IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.36852 of 2021

Parbati Murmu …. ***Petitioner***

Mr. N.K. Sahoo, Adv.
on behalf of
Ms. S. Jena, Adv.

-versus-

Union of India and Ors. …. ***Opposite Party***

Mr.P.K.Parhi, DSGI
Ms. Babita Sahu, CGC

CORAM:
DR. JUSTICE S.K. PANIGRAHI

Order No. **ORDER**
23.12.2022

05.

1. This matter is taken up through hybrid mode.
2. The petitioner has filed this writ petition challenging the rejection order dated 10.11.2021 passed by the Superintendent of Post Offices, Mayurbhanj Division, Baripada-Opposite Party No.2 wherein the prayer of the petitioner to allow the closure of the two T.D. accounts and withdraw the amount deposited therein has been rejected.

I. FACTS OF THE CASE

3. The petitioner had a joint Savings Bank Account No.3684009048 with her husband and it was being

maintained by the petitioner. In that account, she had deposited the amount received as compensation on accountof the death of her father in a road accident, and also other financial benefit from her parental property. After a few years, the petitioner decided to close the above joint account and open two fixed deposit accounts in the Barasahi Sub-Post Office, Barasahi. On 14.11.2018, the petitioner deposited Rs.5,00,000/- in both the T.Ds. for five years under term deposit scheme dividing the amount in two equal amount i.e. Rs.2,50,000/-. Two account numbers were assigned to the petitioner i.e. 4199367364 and 4199364912. In February, 2020, the petitioner suffered from various health ailments including a serious gynaecology problem. In order to meet the expenses, the petitioner approached the opposite party No.3 to close the T.D. accounts and withdraw the amount deposited therein. However, the opposite party No.3 refused to close the account. The petitioner made several representations to opposite party No.2 informing about her grievance of non-closure of term deposit account and making payment thereof. Not finding any other way out, the petitioner approached this Court through W.P(C) No.27409 of 2021 seeking direction to the opposite party No.2 to consider the representation made by her. In turn, the Court ordered

Opposite Party No. 3 to consider the request of the petitioner but he rejected it alleging that the petitioner's husband has been involved in commission of the fraud of Rs.5,64,160/- in booking of Value Payable Articles from 02.09.2017 to 19.11.2018. For the ongoing investigation against her husband, who was a suspended employee of the postal department under Rule 14 of CCS (CCA) Rule 1965, her request cannot be honoured.

II. SUBMISSIONS OF THE PETITIONER

4. Learned counsel for the petitioner submits that the opposite party No.3 while passing the impugned rejection order, has failed to appreciate that the petitioner is not a part of the Departmental Proceeding and therefore, her saving accounts cannot be confiscated. In this respect, it is submitted that, there are no provisions under the Public Accountants' Default Act, 1850 mandating confiscation of the movable and immovable properties of the offender.
5. It is pertinent to mention that, in the charge sheet, the amount alleged to have been misappropriated by the husband of the petitioner has been stated to be Rs.2,59,040/-. However, in the impugned rejection order, the opposite party No.2 has stated that an amount of Rs.5,64,160/- has been misappropriated which is false and has been stated

intentionally to frustrate the prayer of the petitioner to withdraw the total sum of Rs.5,00,000/- from the said T.D. accounts. It is further submitted that once the amount alleged to have been misappropriated is mentioned in the charge sheet, investigation stops after the issuing of the charge sheet and no further amount can be added but in the instant case the amount has been more than Rs.5,00,000/-.

6. It is further submitted that there is not a single piece of information or evidence to show that the husband of the petitioner has transferred the allegedly misappropriated amount to the T.D. accounts. Therefore, there is no basis for which the accounts of the petitioner could be confiscated. Furthermore, neither the inquiring authority nor the disciplinary authority has established any connection between the accounts of the petitioner with the allegation against the husband of the petitioner in their findings.

7. As per the rejection order, apparently the suspicion on the T.D. accounts were raised because the amount was withdrawn from the joint account and deposited in the T.D. account on the same day. However, there is nothing unusual about the above stated fact as it is a usual practice to withdraw the amount on the same day as and when the amount is to be deposited in T.D. accounts. Therefore, this cannot be held as tactful/suspicious. That apart, the

Department does not have any right to confiscate the T.D. accounts of a customer who is not involved in any offence.

8. In order to substantiate their case, learned counsel for the petitioner has analysed the Article 300-A of the constitution "no person shall be deprived of his property save by authority of law". The scope of Article specifies that it has been left to the legislature to deprive a person by the authority of law. The property in this Article means only that which can by itself be acquired, disposed of, taken possession of. In case of ***Bombay Dyeing and Manufacturing Co. vs. State of Bombay***[1]**,** it is held by the Apex Court that property in this context, includes "money" as reflected in the present case.

9. On the same vein, the Apex Court in the case of State of ***Jharkhand & Ors. vs. Jitendra K. Srivastav***[2]**,** mentioned that:

> *"This right of the property cannot be taken away without due process of law as per provisions of the Article 333-A of Constitution of India. At para-15 "it hardly needs to be emphasized that the executive instructions are not having statutory character and therefore cannot be termed as law within the meaning of aforesaid Article 300-A. In the case of* ***Sandhyarani Hansda vs. Union of India*** *this Court has rejected the claim of the*

[1] AIR 1958 SC 328
[2] AIR 2013 SC 3383

> *postal department for recovery of money under the provisions of PAD Act, 1850 from the sister of the accused and directed for release of due payment. In the instant writ petition another Bench of this Court in order dated 12.10.2022 has mentioned that the postal authority itself has relied on the Act "in the circumstances under the provisions it can move against the husband of the client and the surety but not against his client"*

III. SUBMISSIONS OF OPPOSITE PARTY

10.*Per contra*, learned Assistant Solicitor General of India appearing for opposite party submitted that the husband of the petitioner was directly involved in the commission of a fraud in booking of Value Payable article from 01.09.2017 to 19.11.2018. The fraud amount detected is Rs.5,64,160/- and further investigation in the present case is under progress. The said Sri Kisku has been proceeded under Rule-14 of CCS (CCA) Rules, 1965 vide Superintendent of Post Offices, Mayurbhanj Division Memo No.F/1-3/2018/Disc-1 dated 01.08.2019 and the investigation into the case is still under progress. As a part of investigation and to save the loss of Government money, the account in the name of the said Ghanashyam Kisku was searched and it is found that one Post Office Savings Bank Account No.3684009048 stands at Barsahi Sub-Post Office jointly in the name of Smt. Parbati Murmu and her husband Sri Ghanashyam Kisku. On scrutiny of ledger copy of the said account, it is noticed that two withdrawals amounting to Rs.2,50,000/- each, total amounting to Rs.5,00,000/- were transferred on 14.11.2018 to two 5-year T.D. accounts bearing Nos.4199367364 and 4199364912 were opened on the same day i.e. 14.11.2018 at Ranibandh Branch Post Office in account with Barsahi Sub Post Office in the name of Smt. Parbati Murmu, wife of the said Sri Ghanashyam Kisku.

11. It is further submitted that although the facility of opening of T.D. account is available at Barsahi Sub Post Office where the husband of the petitioner was working as Sub-Postmaster, the above two T.D. accounts (including joint B Savings Account) were opened tactfully/suspiciously at one of the Branch Post Offices under Barsahi Sub Post Office in the name of Petitioner Smt. Parbati Murmu wife of Sri Ghanashyam Kisku who was working as SPM, Barsahi Sub Post Office on the very day by transferring the amount from the joint account in which one party is Sri Ghanashyam Kisku. Both the T.D. accounts were frozen as a preventive measure for the purpose of investigation and adjustment of loss sustained by the Department. Reasoned Order bearing No-LC/MBJ/44/2021 dated 10.11.2021 (Annexure-4) was issued by the opposite party No.2 in compliance with the order dated 09.09.2021 passed by this Court disposing of the

representation dated 09.05.2020 of the petitioner under Annexure-2 in W.P(C) No.27409 of 2021 filed by the petitioner.

12. It is crystal clear that the two TD Accounts opened by the petitioner on 14.11.2018 i.e. during the period of Fraud have been found from the joint Savings Bank Account of Sri Ghanashyam Kisku and Smt. Parbati Murmu. The petitioner being a housewife having no individual income for funding of Rs.5,00,000/- towards opening of the two TD Accounts in discussion. It is clear that these two T.D Accounts have been funded from the misappropriated amount of Government money committed by said Sri Kisku.

13. It is pertinent to mention here that Sri Ghanashyam Kisku during his incumbency as Sub Post Master Barsahi Sub Post Office accepted Value Payable Letters (VPL) from different customers for bulk bookings, booked and dispatched the articles and instantly deleted the booking information from the computer database without crediting the VPL booking amounts to Government Accounts. He misappropriated the entire revenue realized in booking of VPL articles. During the initial stage of investigation the calculated amount was to the tune of Rs.2,59,040/- but as investigation progressed the involved amount was realized to be Rs.5,64,160/-. For

the aforesaid reason, both the TD accounts including joint Savings Bank account were frozen as a preventive measure for the purpose of investigation and adjustment of loss sustained by the Department. There is no unjustified grounds to freeze the said accounts. Further no prejudice will be caused to the petitioner if the Order dated 10.11.2021 is not quashed. The Opposite Parties have relied upon the following judgments:

A. The Apex Court in the case of ***Teesta Atul Setalvad vs. The State of Gujarat***[3] has observed that when the accused as a public officer has committed any fraud, the bank of the accused or any of his relations is 'property' within the meaning of Section 102 of the Cr.P.C. and Police Officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into.

B. Further, the Apex Court has resonated the similar sentiment in ***State of Maharashtra V. Tapas D. Neogy***[4], in the following words:

> *"A plain reading of sub-section(1) of Section 102 indicates that the Police Officer has the power to seize any property which may be found under*

[3] Criminal Appeal No.1099 of 2017 (Supreme Court)
[4] (1999) 7 SCC 685

> *circumstances creating suspicion of the commission of any offence, the legislature having used the expression 'any property' and 'any offence' have made the applicability of the provisions wide enough to cover offences created under any Act. But the two precondition of Section-102(1) are that it must be 'property' and secondly, in respect of the said property there must have been suspicion of commission of any offence. In this view of the matter the two further questions that arise consideration are whether the bank account of an accused are of this relation can be said to be 'property' within the remain of sub-section-(1) of Section-102 of the Cr.P.C. and secondly whether circumstances exist, creating suspicion of commission of any offence in relation to the same…."*

14. Hence, the writ petition filed by the petitioner is devoid of any merit and is liable to be dismissed.

IV. COURT'S REASONING AND ANALYSIS

15. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the

Court/Tribunal as held in ***Union of India v. H.C Goel***[5]***.*** The Supreme Court has held that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

16. In ***High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil & Anr.***[6] the Supreme Court has held that interference with the decision of departmental authorities is permitted if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution. It was held as under:

> *"16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by*

[5] (1964) 4 SCR 781
[6] (2000) 1 SCC 416

> *considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution."*

17. It is pertinent to understand whether a nexus can be found between the petitioner's bank account and the accused. Similar issue was before the Kerala High Court in the case of ***Mohammad Enamul Haque v. Central Bureau of Investigation***[7] and it was held:

> *"8. Now, the question is whether the bank accounts of the petitioner will have any nexus, or whether the investigating agency can have any reason to believe or suspect that his bank accounts will have any nexus with the commission of crime alleged against the 1st accused. As already stated, it cannot be the concern of the CBI now, whether the accused has committed any economic offence. If the CBI has reason to believe or suspect that the petitioner has committed any such offence, it will*

[7] Crl.MC. No. 7372 of 2018 (Kerala High Court)

have to be reported to the concerned authority, and the concerned authority will have to step in for necessary action under the existing laws. Every investigating agency is governed by the laws of the land, including the Code of Criminal Procedure. No agency can arbitrarily freeze bank accounts under Section 102 Cr.P.C., or keep the accounts frozen indefinitely, because it will have the ultimate effect of denying the Constitutional or legal rights of the account holder. Such a step can be resorted to by the investigating agencies only if it is found absolutely necessary. Just because, a person is said to have paid bribe to an accused, his bank accounts cannot be mechanically or arbitrarily frozen. Arbitrariness in investigation, or investigative excess, cannot be, in any circumstance, condoned by the courts. Here is a case where, the CBI reported no objection when the petitioner sought orders de-freezing three of his accounts. What the CBI has frozen is not one or two or three accounts of the petitioner, but 26 accounts, leaving no account be operated by him for his daily affairs and transactions. This will have to be said to be high-handed arbitrariness, and also an investigative excess. Whether the petitioner's transactions as a business man involves any illegality will have to be monitored and inspected appropriately by the appropriate agencies, and necessary action will have to be taken against him. That cannot be the concern or area of action in a prosecution brought under the provisions of the PC Act."

18.In the present case, the Opposite Party has contended that the two TD Accounts opened by the petitioner on 14.11.2018 i.e. during the period of Fraud have been found from the joint Bank Savings Account of Sri Ghanashyam Kisku and Smt. Parbati Murmu. The petitioner being a housewife had no individual income for funding of Rs.5,00,000/- towards opening of the two TD Accounts in discussion. It is clear that these two T.D Accounts have been funded from the misappropriated amount of Government money committed by said accused. Even though the investigation is at an early stage, however a nexus can be found between the petitioner's bank account and misappropriation of funds by the accused. Therefore, this Court is of the opinion that it would not be right to interfere at this stage of the proceedings.

19. In light of the aforesaid discussion and having regard to the present position of law, this Court is of the view that the writ petitioner cannot be granted any relief by way of a writ and the present Writ Petition is liable to be dismissed.

20. Accordingly, this Writ Petition is dismissed. No order as to costs.

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(Dr. S.K. Panigrahi)
Judge

B.Jhankar