

HIGH COURT OF CHHATTISGARH, BILASPUR

(Judgment/Order reserved on 09.03.2021)

(Delivered on 26.03.2021)

WPS No. 5287 of 2012

Toman Lal Sahu S/o Panth Ram Sahu Aged About 50 Years
 Ex-Head Constable, Batch No. 265 Ps Maudahapara, Raipur,
 R/o Qtr. No. 7, City Kotwali Colony, Raipur, Distt Raipur,
 Chhattisgarh --- **Petitioner**

Versus

1. State of Chhattisgarh through Secretary, Deptt of Home and Police, Mantralaya, DKS Bhawan, Raipur, Distt Raipur, Chhattisgarh
2. The Director General of Police C.G., H. Q. - P. H. Q. Raipur C.G.
3. The Inspector General of Police Raipur Range, Raipur, C.G.,
4. The Senior Suprintendent of Police Dist. Raipur ---
Respondents

For the applicant	: Dr. N.K. Shukla, Sr. Advocate with Ms. Ritu Mishra, Mr. R.K. Kesharwani, Advocate
For the State	: Mr. Somkant Verma, Panel Lawyer

WPS No. 5288 of 2012

Chandrabhan Singh Bhadoriya S/o Lt. Harchand Singh Aged About 48 Years Ex Constable, Batch No. 1194 P.S. Maudhapara, Raipur R/o Bhatgaon Chowk, Awadhpuri Colony, Near Voda Moblie Tower, Raipur Dist. Raipur Chhattisgarh
 --- **Petitioner**

Versus

1. State of Chhattisgarh through its Secretary, Deptt. of Home & Police, Mantrly. DKS Bhawan Raipur Chhattisgarh
2. The Director General of Police H. Q. - P. H. Q. Raipur , C.G.,

3. The Inspector General of Police Raipur Range, Raipur , C.G.
 4. The Senior Superintendent of Police Dist. Raipur Chhattisgarh
- Respondents**

For the Petitioner : Mr. R. K. Kesharwani, Advocate

For the State : Mr. Somkant Verma, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

CAV ORDER

1. Heard.
2. The challenge in both these petitions is to the suspension orders dated 20th July 2011 (Annexure P-2) and subsequent dismissal orders dated 28.07.2011 (Annexure P-1). Petitioner Toman Lal Sahu was working as Head Constable and petitioner Chandrabhan Singh Bhadoriya was constable and both were posted at Police Station Moudha Para, Raipur, City Kotwali. As per the State, telephonic conversations made in between criminal Chhota Annu @ Anwar and the petitioners were recorded. Against Criminal Anwar, many criminal cases were registered against him. It is alleged that the petitioners being posted as Constable and Head Constable wanted to favour the criminal and the conversation to that effect was recorded and eventually on the basis of CD transcriptions and the CD which were made available to the higher officials of the Police, the petitioners were dismissed from service in exercise of power under Article 311(2) Clause (b), without there being any

departmental enquiry. Since the services were terminated on the basis of the telephonic/mobile conversations by invoking power under Article 311(2) Clause (b), as such, no enquiry was held. when the said dismissal order was subject to departmental appeal, the same was also affirmed in appeal. The challenge in these petitions, therefore, is to the dismissal orders passed by the respondent State-Respondents.

3. Learned counsel for the petitioners would submit that admittedly before the petitioners were dismissed from services, though the ground was taken that if the departmental enquiry is held, no evidence would be available but the reading of dismissal order would show that the mandatory requirement of Article 311(2)(b) were not satisfied. They would submit that on the basis of source of alleged conversation converted in a Compact Disk (C.D) the petitioners' services were terminated. It was contended that neither the source of CD was disclosed nor the CD was supplied to the petitioners and even it was not revealed in the dismissal order whether the voice which has been relied upon by the State-respondents is that of the petitioners and the accused Anwar. Learned counsel would further submit that even if the State was of the opinion that the voice of conversation is of the petitioners, then it could have been proved by any Forensic expert. They would further submit that when the basic ground on which the dismissal orders were passed is on the telephone conversation tape, such action of State-Respondents cannot be allowed as recording of telephonic conversation offends Article 21 of the

Constitution. He placed reliance in ***AIR 1997 SC 568 People's Union for Civil Liberties (PUCL) V. Union of India*** and would submit that in the like nature of the cases in absence of compliance of valid procedure/guidelines, the action of respondents cannot be held statutory and the conversation so recorded cannot be used to dismiss the service as the statutory mandates were not followed. They would further submit that dispensing with the enquiry on the mere recording of conversation will not bring home the requirement. Further reliance is placed in ***AIR 1987 S.C. 1137 Shyam Lal Sharma V. Union of India***.

4. Learned Counsel further relies on a judgment passed by the Division Bench of this Court in ***State of M.P. Versus R. P. Katiyar and another 2006 1 CGLJ 398*** and would submit that before passing such dismissal order, the petitioners are entitled for full-fledged enquiry and only on the basis of sole satisfaction of the respondent officers, the dismissal of petitioners from services in the like nature cannot be accepted as it would offend Article 311 of the Constitution.
5. Learned counsel for the petitioners would further submit that dispensing with the enquiry cannot be logically accepted for the reason that the petitioners were posted at Moudhapara Police station and if the circumstances warrant, they could have been transferred to other police station and thereafter enquiry could have been conducted.
6. Per contra, learned counsel for the State would submit that the conversation has been placed on record along-with CD. He would submit that the record would show that the petitioners were in contact with a notorious criminal against

whom number of criminal cases stand registered against him. Therefore, it would not have been possible to get the evidence against him. Consequently the enquiry was dispensed with. He would further submit that the nature of conversation will prove the seriousness of the offence as the petitioners who were posted at Moudhapara Police station as Head constable and Constable and since they were involved in conversation with a criminal, in order to uphold the public safety, the enquiry was dispensed with.

7. Heard the learned counsel for the parties and perused the records.
8. A perusal of orders of dismissal (Annexure P-1) shows that these orders were passed in the back-drop of involvement of the petitioners with a hardcore criminal and the petitioners were in telephonic conversation with him to extend some favour and the said conversation was converted in a CD. The CD was relied on as a document and was a base for the entire actions. The orders purport that the respondents recorded the voices on the basis of the conversation held between Chhota Annu @ Anwar who is a master-mind criminal and the petitioners. The dismissal orders (Annexure P-1) purport that the criminal was given shield by the petitioners so that he can unleash the criminal activities in the area. Annexure P-1 further purports that no evidence would be available to prove the conversation between the petitioners and accused and no-one would give evidence against the petitioners for facilitating the activity of a criminal and for this reason alone, the information is not transmitted to the higher officers. The order further records

that in order to certify the criminal activities, the petitioners have already recorded the alleged threatenings by the criminal Anwar in the *Rosnamcha Sanha* so as to save themselves from any untoward incident which may happen, thereby they were hands in gloves with the criminal and thus the criminal was given protection. It further records that if the departmental enquiry would have been held, no evidence would have been available, which would result in escalation of the criminal activity. Consequently, the enquiry was dispensed with and eventually the dismissal orders were passed.

9. Admittedly, no Departmental Enquiry (D.E) was conducted before passing such dismissal orders and the D.E., was dispensed with merely on the basis of alleged telephonic conversation held between the criminal Chhota Annu @ Anwar and the petitioners, which was recorded by the police. Therefore, the nucleus of cause of action is based on the telephone records. The source of CD is not disclosed. The alleged telephonic conversation converted into CD which records the conversation was not supplied to the petitioners. The orders also do not disclose the fact how the voice of Tomanlal Sahu and Chandrabhan Singh were identified. It also neither discloses whether proper assistance of any officer was taken to identify the voice of the petitioners who were working as Head Constable and Constable nor the voice of criminal Chhota Annu @ Anwar was identified. No statement of any officer from department exists to say that he recognizes their voices. The compact disk was not sent for examination to any expert or to any Forensic Science

Laboratory. The telephones or the mobiles in which the voice of conversation was recorded were not produced in original.

10. Section 65-B of the Evidence Act lays-down certain procedure to be followed about the admissibility of the electronic record. In the instant case, it appears that the procedure for admissibility of such Compact Disk (CD) as envisaged in section 65-B of the Evidence Act has not been followed. No certificate of telephonic conversation to satisfy the ingredient of Section 65-B is also on record. Therefore, under the circumstances when a question comes to fore that whether any valid procedure or statutory mandate was followed to dispense with the departmental enquiry which proceeded on the premises of a telephonic recorded statement, the obvious answer would be in negative.
11. Further more, the action of respondents to dispense with the departmental enquiry before passing the dismissal orders on the basis of telephone tape conversation itself would be illegal. The question posed here is whether the telephonic conversation between the two individuals can be recorded to form a basis of dismissal ? The answer would be found in the dictum laid down in ***PUCL Vs. Union of India AIR 1997 SC 568 (supra)*** wherein at para 35 the Supreme Court has issued certain directions/ guidelines for telephone tapping as otherwise, it has held that it would offend Articles 19(1)(a) & 21 of the Constitution of India. Paras 19, 20 & 35 of the said Judgment are relevant and quoted below :

“19. The right to privacy – by itself – has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether

right to privacy can be claimed or has been infringed in a given case would depend upon the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of man's private life. Right to privacy would certainly include telephone conversation in the privacy of one home or office. Telephone tapping would, thus infract Article 21 of the constitution of India unless it is permitted under the procedure established by law".

"20. Right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution. This freedom means the right to express one's convictions and opinions freely by words of mouth, writing, printing, picture, or in any other manner. When a person is talking on telephone, he is exercising his right to freedom of speech and expression. Telephone tapping unless it comes within the grounds of restrictions under Article 19(2) would infract Article 19(1)(a) of the Constitution".

"35. We, therefore, order and direct as under :

1. An order for telephone-tapping in terms of Section 5(2) of the Telegraph Act shall not be issued except by the Home Secretary of India (Central Government) and Home Secretaries of the State Government. In an urgent case, the power may be delegated to an officer of the Home Department of the Government of India and the State Government not below the rank of Joint Secretary. Copy of the order shall be sent to the Review Committee concerned within one-week of the passing of the order.
2. The order shall require the person to whom it is addressed to intercept in the course of their transmission by means (of) a public telecommunication system, such communications as are described in the order. The order may also require the person to whom it is addressed to

disclose the intercepted material to such person and in such manner as are described in the order.

3. The matters to be taken into account in considering whether an order is necessary under Section 5(2) of the Act shall include whether the information which is considered necessary to acquire could reasonably be acquired by other means.

4. The interception required under Section 5(2) of the Act shall be the interception of such communications as are sent to or from one or more addresses, specified in the order, being an address or addresses likely to be used for the transmission of communications to or from, from one particular person specified or described in the order or one particular set of premises specified or described in the order.

5. The order under Section 5(2) of the Act shall, unless renewed, cease to have effect at the end of the period of two months from the date of issue. The authority which issued the order may, at any time before the end of two months' period renew the order if it considers that it is necessary to continue the order in terms of Section 5(2) of the Act. The total period for the operation of the order shall not exceed six months.

6. The authority which issued the order shall maintain the following records :

- (a) the intercepted communications,
- (b) the extent to which the material is disclosed,
- (c) the number of persons and their identity to whom any of the material is disclosed
- (d) the extent to which the material is copied,
- (e) the number of copies made of any of the material

7. The use of the intercepted material shall be limited to the minimum that is necessary in terms of Section 5(2) of the Act.

8. Each copy made of any of the intercepted material shall be destroyed as soon as its retention is no longer necessary in terms of Section 5(2) of the Act.

9. There shall be a review Committee consisting of Cabinet Secretary, the Law Secretary and the Secretary, Telecommunication at the level of the Central Government. The Review Committee at the State Level shall consist of the Chief Secretary, Law Secretary and

another member, other than the Home Secretary, appointed by the State Government.

(a) The Committee shall on its own, within two months of the passing of the order by the authority concerned, investigate whether there is or has been a relevant order under Section 5(2) of the Act. Where there is or has been an order whether there has been any contravention of the provisions of Section 5(2) of the Act.

(b) If on an investigation the Committee concludes that there has been a contravention of the provisions of Section 5(2) of the Act, it shall set aside the order under scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material.

(c) If on investigation, the Committee comes to the conclusion that there has been no contravention of the provision of Section 5(2) of the Act, it shall record the finding to that effect”.

12. Therefore, examining the orders of dismissal in the light of the observations made by the Supreme Court (*Supra*) and the procedure prescribed in section 65-B of the Evidence Act, the very substratum to dispense with the enquiry cannot be held to be justified. The order of dismissal is primarily based on telephonic recorded conversation, which is against the dictum laid down by the Supreme Court, therefore, would tantamount to offend Article 21 of the Constitution of India. Hence, the justification to dispense with enquiry on the basis of telephonic recorded conversation cannot be insulated by the judicial verdict. Consequently the orders of dismissal dated **28th July 2011 (*Annexure P-1*)** are set aside.
13. Considering the nature of allegations, the respondents would be at liberty to hold the departmental enquiry against the petitioners by giving them proper opportunity of hearing and following the procedure of rules of natural justice and thereafter may pass appropriate orders.

14. With such observation, these petitions stand disposed of.

Sd/-

**GOUTAM BHADURI
JUDGE**

Rao