

(1987) 02 CAL CK 0019

Calcutta High Court

Case No: F. M. A. T. No. 1606 of 1985

Amar Nath Saha and A.N. Saha

APPELLANT

Vs

High Court, Calcutta and Others

RESPONDENT

Date of Decision: Feb. 19, 1987

Acts Referred:

- Penal Code, 1860 (IPC) - Section 161, 165
- Prevention of Corruption Act, 1988 - Section 5, 5(d)

Citation: 91 CWN 912

Hon'ble Judges: Prabir Kumar Majumdar, J; G.N. Ray, J

Bench: Division Bench

Advocate: Amar Neth Saba alias A.N. Saha In person, S.K. Bose, Mr. Partha Sarathi Bose, for the Appellant; Shakti Nath Mukherjee, Pradipta Ray, for the Respondent

Final Decision: Dismissed

Judgement

G.N. Ray, J.

This appeal is directed against the decision of the learned Trial Judge, dated 22nd April, 1985 made in Civil Order No. 7435(W) of 1983.

2. The appellant moved a writ petition before this Court which was disposed of as a contested application upon notice to the respondents in Civil ORDER No.7435 (W) of 1983, In the writ petition, the appellant challenged the legality and validity of the disciplinary proceeding initiated against the writ petitioner appellant on the basis of a Full Court decision of this Court and also against an order of suspension passed against the writ petitioner appellant as contained in the memo issued by the Registrar, Appellate Side of this Court by the order of the Full Court, The appellant is a member of the West Bengal Higher Judicial Service and at the time of initiating the said disciplinary proceeding against him and passing an order of suspension he was holding the post of Additional District and Sessions Judge, 3rd Court, Alipore in the district of 24-Parganas. Three charges have been levelled against the appellant

and the said charges are set out hereunder:

Charge- 1

It appears that your Sri Amarnath Saha, while functioning as the presiding officer of the 3rd Court of the Additional District & Sessions Judge at Alipore, 24-Parganas had exercised your personal and extraneous influence upon Sri Arun Kumar Seal, District Delegate, Alipore, and the members of the Court staff in, order to help Smt. Bimala Ghosh to obtain an improper/illegal/irregular succession certificate in Succession certificate Case No. 831 of 1981 in respect of movable proper ties left by - "deceased Mono alias Monoranjan Mitra, residing at 126A, Shyamaprosad Mookerjee Road, Calcutta, knowing it to be so in violation .of the established norms of judicial propriety and such allegations, if proved, would show that you are guilty of corruption/corrupt practice/dishonest conduct/improper conduct unbecoming a Judicial officer.

Charge -2

It appears that you, Sri Amarnath Saha, while functioning as the presiding officer of the 3rd Court of Additional District and Sessions Judge at Alipore, District 24-Parganas, in order to exercise personal and extraneous influence on the Office-in-charge and other Police Officers of Bhowanipore Police Station for effecting immediate release of the movables, belonging to the late Mono alias Monoranjan Mitra of 126A, Shyamaprosad Mookherjee Road, Calcutta which had been previously seized by the Police in favour of Smt. Bimala Ghosh who have obtained a succession certificate from the learned District: Deligate, 24-Parganas in Succession Certificate Case No. 331 of 1981, on 2nd June, 1981 during Court hours rang up the Officer-in-charge, Bhowanipur Police Station and on 6th June, 1981 also had personally visited along with Miss. Juthika Ghosh and Sri Utpal Bhattacharya, Advocate the said Police Station and on both the occasions held out threats and hurled abuses to the Officer-in-charge and other police officers of the said police station for inducing coercing/intimidating them to release the said seized movables in favour of Smt. Bimala Ghosh without any delay and in violation of the established norms of judicial propriety and such allegation if established would show that you are guilty of corruption/corrupt practice/dishonest conduct and/or improper conduct unbecoming of a judicial officer.

Charge -3

It appears that you, Sri Amarnath Saha, while functioning as the presiding officer of the 3rd Court of Additional District and Sessions Judge at Alipore in the District 24-Parganas on 6th June, 1983, at about 11-40 A.M. left your judicial work and visited the Bhowanipore Police Station without making necessary entries therein to show that you rose for the day only at 1-30 A.M. in violation of the established norms of judicial propriety and such allegations if established would show that you are guilty of corruption/corrupt practice,/dishonest conduct and/or improper

conduct unbecoming a judicial officer.

3. Along with the said memo containing the charge sheet the list of documents forming basis of the charge sheet and the list of witness by, whom the charges were proposed to be sustained were also forwarded to the appellant. The list of documents and the list of witnesses as referred to in the charge sheet are set out hereunder: -

List of Documents

1. Record of Succession Certificate Case No. 331 of 1981 of the Court of District Delegate at Alipore.
2. Records of Succession Certificate Case No. 248, 234, 295, 328, 320 all of 1981 of the Court of District Delegate at Alipore.
3. Statement of Sri Chittaranjan De, the then Clerk in charge, Succession Certificate, Alipore, Shri Raghupati Ghosh and Sri Somnath Chatterjee, both the then Naib Nazir of the Court of D.J., 24-Parganas submitted to Sri N. K. Sen, the then D.J., 24-Parganas.
4. Entries Nos. 360 and 367 dated 6.6.81 in the General Diary of Bhowanipore P.S.
5. Diary of the Court of Shri A. N. Saha, A.D.J. 3rd Court, Alipore for the date 2.6.81 and 6.6.81.

List of Witness

1. Shri Chittaranjan De, the then Clerk-in-charge, Succession Certificate, Alipore.
 2. Shri Somnath Chatterjee (both the then Naib Nazir of the
 3. Shri Raghunath Ghosh Court of D.J., 24-Parganas)
 4. The then Officer-in-charge/Bhowanipore P.S. Shri J. C. Banerjee.
 5. The then Sub-Inspector, Bhowanipore P.S. Shri G.Rorat.
 6. Shri Tapan Guha, son of late S. C. Guha of 35A, Shyama Prosad Mukherjee Road, Calcutta.
 7. Shri Santi Kumar Barman, son of late Jyotiprosad Barman of 86/218, Gopal Nagar Road.
 8. Shri S. Roy Chowdhury, Sergeant, Bhowanipore P. S.
 9. Shri P. Mitra, Asstt. Sub-Inspector, Bhowanipore P.S.
 10. Shri J. Chatterjee, Asstt. Sub-Inspector, Bhowanipore P.S.
4. The appellant contended in the writ petition that no statutory rule governing the conditions of service having been framed under Article 309 of the Constitution in so

far as the members of the Judicial Service of the State of West Bengal are concerned, the High Court at Calcutta in exercise of the power under Article 235 of the Constitution of India could not take any step in placing the appellant under suspension and/or initiating any disciplinary proceeding. The appellant also contended that in the absence of any conditions of service and conduct rules relating to the services of the Judicial officers of the State of West Bengal having been framed by the Appropriate Authority under Article 309 of the Constitution of India, the power of control of the High Court under Article 235 of the Constitution could not be exercised and such power remains in effective in the absence of any conditions of service. The appellant also contended that the charges levelled against the appellant indicated a bias and closed mind of the charging authorities and on that score alone, the charge-sheet was liable to be quashed. The appellant also contended that in the absence of any definition of any improper conduct unbecoming of a Judicial Officer and any norm of judicial propriety, such charges could not be levelled against the appellant and it was also not possible for the appellant to meet such allegations of improper conduct unbecoming of a Judicial Officer and violation of established norms of judicial propriety. Accordingly such charges were untenable on the face of them and no disciplinary proceeding could be initiated on the basis of such charges and no order of suspension could also be passed on account of such charges levelled against the appellant.

5. Mr. Justice B. C. Boy (as his Lordship then was) dismissed the writ petition inter alia holding that in the absence of any statutory rules governing the conditions of service of the Judicial Officers of the State of West Bengal, the power of Control vested in the High Court under Article 235 of the Constitution does not become nugatory or inoperative merely on the plea that no rule or enactment has been made under Article 309 of the Constitution of India. The learned Trial Judge has referred to the decision of the Supreme Court made in the case of [Sant Ram Sharma Vs. State of Rajasthan and Another](#), since cited by the appellant and had held that the facts of the said case were different from the facts and circumstances of the instant case. In the said case, the Supreme Court held that until the statutory rules were framed governing the conditions of promotion to the selection post, the Government could issue administrative instructions regarding the principles to be followed for promotion of Officers to the selection grade. The learned Trial Judge also negated the contention of the appellant writ petitioner that Article 235 has conferred unlimited power to the High Court without laying down the guidelines to exercise such powers in the matter of initiation of departmental proceeding and as such, such exercise of power was arbitrary and violative of Article 14 of the Constitution. The learned Trial Judge has indicated that the writ petitioner was served with a charge sheet and he was given time to submit his defense against the charge sheet. Along with the charge sheet, a list of documents intended to be relied upon and the names of the witnesses to be examined in the departmental proceedings to bring home the charges had also been given and the writ petitioner had been asked to

submit his reply to the said charge sheet within the prescribed period. In the aforesaid circumstances, the principles of natural justice had not been violated and the departmental proceeding had also not been initiated by the High Court arbitrarily. The learned Trial Judge has held that the power of exercise of control under Article 235 of the Constitution of India by the High Court was to be exercised in conformity with the provisions of clause (2) of Article 311 of the Constitution. The learned Trial Judge did not accept the contention of the writ petitioner appellant that the High Court had acted without jurisdiction in passing the order of suspension against the writ petitioner as there was neither any law nor any rule conferring such power on the High Court. The learned Trial Judge has referred to the decision of the Supreme Court made in the case of B. R. Patel vs. State of Maharashtra reported in AIR 1968 S.C. 803 wherein it was held by the Supreme Court that an authority entitled to appoint a public servant was entitled to suspend him pending departmental enquiry into his conduct or pending criminal proceeding and the law was well-settled that the order of interim suspension could be passed against the employee while an enquiry was pending against the conduct even though there was no such term in the contract or appointment and suspension was always an implied term in every contract of service. The learned Trial Judge has also held that the control vested in the High Court over the subordinate judiciary includes not only administrative control but also disciplinary control. The learned Judge has further held that in the instant case the departmental proceeding had been initiated against the writ petitioner for enquiring into such charges of misconduct and pending such departmental proceeding, the impugned order of suspension had been passed. Such suspension having been made to uphold the image and dignity of the judiciary and the power of interim suspension being incidental to the power of disciplinary control, the order of suspension could not be questioned as, illegal or without jurisdiction. The learned Trial Judge has also held that the writ petitioner had applied for inspection of documents and such inspection of documents had also been given to him and he has also filed a reply to the charges. In the aforesaid circumstances, the principles of natural justice had not been violated. The learned Trial Judge negated the contention of the writ petitioner that rule of law requires that decisions must be predictable and a person affected must know where he is and in what manner the decision is rendered. The learned Trial Judge has held that the departmental proceeding has not then been concluded and as such the question of any predictable decision was premature. In the aforesaid views, the learned Trial Judge dismissed the writ petition and as aforesaid the instant appeal has been preferred.

6. The appellant has appeared in person at the hearing of this appeal and has made his submissions.

7. The appellant has contended at the hearing of the appeal that Article 235 of the Constitution of India has two parts. The first limb vests the power of control over the District Courts and Courts subordinate thereto including the posting and promotion

of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of the District Judge in the High Court, but the second limb of the said Article envisages that nothing in the said Article should be constructed as taking away from any such person any right, of appeal which he may have under the law regulating the conditions of service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of service prescribed under such law. The appellant has contended that the rule regarding the conditions of service of the Judicial Officers of the State may be framed by the Governor under Article 809 of the Constitution or by the State Legislature. He has, therefore, contended that such exercise of control is dependent upon the rules governing the service conditions of Judicial Officers. If such rules have not been framed by the appropriate authorities, the power to exercise control remains ineffective. He has submitted the High Court should have asked for appropriate executive instructions from the State Government regarding the conditions of service so long service regulations have not been framed by the appropriate authority. But the High Court not having taken such administrative instructions from the State Government, it is not possible for it to exercise control under Article 235 of the Constitution so far as the members of the State Judiciary are concerned. In the aforesaid circumstances, there was no occasion to place the appellant under suspension in the purported exercise of inherent power of the Controlling Authority to place an employee under suspension and the learned Trial Judge has misconceived the facts and circumstances of the case and has erred in proceeding on the footing that the High Court in the exercise of the power of control under Article 235 of the Constitution could place an employee under suspension in an appropriate case. The appellant has also submitted that no conduct rule of the Judicial Officers of the State has been framed as yet and no guideline whatsoever has been given as to how the Judicial Officers should behave. The appellant has contended that "misconduct" unless defined, is capable of being interpreted differently by different persons and in the absence of proper definition in relation to the service of a Judicial Officer of a State, charge of misconduct is bound to be vague and dependent on subjective satisfaction of the authority dealing with Judicial Officer. If there is no guideline or prescribed norm governing the code of conduct of a Judicial officer of the State it is not possible for the Judicial Officer to guard against the alleged misconduct and a Judicial Officer is likely to be subjected to a disciplinary proceeding and actions connected therewith on the basis of subjective application of code of conduct befitting to a Judicial Officer of the State by the concerned authority in the High Court. The appellant has contended that the appellant has not done anything concerning his judicial duties and functions but he has taken, certain steps in his personal capacity vis-a-vis his relation with a private individual. Even assuming that such action was injudicious it cannot be held that such action has undermined the dignity of a judge or the dignity of the subordinate judiciary. In the aforesaid circumstances, the charges levelled against the appellant are ex facie bad and untenable and the departmental proceeding having been initiated on the basis

of such untenable charges must be quashed and the order of suspension passed on the basis of such untenable charges must also be quashed by this Court. In this connection, the appellant has referred to the decision of the Supreme Court made in the case of [Mrs. Maneka Gandhi Vs. Union of India \(UOI\) and Another,](#) . The Supreme Court has held in the said decision that when a Statute vests unguided and unrestricted power on an authority to affect the rights of a person without laying down any policy and principle which is to guide the authority in exercise of such power, it would be affected by the vice of discrimination since it would leave it open to the authority to discriminate between persons and things similarly situated. The appellant has submitted that as there is no guideline or any prescribed norm about the code of conduct to be maintained by the Judicial Officers of the State, the Judicial Officers of the State may be treated differently according to the subjective satisfaction of the persons in the helm of the affairs. He has submitted that absence of arbitrary power is the essence of the rule of law upon which the whole constitutional system is based and he has submitted that the various decisions of the Supreme Court have high lighted that arbitrariness is antithesis to the rule of law and as such opposed to Article 14 of the Constitution. The appellant has contended that the founding fathers of the constitution were anxious to check the powers of the High Court to fix channels for the flow of the power of control and as such did not make the second part of the Article 235 a proviso. A proviso excepts something out of the main clause. But the founding fathers of the Constitution made the checks inbuilt in the main provision itself by providing for that exercise of the control by the High Court over the subordinate judiciary should be exercised only in accordance with the conditions of service framed for the purpose. The appellant has contended that the control over the subordinate judiciary of the State has been given to the High Court and such control can be exercised only by the High Court but the exercise of the control should be made strictly on the basis of the conditions of service framed by the appropriate authority and not by the High Court. Unfortunately, neither the State Government nor the High Court has taken care to have the service conditions of the Judicial Officers framed and the "High Court has also not taken executive instructions from the State Government governing the conditions of service until such service conditions are properly framed. As a result, the first limb of the Article 235 of the Constitution has become inoperative and it must be held in the facts of the case that no effective control can be exercised by the High Court over the Judicial Officers of the State. The appellant has referred to the decision of the Supreme Court made in the case of [Glaxo Laboratories \(I\) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others,](#) and in the case of [Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another,](#) for the purpose of contending that unless misconduct is defined, no departmental proceeding for the alleged misconduct can be initiated. He has also contended that from the charge-sheet it can be clearly demonstrated that the charging authorities have framed their mind about the commission of the offence alleged in the charge-sheet. In the aforesaid circumstances, the charge-sheet must be quashed on

the ground of bias and or closed mind of the charging authority. He has submitted that this Court and various other High Courts have quashed the charge-sheet whenever the charge-sheet appeared to be vitiated on the ground of bias and or closed mind of the charging authority. The appellant has contended that the concept as to what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated, as misconduct would expose a grey area not amenable to objective evaluation. He has further submitted that where misconduct when proved entails penal consequences, it is obligatory on the employer to specify so that any ex-post facto interpretation of some incident may not be camouflaged as misconduct.

8. Mr. Saktinath Mukherjee, the learned Counsel appearing for the respondent High Court Administration has, however, submitted that the control of the subordinate judiciary by the High Court of the State under Article 235 of the Constitution of India does not suffer any infirmity on the ground that the service rules for the officers of Judicial Service of the State have not been framed under Article 309 of the Constitution or by the Legislature. He has submitted the first limb of the Article 235 of the Constitution of India is complete and independent and does not depend on the operation of the second limb of the said Article. Mr. Mukherjee has contended that the second limb of Article 235 only envisages that if any right of appeal has been conferred on the members of the Judicial Service of the State or any Service Rule has been framed by the appropriate authority, the exercise of control by the High Court under the first limb of Article 235 will be subject to such right of appeal and/or conditions of service. Mr. Mukherjee has contended that it would be fallacious and incorrect to contend that unless service conditions are framed, members of the subordinate judiciary cannot be subjected to any control by the High Court and first limb of Article 285 remains inoperative. Mr. Mukherjee has submitted that the contention of the appellant that in the absence of any service regulation the High Court should have taken executive instructions from the State Government for regulating the conditions of service of the Judicial Officers of the State and in the absence of such executive instructions, the power of control under Article 235 remains inoperative, cannot be accepted. Mr. Mukherjee has contended that the question of taking executive instructions under Article 162 by the High Court in the matter of regulating the conditions of service of the members of the Judicial Service of the State does not and cannot arise and necessity of taking such instructions will be repugnant to the basic principle of separation of judiciary for which Article 235 of the Constitution has been incorporated. In this connection, Mr. Mukherjee has referred to a decision of the Supreme Court made in the case of [Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others](#), . It has been held by the Supreme Court in the said decision that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends wide

variety of matters. Mr. Mukherjee has submitted that although West Bengal Government, Servants' Conduct Rules, 1975 does not apply to the members of the Judicial Service of the State, the West Bengal Services (Duties, Rights and Obligations of the Government Employees) Rules, 1980 (hereinafter referred to as West Bengal Duties and Rights Rules) applies to all Government servants including the members of the Judicial Service. Mr. Mukherjee has submitted that under Rule 3(2) of the said West Bengal Duties and Rights Rules, it has been provided for "every Government employees shall, in the discharge of his duties rise above all personal, political and other considerations and. maintain integrity, impartiality and devotion to duty" and Rule 5(1) provides for that "no Government employee shall commit any misconduct as laid down in Section 5 of the Prevention of Corruption Act, 1947 or take any gratification other than the legal remuneration or obtain valuable things without consideration or for consideration which he knows to be inadequate, from persons concerned in proceedings or business transacted by such Government. employee and detailed in section 161 and section 165 of the Indian Penal Code". Rule 9 provides "any violation or infringement of these rules shall be deemed to be a good and sufficient reason within the meaning of Rule 8 of the West Bengal Service (Classification, Control and Appeal) Rules 1971, for imposing penalties." Mr. Mukherjee has submitted that the charges levelled against the appellant clearly come within the preview of section 5(d) of the Prevention of Corruption Act and Rules 3(2) and 5(1) of the said West Bengal Duties and Rights Rules. Mr. Mukherjee has submitted that even if no specific rule is framed for defining "misconduct", a Government employee can be charged for misconduct on the accepted notion of the Society about misconduct. He has submitted that it will be incorrect to contend that unless misconduct is defined, no one can be charged on the ground of misconduct because in that event the concept of misconduct is likely to vary from persons to persons. Mr. Mukherjee has also submitted that in the absence of any statutory regulation governing the manner in which a disciplinary proceeding is to be conducted, the concerned department has an obligation to give reasonable opportunity to - the delinquent officer to defend himself and to follow the basic principle of natural justice. In the instant case, the appellant has been served with the charge-sheet containing imputation of allegations so that he knows on what basis the disciplinary proceeding has been initiated against him. He has been given all reasonable opportunities to defend himself by filing his answers to the show cause memo. In the aforesaid circumstances, it cannot be contended that the disciplinary proceeding has been initiated in violation of the basic norm of audi alteram partem. In this connection, Mr. Mukherjee has referred to a decision of the Supreme Court made in the case of [Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee,](#) . It has been held that in a disciplinary proceeding, enquiry in accordance with the statutory regulations should be made and in the absence of such regulation, such enquiry should be made on the principle of natural justice. Mr. Mukherjee has further submitted that the appellant has tried to challenge the initiation of the disciplinary proceeding itself on

the ground of lack of power of the High Court to initiate such disciplinary proceeding and to frame the charges alleged against the appellant. But such contention of the appellant cannot be accepted because the High Court is the only authority, which can exercise control over the members of the subordinate judiciary of the State under Article 235 of the Constitution Mr. Mukherjee has also submitted that the charges levelled against the appellant are .not perverse or vague on the face of them and or not capable of being understood. Such charges are in conformity with the norms accepted in the present day social order. Hence, the initiation of the disciplinary proceeding cannot be quashed at this stage. If the appellant ultimately feels aggrieved by the adjudication against him in the disciplinary proceeding, he will be entitled to challenge such adjudication if such challenge is possible on cogent grounds. Mr. Mukherjee has therefore submitted that the learned Trial Judge was justified in dismissing the writ petition and no interference is called for in the instant appeal.

9. Mr. Bose, the learned Counsel appearing for the State has also submitted that, the High Court has got exclusive control over the members of the subordinate judiciary of the State and in exercise of such control, the High Court can initiate the disciplinary proceeding against the appellant and such disciplinary proceedings had been and are being initiated against the members of the Judicial Service of the State all along.

10. Mr. Saha, the appellant, in reply, has submitted that the West Bengal Duties and Rights Rules cannot apply to the members of the Judicial Service of the State because some of the provisions of the rules cannot apply to the members of the Judicial Service. Referring to Rule 6, Mr. Saha has contended that if an employee does not receive any information of the action taken within a fortnight by the authority at the lowest level on the grievance made by such employee or he fails to get redress of his grievance, then the employee may directly address higher authorities including the Minister seeking interview or intervention. Mr. Saha has contended that for the members of the Judicial Service of the State, High Court is the only controlling authority and as such question of making complaint to the lowest authority and then to Higher Authority in terms of Rule 6 cannot apply. Referring to Rule 9 of the said West Bengal Duties and Rights Rules, Mr. Saha has contended that any violation or infringement of the said West Bengal Duties and Rights Rules shall be deemed to be a good and sufficient reason within the meaning of Rule 8 of the West Bengal (Classification, Control and Appeal) Rules, 1971 for imposing penalty but the West Bengal (Classification, Control and Appeal) Rules, 1971 does not apply to the members of the Judicial Service. He has, therefore, submitted that the Rights and Duties Rules, therefore, cannot apply to the members of the Judicial Service. He was further submitted that the charges levelled against him do not stand scrutiny on the face of them. No allegation of material benefit deprived by the appellant has been made. He has submitted that request to give effect to the succession certificate for helping a person known to the appellant is no offence. He has, therefore, submitted

that the disciplinary proceeding has been initiated on untenable grounds and as such the same should be quashed at this stage.

11. After considering the respective contentions of the parties, it appears to us that control of the High Court over the members of the subordinate judiciary in the State, is a complete and exclusive control and it is the High Court and no other authority which can exercise such control over the members of the subordinate judiciary of the State. The Supreme Court in the case of the Chief Justice of Andhra Pradesh & Anr. vs. L.V.A. Dikshitulu & Ors. (A.I.R. 1070 S.C. 193) has clearly indicated that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation and it comprehends wide variety of matters. In our view, the contention of the appellant that although under the first limb of Article 235 of the Constitution, exclusive control over the members of the Judicial Service of the State has been vested in the High Court, such control cannot be exercised unless statutory rules governing the conditions of service or in the absence of such statutory rules, executive instructions are issued by the State Government, cannot be accepted. It will be an incorrect reading of Article 235 of the Constitution, if it is contended that the exercise of control can only be made by the High Court on the basis of service regulation framed by the appropriate authority and or the executive instructions issued by the State Government. It appears to us that the second limb of Article 235 of the Constitution only limits the exercise of control by the High Court under the first limb of Article 235 and the said second limb only envisages that if there is any service regulation, the exercise of control by the, High Court will be made in accordance with such service conditions; The exercise of control under Article 235 of the Constitution does not become inoperative or inchoate in the absence of framing of any service regulation and/or issuing any exclusive instructions by the State Government. The Supreme in the case of [The State of West Bengal Vs. Nripendra Nath Bagchi](#), has considered the scope of Article 235 of the Constitution of India, and has held that the expression "control" as used under Article 235 includes disciplinary control. Similar view has been expressed by the Supreme Court in the case of [Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another](#), and in the case of or [State of Haryana Vs. Inder Prakash Anand H.C.S. and Others](#), . It is quite apparent that the High Court in discharging its duties and function as a Controlling Authority of the members of the Judicial Service of the State has power to initiate disciplinary proceeding and make enquiries against the Judicial Officers in furtherance of the administration of justice. The decision made in the case of [Glaxo Laboratories \(I\) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others](#), and the decision made in Rasiklal Bhagagi"s case (AIR 1955 S.C. 504) since relied on by the appellant have no manner of application in the facts and circumstances of the instant case. In the said decisions, the Supreme Court has held that when "misconduct" has been defined in the relevant standing order, a charge of misconduct must be confined to such defined or enumerated misconduct. It may be

noted in this connection that no service regulation has been framed by the appropriate authority regarding the conditions of service of the members of the Judicial Service of the State of West Bengal but the members of the Judicial Service of the State are being controlled all along by the High Court and disciplinary proceedings had been and are being initiated from time to time. Although the West Bengal Government Servant's Conduct Rules, 1959 do not apply in terms to the members of the Judicial Service, but the broad principles of such Conduct Rules applicable to Government employees in general may be followed. In our view, it is not necessary to go into the question as to whether or not the West Bengal Duties and Rights Rules and the provisions of Prevention of Corruption Act apply to the members of the Judicial Service for the purpose of disposing of the contentions raised in the instant appeal. It appears to us that charges are not at all vague and the said charges also do not depict that the charging authority has finally framed its mind and is proceeding with bias and or closed mind against the delinquent Officer. It will appear from charge No. 2 that the delinquent Officer held out threats and hurled abuses to the Officer-in-charge and other Police Officer of the Bhowanipur Police Station in inducing, coercing and/or intimidating them to release the seized movables in favour of one Smt. Bimala Ghosh. It does not appear to us that no such allegations, a disciplinary proceeding cannot be initiated against the delinquent Officer simply because "misconduct" on the part of the Judicial Officer has not been defined. It also does not appear to us that the charges have been framed against the appellant on grounds inconsistent with accepted notion of good or proper conduct of a public servant and as such it can be reasonably contended that an arbitrary action has been taken against the delinquent Officer by initiating a disciplinary proceeding merely on subjective evaluation of a standard relating to the conduct of the appellant although such standard is not commonly accepted. Accordingly, in the facts of the case, the allegation of an arbitrary action on the part of the disciplinary authority in initiating the disciplinary proceeding is not tenable. In our view, the learned Trial Judge has rightly noted that the delinquent Officer has been served with the charge-schedule containing the charges and imputations made in support of such charges. The documents intended to be relied upon in the disciplinary proceeding have also been indicated and inspection of such documents have also been given to the delinquent Officer. Hence, all reasonable opportunities to defend the charges levelled against the delinquent Officer have been given. In the, circumstances, there is no occasion at this stage to quash the disciplinary proceeding either on the ground of inherent lack of jurisdiction of the High Court to initiate such proceeding or on the ground of arbitrary or untenable charges levelled against the appellant. If the contention of the appellant that in the absence of any service regulation or executive instructions issued by the State Government, the High Court cannot exercise any control over the members of the Judicial Service of the State is accepted, it will only mean that the members of the Judicial Service of the State of West Bengal are at present fully immuned against any administrative control because under Article 235 of the Constitution the High Court and no other

authority can exercise control and the High Court for want of service regulations are also incompetent to exercise such control. Such contention is not only untenable and opposed to the provisions of Article 235 of the Constitution but will lead to an absurdity. In our view pending disciplinary proceeding an order of suspension as an interim measure can be passed and we fully endorse the view taken by the learned Trial Judge in this regard. In the circumstances, no interference is called for in the instant appeal and the appeal, therefore, fails. But we make no order as to costs.

12. The appellant has prayed for leave to appeal to the Supreme Court. In our view, the Supreme Court has decided the scope and extent of Article 235 of the Constitution in a number of decisions and we do not think that the contentions raised in this appeal require any authoritative decision of the Supreme Court. Accordingly, the prayer for leave to appeal to the Supreme Court is disallowed. We, however, stay the operation of this judgment for a period of three Weeks from today.

Prabir Kumar Majumdar, J.

13. I agree.