or under compulsion, the relative position of the parties has to be considered. The inquisitor was the Collector and the District Magistrate and the person facing him a minor clerk. Thus the position of the parties was such that one could dominate the will of the other. It is also note-worthy that the Collector never warned the petitioner that any statement made by him was likely to be used against in any subsequent enquiry. The petitioner and the Collector were alone in the interview and petitioner had no previous opportunity of taking legal opinion as to whether he should answer or refuse any questions. I must therefore hold that the petitioner's statement in annexure A3 was made under circumstances which deprives it of the character of a voluntary statement.

32. I am constrained to observe that the manner in which the Collector interrogated the petitioner at the second interview was unfair. He knew that he was obviously trying to secure a confession from the petitioner which if made, would have very serious consequences for him. Rule 72 of the Manual of Government Orders enjoins that if a Government servant is guilty of misconduct which is also a crime, his superior officer may either try the Government servant departmentally or direct his prosecution by a criminal court. Rule 73 enjoins that when the Government servant has been acquitted by the criminal court, its verdict should be accepted normally. The Collector was trying to obtain from the petitioner an admission or confession which might have led to the petitioner's prosecution in the criminal courts as required by Rule 72 of the Manual of Government Orders.

The reason why the Collector did not decide in favour of a criminal prosecution is obvious enough; the petitioner's admission was much too vague to form the basis of a criminal prosecution. But, had the Collector succeeded in extorting from the petitioner an admission containing particulars of specific acts of accepting illegal gratification, he might have ordered his prosecution. All these considerations must or ought to have been present in the mind of the Collector when he summoned the petitioner for a second interview in the afternoon of 16th May. No serious objection can be taken to the first interview, but the second interview degenerated into an inquisition with the Collector Mr. Jayal as the presiding inquisitor. Not once during the interview did he warn the petitioner that any statement made by him might be

used against him. The petitioner's reluctance to answer questions is shown by the Collector's own note in Annexure A. The petitioner was fully entitled under the law and the Constitution to refuse to answer any question if his answer was likely to incriminate him. And yet, in the charge sheet drawn up under the direction of the Collector, the petitioner was told that his refusal to answer questions on 18th May that is, his refusal to incriminate himself clearly amounted to insubordination.

In the face of these facts, the Collector's statement in his counter affidavit that the petitioner gave all the answers voluntarily must be taken with a pinch of salt. It is surprising that the Collector did not realise the transparent unfairness of the manner in which he tried to obtain self-incriminating admissions from the petitioner at the second interview on 16th May. This Court is gravely concerned that an attempt should have been made by the executive head of the district to obtain a self-incriminating statement from a subordinate clerk in a manner which is indistinguishable from an inquisition. It is to be hoped that the money and the procedure adopted by the Collector in the second interview on 16th May will not in future be lightly repeated by any superior officer in securing a self-incriminatory confession or admission from a subordinate official.

33. But, when closely examined the petitioner's admission during the second interview was no more than saying that he had, earlier in the day, made some kind of admission before the Collector. ('I had said so. I may be excused'). Therefore, this statement is no more than a repetition of, or a reference to, the earlier oral admission of the petitioner before the Collector. I have held that this earlier statement was made voluntarily and without compulsion. Therefore, if the earlier statement can be used against the petitioner in any proceedings, it is immaterial whether the latter statement, which is only a reference to the first, is inadmissible or not. The real point is to examine the contents of the earlier statement for the purpose of deciding whether it could validly form the basis of a charge of bribery against the petitioner.

34. As stated above, the petitioner denied having made any admission before the Collector. The sole proof of this statement and its contents is the Collector's deposition before the Commissioner. It is therefore necessary to examine the

Collector's statement which was recorded in Hindi. The relevant portion, translated in English, is as follows:

'When I was in Sadabad on tour I heard complaints against his (the petitioner's) integrity, and transferred him to the Treasury where the opportunity for taking bribes is comparatively small. At the time of considering his integrity certificate I called the petitioner in accordance with rules and asked him if he had anything to say. When I questioned him, Niranjan Prasad replied that he used to accept money from people but did so under the directions of the Tehsildar. Thereupon I passed a certain order on the same date asking him for proof that he accepted bribes at the instance of the Tehsildar. On this, Niranjan Prasad gave a written reply that he had nothing to say and that he should be excused. He gave this answer in reply to my order as he was refusing to give anything in writing.'

35. The petitioner's admission, for what it is worth, is contained in the Collector's sentence, 'Naranjan Prasad replied that he used to accept money from people but did so under the directions 'of the Tehsildar'. The question before this Court is whether a vague admission of this nature can form the basis of a finding that the petitioner was guilty of the misconduct of accepting illegal gratification. In my opinion, it cannot.

36. It was proposed to dismiss the petitioner on the charge of having accepted illegal gratification. The petitioner was entitled to a reasonable opportunity to show cause against the punishment proposed to be inflicted on him. This included the right to show that he was not guilty of the offence imputed to him. The essential element of reasonable opportunity is that the petitioner must know the precise charge against him and the evidence on which it is based. A vague accusation that the petitioner used to accept bribes is not enough. It was held by the Nagpur High Court in *Tribhuwan Nath v. Government of the Union of India*, AIR 1953 Nag 138 that, for an opportunity to be reasonable within the meaning of Article 311(2), a person must be told in the clearest terms and with full particulars what his alleged misconduct is. In that case it was alleged against the Government official that his work during the period of his probation was found to be unsatisfactory.

The second charge against him was that he had not reported himself to the Deputy Commissioner of the district and thus disobeyed the orders of the Government. The High Court held that the first charge was so vague that it could not be said to give any idea to the petitioner of what he had to answer. In the case of *A. R. S. Choudhury v. Union of India*, AIR 1956 Cal 662, the Calcutta High Court held that the phrase 'reasonable opportunity' included at least two ingredients (1) that the accused official must be told clearly and specifically of the offences with which it is intended to charge him and (2) must not be condemned unheard. In *Ananthanarayanan v. General Manager Southern Rly. P. T. Madras*, (S) AIR 1956 Mad 220, it was held that the charge against a Government official must be clear, precise and accurate. In that case a Government official was charged, inter alia, with having 'collected funds for the Communist Party of India' and having 'actively canvassed for Communist Party candidate in the last election to the Legislative Assembly'.

The petitioner filed a writ petition in the High Court impugning the legality of the charge and of an order suspending him. The Court allowed the petition and quashed the charge framed against him. The principle established in these cases would apply to the case of the petitioner. He was asked to show cause why he should not be dismissed on the charge of having accepted illegal gratification, but no particulars of specific acts were given. In the circumstances, it is difficult to see how the petitioner could have successfully rebutted the charge. In my view, a Government servant who is asked to show cause why he should not be dismissed for having accepted bribes but is not supplied with particulars of any specific acts of misconduct, will not be deemed to have been given a reasonable opportunity of showing cause as required by Article 311(2).

37. I shall now deal with the question whether a Government servant can be dismissed on the charge of having accepted bribes when there is no evidence whatsoever of any specific act of misconduct against him and the sole basis of the finding of the enquiry tribunal is his own admission, made in vague and general terms, that he used to accept money from the public in the past. The Supreme Court, in *Parshotam Lal v. Union of India*, AIR 1958 SC 36, held that where a Government servant is appointed substantively to a permanent post, he normally

acquires a right to hold the post and..... 'he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2)'. In another part of the same judgment, the Court held that the services of a Government servant with a right to continue in service, 'cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause'.

By 'misconduct', their Lordships clearly meant misconduct properly proved after giving the petitioner a reasonable opportunity to rebut the charge against him. It follows from the Supreme Court's judgment in P. L. Dhingra's case AIR 1958 SC 36 that unless the misconduct of the Government servant is held to be proved against him, he cannot be dismissed or otherwise punished on the basis of that particular conduct. It is not open to the State to dispense with proof of misconduct and hold a government servant guilty on the basis of some vague admission made by him that he was in the habit of doing certain acts in the past. To apply this question to the concrete facts of the petitioner's case, it was not open to the Government in a case in which it is proposed to dismiss a Government servant on the charge of having accepted bribes to dispense with proof of specific acts of bribery, and rely upon the petitioner's vague admission that he had accepted monies in the past and hold that the guilt of bribery was proved against him. This manner of proof of misconduct apart from being grossly unfair, is impliedly forbidden by Article 311(2), as interpreted by the Supreme Court in P. L. Dhingra's case -- AIR 1958 SC 36.

38. If a government servant can be dismissed on the charge of bribery, not for any specific act of bribery proved against him, but merely on the basis of his own vague and general statement that his income from bribes had averaged Rs. 25/- per day in the past -- such a statement being made in an unguarded moment and in an interview with a superior officer in which he was not warned that his admission would be used against him as proof of his guilt -- this would set a dangerous and vicious precedent. It would require only a short step to extend this principle to the case of a government servant who, in an unguarded moment, and at a comparatively advanced stage in his official career, states that he accepted a

few 'presents' when he was a young official. This principle could be extended to other spheres. A doctor could be 'struck off a register' on the charge of professional misconduct on the sole basis of his own vague statement that he and several other doctors had, earlier in their careers, earned fees from illegal operations; an advocate could be disbarred for professional misconduct for admitting in an unguarded moment that he and many other advocates had won cases in the past by bribing juries.

Once permitted, this vicious principle of accepting a man's vague statement as a substitute for proof of his guilt, would open the gates wide for spying, back biting, and what is known as 'ratting on one's colleagues'. Government servants would render themselves liable to be dismissed, doctors to be struck off the register, and advocates to be disbarred for any indiscreet but vague admission made to a colleague in a mood of gushing comradeship. A principle which permits a man's own vague statement of a general nature to be used as a substitute for legal proof of his guilt on a specific charge must be rejected by this Court as illegal, vicious, and opposed to all notions of fair play and justice.

39. For these reasons I hold that in dismissing the petitioner on the charge of illegal gratification on the basis of his own vague statement that he had accepted moneys in the past -- a statement which he denied having made at the inquiry -- and without giving him an opportunity to meet any charge of specific acts of misconduct is hit by Article 311(2) of the Constitution and must be quashed on the ground that the petitioner did not have a reasonable opportunity of showing cause against the action proposed to be taken against him.

40. There is an additional reason for quashing the finding of the enquiry tribunal holding the petitioner to be guilty of the offence of accepting illegal gratification. The enquiry held by the Commissioner was quasi-judicial and he was under a duty to act judicially. Therefore, his decision is amenable to a writ of certiorari if a proper case is made out against it. It was held by the Supreme Court in the Case of T. C. Basappa v. T. Nagappa, AIR 1954 SC 440, following a decision of the English Court of Appeal in Rex v. Northumberland Compensation Appeal Tribunal. 1952-1 KB 338: 1952-1 All ER 122 that a decision of a judicial or quasi-judicial

tribunal will be quashed if it contains a manifest error apparent on the face of the record. This decision was subsequently confirmed in *Hari Vishnu Kamath v. Ahmad Ishaque*, (S) AIR 1955 SC 233 and is the settled law of the land.

I have therefore to examine whether the decision of the Commissioner holding the petitioner guilty of the charge of having accepted illegal gratification is erroneous on the face of the record. In his provisional order dated 13-3-1956 the Commissioner held the charge proved against the petitioner and issued a notice directing him to show cause why he should not be dismissed. A perusal of this order makes it clear that the Commissioner relied on the petitioner's own vague statement as the sole proof of his guilt. In paragraph 3 of the order, he observed. 'The clerk admitted that he used to take Rs. 25/- to Rs. 30/- per day as bribes from the litigant public, but that he did so under the orders of the Tehsildar'. This observation is erroneous. The Collector Mr. Tayal had deposed before the Commissioner, Niranjan Prasad replied that he used to accept money from people at the instance of the Tehsildar, ('Niranjan Prasad ne jawab diya ke woh logon so rupiya late the par Tehsildar Sahab ke kahne par').

Thus the Collector stated that the petitioner had told him that 'he used to accept money from people.' This does not necessarily amount to an admission that money was accepted in the form of bribes. There are different ways of accepting money from the public -- for example, as loans, presents on the occasion of marriage in the family, and so on. From the Collector's own statement it is not proved whether the petitioner admitted that he had accepted money as bribes. He did not use the word bribe or illegal gratification before the Commissioner but the latter assumed that the acceptance of money must necessarily have been in the form of bribes. He probably considered himself justified in making this assumption against the petitioner.

But when a Government servant's statement is being used as proof of a specific type of misconduct, the Court must examine the statement closely and see whether it contains any admission by the accused official that he committed that particular type of misconduct. In my view, the statement of the petitioner, as repeated by the Collector to the Commissioner, does not contain a clear admission that he

accepted moneys from people as bribes. There is a lacuna in his statement of which the benefit must go to the petitioner. The Commissioner erroneously assumed that the petitioner's so-called admission amounts to a clear confession of having accepted illegal gratification. I do not find it so. In my view there is a difference between a person saying that he accepted moneys from the people in the past and his confessing that he accepted moneys in the form of bribes. The first kind of statement may raise a suspicion that money was probably accepted as a bribe, but it does not of itself amount to a clear confession of bribery.

41. But there is another and more serious error which vitiates the finding of the enquiry tribunal. The sole basis of this finding is the petitioner's vague admission that he accepted moneys from the people in the past. The charge against him was that he had accepted illegal gratification. In my view, the enquiry tribunal was guilty of a manifest error in holding, on the basis of this statement alone, that the charge was proved against the petitioner. In the case of *Avadh Narain Singh v. The Addl. Supdt. of Police*, Writ Petn. No. 1263 of 1957 decided by me on 13-2-1959: (AIR 1960 All 304). I held that a finding of fact of a tribunal in quasi judicial proceedings can be quashed by a writ of certiorari if the Court holds that it could not reasonably have been founded on the material before the enquiry tribunal.

In that case, a Sub-Inspector of Police had been reduced in rank on the charge that he allowed the National Flag to be lowered without making use of his powers under Section 128 Cr. P. C. and was thus guilty of remissness in the discharge of his duties. The Police Official filed a writ petition in this Court challenging the legality of the decision to reduce him. Following the principle laid down in the two English cases, *R. v. Medical Appeal Tribunal Ex parte Gilmore*, 1957-1 All ER 796, and (2) *Edwards v. Baristow*, 1955-3 All ER 48, I held that the finding of the enquiry tribunal holding the petitioner to be guilty of remissness of duty was erroneous and could not stand. I observed:

'If I may adopt the reasoning of the House of Lords in *Baristow's* case, 1955-3 All ER 48 the finding of the Enquiry Officer that the petitioner's conduct in permitting the National Flag to be lowered without making use of his powers under Section 128 Cr. P. C. amounted to remissness in the discharge of his duties and unfitness

for the same cannot stand, whatever be the test adopted. Whether it is regarded as a pure finding of fact or as a pure question of law or of mixed law and fact, the conclusion is the same. The decision must be quashed. Whether his conclusion that the lowering of the flag of itself amounts to an insult is regarded as perverse or completely extraneous to the question of petitioner's remissness, it must be set aside. There is no evidence to support it, alternatively the evidence is completely inconsistent with and contradicts this finding. The only reasonable conclusion from the evidence must be that no insult to the National Flag was intended or offered and this is fatal to the impugned decision. Similarly, his conclusion, that though the petitioner was under orders to handle the situation tactfully, his action in permitting the lowering of the flag without using force under Section 128 Cr. P. C. amounted to remissness cannot stand, whatever the legal character of this finding. If a finding of fact, it could not reasonably have been founded on the material before the Enquiry Officer. If a finding of law, it must be held that no person acting judicially and properly instructed as to the relevant law (including Section 128 Cr. P. C.) would have made this decision, it must be assumed that there has been a misconception and misapplication of the law'.

42. The principles laid down in this observation apply to the facts of the petitioner's case. Whether the finding of the Commissioner that the charge of accepting illegal gratification was proved against the petitioner is regarded as a pure finding of fact or as a pure question of law or of mixed law and fact, the conclusion of this Court must be the same. The decision must be quashed. There is no evidence to support the Commissioner's conclusion. The petitioner's own statement was so vaguely phrased that no tribunal could reasonably have founded a verdict of guilty on its basis. The Commissioner's verdict must therefore be quashed. With its quashing, the foundation of his subsequent order dismissing the petitioner from service is also destroyed.

43. In *Mohammad Ibrahim v. State of U. P.*, Writ Petn. No. 449 of 1955 (All) a Division Bench of this Court quashed an order dismissing a police official on the ground that there was no legal evidence to support the finding of the enquiry officer that the accused official was guilty of the offence imputed to him. This decision is binding on me and provides an additional ground for holding that the

impugned order in the present case is erroneous as there is no evidence to support the Commissioner's finding that the charge of bribery was proved against the petitioner.

44. Learned Junior Standing Counsel for the State vehemently argued that even if this Court holds that the finding of the Commissioner is erroneous, it should not give any relief to the petitioner in view of the circumstances of this case. He emphasised that if the order of dismissal is set aside the result will be that the State will be compelled to take back in service a government servant who had admittedly acquired a bad reputation for taking bribes and who had admitted his misconduct before the Collector. Learned Junior Standing Counsel pointed out that the power to grant relief under Article 226 is discretionary and the Court should take into consideration such matters as the conduct of the petitioner and the requirements of public interest. He strongly contended that it is not in the public interest that this Court should pass an order the effect of which must be to compel the Government to take whom 'he called a notorious bribe taker' back into service.

45. I have given my anxious consideration to this argument. It is true that the power under Article 226 is discretionary and relief cannot be demanded by any petitioner as of right. It is also true that this Court must take into consideration various matters such as the conduct of the petitioner and particularly in the case of a prayer for mandamus, the public interest.

46. But, taking every relevant matter into consideration, I am of the opinion that it is the duty of the Court to interfere in this case. There has been a violation of the constitutional safeguards in the inquiry held against the petitioner. It is sought to dismiss him on the basis of a vague statement made by him that he had accepted moneys from the people in the past. It is true that the benefit of the Court's interference in the present case will go to a government servant who has an unsavoury reputation for integrity and is suspected of having taken bribes. This Court has no sympathy with anyone with a bad reputation as regards integrity. But, as against this, the Court cannot sit back and condone a procedure in which the safeguards imposed by the Constitution have been violated. The Constitution

enjoins that a Government servant must not be dismissed without observing the procedure laid down in Article 311. These safeguards are ordinarily meant for the protection of persons who come under a cloud or are accused of serious misconduct, for an honest person who never gets into trouble has no need of these safeguards. State Counsel's argument that this Court should not interfere even after holding that Article 311 has been violated is no more than a plea that this Court should wink at these violations of constitutional safeguards merely because the benefit of its decision will go to an undeserving person. This is almost identical with the Bassanio's appeal to the judge in Shylock v. Antonio (Shakespeare: Merchant of Venice, Act IV, I).

'And I beseech you. Wrest once the law to your authority, to do a great right do a little wrong; And Curb this cruel devil of his will'.

47. The Judge Portia rightly rejected this argument as destructive of the very foundations of the rule of the law.

'It will be recorded as a precedent, And many an error by the same example will rush into the State: it cannot be'.

48. The temptation to deprive dishonest or undeserving persons of the benefit of constitutional safeguards must be resisted by the judiciary. It is sought, a short step from this plea, to the attitude that the safeguards enforced in the Code of Criminal Procedure should not be enforced for the benefit of a person strongly suspected of having committed murder. Nothing could be more subversive of the rule of the law than the adoption of such prejudices by the judiciary. The majesty of the rule of the law lies in the fact that it protects sinners as well as saints, criminals as well as honest persons. Na hi samharte jyotsnma Chandrash Chandala Veshimana. The fair moon floods all homes with its rays equally and impartially so does the rule of the law throw its protective mantle over all - the deserving and the undeserving alike.

49. I would, however, like to point out that the fear of the Standing Counsel that the result of this Court's interference will be to compel the State to take the petitioner back into service is not well founded. There is no law which can compel

the State to take work from a government servant. Nor does this Court intend to pass any order which will have the effect, directly or indirectly, of compelling the Government to take work from an official whom it considers undesirable. The only result of the Court's order will be to quash certain proceedings and set aside an order on the ground that it was not passed according to law.

50. For reasons detailed in this judgment I hold that the petitioner was not given a reasonable opportunity of showing cause against the punishment of dismissal inflicted on him. I further hold that the finding of the enquiry tribunal holding the petitioner guilty of the charge of accepting illegal gratification is manifestly erroneous,. I further hold that the order dismissing the petitioner Niranjana Prasad from service was passed in violation of the procedure prescribed by Article 311(2) of the Constitution and is also erroneous. I therefore quash the finding of the Commissioner and the order of dismissal based on it.

51. However, in the peculiar circumstances of this case, the parties shall bear their own costs.

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