

State Through Anti-Corruption Bureau, Government of Maharashtra, Bombay

Vs

Krishanchand Khushalchand Jagtiani

Criminal Appeal No. 580 of 1996

(B.P. Jeevan Reddy, K.S. Paripoornan JJ)

25.04.1996

JUDGEMENT

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B. P. JEEVAN REDDY, J.:-

1. Leave granted Heard counsel for the parties.

2. Respondents, K. K. Jagtiani, was an Assistant Engineer in the service of the Municipal Corporation, Greater Bombay. On the basis of a complaint received, a trap was laid. The respondent was caught accepting the money. The Municipal Commissioner granted sanction for prosecuting the respondent and another employee under Section 5 of the Prevention of Corruption Act, 1974 [the Act] and Sections 161 and 165 of the Indian Penal Code on January 4, 1988. On that date, the respondent was in receipt of basic minimum salary which was less than Rupees twelve hundred per month. In due course, a chargesheet was filed against the respondent in the Court of Special Judge, Greater Bombay under Sections 5(1) (d) and 5(2) of the Act and Sections 161 and 165 of the Indian Penal Code. The learned Special Judge took cognizance of the offences and framed charges. The respondent raised a preliminary objection that the sanction granted by the Municipal Commissioner without obtaining the previous approval of the Standing Committee of the Corporation is not valid and competent in law inasmuch as the Municipal Commissioner by himself was not competent to remove him. The learned Special Judge overruled the objection, which was challenged by the respondent by way of a writ petition in the Bombay High Court. a learned Single Judge has upheld the objection and allowed the writ petition.

3. Section 6(1) (C) of the Act, insofar as it is relevant, reads:

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

(C) In the case of any other person of the authority competent to remove him from his office."

4. Section 83 of the Bombay Municipal Corporation Act prescribes the authorities competent to impose various punishments upon its employees. It reads:

"83 (1) Every municipal officer and servant may be fined, reduced, suspended or

dismissed for any breach of departmental rules or discipline or for carelessness, unfitness, neglect of duty or other misconduct, by the authority by whom such officer or servant is appointed ;

(2) Provided that -

(a) no officer appointed to a post, 'The minimum monthly salary exclusive of allowances of which is rupees one thousand two hundred or more; shall be dismissed by the Commissioner, without the previous approval of the standing committee or in the case of an officer appointed for the purposes of clause (q) of Section 61, of the Education Committee;

(b) any officer appointed by the corporation under Sections 55, 56A, 74, 75, 76B, 77, 78A or 78C may be suspended by the Standing committee and any officer appointed by the corporation under Section 76A may be suspended by the Education Committee, pending in each case an order of the corporation and every such suspension and the reasons therefor shall be forthwith reported to the Corporation;

(c) any officer appointed by the Corporation otherwise than under Sections 55, 56A, 74, 75, 76A, 77, 78A or 78C may, for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct be fined, reduced or suspended by the Commissioner, or may, with the previous approval of the standing committee or in the case of an officer appointed for the purposes of Clause (q) of Section 61 of the Education Committee, be dismissed by the Commissioner;

(d) any officer or servant immediately subordinate to the Municipal Chief Auditor and drawing a salary not exceeding rupees two hundred and fifty per month exclusive of allowances may, subject to such conditions and limitations, if any, as the standing committee may deem fit to prescribe, and subject to a right of appeal to the standing committee be fined, reduced or suspended for any breach of departmental rules or discipline or for carelessness, unfitness, neglect of duty or other misconduct by the Municipal Chief Auditor."

5. An analysis of the Section - a shining example of bad draftsmanship* - yields the following propositions:

(1) A municipal officer or servant may be fined, reduced, suspended or dismissed by the authority by whom such officer or servant is appointed [sub-section(1)].

*There was a good amount of discussion before us regarding the meaning and ambit of Clause (a) and clause (c) of the proviso (sub-section (2)). It was also pointed out that to remove the difficulty - and ambiguity - in understanding these clauses, clause (a) has been amended later in the years 1989 and in 1990.

(2) An officer holding a post, the minimum monthly salary exclusive of allowances is Rs. 1200/- per month or more, can be dismissed by the Commissioner with the previous approval of the Standing Committee. If he is an officer appointed for the purposes of Section 61 (q), he can be dismissed by the Commissioner with the previous approval of the Education Committee [Clause (a) of the proviso which is

styled as sub-section (2)].

(3) An officer appointed by the Corporation under Sections 55, 56A, 74, 76B, 77, 78A or 78C can be suspended by the Standing Committee pending orders of the Corporation. ["Pending in each case an order of the Corporation"]. If, however, he is an officer appointed by the Corporation under Section 76A, he may be suspended by the Education Committee pending the orders of the Corporation. In either case, the authority suspending the officer shall report the orders of suspension along with reasons therefor to the Corporation [Clause (b) of the proviso/sub-section (2)].

(4) In the case of an officer appointed by the Corporation otherwise than under Sections 55, 56A, 74, 75, 76A, 77, 78A or 78C, he may be fined reduced or suspended by the Commissioner. Such an officer can be dismissed by the Commissioner with the previous approval of the Standing Committee. If he is an officer appointed for the purpose of Section 61(q), he can be dismissed by the Commissioner with the previous approval of the Education Committee [clause (c) of the proviso/sub-section (2)].

[We are not setting out the purport of clause (d) of the proviso since it is not relevant herein.]

6. The respondent herein is an officer whose minimum monthly salary exclusive of allowances was less than Rs. 1200/- at the relevant time. If so, he does not fall under clause (a) of the proviso. It is agreed by the counsel for the parties before us that he is also not an officer appointed under any of the Sections mentioned in clause (b) of the proviso. He falls under clause (c). The contention of the learned counsel for the respondent is that while the Commissioner can impose a fine, reduce in rank or suspend the respondent without reference to the Standing Committee, he cannot dismiss him without the previous approval of the Standing Committee. He submits that in the case of the respondent, "the authority competent to remove him from his office" in clause (c) of sub-section (1) of Section 6 of the Act must, therefore, be construed as Commissioner acting with the previous approval of the Standing Committee and not the Commissioner acting on his own. Inasmuch as in this case the previous sanction was accorded by the Commissioner without obtaining the previous approval of the Standing Committee, it is submitted, the sanction is invalid and ineffective in law. On the other hand, Sri K.T.S. Tulsi, learned Additional Solicitor General appearing for the Municipal Corporation, submits that according to clause (c) of the proviso [sub-section (2) of Section 83], the Commissioner is the competent authority to dismiss the respondent. The requirement of obtaining the previous approval of the Standing Committee does not make him any the less the competent authority. It is no doubt a condition which has to be complied with by the Commissioner before dismissing the respondent, submits Sri Tulsi, but the said requirement does not make the Standing Committee the competent authority within the meaning of Section 6(1) (c) of the Act. The competent authority remains the Commissioner alone who is also the appointing authority of the respondent within the meaning of sub-section (1) of Section 83. The learned Additional Solicitor General submits that an identical question had in fact arisen in the case of K. Veeraswami, former Chief Justice of the Madras High Court in the decision reported in K. Veeraswami v. Union of India (1991) 3 SCC 655 and that the observations therein support his contention. That was a case where a former Chief Justice of a High Court was charged under offences punishable under Sections 5 and 6 of the Act. The objection raised by him was that since a Judge of the High Court can be removed only "by an order of the President of India passed after an address by each House supported by a majority of not less than two-third of the members of the

House present and voting has been presented to the President in the same session for such removal" [Article 218 read with clause (4) of Article 124 of the Constitution of India]. The sanction for this prosecution can be accorded by the President only on the basis of an address by each House of Parliament prescribed according to Article 124 (4), the Constitution Bench which heard the case did discuss this issue at some length though it was also held that no such previous sanction was necessary in the case of the appellant therein [K Veeraswami] inasmuch as he had ceased to hold the office of Chief Justice/Judge of a High Court on the date of his prosecution. [It was held that the requirement of previous sanction contemplated by Section 6 (1) (c) of the Act does not apply in case of a person who has ceased to hold that office on the date of taking cognizance of offence by the Court.] The relevant discussion is found at Pages 702-709. [Opinion of K. Jagannatha Shetty, J., speaking for himself and M. N. Venkatachaliah, J. with whom B.C. Ray, J. agreed]. The Constitution Bench [majority] was of the opinion that the previous sanction contemplated by Section 6 (1) (c) can be accorded by the President without the necessity of the Parliament presenting an address [as contemplated by Article 124 (4) of the Constitution]. At the same time, they imposed the requirement of consultation with the Chief Justice of India before according such sanction. This requirement was imposed out of concern for and with a view to safeguard the independence of judiciary. It would be enough for the purpose of this case if we quote the following observations from the judgment :

"The construction which would promote the general legislative purpose underlying the provision in question, is to be preferred to a construction which would not. If the literal meaning of the legislative language used would lead to results which would defeat the purpose of the Act, the Court would be justified in disregarding the literal meaning and adopt a liberal construction which effectuates the object of the legislature. Section 6 with which we are concerned indeed requires to be liberally construed. It is not a penal provision but a measure of protection to public servants in the penal enactment . It indicates the authorities without whose sanction a public servant cannot be prosecuted. It is sufficient that the authorities prescribed thereunder fall within the fair sense of the language of the section. The expression 'the authority competent to remove' used in clause (c) of Section 6 (1) has to be construed to mean also an authority without whose order or affirmation the public servant cannot be removed. In this view, the President can be considered as the authority to grant sanction for prosecution of a Judge since the order of the President for the removal of a Judge is mandatory. The motion passed by each House of Parliament with the special procedure prescribed under Clause (4) of Article 124 will not proprio vigore operate against the Judge. It will not have the consequence of removing the Judge from the office unless it is followed by an order of the President [Para 45]For the reasons which we have endeavoured to outline and subject to the direction issued, we hold that for the purpose of clause (c) of Section 6 (1) of the Act the President of India is the authority competent to give previous sanction for the prosecution of a Judge of the Supreme Court and of the High Court [Para 61].

7. It is true that the opinion of the Constitution Bench was also influenced by the fact that the Parliament cannot discuss the conduct of a Judge of the High Court or of the Supreme Court except in a proceeding for impeachment of the Judge, yet the fact remains that the Constitution Bench did ultimately opine that the President can accord sanction for prosecution of Judge of a High Court without the requirement of an address being presented by the Parliament as provided by Section 124 (4) of the Constitution. While it is true that the provisions considered and the very context in which the said discussion took place is quite different from the one concerned herein, yet the relevance of

the approach adopted by the majority in *K. Veeraswami* (1991 (3) SCC 655) cannot be denied.

8. On a consideration of the relevant provisions and the object underlying the provisions concerned herein, we are of the opinion that the previous sanction required by Section 6 (1) (c) of the Act was validly granted by the Commissioner [without the previous approval of the Standing Committee] in the case of the respondent; it was not necessary that before according such sanction, the Commissioner should have obtained the previous approval of the Standing Committee. It must be remembered that the object of Section 6 (1) (c) or for that matter Section 197 of the Criminal Procedure Code is that there should be no unnecessary harassment of public servant; the idea is to save the public servant from the harassment which may be caused to him if each and every aggrieved or disgruntled person is allowed to institute a criminal complaint against him. The protection is extended against prosecution even by a State agency but the protection is not absolute or unqualified. If the authority competent to remove such public servant accords previous sanction, such prosecution can be instituted and proceeded with. The law presumes-- and the Court must also presume until the contrary is established --that such authority will act fairly and objectively and will accord sanction only where he is satisfied that the charge (s) against the public servant requires to be inquired into by a Court. The authority is presumed to, and expected to, act consistent with public interest and the interest of law--both of which demand that while a public servant be not subjected to harassment, genuine charges and allegation should be allowed to be examined by the Court. Both the considerations aforesaid should be present in the mind of the authority while deciding the question of grant of previous sanction required by Section 6 (1) (c) of the Act, for that matter, Section 197 of the Criminal Procedure Code. [See *R. S. Nayak v. A R Antulay*, (1984) 2 SCC 183 at 207 : (AIR 1984 SC 684 at p. 698)]. Looked at from this standpoint, requiring the previous approval of the Standing Committee at this stage, when the charges or allegation are yet to be enquired into and established, would be imposing an impartial pre-condition. One can understand the Standing Committee considering the matter at the end of disciplinary enquiry or a criminal trial, when definite findings, would be available which would enable the Standing Committee to take a decision whether or not to accord previous approval to the Commissioner to dismiss the delinquent employee/ officer. But at the stage of grant of sanction, bringing in Standing Committee may not be consistent with the object underlying the said provisions. The Standing Committee admittedly is not the competent authority, competent authority remains the Municipal Commissioner. The previous approval of the Standing Committee is only a pre-condition to the exercise of power of dismissal by the Commissioner. As observed by this Court in *K. Veeraswami* (1991 (3) SCC 655), the provision in Section 6 (1) should be construed liberally and not in a mechanical or pedantic manner. The check upon dismissal need not be extended to according of previous sanction; it would be more appropriate to confine it to the stage of dismissal only. It must also be remembered that so far as the respondent is concerned, the appointing authority for him is the Commissioner. [See Ground (xi) of the Special Leave Petition which has not been denied by the respondent in his counter]. It would, therefore, be reasonable and consistent with the object underlying the Act as well as the Bombay Municipal Act to hold that previous sanction for prosecution contemplated by Section 6 (1) (c) of the Act could have been accorded and was validly accorded by the Commissioner acting by himself and that the said previous sanction is not invalid or ineffective in law on the ground that it was not preceded by the previous approval of the Standing Committee.

9. It is brought to our notice that by two Amendment Acts, Maharashtra Act 33 of 1989 and Act 12 of 1990, the proviso in Section 83 has been amended. We need not refer to the said amendments since in this case we are concerned with the period prior to the commencement of the said Amendment Acts.

10. The appeal is accordingly allowed, the judgment of the High Court is set aside and that of the learned Special Judge is restored. Appeal allowed.