

K. M. Kanavi

Vs

The State of Mysore

Criminal Appeal No. 145 of 1965

(J. M. Shelat, V. Bhargava, S. M. Sikri JJ)

18.04.1968

JUDGMENT

BHARGAVA, J. -

The appellant, K. M. Kanavi, was the President of the Municipal Borough of Gadag Betgeri from 11th January, 1960 to 15th March, 1963. He was removed from the Presidentship on 15th March, 1963 by an Order passed by the Government of Mysore for neglect of duty and incapacity under section 21(2) of the Bombay Municipal Boroughs Act, 1925 (No. XVIII of 1925) (hereinafter referred to as "the Act") which was applicable to Gadag Betgeri, even though it was situated in the State of Mysore, because it was earlier a part of the State of Bombay. On the next day, i.e., on 16th March, 1963, the Government passed an order superseding the Borough. The appellant filed two writ petitions challenging these two orders of his removal and supersession of the Borough. The order of supersession was quashed by the High Court of Mysore by its judgment dated 10th April 1963 in Writ Petition No. 492/1963 reported in *The President, Gadag-Betgeri Municipal Borough v. State of Mysore* [[1964] I.M.L.J. 147]. Thereafter, elections were held for the office of the President, because the appellant had ceased to be the President under the of removal. One Malashetti was elected as the President of the Borough on 22nd April, 1963. On 25th April, 1963, the new President asked the appellant to hand over all the papers, documents and property belonging to the Municipal Administration. On 2nd May, 1963, the appellant sent three keys and two files of papers by registered parcel to the new President. The new President returned it on the ground that those articles had not been delivered to him in person by the appellant and he considered it unsafe to take delivery of the registered parcel. When sending this parcel, the appellant wrote an accompanying letter in which he specifically stated that he was retaining certain papers as they were needed by him for his writ petition which was pending against his order of removal. Thereafter, on 20th June, 1963, the State Government made an order under sub-s. (2) of s. 23A of the Act directing the appellant to hand over charge of all the papers and properties which were in his possession to the new President. He was also asked to hand over an iron cupboard with its keys and contents which were with him. This Government Order was served on the appellant on 9th July, 1963. The appellant did not comply with the Order and, consequently, on 21st September, 1963, the Government of Mysore sent an order to the Divisional Commissioner directing him to take necessary action under section 23A of the Act to prosecute the appellant, since he had defied the Government Orders and had refused to hand over charge of the papers and properties of the Borough to the newly elected President. The Divisional Commissioner, in turn, wrote to the Deputy Commissioner on 5th October, 1963, requesting him to take immediate action under s. 23A(3) of the Act to prosecute the appellant. The Deputy Commissioner then passed an order authorising the newly elected President of the Borough to be the formal complainant in respect of this prosecution which had been ordered by the Government and to file a criminal complaint against the appellant. This order was made by the

Deputy Commissioner on 24th December, 1963. The new President, Mala-shetti, thereupon filed a complaint against the appellant for an offence punishable under s. 23A(3) of the Act. The complaint itself is dated as 3rd January, 1964, but the judgment of the High Court mentions that the complaint was actually presented in Court on 8th January, 1964. Since these dates are not very material for decision of the point on the basis of which this appeal is being decided, we have not tried to ascertain the exact date of presentation of the complaint in court. On the basis of this complaint and the facts mentioned above, the appellant was convicted by a Magistrate for the offence under s. 23A(3) of the Act and was sentenced to pay a fine of Rs. 50/-, in default to suffer simple imprisonment for sever days. The appellant filed a revision against this order of conviction in the High Court of Mysore and challenged it on three grounds. One ground was that the complaint filed by the new President Malashetti was incompetent as it was not filed in accordance with the procedure laid down in the Act, so that the proceedings taken by the Magistrate were without jurisdiction. The second point was that, even if it be held that the complaint was validly filed the provisions of s. 23A of the Act were not attracted, as the appellant could not be held to be a retiring President and an order under s. 23A(2) can only be made against a retiring President. The third plea was taken that the complaint was barred by time. The High Court did not accept any of these three pleas and dismissed the revision. The appellant, has, therefore, come up to this Court in appeal by special leave.

In this case, the facts, which have been enumerated above, were not disputed even during the trial of the case, and the defence of the appellant was confined to the three grounds mentioned above which were urged in the revision before the High Court. To appreciate the first ground mentioned above, it is necessary to reproduce section 23A and sub-s. (1) of section 200 of the Act which are as follows :-

"23A. (1) On the election of a new President or Vice-President, the retiring President or Vice-President in whose place the new President or Vice-President has been elected shall hand over charge of his office to such new President or Vice-President, as the case may be.

(2) If the retiring President or Vice-President fails or refuses to hand over charge of his office as required under sub-section (1) the State Government or any authority empowered by the State Government in this behalf may, by order in writing, direct the President or the Vice-President, as the case may be, to forthwith hand over charge of his office and all papers and property of the municipality, if any, in his possession as such President or Vice-President, to the new President or Vice-President.

(3) If the retiring President or Vice-President to whom a direction has been issued under sub-section (2) does not comply with such direction, he shall, on conviction, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to Rs. 500 or with both.

200. (1) The standing committee and, subject to the provisions of sub-section (3) the Chief Officer may direct any prosecution for any public nuisance whatever and may order proceedings to be taken for the recovery of any penalties and for the punishment of any persons offending against the provisions of this Act or of any rule or by-law thereunder and may order the expenses of such prosecutions or other proceedings to be paid out of the municipal fund :

Provided that no prosecution for an offence under this Act or by-laws framed thereunder shall be instituted except within six months next after the date of the commission of the offence or if such date is not known or the offence is a continuing one within six months next after the commission or discovery of such offence."

Sub-s. (1) of s. 23A casts the duty on the retiring President to hand over charge of his office to the new President, when a new President has been elected. It is obvious that, when handing over charge, the retiring President must hand over to his successor all the papers and property belonging to the Borough. Sub-section (2) of s. 23A envisages a case where the retiring President fails or refuses to hand over charge of his office in that manner. This sub-section empowers the State Government or any authority empowered by the State Government in this behalf to make an order in writing directing the retiring President to forthwith hand over charge of his office and all papers and property of the municipality to the new President. Sub-section (3) of s. 23A prescribes the punishment which can be awarded to a retiring President who is convicted for not complying with a direction issued under sub-s. (2). It is clear that, in the present case, the appellant was not liable to conviction under s. 23A(3) merely because he refused to hand over complete charge to Malashetty when the latter asked him to do so by his letter dated 25th April, 1963 or even by the subsequent reminder dated 6th May, 1963. The failure of the appellant to hand over the property, however, led the State Government to make a direction under s. 23A(2) on 20th June, 1963 and this Order of the Government was served on the appellant on 9th July, 1963. This Order was not complied with by the appellant according to the case of the prosecution. It was because of the failure of the appellant to comply with this Order that the complaint was filed by the new President under s. 23A(3). The complaint was, therefore, clearly for initiating a proceeding for the punishment of the appellant who had offended against the provision under sub-s. (2) of s. 23A of the Act. Under s. 200(1) of the Act, direction for taking such proceedings could be made either by the standing committee or by the Chief Officer. Admittedly, Malashetty was not the Chief Officer, nor did he file the complaint under any direction made by the Standing Committee of the Borough. It is on this ground that the plea has been put forward on behalf of the appellant that the complaint against him was incompetent and no conviction could be validly recorded against him on its basis.

The High Court rejected this plea on the ground that, in its opinion, s. 200(1) of the Act is only an enabling section which gives the power to the Standing Committee and the Chief Officer to make directions for taking of proceedings of this nature and it cannot be held to be exhaustive of the authorities who could make directions for initiation of such proceedings. The High Court took notice of the fact that in the Act, there is no provision forbidding cognizance of an offence being taken except on a complaint made under a direction of the Standing Committee or the Chief Officer, and interpreted the expression "may direct" used in s. 200(1) of the Act as indicating that it was an enabling section permitting the Standing Committee and the Chief Officer to make necessary directions. In these circumstances, the High Court concluded that this provision could not be held as laying down that the Standing Committee and the Chief Officer were the exclusive authorities who could institute proceedings of the nature mentioned in that sub-section. On this view, the High Court further proceeded to hold that a complaint could have been filed for an offence under the Act by even a private individual, so that the complaint filed by Malashetty, who was interested in his capacity as the newly elected President, was competent and valid.

We are unable to accept the interpretation put by the High Court on s. 200(1) of the Act. It is true that there is no specific provision in the Act laying down that cognizance of an offence under the Act is not to be taken except on a complaint filed in accordance with a direction made under s. 200(1), but the scheme of the Act and the purpose of this provision in s. 200(1) makes it clear that

the legislature intended that such proceedings should only be instituted in the manner laid down in that sub-section. The word "may" was used only because the legislature could not have enacted a mandatory provision requiring the Standing Committee or the Chief Officer to make a direction for institution of proceedings in all cases. This word was intended to give a discretion to the Standing Committee or the Chief Officer to make directions for taking proceedings only when they considered it appropriate that such a direction should be made and to avoid compelling the Standing Committee or the Chief Officer to make such directions in all cases. The use of this word "may" cannot be interpreted as laying down that, if a proceeding for punishment of any person for contravention of any of the provisions of the Act is to be instituted, it can be instituted in any manner without complying with the requirements of s. 200(1) of the Act. If the interpretation put by the High Court on this provisions is accepted, it would mean that this provision was totally unnecessary, because there would be no need to confer power on the standing committee or the Chief Officer to make such directions if such directions could be made or proceedings instituted at the instance of any private individual. We cannot accept the submission that this provision was made in the Act simply by way of abundant caution. In fact, if the provision had been made with such an object in view, there is no reason why the power should have been expressed to be conferred on the standing committee and the Chief Officer only and not on the President of the Municipality. We, consequently, hold that, if any proceeding for punishment of any person for contravention of any of the provisions of the Act is to be instituted, it must be instituted in the manner laid down in s. 200(1) of the Act and in that manner only.

This view of ours follows the principle laid down by this Court in *Ballavdas Agarwala v. Shri J. C. Chakravarty* [[1960] 2 S.C.R. 739]. In that case, the Court had to interpret a similar provision in s. 537 of the Calcutta Municipal Act, 1923, under which it was laid down that the Commissioner may institute, defend or withdraw from legal proceedings under that Act or under any rule or byelaw made thereunder. The Court held that, though the word used was "may" this provision must be read as requiring that the institution or withdrawal from legal proceedings under that Act must be by the Commissioners and no other authority. The decision was given on the basis that the scheme of the Act made it clear that that section was intended to confer exclusive power on the Commissioners. The interpretation that it was a mere enabling section because of the use of the word "may" was rejected and it was held that, if the other interpretation canvassed was accepted, the section would become clearly otiose. That principle clearly applies to the interpretation of s. 200(1) of the Act with which we are concerned.

In *Mangulal Chunilal v. Manilal Maganlal and Another* [Criminal Appeal No. 59 of 1965 decided on 23-11-1967], a similar interpretation was put on section 481(1) of the Bombay Provincial Municipal Corporation Act, 1949, which also used the word "may" when laying down that the Commissioner may take or withdraw from proceedings against any person who is charged with any offence against this Act or..... This Court referred to the decision in *Ballavdas Agarwala* [[1960] 2 S.C.R. 739] and said :-

"Similarly, here it seems to us that only the authorities mentioned in s. 481, read with s. 69, can launch proceedings against persons charged with offences under the Act or the rules, regulations or by-laws made under it."

In the case before us, reliance was placed on the other side on a decision of the Bombay High Court in *The State v. Manilal Jethalal* [[1953] 55 B.L.R. 377]. That decision has already been disapproved by this Court in the case of *Mangulal Chunilal* [Criminal Appeal No. 59 of 1965 decided on 23-11-1967] and need not detain us. On this view, it must be held that the complaint in the present case,

which was instituted by Malashetty, the newly elected President, without any order or direction by the standing committee or by the Chief Officer was not competent as it did not comply with the requirements of s. 200(1) of the Act.

In this connection, a new point that was raised was that, whenever an Order under s. 23A(2) of the Act is made and is disobeyed, only the State Government, which made the Order or the new President to whom the papers and property of the Borough have to be given under the direction made by the Government will have the knowledge that the retiring President has failed to comply with the direction and has, thus, committed an offence punishable under s. 23A(2) of the Act and, consequently, it should be held that a complaint in respect of such an offence was not intended to be covered by the provisions of s. 200(1) of the Act. On the language of s. 200(1) of the Act, however, we must reject this contention, because it clearly lays down that the Standing Committee and the Chief Officer are the authorities who can order proceedings to be taken for the punishment of any person offending against the provisions of the Act, and the present prosecution of the appellant is clearly for an offence of failing to comply with a direction under s. 23A(2) made punishable under s. 23A(3) of the Act. It may, no doubt, appear anomalous that the prosecution of even a retiring President in such circumstances has to be ordered by the Chief Officer, who was his subordinate at least during the time when he was working as the President. It seems to us that this anomaly has arisen, because, when s. 23A in its present form was introduced in the Act by the Bombay Act XL of 1950 and for the first time a retiring President was made liable to conviction for failing to comply with a direction made under sub-section (2) of that section, the Legislature did not notice that s. 200(1) of the Act would govern even such a proceeding. The legislature left s. 200(1) of the Act untouched. That provision, as it stands at present, is clearly applicable even to a proceeding for punishment of a retiring President under s. 23A(3) of the Act, so that the remedy may now lie in a suitable amendment of s. 200(1) of the Act. The conviction of the appellant on the basis of the complaint filed by the new President Malashetty, in disregard of the provisions of s. 200(1) of the Act, must, therefore, be held to be invalid and set aside.

Since the appeal succeeds on this one ground, we do not consider it necessary to discuss the other two grounds raised by the appellant for challenging his conviction. The appeal is allowed and the conviction and sentence of the appellant are set aside.

Appeal allowed.##

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