

S.A. KHAN
v.
STATE OF HARYANA AND ORS.

DECEMBER 18, 1992

[S. RATNAVEL PANDIAN AND K. JAYACHANDRA REDDY, JJ.]

Civil Service: All India Services (Discipline and Appeals) Rules, 1969—Rules 3, 4 and 16—Suspension order—Challenge to—Availability of statutory remedy of appeal—Writ Petition—Maintainability of.

Constitution of India, 1950: Articles 14 and 32—Suspension order passed by State Government on the basis of F.I.R. registered against Petitioner and confirmed by Central Government—Validity of—Availability of statutory right of appeal—Writ Petition challenging order—Maintainability of.

The petitioner, a Deputy Inspector General of Police filed a writ petition before this Court, praying for setting aside the order of suspension passed against him and declaring it to be *void ab initio* and for hearing the petition along with the contempt petition filed by him earlier, and (b) an interim order suspending the operation of the order of suspension, during the pendency of the hearing of the said contempt petition and the writ petition.

It was contended that the suspension order had been passed in *male fide* exercise of the discretionary power for improper purpose, for the reason that the petitioner had been incharge of the investigation of the case of corruption registered against the Chief Minister of the State; that the order was patently unconstitutional and illegal, besides being vitiated by malice both in law and facts and that it was in gross violation of Article 14 of the Constitution as it had been passed by misuse of power in a very arbitrary and capricious manner; that after assuming the charge of Chief Ministership of the State, by misusing his powers, the Chief Minister secured false affidavit from the complainant in the corruption case by rewarding him the appointment of Chairman of the State Khadi Board, and had suspended the petitioner with a designed motive of deflecting the judgment of this Court rendered in a Civil appeal before this Court.

A In the counter affidavit filed on behalf of the State it was stated that no fundamental right of the petitioner had been violated and, as such, the writ petition was not maintainable; that the suspension order, in question, was passed by the State Government after due consideration and in lawful exercise of its functions in terms of Rule 3(3) of the All India Services (Discipline and Appeal) Rules, 1969 and the order had been confirmed by the Government of India under Rule 3(1)(b) of the Rules; that the said Rule provided remedy to the officers concerned by filing an appeal under Rule 16 of the Rules and therefore the writ petition was misconceived because of the availability of statutory remedy provided under the Rules, that the investigation pursuant to the order of this Court made in the civil appeal was finally completed when the State was under the President's Rule; that as no proof was found to establish the allegations, a cancellation report was sent to the Court which had been accepted and that, therefore, the order of this Court made in the civil appeal was neither nullified nor any attempt had been made to stultify the jurisdiction of this Court, that the suspension order was passed so that free and fair investigation could be carried on in the cases registered against the petitioner and had no connection with the Contempt Petition filed by the petitioner before this Court; and that it was neither violative of Articles 14 and 16 of the Constitution nor opposed to any valid law or rules.

E Dismissing the writ petition, this Court

F HELD: 1.1. The order of suspension does not either expressly or impliedly or even remotely spell out that the petitioner was suspended for having been incharge of the investigation of the corruption case or for having taken active role in the proceedings of the case. The suspension order has been confirmed by the Central Government in exercise of its powers under Rule 3(1)(b) of the Rules. The Rules provide a remedy to the officer concerned by preferring a statutory appeal under Rule 16 of the Rules. [762-C,D]

G 1.2. It is not possible to accept that in view of the quick succession of events, viz., that the very next day after the respondent became the Chief Minister, the petitioner was transferred, without being given any place of posting and after five days he was suspended; that earlier to the election of the respondent as the Chief Minister, the investigation of the corruption case was completed and the cancellation report was forwarded to the

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Ilaqa Magistrate, who accepted the cancellation report and discharged the accused, though the investigation of the corruption case does not writ large on the face of the suspension order, suspension order was in fact very much connected with the investigation of the corruption case, which was under the supervision and incharge of the writ petitioner and, therefore, this Court should exercise its extraordinary jurisdiction in revoking this suspension. [766-G,H; 767-A,B]

1.3. No opinion is expressed on the question of alleged *mala fide*, exercise of fraud, arbitrariness, malice etc. since any observation, if made on this aspect, will prejudice or be detrimental to either of the parties in any future adjudication relating to the suspension order. Further, there is no violation of Article 14 of the Constitution giving rise to the filing of the writ petition under Article 32 of the Constitution. Moreover, it is only a suspension order and there is a statutory remedy available to the petitioner. Therefore, it is not possible to intervene at this stage.

[767-C,D]

De Smith's Judicial Review of Administrative Action (Fourth Edition at page 325); *S.G. Jaisinghani v. Union of India and others*, [1967] 2 SCR 703; *S.Pratap Singh v. The State of Punjab*, [1964] 4 SCR 733 and 741; *Andhra Pradesh State Road Transport Corporation v. Satyanarayana Transporters*, AIR 1965 S.C. 1303; *Lazarus Estates Ltd. v. Beasley*, (1956) 1 All. E.R. 341, 345; *Basheshar Nath v. The Commissioner of Income Tax, Delhi & Rajasthan & Another*, [1959] 1 Suppl. SCR 528; *Maneka Gandhi v. Union of India*, [1978] 2 SCR 621; *Pannalal Binjraj v. Union of India*, [1957] SCR 233 and *G. Sandandan v. State of Kerala*, AIR 1966 S.C. 1925 p. 1930 para 21, referred to.

1.4. The material on record irrefragably and demonstratively shows that there was bad blood between the Chief Minister and the petitioner, which, has been gaining momentum day by day and has ultimately culminated in these proceedings inclusive of the filing of the writ petition. The petitioner, in one of his letters to the Director General of Police of the State has himself admitted his strained relationship. In another letter to the State Director General of Police, the petitioner has mentioned some unpalatable, unsavoury and vitriolic remarks couched in unrestrained language against the Chief Minister allegedly on the strength of a confidential report. It is manifestly clear that the petitioner in utter despera-

A tion has made such an unpalatable remark evidently crossing his bounds. A bureaucrat working under the Government is not expected to disclose any confidential report that comes to his knowledge in his official capacity to satisfy his personal grievance. The petitioner is holding a high position in the Governmental machinery that too in the disciplinary police force though now under suspension, and this Court expresses its strong disapproval in this regard. [758-G,H 760-D-F; 761-A-D]

ORIGINAL JURISDICTION : Writ Petition (Civil) No. 923 of 1991.

(Under Article 32 of the Constitution of India).

C Kapil Sibal, K. Parasaran, R.K. Garg, Ms. Indu Malhotra, Ms. Indu Goswami, Mahabir Singh and S. Srinivasan for the appearing parties.

The Judgment of the Court was delivered by

D S. RATNAVEL PANDIAN, J. This Writ Petition under Article 32 of the Constitution of India is filed by the petitioner, Shri S.A. Khan, IPS, Deputy Inspector General of Police, Haryana, now under suspension seeking the following reliefs:

E "It is, therefore, prayed that this Hon'ble Court be pleased to hear this petition alongwith the Contempt Petition aforesaid and grant the petitioner following reliefs:-

(a) a writ, order or direction setting aside the illegal order of suspension dated 5.7.1991 (Annexure 'A') passed against the petitioner and declaring it to be *void ab initio*;

F (b) An Interim order suspending the operation of the impugned order of suspension during the pendency of the hearing of the said Contempt petition and also this writ petition;

G (c) Issue any other writ, direction or order;

(d) Award the cost of the petition."

H We would also like to proliferate the prefatory note of the Writ Petition for proper understanding the circumstances under which this petition has been filed:

"Writ petition under Article 32 of the Constitution of India in continuation of C.M.P. No. 2743 of 1989, I.A. Nos. 1 and 2 of 1991 in C.A. No. 5412 of 1990."

The material facts which have led to the filing of the above CMP and IAs referred to in the prefatory note are given separately in the contemporaneous proceeding relating to the Contempt Petition No. 7/89. Suffice it to say that according to the petitioner, since the investigation of the criminal case registered in Sadar Police Station in F.I.R. No. 372/87 dated 21.11.87 against Ch. Bhajan Lal (who was then the Union Minister for Environment and Forests, Government of India, at the time of the registration of the case and who is now the Chief Minister of Haryana State) and others on the complaint of one Dharam Pal under Sections 161 and 165 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act of 1947 was under the direct charge and supervision of the writ petitioner Shri Khan, Ch. Bhajan Lal with *mala fide* intention of clogging and terminating the investigation has caused the impugned suspension order to be passed as against the petitioner by misusing his power and authority as Chief Minister.

Mr. R.K. Garg, the learned senior counsel appearing on behalf of the petitioner has vehemently contended that the suspension order has been passed in *mala fide* exercise of the discretionary power for improper purpose, for the simple reason that the petitioner has been incharge of the investigation of the case of corruption registered against Ch. Bhajan Lal; that the order of suspension is patently unconstitutional and illegal besides being vitiated by malice both in law and facts and that it is in gross violation of Article 14 of the Constitution as it has been passed by misuse of power in a very arbitrary and capricious manner. He has further submitted that Ch. Bhajan Lal after assuming the charge of Chief Ministership of Haryana by misusing his powers secured false affidavit from the complainant in the corruption case (Dharam Pal) by rewarding him the appointment of Chairman of the Haryana Khadi Board, and has suspended the petitioner S.A. Khan with a designed native of deflecting the judgment of this Court rendered in Civil Appeal No. 5412/90 by and under which liberty has been given to the State Government to direct an investigation afresh in the corruption case and also making it impossible for the State Government and the petitioner or the other police officers to complete the investigation into the serious charges of corruption against Ch. Bhajan Lal. The petitioner has recalled the attention of this Court to the various *averments* made in I.A. No. 2 of 1991 in C.A. No. 5412/90 wherein also a similar

- A prayer for setting aside the suspension order is made on the ground that the suspension order is illegal and contumacious. It is further stated by the petitioner that the present Writ Petition has been filed in addition to the I.A. 2/91 in order to obviate the technical objections, if any, raised.

- We shall now give a brief note of the reply of the respondents
- B narrating the circumstances which led to the suspension of the petitioner. The Under Secretary, Home Department, Haryana in his reply affidavit filed in the contempt petition has rebutted the allegations made by Shri S.A. Khan in I.A. No. 2/91 which relates to the suspension order. In that affidavit, it is stated that in pursuant to the judgment of this Court dated 21st November, 1990 in Civil Appeal No. 5412/90, the State of Haryana
- C entrusted the investigation of the case to the competent authorities, namely, Shri Baldev Raj, the then CID Ambala and Shri Avtar Singh, DSP (Crime), Ambala on 20.12.1990; that the abovesaid investigating officers retired before the investigation could be completed, that the investigation of the case thereafter was entrusted to Shri Avtar Krishnan, DSP Tohana District, Hissar in June, 1991; that on completion of the investigation on 18.6.1991
- D the investigating officer came to the conclusion that the allegations against Ch. Bhajan Lal were false. Consequently, a cancellation report was forwarded to the Ilaqa Magistrate for his approval which was accepted on 22.7.1991. There is no investigation now pending against Ch. Bhajan Lal. It is further stated that the application pertaining to the revocation of the suspension order passed against Shri S.A. Khan is without any merit and
- E the said suspension is based on a separate cause of action; that it has got nothing to do with the proceedings against Ch. Bhajan Lal and that Shri S.A. Khan has been suspended on account of the obstruction caused by him in the investigation of two FIRs lodged against him in 1989 being FIR No. 147/89 and FIR No. 492/89 at Bhiwani Police Station registered under Section 307 IPC and Section 302 read with Section 34 IPC respectively;
- F that several officers including Shri S.A. Khan were suspended and the suspension of each of the officers has been 'confirmed by the Central Government and that the plea of Shri Khan that the suspension is singular and *malafide* is absolutely baseless and false to his knowledge.

- G Ch. Bhajan Lal has also filed a separate affidavit in the contempt petition in which also a prayer for setting aside the suspension order is made, saying that he has no ill-will or malice against Shri Khan who has made these false allegations on some erroneous impression as if Ch. Bhajan Lal is ill-disposed towards him.

- H A separate counter affidavit by the State of Haryana in this Writ

Petition is filed by the Under Secretary to the Government of Haryana Stating that no fundamental right of the petitioner has been violated and as such the Writ Petition is not maintainable; that the impugned suspension order dated 5.7.1991 was passed by the State Government after due consideration and in lawful exercise of its functions in terms of Rule 3(3) of the All India Services (Discipline and Appeal) Rules 1969 - (hereinafter referred to as "the Rules") which order has been confirmed by the Government of India under Rule 3(1) (b) of the Rules; that the said Rule provides remedy to the officers concerned by filing an appeal under Rule 16 of the Rules and that therefore this Writ Petition is misconceived because of the availability of statutory remedy provided under the Rules. Further it is stated in the counter that the investigation pursuant to the order dated 21.11.1990 made in Civil Appeal No. 5412/90 was finally completed on 18.6.1991 when the State of Haryana was under the President's Rule; that as no proof was found to establish the allegations against Ch. Bhajan Lal a cancellation report was sent to the Court which has been accepted on 22.7.1991 and that, therefore, the order of this Court made in the Civil Appeal was neither nullified nor any attempt has been made to stultify the jurisdiction of this Court. According to the State, the suspension order was passed so that free and fair investigations could be carried on in the cases registered against the petitioner in FIR Nos. 147/89 and 492/89. The suspension order has no connection with the Contempt Petition filed before this Court against Ch. Bhajan Lal. It is further stated that the suspension order is neither violative of Articles 14 and 16 of the Constitution nor not opposed to any valid law or rules; that the investigation in the main corruption case was completed even before the suspension of the petitioner; that the petitioner as D.I.G. (CID) from 23.7.1990 to 2.4.1991 was not the investigating officer of the case and that the said order of suspension was not passed with a view to buy over the complainant (Dharam Pal), Ch. Bhajan Lal was elected as Chief Minister on 23.6.1991 only after the completion of the investigation on 18.6.1991 during the President's Rule. The first respondent has enumerated the following instances in which the petitioner has been involved:

- (1) During the elections to the Bhiwani Parliamentary Constituency held in November 1989 and again during the elections to the Darba Kalan Assembly Constituency, the petitioner was restrained from visiting both the constituencies under the directions of the Elections Commissioner, as the Commissioner had reasons to believe that this Police Officer would interfere in free and fair elections. vide letter

A No. 90/3AE-5418 dated 12th July, 1990 written by the Chief Electoral Officer, to Director General of Police, Haryana.

B (2) The Ministry of Home Affairs had recently sought the consent of the State Government under Section 6 of the Delhi Police Special Establishment Act, 1946 to conduct a detailed inquiry to unearth the benami nature of two commercial ventures allegedly owned by the petitioner.

C (3) In March 1990, disciplinary proceedings were initiated against Shri S.A. Khan under Rule 8 of the Rules for certain acts of omission and commission during the general elections to the 9th Lok Sabha.

(4) An inquiry under Rule 8 of the Rules is directed to inquire into the alleged drawal of false TA/DA.

D (5) The ministry of Home Affairs had brought to the notice of the first respondent in December, 1989 that the petitioner is liable to pay Rs. 68,900/- on account of excess telephone calls made by him.

E The petitioner has filed an affidavit in reply to the counter of the first respondent (State) and of Ch. Bhajan Lal denying all the allegations levelled against him. According to him, the various allegations levelled by the first respondent are totally untenable and irrelevant. He states that Ch. Bhajan Lal and his Government are unjustly harassing him by passing the illegal order of suspension for the following reasons:

F 1. The petitioner had furnished incontrovertible evidence to the Commission of Inquiry headed by Raja Jaswant Singh (ex-Judge of the Supreme Court) appointed by the then Prime Minister against Ch. Bhajan Lal to find out as to whether he could be continued as Chief Minister.

G 2. Ch. Bhajan Lal in order to continue as Chief Minister without facing the criminal prosecution for corruption has placed the petitioner under suspension by misusing his power.

H 3. To paralyse the investigation of the corruption case

under the petitioner's supervision and to nullify the order of the Supreme Court in Civil Appeal No. 5412/90 for escaping from the criminal liability, he has rewarded the complainant, Dharam Pal, by appointing him as the Chairman of the Khadi Board as a *quid pro quo* for the withdrawal of the complaint.

Shri Khan has refuted the allegations of his involvement in the two FIRs stating that he is neither an accused in the respective complaints nor is he involved in them in any other manner. He has further stated that even in the statements recorded under Section 164 of the Code of Criminal Procedure from the witnesses in connection with those two FIRs, there is no mention of his involvement in either of the criminal cases.

Explaining the other allegations, the petitioner states that he has sent a detailed letter to the Chief Election Commissioner, Haryana through the Director General of Police in June, 1990 stating that he could not be stopped to perform his lawful duties in his jurisdiction in exercise of his official work as the range Deputy Inspector General of Police. The petitioner challenged his transfer on the basis of the letter written by the Chief Election Commissioner of India during November 1989 and June 1990 and the matter came up before this Court in SLP (C) No. 6996 of 1991. This Court while dismissing the SLP observed:

"We would like to make it clear that the allegations made therein will not be linked with the impugned transfer and they will further not be considered against the petitioner service career."

He has denied the allegations of benami commercial ventures as well as the alleged false claim of T.A. and D.A. It is stated by the petitioner that the High Court of Punjab and Haryana has directed the Union of India to make the payment of T.A. Bills in civil revision petition filed by him. Regarding the telephone bill, he states that he was not provided with STD facilities and that he has moved the District Forum under the Consumer Protection Act against excessive billing by the Telephone Department. Finally he states that he has sent a number of representations to the Home Secretary, Haryana; Director General of Police, Haryana; Home Secretary, Government of India, New Delhi on various dates followed by his reminders. Along with the reply affidavit the petitioner has annexed some

- A copies of statements recorded under Section 164 of the Code of Criminal Procedure as well as his correspondences with his higher ups and copies of the order of this Court in SLP (C) No. 6996/91 and the order of the High Court of Punjab and Haryana made in Civil Miscellaneous No. 8455-CII of 1991 in Civil Revision No. 2025/91. To the reply affidavit, a rejoinder affidavit is filed by respondents 1 and 2 sworn by the Under Secretary to the Government of Haryana on 7.2.1992. In this rejoinder, it is stated that the two FIRs lodged against the petitioner have been referred to the Government of India for entrusting the investigation to the CBI; that in the meanwhile a special team under the supervision of Deputy Superintendent of Police, Headquarters Bhiwani has been constituted by the S.P.
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- C for further investigation of those two FIRs; that the Ministry of Home Affairs had sought consent of the State Government under Section 6 of the Delhi Police Establishment Act, 1946 to conduct a detailed inquiry to unearth the benami nature of the two commercial ventures; that there is an inquiry being conducted by the C.B.I. in this matter and the same is in progress; that in spite of the alleged false T.A. Bills by the petitioner, the petitioner has been chargesheeted under rule 8 of the Rules by the Government of India and that with regard to the non-payment of telephone bills the Government of India has brought to the notice of the State Government in December 1989 that the petitioner is not ready to pay Rs. 68,900, which amount he has not deposited so far and that the statements of Sarvashri
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- E Azad Singh, Bir Singh, Dharma Chand, Balwan Singh and Om Prakash which are annexed to the reply affidavit are not on the police files and that in fact the statements were not recorded under Section 164 Cr. P.C. through the investigating officer, who is entrusted with the investigation of the case. In support of this averment, a report of the Sub-Inspector,
- F Bhiwani is annexed.

- A close scrutiny of the serious averments made in the Writ Petition, the affidavits of counter, reply and rejoinder as well as in the documents annexed thereto irrefragably and demonstratively shows that for a considerable length of time, in fact over a decade, there was bad blood between
- G Ch. Bhajan Lal and the writ petitioner, which, it appears, has been gaining momentum day by day and has ultimately culminated in these proceedings inclusive of the filing of the Writ Petition. The writ petitioner has given various instances in Annexure 'B' to this Writ Petition which according to him, have provoked Ch. Bhajan Lal to entertain a feeling of vengeance
- H against the writ petitioner. Those are:

(1) While the writ petitioner was Assistant Inspector General of Police, Haryana, he was deputed to arrest Shri Bhindrawala at Chandokalan. But, as the news of his "impending arrest" was disclosed to Shri Bhindranwala, he with the assistance of the official machinery escaped the arrest. In spite of this incident, a one man commission of inquiry headed by Justice Gurnam Singh was appointed to inquire into the allegations involving the petitioner and his staff at Chandigarh. The petitioner was constrained to file a Writ Petition before the High Court of Punjab and Haryana challenging the appointment of the one man commission which was not liked by Ch. Bhajan Lal. A similar Writ Petition was also filed by a member of the police force before the Supreme Court which is still pending. The Enquiry Commission was stayed and has remained stayed since then.

(2) Ch. Bhajan Lal secured the transfer of the petitioner outside the State of Haryana and assigned no duty for a long time in order to punish him for approaching the High Court.

(3) As a result of a wide public reaction against the then corruptive practices prevailing in the administration of the Government of Haryana and the serious allegations levelled against the then Chief Minister, namely, Ch. Bhajan Lal in that connection, the Prime Minister Shri Rajiv Gandhi appointed an Enquiry Commission, headed by a retired Judge of the Supreme Court, Justice Jaswant Singh to hold an inquiry into the allegations against Ch. Bhajan Lal. Before the Enquiry Commission, the petitioner placed materials relating to incontrovertible proof of corruption of Ch. Bhajan Lal. On account of this Ch. Bhajan Lal became inimical towards the petitioner.

(4) A series of criminal cases numbering to 21 listed in the Writ Petition were registered against the partners, close associates and relations of Ch. Bhajan Lal in Hissar range even before the petitioner was transferred to Hissar range

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B (5) When Ch. Devi Lal became the Chief Minister of
C Haryana, the FIR No. 372/87 was lodged with the allegations of corruption of high magnitude against Ch. Bhajan Lal which led to the Civil Appeal No. 5412/90, which was disposed of by this Court on 21.11.1990. In that case, the petitioner was assisting and instructing the Advocate General appearing for the State of Haryana before the Supreme Court. Hence Ch. Bhajan Lal apprehending that his political career was in jeopardy by that judicial proceeding has misused his power maliciously and suspended the petitioner w.e.f. 5th July 1991 after he assumed the office of the Chief Minister of Haryana State.

(Vide paragraph 13 (A to F) of the aforementioned Annexure 'B'.)

D In fact the petitioner himself has stated in one of his letters dated 13.8.1991 enclosed with the Writ Petition addressed to the Director General of Police, Haryana admitting his strained relationship as follows:

E "I have strained relations with the present Chief Minister as Shri J.P. Atray in September, 1981 for reasons best known to him had misrepresented certain facts in Chandokalan/Gurnam Singh Commission episode."

F Further in yet another letter dated 13.8.1991 addressed to the Director General of Police, Haryana he has mentioned some unpalatable, unsavoury and vitriolic remarks couched in unrestrained language, allegedly on the strength of a confidential police report which reads:

G "The confidential record of P.S. Adampur and District Crime Record Hissar, clearly shows that Shri Bhajan Lal started his career as a petty Food grain smuggler. In the village Crime book there is mentioned of his Anti Social activities. He is notorious for his corruption and now he is making every effort to stop this process of law to avoid the Supreme Court direction to investigate.....
H Pressure is being put on the Judiciary to approve this

cancellation report within 3 weeks."

We have given the above facts, extracting the same from various documents annexed to the Writ Petition for demonstrating the high magnitude of their hostile relationship existing well-nigh for a decade, that is from 1981 onwards. It appears that the petitioner is having a long-standing deep rooted hostility and strained relationship with Ch. Bhajan Lal which is reflected from the averments made in the letter written by him to the Director General of Police notwithstanding the fact that Ch. Bhajan Lal is the Chief Minister of the State whereas the petitioner is bureaucrat. It is manifestly clear that the petitioner in utter desperation has made such an unpalatable remark evidently crossing his bounds. Needless to emphasise, a bureaucrat working under the Government is not expected to disclose any confidential report that comes to his knowledge in his official capacity to satisfy his personal grievance. The petitioner is holding a high position in the Governmental machinery that too in the disciplinary police force though now under suspension. We do not like to elaborate this aspect of the matter any further except expressing our strong disapproval.

In the above back-drop, we may now turn to the submissions made by Mr. R.K. Garg for setting aside the order of suspension.

The order of suspension under challenge which is annexed as 'Annexure-A' reads as follows:

**"HARYANA GOVERNMENT
HOME DEPARTMENT
ORDER**

Whereas the Governor of Haryana is satisfied that it is necessary to place Shri S.A. Khan IPS (HAR-1970), DIG, under suspension so that free and fair investigations in cases FIR No. 147/89 u/s 307-IPC and FIR No. 492, u/s 302/34-IPC registered at police station, City Bhiwani could be conducted in public interest.

Now, therefore, the Governor of Haryana hereby places Shri S.A. Khan, IPS, DIG, under suspension with immediate effect.

A During the period of suspension, Shri S.A. Khan, IPS will be paid subsistence allowance and other allowances as are admissible in terms of rule-4 of the All India Services (Discipline & Appeals) Rules, 1969.

B His headquarters during the period of suspension will be at Ambala.

Tirlochan Singh
Financial Commissioner and Secretary
to Govt. Haryana, Home Department.

C No. 18/76/91-2HG-1

Dated Chandigarh
the 5th July, 1991."

D A reading of the above order of suspension does not either expressly or impliedly or even remotely spell out that the petitioner was suspended for having been incharge of the investigation of the corruption case registered in FIR No. 372/87 or for having taken active role in the proceedings of the said case. This suspension order has been confirmed by the Central Government in exercise of its powers under rule 3(1)(b) of the Rules. It cannot be disputed that the Rules provide a remedy to the officer concerned by preferring a statutory appeal under rule 16 of the Rules.

E Mr. R.K. Garg states that Ch. Bhajan Lal after having been elected as Chief Minister of Haryana State on 23.6.1991 on being actuated by malice has ordered the suspension of the petitioner misusing his authority and deceptively passed this order as if this suspension order has nothing to do with the corruption case registered against him so as to give a misleading impression. What Mr. Garg wants this Court is to draw an inference which could be the only inference according to him from the surrounding circumstances of the case that this suspension order was passed because of the active interest taken by the petitioner in the criminal proceedings of the case of corruption registered against Ch. Bhajan Lal and as such this order is vitiated by *mala fide*. According to Mr. Garg, the submission made by Mr. Kapil Sibal, the senior counsel appearing on behalf of the first respondent (the State of Haryana) that there is no fundamental right of the petitioner to approach this Court with this Writ Petition and that the remedy available to him at this stage is only for a statutory appeal under Rule 16 of the Rules, is totally inconceivable. He further contends that this petition under Article 32 is maintainable since

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there is gross violation of Article 14 of the Constitution committed by Ch. Bhajan Lal by misusing his power in an arbitrary manner and that *mala fide* permeates through the order of suspension. The other facet of his argument is that since the suspension order is connected with the final order passed by this Court in Civil Appeal No. 5412/90, the petitioner was constrained to file the Writ Petition under Article 32 instead of approaching the High Court under Article 226 of the Constitution or preferring an appeal to the authorities concerned under the rules. In continuation of his submission, the learned counsel vehemently urged that this suspension is nothing but a fraud on power and if it is allowed to stand, there will be negation of justice and that the Chief Minister has by this order destroyed the petitioner's equal protection of law as enshrined under Article 14 of the Constitution. In support of his contention he has relied upon a passage of *De Smith's Judicial Review of Administrative Action* (Fourth Edition at page 325) under the caption 'Exercise of a Discretionary power for an Improper Purpose'. The relevant passage referred to reads as thus:

"If a power granted for one purpose is exercised for a different purpose, that power has not been validly exercised.....nowadays the courts will not readily be deterred by subjectively worded statutory formulae from determining whether acts done avowedly in pursuance of statutory powers bore an adequate relationship to the purposes prescribed by statute.....An exercise of discretionary power, *ex facie* valid, is likely to be held invalid if it can be shown to have been directed *ad hominem* - e.g. where a by-law or order has been made especially to thwart an individual application for a permit.....If a *prima facie* case of abuse of power by a public authority has been established, the failure of that authority to adduce any evidence in reply from which it can reasonably be inferred that the avowed purpose had in fact been pursued may lead a court to the conclusion that they have not been genuinely pursued."

Mr. Garg forcibly articulated that the absence of arbitrary power is the first essential of the Rule of Law upon which our whole constitutional system is based and that in a system governed by Rule of Law, discretion when conferred upon executive authorities, must be continued within clear-

- A ly defined limits and if a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the Rule of Law. For the above proposition, he placed reliance on the decision of this Court in *S.G. Jaisinghani v. Union of India and others*, AIR 1967 S.C. 1427 = [1967] 2 SCR 703.
- B Reliance was also placed in *S. Pratap Singh v. The State of Punjab*, [1964] 4 SCR 733. According to him, Ch. Bhajan Lal for pursuing his illegitimate aim and wreaking vengeance against the writ petitioner who having been in charge of the investigation of the corruption case took active role in unmasking him and thereby exposing him to the public what Ch. Bhajan Lal is, after having become the Chief Minister of Haryana State has passed this suspension order which is tainted with *mala fide*. Therefore, this order is liable to be struck down. In this connection, he drew the attention of this Court to an observation at page 741 made in *Pratap Singh's* case (supra) reading "the use of that power for achieving an alien purpose - wreaking the minister's vengeance on the officer would be *mala fide* and a colourable exercise of that power, and would therefore, be struck down by the Courts."
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- The further submission of Mr. Garg is in addition to the manifestation of *mala fide*, personal bias on the part of the Chief Minister, Ch. Bhajan Lal is writ large on the face of the order of suspension and therefore on that ground also the suspension has to be quashed. In support of this plea, he placed reliance in *Andhra Pradesh State Road Transport Corporation v. Satyanarayana Transporters*, AIR 1965 S.C. 1303. Saying that the suspension order was passed in exercise of fraud besides with *mala fide* and personal bias, he drew our attention to the observation of Lord Denning in *Lazarus Estates, Ltd. v. Beasley*, (1956) 1 All. E.R. 341, 345, which reads thus:
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"No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud."

- G Relying on the view expressed by this Court in *Pratap Singh's* case (supra) it has been strenuously urged that if the dominant purpose of making an order is unlawful, then the act itself is unlawful and it is not cured by saying that the maker had another purpose which was lawful.

- H Lastly, drawing strength on the decisions of this Court in *Basheshwar Nath v. The Commissioner of Income-Tax, Delhi & Rajasthan & Another*, [1959] 1 Suppl. SCR 528 and *Maneka Gandhi v. Union of India*, [1978] 2

SCR 621, it has been contended by Mr. Garg that since the order of suspension under challenge is one passed by the Government in arbitrariness violating the equal protection as envisaged under Article 14 of the Constitution, this Court being the guardian of the liberty and protector of the fundamental rights of the citizens of this country has to step into this matter and set at naught the gross injustice done to the petitioner. Even if the power is discretionary, it is not necessarily discriminatory and the discretion vested in such high officials should not be assumed by abuse of power, vide *Pannalal Binraj v. Union of India*, [1957] SCR 233. According to him as pointed out in *G.Sandandan v. State of Kerala*, AIR 1966 S.C. 1925, at page 1930 para 21, the tendency to pass orders in a very casual and cavalier manner by using the unfettered powers will ultimately pose a serious threat to the basic values on which the democratic way of life in this country is founded and this case is one such example.

According to Mr. Kapil Sibal, all the decisions relied upon by Mr. Garg are not under Article 32 of the Constitution except (1) *Pannalal Binraj's* case (supra) in which the question was whether Section 5(7A) of the Income Tax Act is *ultra vires* of the Constitution as infringing the fundamental rights enshrined in Article 14 and Article 19(1)(g); and (2) *Maneka Gandhi's* case (supra) in which the main thrust of contention was whether Section 10(3)(c) of the Passports Act, 1957 is violative of Article 14, 19(1)(a) and (g) and 21 of the Constitution of India and hence all those decisions except the two mentioned above cannot be availed of by the writ petitioner.

Be that as it may, as we have indicated above the suspension of the Writ petitioner Mr. Khan is based on a separate cause of action and there is no reference of any part of the corruption case either directly or indirectly in the suspension order. Further the said suspension order has been confirmed by the Central Government. Along with the reply affidavit Mr. Khan has annexed several letters. In one of the letters dated 19.7.1991 addressed to the Home Secretary, Haryana by Shri Khan the following averments are made:

"Within 24 hours of his taking over as Chief Minister, I was transferred and till 5th July I was not given any posting orders. I have waited till today i.e. 19.7.1991 but I have not been served the suspension order for the reasons best

- A known to you. I feel that it is desired that I should not be in a position to agitate in the Administrative Tribunal for redressal and justice.....I suppose on fancy as well as caprice, on 20.8.1991 your suspension order is likely to become invalid and faulty as no charge sheet can possibly be served on these grounds without investigation.
- B I request you to re-consider the matter dispassionately, revoke my suspension order and save me unnecessary expense and mental torture."

- C In another letter dated 7.10.1991 addressed to the DGP he has requested "that the suspension order may please be revoked" after pointing out that though more than 90 days have elapsed, he has not been served with any chargesheet. In yet another letter dated 9.1.1992 addressed to the DGP, he, after stating that more than 6 months period has elapsed since his suspension, has requested the DGP that his representation be sent to
- D the Government of India for revocation of the suspension order. Along with the letter it appears that he has attached copies of those earlier representations addressed to the Government of India.

- E From the above correspondence, it is gathered that the petitioner Mr. Khan has not only approached the Home Secretary of the State Government, the DGP of the State of Haryana, but also has sent his representations to the Government of India presumably through the DGP requesting for revocation of the suspension for the various reasons mentioned therein, one of which being that more than 6 months had elapsed since the suspension. In one of the letters he has also expressed his
- F awareness of approaching the Administrative Tribunal for any relief to which he would be entitled to. Till date admittedly no formal charge has been framed following the suspension. It is also admitted that the petitioner has got a statutory appeal under rule 16 of the Rules.

- G At the risk of repetition, it may be recalled in this connection that Ch. Bhajan Lal became the Chief Minister on 23.6.1991 and that on the very next day, that is on 24.6.1991 the petitioner Mr. Khan was transferred without being given any place of posting and on 5.7.1991 he was suspended. Earlier to the election of the Chief Minister, the investigation of the
- H corruption case was completed on 18.6.1991 and the cancellation report

dated 18.6.1991 was forwarded to the Ilaqa Magistrate who accepted the cancellation report on 22.7.1991 and discharged the accused. A

From the above quick succession of events, it has been forcibly urged that though the investigation of the corruption case does not writ large on the face of the suspension order, in fact this order is very much connected with the investigation of the corruption case which was under the supervision and incharge of the writ petitioner, Shri Khan and therefore this Court should exercise its extraordinary jurisdiction in revoking this suspension. We are unable to accept the above argument. As we feel that any observation of ours, if made, on the submissions advanced on behalf of the petitioner as regards the alleged *mala fide*, exercise of fraud, arbitrariness, malice etc. will prejudice or be detrimental to either of the parties in any future adjudication relating to the suspension order, we refrain from expressing our views on this aspect. Further we see no force in the argument that there is a gross violation of Article 14 of the Constitution giving rise to the filing of the writ Petition under Article 32 of the Constitution. Above all, we are inclined to dismiss this writ petition since it is only a suspension order and there is a statutory remedy available to the petitioner. B C D

In the result, for all the aforementioned reasons the Writ Petition is dismissed. Notwithstanding the dismissal of the Writ Petition, we hope and trust that the State Government will expedite the proceedings one way or the other without keeping the petitioner Mr. Khan on tenterhook for any further period. We would like to point out that any observation made in justification of this judgment shall not have any bearing on any proceedings that may arise on this issue. No. costs. E F

N.P.V.

Petition dismissed.