

Corporation of The City of Nagpur, Civil Lines, Nagpur and Another

Vs

Ramchandra and Others

Civil Appeal No. 396 of 1980

(Syed M. Fazal Ali, A. Varadarajan, V.B. Eradi JJ)

26.02.1981

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special lease is directed against an order of that High Court of Bombay of October 2/3, 1979 by which an order passed suspending the two respondent was quashed on the ground that the order of suspension pending a departmental inquiry was passed by the Municipal Commissioner who was not competent to suspend the respondents pending a departmental inquiry. The High Court was of the view the under the rules and by-laws of the City of Nagpur Corporation Act, 1948 (hereinafter referred to as "the Act") as amended up-to-date the competent authority to pass orders of suspension against the respondents was the Corporation itself and not the Chief Executive Officer. It appears that originally the order of suspension was passed by the Cooperation by its order dated September 23, 1974. It is alleged by the respondents that latter order was not departmental inquiry relating to two accidents which occurred during the construction of a stadium called the Yeshwant Stadium, which was being looked after by the respondents and which resulted in the death of seven police as a result of which a charge-sheet under Section 304-A, IPC was filed against the respondents on September, 25, 1976. In view of the charge sheet submitted by the police another order of suspension was passed by the Municipal Commissioner on January 13, 1977, with effect from October 8, 1976. The respondents filed an appeal to departmental appellate authority which was dismissed on July 20, 1977. Thereafter, the respondents filed a writ petition in the High Court which allowed the petition and quashed the order of suspension and directed the respondents to be paid their full salary and further directed the reinstatement of the respondents. Hence this appeal.

2. This short point taken by Mr. Sanghi was that under Section 59(3) of the Act, the Municipal Commissioner is the competent authority to suspend the respondents pending a departmental inquiry. On a perusal of Section 59(3) we are of the opinion that the contention is well-founded and must prevail. Section 59(3) may be extracted thus :

Subject, whenever it is in this Act expressly so directed to the approval or sanction of the Corporation or of the Standing Committee, and subject also to all other restrictions, limitations and conditions imposed by this Act, the entire executive power for the purpose of carrying out the provisions of this Act vests in the Commissioner who shall also -

(a).....

(b) exercise supervision and control over the acts and proceedings of all municipal

officers and servants, and, subject to the rules or by-laws for the time being in force, dispose of all questions relating to the services of the said officers and servants and their pay, privileges and allowances.

3. Thus clause (b) of Section 59(3) in express terms authorises and clothes the Municipal Commissioner with the power to exercise supervision and control over the acts of municipal officers and servants. It may be noticed that the said clause (b) is preceded by the words vests in the Commissioner. When the words control and vests are read together they are strong terms which convey an absolute control in the authority in order to effectuate the policy underlying the rules and makes the authority concerned the sole custodian of the control of the servants and officers of the Municipal Corporation. In the case of *State of W. B. v. Nripendra Nath Bagchi* while interpreting a similar language employed in Article 235 of the Constitution of India which confers control by the High Court over District Courts, this Court held that the word control would include the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations :

The word "control", as we have seen, was used for the first time in the constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge..... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal....

This view was reiterated in High Court of *A. P. v. V. V. S. Krishnmurthy* where this Court clearly held that 'control' included the passing of an order of suspension and that the power of control was comprehensive and effective in operation. In this Connection *Sarkaria, J.* speaking for the Court, observed as follows : (SCC pp. 46 & 47 : SCC (L & S) 110 & 111, para 40)

The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystallised by these decisions is 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 a wide variety of matters. Among others, it includes :

(a) (i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal removal reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this Control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal...

(ii) In Article 235, the word "Control" is accompanied by the word "vest" which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court being exclusive and not dual an inquiry into the conduct of member of the judiciary can be held by the High Court alone and no other authority....

(iii) Suspension from service of a member of the judiciary with a view to hold a disciplinary inquiry.

4. It is thus now settled by this court that the term 'control' is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned. In the aforesaid case, suspension from service pending a disciplinary inquiry has clearly been held to fall within the ambit of the word control. On a parity of reasoning, therefore the plain language of clause(b) of Section 59(3) as extracted above, irresistibly leads to the conclusion that the Municipal Commissioner was fully competent to suspend the respondents pending a departmental inquiry and hence the order of suspension passed against the respondents by the Municipal Commissioner did not suffer from any legal infirmity. The High Court was, therefore, in error in holding that the order of suspension passed by the Municipal Commissioner was without jurisdiction. In this view of the matter the order of the High Court Cannot be maintained and has to be quashed.

5. We might, however mention that although in the criminal case, charge sheet was submitted as far back as September 1976 we understand that no charges have been framed so far. Criminal case should be disposed of as quickly as possible so as to protect the accused from unnecessary harassment. We therefore direct the Judicial Magistrate, First Class of Nagpur to dispose of the Criminal Case 1902 of 1976 pending in his file with the utmost expedition and if possible within six months from today. Mr. Sanghi, on behalf of the Municipality, states that he will fully cooperate with the prosecution in producing all available evidence before the court and bringing the case to a final conclusion within the period mentioned above.

6. The other question the remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honorably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will taken into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the even of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so. In case the respondents are acquitted, we direct that the order of suspension shall be revoked and the respondents will be reinstated and allowed full salary thereafter even though the authority chooses to proceed with the inquiry. Mr. Sanghi states that if it is decided to continue the inquiry, as only arguments have to be heard and orders to be passed, he will see that the inquiry is concluded within two months from the date of the decision of the criminal court. If the respondents are convicted, then the legal consequences under the rules will automatically follows.

7. We might mention that at the time when special leave was granted by this Court, it was ordered that the respondents should be paid a lump sum of Rs. 10,000 each apart from the 75 per cent allowance. We think that in the interest of justice the department may not insist on the refund of the amount of Rs. 10,000 until the result of the departmental inquiry and if the departmental inquiry concludes in their favour, the amount will be either refunded or adjusted against their dues.

8. With these observations, the appeal is accepted and the judgment of the High Court is quashed.

Parties will bear their own costs throughout.

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