

S. S. Karmalkar and Others

Vs

Ibrahim Husseni Tamboli and Others

S. D. Joshi

Vs

S. D. Pakhare and Others

State of Maharashtra and Others

Vs

Ibrahim Husseni Tamboli and Others

Civil Appeal Nos. 3804 To 3807 of 1988

(M. M. Dutt, S. Natarajan JJ)

31.10.1988

JUDGMENT

DUTT, J. –

1. Special leave is granted in all these matters. Heard learned counsel for the parties.
2. The principal question that is involved in these appeals is somewhat peculiar. The question is whether the Food and Civil Supplies Department, Sholapur, has a separate and independent existence or whether it is part and parcel of the Revenue Department. The best authority which can answer the questions the government, but the civil courts and the High Court have not been able to accept the government version that the Food and Civil Supplies Department, Sholapur, is an independent government department and does not form part of the Revenue Department. The facts leading to the question will be stated presently.
3. The Commissioner of Pune Division, by his order dated January 27, 1981, granted promotions to the appellants to the posts of Awal Karkuns, and directed that the private respondents herein, who were holding these posts would be repatriated to their parent department, that is, the Revenue Department. Aggrieved by the said order of the Commissioner, Pune Division, some of the private respondents filed a civil suit for a declaration that the said order granting out of turn promotions to the appellants as Awal Karkuns was unjust, illegal and violative of the fundamental rights of the respondents guaranteed under Articles 14 and 16 of the Constitution of India. The learned Civil Judge, Senior Division, Sholapur, decreed the suit and declared that the impugned order of the Commissioner, Pune Division, was discriminatory, illegal and not binding upon the respondents. The learned Civil Judge also granted an injunction permanently restraining the government from reverting the respondents from the posts of Awal Karkuns to the posts of Clerks. On appeal, the Fourth Additional District Judge, Sholapur, upheld the judgment and decree of the civil court and

dismissed the appeal preferred by the appellants and the State of Maharashtra. The appellants and the State of Maharashtra filed two separate second appeals to the High Court of Bombay. In the meantime, some of the respondents also filed writ petitions in the High Court challenging the validity of the impugned order of the Commissioner, Pune Division. The High Court, by a common judgment, disposed of the second appeals and the writ petitions. The High Court came to the finding that the Food and Civil Supplies Department, Sholapur, had no separate existence on the date the impugned order was passed, and that it was part and parcel of the Revenue Department. Upon that finding, the High Court dismissed the second appeals and allowed the writ petitions of the respondents.

4. It is not disputed before us that before 1965, there was no such department as the Food and Civil Supplies Department at Sholapur. Initially, the Agriculture, Food and Cooperation Department of the government was entrusted with the subject of food and the supply thereof. By a circular dated January 13, 1965 of the Government of Maharashtra., a new department called "the Civil Supplies Department" was created. By a subsequent government circular dated May 13, 1965 it was renamed as "Food and Civil Supplies Department". It appears from the said government circular dated January 13, 1965, creating the department, that the Agriculture, Food and Cooperation Department was renamed as the Agriculture and Cooperation Department. In other words, the subject of food was withdrawn from the said department and a new department, namely, the Civil Supplies Department, subsequently renamed as Food and Civil Supplies Department, was created.

5. After the creation of the Food and Civil Supplies Department, the statutory rationing was introduced in Sholapur City and Salgarwadi area under the control of the Food and Civil Supplies Department which will appear from the government resolution dated February 19, 1966. As a result of introduction of statutory rationing, several posts had to be created in the establishment of the Controller of Rationing, which was admittedly a part of the Food and Civil supplies Department. Certain posts were also transferred from the Revenue Department to the Food and Civil Supplies Department along with the holders of such posts. The most significant fact in this regard is that the holders of the posts had to be appointed afresh as personnel of the Food and Civil Supplies Department, which will also appear from the government resolution dated February 19, 1966. It is not disputed that at that time, that is to say, after the introduction of statutory rationing, the Food and Civil Supplies Department was an independent government department at Sholapur.

6. The statutory rationing was discontinued in Sholapur with effect from May 1, 1969. The posts in the rationing establishment were directed to be merged in the office of the Foodgrain Distribution Officer, Sholapur, and the expenditure on that account was directed to be debited to the budget head "26-Miscellaneous Department-Civil Supplies Department (iii) Procurement, Distribution and Price Control (b) Mofussil" and met from the grants sanctioned thereunder.

7. It is, however, not disputed that some of the rationing staff were retrenched, some were absorbed in the Revenue Department and the remaining staff were directed to be merged in the office of the Foodgrain Distribution Officer, Sholapur, with effect from May 1, 1969. So far as the appellants before us are concerned, they were not retrenched, but according to the private respondents they were absorbed in the Revenue Department. This has been emphatically disputed by the appellants.

8. Mr. Tarkunde, learned counsel appearing on behalf of the private respondents, has drawn our attention to a letter dated October 25, 1969 written by the Foodgrain Distribution Officer, Sholapur, to the Collector, Revenue Branch, Sholapur. In that letter, the Foodgrain Distribution Officer, Sholapur, requested the Collector to absorb the remaining staff of the rationing department, who

were then working in the Foodgrain Distribution Office. At this stage, it may be mentioned that there is no dispute that both the departments, namely, the Food and Civil Supplies Department and the Revenue Department, were under the District Collectorate. A list was attached to the said letter dated October 25, 1969 of the Foodgrain Distribution Officer relating to absorption of rationing staff in the Revenue Department. The list contains the names of the appellants and under column 7 of the list, it has been recorded that the appellants and other remaining staff were willing to work in the Revenue Department. In view of the said letter of the Foodgrain Distribution Officer and the list annexed to his letter written to the Collector, it is submitted by the learned counsel, appearing on behalf of the private respondents, that the appellants were transferred to the Revenue Department as the Food and Civil Supplies Department was abolished on the abolition of the statutory rationing.

9. It has been already noticed that some of the staff of the rationing establishment, who were not retrenched, were transferred to the office of the Foodgrain Distribution Officer. According to the respondents, the Foodgrain Distribution Office is under the Revenue Department, while the appellants aver that it belongs to the Food and Civil Supplies Department. In this regard, the most important say is that of the government. It is asserted on behalf of the State of Maharashtra that the Foodgrain Distribution Officer belongs to the Food and Civil Supplies Department. The controversy in this respect can be easily resolved by referring to the said letter dated October 25, 1969 of the Foodgrain Distribution Officer to the Collector, Revenue Branch. If the Foodgrain Distribution Office belongs to the Revenue Department, there was no necessity for the Foodgrain Distribution Officer to request the Collector, Revenue Department, to absorb the unretrenched staff of the rationing establishment. Be that as it may, the question that arises is whether the appellants were absorbed in the Revenue Department. It is true that under column 7 of the list annexed to the said letter dated October 25, 1969 of the Foodgrain Distribution Officer, it has been recorded that the appellants and other staff of the rationing establishment were willing to work in the Revenue Department. There is, however, nothing to show that as a matter of fact the appellants were transferred to the Revenue Department. The appellants might be willing to be absorbed in the Revenue Department, but there is no material in proof of the alleged absorption of the appellants in the Revenue Department. It is also not the case of the State Government that the appellants were absorbed in the Revenue Department. In the counter-affidavit of respondent 1, it is stated as follows :

That the District collector of Sholapur by his memorandum dated April 17, 1969 laid down the conditions of giving alternative employment to the retrenched ex-civil supply staff in Revenue Department. These conditions are :

- (1) That the services in Revenue Department are transferable throughout the district.
- (2) That Revenue employees are required to pass departmental examination within prescribed period.
- (3) That to hold Awal Karkun's post Revenue employee is required to pass revenue qualifying examination in addition to Sub-Service Department Examination.

10. It is clear from the statement extracted above that one of the conditions for absorption was that the appellants were required to pass the departmental examination within the prescribed period. Another condition was that one had to pass revenue qualifying examination in addition to Sub-Service Department Examination for holding the posts of Awal Karkun in the Revenue Department. It is not disputed that the appellants have not passed any of these examination. This shows that as

they did not fulfil the conditions for absorption in the revenue Department, they could not be transferred to or absorbed in that department.

11. The High Court proceeded on the assumption that on the abolition of the statutory rationing, the Food and Civil Supplies Department, Sholapur, also came to be abolished. Indeed, this is also the contention of the private respondents. Food is an important matter for government's consideration and it was the responsibility of the Agriculture, Food and Cooperation Department before the creation of the Food and Civil Supplies Department. The said department was renamed as 'Agriculture and Cooperation Department' inasmuch as "food" was taken out of that department and placed under the Food and Civil Supplies Department. Thus, the fact of introduction or abolition of statutory rationing has nothing to do with the question of food and supply thereof, which must be dealt with by some department of the government and after the creation of the Food and Civil Supplies Department, it was dealt with by that department. It will be wrong to assume that the Food and Civil Supplies Department dealing with food and supply thereof, will be abolished consequent on the abolition of the statutory rationing. In the counter-affidavit of the State of Maharashtra, affirmed by Shri Chandrasen Pandarinath Kamble, it has been stated inter alia that in the State of Maharashtra there is a system of Fair Price Shops and Household Card System in the areas where statutory rationing system does not exist. This Fair Price Shops and Household Card System undoubtedly comes under the control and supervision of the Food and Civil Supplies Department. As the department existed, it can be reasonably presumed that it had its own staff and the appellants' contention that they were retained in the Food and Civil Supplies Department seems to be correct. Merely the fact of giving of consent by the appellants to their absorption in the Revenue Department, fails to persuade us to hold that the appellants were absorbed in the Revenue Department, in the absence of any proper material in that regard.

12. A question, has, however, been raised on behalf of the private respondents that if the Department of Revenue and the Food and Civil Supplies Department are two different departments of the government, there is no material to show how the respondents came to hold posts in the Food and Civil Supplies Department. It is true that there is no order showing that the respondents were transferred on deputation from the Revenue Department to the Food and Civil Supplies Department. In our opinion, in view of the facts and circumstances stated above, it can be reasonably presumed that the respondents were sent on deputation to the Food and Civil Supplies Department, otherwise there was no question of their repatriation to their parent department, that is, the Revenue Department. There are other material which would also justify the finding that the Food and Civil Supplies Department and the Department of Revenue are two independent and separate departments even after the abolition of statutory rationing.

13. The Governor of Maharashtra, by an order dated April 13, 1983, framed rules under the proviso to Article 309 of the Constitution of India for regulating recruitment to the posts of Assistant Commissioner (Supply), District Supply Officer and Foodgrain Distribution Officer Class I under the Food and Civil Supplies Department of the Government of Maharashtra. Framing of these rules proves two things, namely, that the Food and Civil Supplies Department has independent and separate existence, and that the Foodgrain Distribution Officer belongs to that department. Another set of rules was framed under the proviso to Article 309 of the Constitution of India by the notification dated May 21, 1984 for regulating recruitment to Class II posts in the Food and Civil Supplies Department of the Government of Maharashtra. The framing of these rules for regulating the recruitment of officers in the Food and Civil Supplies Department supports the case of the appellants and also of the government that the Food and Civil Supplies Department, Sholapur, is an independent department. The final gradation list of supply staff of directly recruited Clerks and

Godown Keepers was prepared and published. It is, however, contended on behalf of the private respondents that the supply staff belong to the Revenue Department. This contention is without any substance. The words "supply staff", undoubtedly, refer to the supply staff of the Food and Civil Supplies Department. The State Government is justified in placing reliance upon the gradation list in support of its case that the Food and Civil Supplies Department is an independent and separate department.

14. It is, therefore, apparent from the above facts, particularly the fact that separate rules were framed for recruitment of officers in the Food and Civil Supplies Department and a final gradation list was also prepared and published, that the Food and Civil Supplies Department is not part and parcel of the Revenue Department, but it has a separate and independent existence. The finding finds support from another fact that the Revenue Department has its own gradation list of its employees including the private respondents.

15. We may now deal with one more submission made on behalf of the private respondents. Our attention has been drawn to a fact which has also been noticed by the High Court, namely, that by a government order issued to all Commissioner of Divisions, it was directed that the posts of Inspecting Officers should be made available to the persons from the Revenue Department as well as from the Food and Civil Supplies Department in the ratio of 75 : 25. It is submitted on behalf of the private respondents that this government order points to the fact that both the Food and Civil Supplies Department and the Revenue Department are one and the same department at Sholapur. We are unable to accept this contention. The government order in question, in our opinion, establishes the facts that the two departments are separate departments of the government. It has been already noticed that some officers of the Revenue Department were holding the posts in the Food and Civil Supplies Department, Sholapur, presumably on deputation and hence, the ratio with regard to the posts of Inspecting Officers, with which we are not concerned, had to be fixed. If the two departments were not separate departments, there was no necessity for mentioning the names of these two departments in the said order. It is not disputed that the posts of Inspecting Officers are posts of the Food and Civil supplies Department. The contention of the private respondents based on the said government order is, accordingly, rejected.

16. Before we conclude the judgment, we may refer to an unreported Bench decision of the Nagpur Bench of the Bombay High Court in Special civil Applications Nos. 707 of 1974 and 4258 and 4834 of 1976 (Atmaram Chaturji Garbade v. State of Maharashtra (Special Civil Applications Nos. 707 of 1974 and 4258 and 4834 of 1976, decided on January 13, 1977 (Nag)) disposed of on January 13, 1977 where it has been held that the two departments are separate. It is, however, contended by Mr. Tarkunde that the Nagpur Bench decision has no bearing on the instant appeals before us as it relates to the city of Nagpur and cantonment in Kampte where the Food and Civil Supplies Department was not abolished. It, however, appears that in that decision, the Bench has taken into consideration some common documents. Be that as it may, in the instant appeals, there are ample materials which justify the conclusion that the two departments are not one and the same department but are two separate departments.

17. In the circumstances, we are unable to agree with the High Court that the appellants are employees of the revenue Department inasmuch as after the abolition of the statutory rationing, the Food and Civil Supplies Department was also abolished and the appellants were absorbed in the Revenue Department. As the appellants belong to a different department, their promotions will be governed by the rules of that department. Similarly, the promotions of the private respondents will be considered in accordance with the rules of the Revenue Department. We are told that after their

repatriation to their parent department all the private respondents were promoted to the posts of Awal Karkuns.

18. For the reasons aforesaid, we set aside the judgment of the High Court as also of the trial court and that of the lower appellant court and dismiss the suit and the appeals. The writ petitions filed in the High Court are also dismissed. The instant appeals are allowed but in view of the peculiar facts and circumstances of the cases, there will be no order as to costs.

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