

Sampuran Singh

Vs

State Of Punjab

Special Leave Petition (Criminal) No. 1171 of 1982

(A. P. Sen, E. S. Venkatramiah, R. B. Misra JJ)

17.08.1982

JUDGMENT

MISRA, J. -

1. The present petition for special leave is directed against the order of the High Court dated March 5, 1982, dismissing the petition under Section 482 of the Criminal Procedure Code.
2. The petition was dismissed in limine after hearing the counsel at some length on April 29, 1982, for reasons to be recorded later. We now proceed to give the reasons.
3. The petitioner was appointed in the year 1961, as Sectional Officer (Overseer) in the Punjab Public Works Department (Irrigation Branch) of the State of Punjab under the Punjab Public Works Department (Irrigation Branch) Overseers Engineering State Service, Class III Rules, 1955, hereinafter called 'the Rules'.
4. In the year 1971-72 a project work relating to desilting of 'Kasur Nallah' was taken up by the Irrigation Department. On July 26, 1973, on the basis of certain complaint, the Vigilance Department lodged a report at Police Station, Valtoha, alleging that various persons including the petitioner herein had committed offences under Section 5(2) read with Section 5(1)(c) and (d) of the Prevention of Corruption Act, 1947 and under Sections 409, 420, 461, 471 and 120-B of the Indian Penal Code.
5. On the basis of the said report the petitioner along with others was put on trial before Shri K.S. Bhalla, Special Judge, Amritsar. In the course of the trial the petitioner along with others moved an application on November 26, 1980 for their discharge, on the ground that the sanction of the Chief Engineer, who is the authority competent to remove the petitioner, within the meaning of Section 6(1)(c) has not been obtained at all by the prosecution and instead the sanction has been accorded by the Chief Minister, which amounts to sanction by the State Government which is the appellate authority under the Rules. It was further alleged that the proposal for sanction was not at all processed by the concerned Administrative Department.
6. The learned Special Judge, however, dismissed the petition by his order dated December 23, 1981. Feeling aggrieved by the said order the petitioner along with Shri Jagjit Singh Bagga, Sub-Divisional Officer, moved an application under Section 482 of the Code of Criminal Procedure in the High Court of Punjab & Haryana for quashing the proceedings pending against them in the court

of Special Judge at Amritsar, and for setting aside the order dated December 23, 1981. The High Court by order dated March 5, 1982, dismissed the application under Section 482 of the Criminal Procedure Code in limine. The petitioner has now come to this Court for special leave to appeal against the said order of the High Court.

7. The contention raised on behalf of the petitioner is that the authority competent to remove him from his office is the Chief Engineer and as such sanction for prosecution could be accorded only by him and by nobody else. But in the present case sanction has been accorded by the Chief Minister and therefore, there is no sanction in the eye of law and the entire proceeding was vitiated on that ground and the same should be quashed.

8. In order to appreciate the contention raised it would be appropriate at this stage to refer to Section 6 of the Prevention of Corruption Act, 1947. Insofar as it is material for the purpose of this case it reads :

6. (1) No court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Indian Penal Code or under sub-section (2) or sub-section (3-A) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction, -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government;

(b) in the case of person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

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9. The petitioner's case will be governed by clause (c) of Section 6(1) and as such only the authority competent to remove him from the office could accord sanction for his prosecution. Under the Rules, the Chief Engineer being the appointing authority of petitioner is the competent authority to remove him from the office. But in the instant case the sanction was accorded not by the Chief Engineer who was competent to remove him from office but by the Chief Minister who was also holding the portfolio of Irrigation at the relevant time.

10. In support of his contention the counsel for the petitioner placed reliance on the following cases. To start with reference was made to Nazir Ahmad v. King-Emperor (AIR 1936 PC 253(2) : 63 IA 372 : 163 IC 881), which laid down that where power is given to do a certain thing in a certain manner, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

11. There is no quarrel with the propositions of law laid down in that case, but the question for determination here is who is the sanctioning authority within the meaning of Section 6(1)(c) of the Prevention of Corruption Act, 1947. Section 6(1)(c) stipulates that the removing authority will be the sanctioning authority. In view of Article 311(1) of the Constitution the removing authority cannot be subordinate in rank to the appointing authority. By necessary implication the removing

authority may be higher in rank to the appointing authority.

12. In *Commissioner of Police, Bombay v. Gordhandas Bhanji* (1952 SCR 135 : AIR 1952 SC 16 : 1951 SCJ 803), an application for permission to build a cinema on a site within the City of Bombay was rejected by the Commissioner of Police. The respondent applied for reconsideration of his application and the Commissioner, acting on the advice of the Cinema Advisory Committee, granted the application on July 16, 1947, though he indicated in an affidavit filed later that but for this advice he would have refused the application again. Subsequently, under instructions from Government the Commissioner sent the following communication to the respondent : "I am directed by Government to inform you that the permission to erect a cinema at the above site granted to you under the office letter dated July 16, 1947, is hereby cancelled." The respondent applied to the High Court of Bombay for an order under Section 45 of the Specific Relief Act directing the Commissioner of Police, Bombay to withdraw the cancellation and to grant permission for the erection of the cinema, the High Court directed the Commissioner of Police "to withdraw the order of cancellation passed by him". On appeal by the Commissioner, this Court held : (i) that there was nothing in the letter dated July 16, 1947, to indicate that the decision was not that of the Commissioner himself given in the bona fide exercise of the discretion vested in him. The sanction was not consequently invalid merely because the Commissioner decided to accept the advice of the Cinema Advisory Committee even though without that advice he would not have granted the permission; (ii) that there was no valid cancellation of the licence because the order of cancellation communicated to the respondent was one made by the Government of Bombay and not by the Commissioner on his own authority; he acted in the matter only as a transmitting agent.

13. So in this case also the specific power was given to the Commissioner which could be exercised by him alone. But in the case with which we are concerned the question is - who was the removing authority within the meaning of Section 6(a) of the Prevention of Corruption Act ? Obviously no officer subordinate to the appointing authority can be the removing authority. This case is also not of much assistance to the petitioner.

14. In *State of U.P. v. Singhara Singh* ((1964) 4 SCR 485 : AIR 1964 SC 358 : 1964 (1) Cri LJ 263(2)), confession had been recorded by the Second Class Magistrate who was not authorised to do so and therefore, it was held that the confession had not been recorded under Section 164 of the Code and the record could not be put in evidence under Sections 74 and 80 of the Evidence Act to prove confession. Here again the question for decision was quite different from the question involved in the case in hand.

15. In *State of Punjab v. Hari Krishan Sharma* ((1966) 2 SCR 982 : AIR 1966 SC 1081 : (1967) 1 SCJ 724), the Sub-Divisional Officer had been constituted the licensing authority, under Section 4 of the Punjab Cinemas (Regulation) Act, 1952, for the concerned area. The respondent made an application to him for a licence to construct a permanent cinema hall. Pending the application, instructions were issued by the State Government that all such applications for licence shall be forwarded to the State Government for orders, accompanied with certain particulars regarding the applicants. The S.D.O. forwarded the respondent's application with the relevant particulars to the State Government which rejected the application. Appeal by the respondent to the State Government under Section 5(3) of the Act was also rejected. In the petition under Article 226 of the Constitution filed by the respondent the High Court held that the State Government had no authority or power to require all applications or licences under the Act to be forwarded to it and to deal with them itself. This Court while dealing with the question held that the scheme of the Act clearly indicates that there are two authorities which are expected to function under the Act - the licensing authority - the

Sub-divisional Officer as well as the State Government. The basic fact of the scheme is that the licensing authority is solely given the power to deal with the applications for licence in the first instance, and this basic position cannot be changed by the State Government by issuing any executive orders or by making Rules under Section 9 of the Act. The court further observed : (SCR Head-note)

The control of the State Government under Section 5(2) subject to which the licensing authority has to function is very wide; but however wide this control may be, it cannot justify the State Government to completely oust the licensing authority and itself usurp its functions. The licensing authority has to act under the control of the State Government, but it is the licensing authority which has to act and not the Government itself....

16. In this case also, if the powers has been specifically conferred upon the licensing authority to grant licences then this power could only be exercised by that authority and by none else.

17. In *K.M. Kanavi v. State of Mysore* ((1968) 3 SCR 821 : AIR 1968 SC 1339 : 1968 Cri LJ 1510), the retiring President was directed by the State Government of hand over the charge of his office who did not comply with such direction. He was, therefore, prosecuted under Section 23-A(3) of the Bombay Municipal Boroughs Act, 1925. But the authorities which may direct any prosecution for punishment of any person offending against the provisions of the Act were the Standing Committee and the Chief Officer. He was convicted under Section 23-A(3) not on the directions of the Standing Committee or the Chief Officer as required by Section 200(1) but on the complaint filed at the instance of the State Government by the newly elected President. The High Court, dismissing revision application against the order of conviction, took the view that Section 200(1) was only an enabling provision and it could not be held to be exhaustive of the authorities who could make directions for initiation of such proceedings. This court, however, set aside the conviction holding that the scheme of the Act and the purpose of Section 200(1) make it clear that if any proceeding for punishment of any person for contravention of any of the provisions of the Act is to be instituted in the manner laid down in Section 200(1) of the Act and in that manner only. The word 'may' 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. If the interpretation of the High Court were to be 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. For the same reasons this case is also distinguishable.

18. In *Purtabpore Co. Ltd. v. Cane Commissioner of Bihar* ((1969) 2 SCR 807 : (1969) 1 SCC 308 : AIR 1970 SC 1896), under Clause 6 of the Sugar-cane (Control) Order, 1955, the Central Government could reserve any are where sugar-cane was grown for a factory taking into account various relevant factors; Clause 11 allowed the Central Government to delegate its power under Clause 6 and the Central Government by a notification dated July 16, 1966 delegated the said power to the several State Governments and the Cane Commissioners of those States. For the seasons 1966-67 and 1967-68 a sugar mill situate on the Bihar side of the border sought to have the area reserved by the State Government. In December 1966, the Cane Commissioner, Bihar passed an order under Clause 6(1) of the Sugar-cane (Control) Order reserving the said area of 208 villages for the appellants for the seasons 1966-67 and 1967-68. The 5th respondent made representations to the Chief Minister. Acting on directions given by the Chief Minister the Cane Commissioner, Bihar

passed orders on November 14, 1967, whereby by a notification in the Bihar Government Gazette 121 of the aforesaid villages were reserved for the appellant and 99 villages for the 5th respondent. On appeal this Court reserved the order observing that from the materials-on-record the only conclusion possible was that the Chief Minister imposed his opinion on the Cane Commissioner. The power exercisable by the Cane Commissioner under Clause 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone - not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner.

19. The question for consideration in this case was whether the order purporting to have been passed by the Cane Commissioner had really been passed by him. This Court came to the conclusion that the Cane Commissioner did not apply his mind and he was guided by the directions given by the Chief Minister. The point for consideration was very much different from the point with which we are concerned in this case.

20. In *Municipal Corporation of Delhi v. Jagdish Lal* ((1970) 1 SCR 579 : (1969) 3 SCC 389 : AIR 1970 SC 7 : 1970 Cri LJ 1), a complaint under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1964, was filed against the respondent. It was filed by the Municipal Prosecutor who had been authorised to file such complaints by a resolution passed by the appellant Corporation under Section 20 of the aforesaid Act. The respondent was acquitted by the High Court. Then the appellant Corporation filed an application in the High Court for special leave to appeal under Section 417 of the Code of Criminal Procedure. The application was allowed. When the appeal came up for hearing a preliminary objection was raised by the respondent that the complaint having been filed by the Municipal Prosecutor the Corporation was not a 'complainant' within the meaning of Section 417(3) of the Code of Criminal Procedure and therefore, special leave to appeal should not have been granted. The High Court upheld the preliminary objection and dismissed the appeal. By special leave the Corporation appealed to this Court. This Court held that under Section 476(1)(h) of the Delhi Municipal Corporation Act the person competent to institute legal proceedings is the Commissioner. However, the present case was governed not by that provision but by Section 20 of the Prevention of Food Adulteration Act, 1964, which provides that a prosecution under that Act may be instituted by the Central Government or the State Government or a local authority or a person authorised in this behalf, by general or special order by the Central Government or the State Government or a local authority. The Municipal Prosecutor had filed the complaint against the respondent under authority given to him by the resolution of the Delhi Municipal Corporation under Section 20 of the Prevention of Food Adulteration Act. In filing the complaint the said Prosecutor was not acting on his own personal behalf but was acting as agent authorised by the Delhi Municipal Corporation to file the complaint. It must, therefore, be deemed in law that the Delhi Municipal Corporation was the 'complainant' in the case for according to the latin maxim : "Qui per alium facit per seipsum facere videtur" (one who does an act through another is deemed in law to do it himself). In this case also the question for consideration was entirely different from the one with which we are concerned.

21. Thus, all the cases cited before us on behalf of the petitioner are distinguishable on facts and are not of much assistance in solving the problem before us.

22. In the present case we are called upon to decide the question whether the authority according sanction was competent to do so within the meaning of Section 6(c) of the Prevention of Corruption Act. Section 6(c) contemplates that the sanctioning authority must be competent to remove the person from his office. Rule 8 of the Punjab Public Works Department (Irrigation Branch)

Overseers Engineering State Service, Class III Rules, 1955, however, provides that the appointing authority of the Sectional Officer is the Chief Engineer. Therefore, removing authority could not be inferior or subordinate in rank to the Chief Engineer in view of Article 311(1) of the Constitution. The Chief Minister concerned is not inferior or subordinate to the Chief Engineer. Article 311(1) of the Constitution enjoins that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Under this Article the authority to remove should not be subordinate to that by which he was appointed. That does not mean that the power cannot be exercised by an authority higher than the appointing one.

23. The true legal position is clarified in the following decisions. In *Mahesh Prasad v. State of U.P.* ((1955) 1 SCR 965 : AIR 1955 SC 70 : 1955 Cri LJ 249), this Court held : (SCR Head-note)

In view of Article 311(1) of the Constitution of India and Rule 1705(c) of the Indian Railway Establishment Code, Volume I (1951 Edition) a sanction under Section 6(c) of the Prevention of Corruption Act, 1917 (as it existed prior to August 12, 1952) may be given either by the very authority who appointed the public servant or by an authority who is directly superior to such appointing authority in the same department. But such sanction is also legal if it is given by an authority who is equal in rank or grade with the appointing authority. Sanction is invalid if it is given by one who is subordinate to or lower than the appointing authority.

24. In *State of U.P. v. Babu Ram Upadhyaya* ((1961) 2 SCR 679 : AIR 1961 (1) Cri LJ 773), dealing with the pleasure of the President under Article 310 of the Constitution this Court summarised the legal position thus : (SCR Head-note)

The position with regard to the tenure of public servants and to the taking of disciplinary action against them under the present Constitution was as follows :

- (i) Every person who was a member of a public service described in Article 310 of the Constitution held office during the pleasure of the President or the Governor.
- (ii) The power to dismiss a public servant at pleasure was outside the scope of Article 154 and, therefore, could not be delegated by the Governor to a subordinate officer, and could be exercised by him only in the manner prescribed by the Constitution.
- (iii) This tenure was subject to the limitations or qualifications mentioned in Article 311.
- (iv) Parliament or the Legislature of States could not make a law abrogating or modifying this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Article 310, as qualified by Article 311.
- (v) Parliament or the Legislatures of States could make a law regulating the conditions of service of such a member which included proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 read with Article 311.
- (vi) Parliament and the Legislature also could make a law laying down and regulating the scope and content of the doctrine of "reasonable opportunity" embodied in Article 311 but the said law was subject to judicial review.

(vii) If a statute could be made by Legislatures within the foregoing permissible limits, the rules made by an authority in exercise of the power conferred thereunder would likewise be efficacious within the said limits.

25. In view of the proposition laid down in the case no law by the Parliament or by the State legislature could abrogate or modify to impinge upon the overriding power conferred on the President or the Governor under Article 310 read with Article 311 of the Constitution.

26. The pleasure of the President under Article 310 of the Constitution cannot be fettered except by the provisions of Article 311. Accordingly the pleasure of the President or the Governor cannot be fettered by ordinary legislation. Again in *Union of India v. K.S. Subramanian* ((1977) 1 SCR 87 : (1976) 3 SCC 677 : 1976 SCC (L & S) 492 : AIR 1976 SC 2433 : (1977) 1 LLJ 5), dealing with the pleasure of the President under Article 310 this Court observed that the Rules (Central Civil Services (Classification, Control and Appeal) Rules, 1965, framed under Article 309), deal principally with the procedure for disciplinary proceedings and penalties and appeals and reviews against orders passed under the Rules. They are applicable if disciplinary proceedings had been taken against the respondent, but they do not make disciplinary proceedings incumbent or obligatory whenever the services of a person are terminated.

27. It was further held that a dismissal by an officer subordinate to the appointing authority is null and void. This Article 311 however, does not require that dismissal or removal must be ordered by the same authority who made the appointment. There is a compliance with clause (1) of Article 311 if the dismissing authority is not lower in rank or grade than the appointing authority.

28. For the foregoing discussion the impugned order does not suffer from any infirmity.

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