

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Rajmal Mehta

(D Wadhwa and S R Babu JJ.)

02.11.1999

ORDER

1. The Government of Rajasthan, in exercise of the powers conferred by Sub Section (1) of Section 79 read with Section 26 of the Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 (hereinafter referred to as the '1959 Act') framed Rajasthan Panchayat Samiti (Selection of Vikas Adhikaris) Rules, 1968 (hereinafter referred to as the '1968 Rules'). These Rules inter alia dealt with recruitment and promotion etc. of Vikas Adhikaris. While these Rules were in force, having been framed under the Act, the Governor of Rajasthan, in exercise of his powers under Article 309 of the Constitution of India, framed Rajasthan Civil Services (Special Selection & Special Conditions of Service of Vikas Adhikaris) Rules, 1982 (hereinafter referred to as the '1982 Rules').

2. Rule 18 of the 1982 Rules provided that all rules and orders in relation to matters covered by the 1982 rules and in force immediately before the commencement of the rules, would stand repealed, though any action taken thereunder or orders made thereunder were saved. The respondent questioned the vires of the 1982 Rules through a writ petition in the High Court of Rajasthan. The principal ground of challenge to the vires of the Rules was that since 1968 Rules had already been framed under the 1959 Act, the field covered by the Rules was an occupied one and the Governor of Rajasthan could not, in exercise of the powers under Article 309 of the Constitution, frame Service Rules of 1982. The writ petition was heard by a Full Bench of the High Court. By a majority, the Full Bench upheld the challenge to the vires of the 1982 Rules. It was held that so long as the Statutory Rules of 1968 held the field, the Governor was not empowered to frame Rules under Article 309 of the Constitution in respect of the same subject matter. The judgment of the High Court was rendered on December 1, 1983.

3. The State of Rajasthan filed a special leave petition in this Court on 5th March, 1984. Leave was granted on 9th April, 1984. It transpires from a perusal of the record that on 13th January, 1984 the

Government of Rajasthan, in exercise of the powers conferred by Sub Section (1) of Section 79 read with Section 26 of the 1959 Act repealed the 1968 Rules with immediate effect.

4. On 14th February, 1996 a Bench of this Court desired the matter to be heard by a three-Member Bench since the petition raised an important question regarding the parameters of rule-making powers of the Governor under Article 309. The three-Judge Bench vide order dated 26th February, 1998 directed the matter to be placed before a Constitution Bench. That is how, the matter has been placed before us.

5. Though the question whether repeal of 1968 Rules by the Government in exercise of its rule making powers under the 1959 Act vide notification dated 13th January, 1984, can by itself revive the 1982 Rules which had been set aside by the High Court on December 1, 1983, is a moot question requiring consideration but we are not now required to decide it because of the subsequent developments which have taken place. The 1959 Act has since been repealed by the Rajasthan Panchayati Raj Act, 1994 (hereinafter the 1994 Act) The 1994 Act itself contains provisions relating to recruitment etc. of Vikas Adhikaris and other officers. That apart. Rajasthan Panchayati Rules, 1996 have also been framed by the State by virtue of the rule making powers under the 1994 Act to deal with the matters which were the subject matter of the proceedings in the High Court and now before us.

6. In view of the enactment of 1994 Act and the 1996 Rules framed thereunder and repeal of the 1959 Act and the relevant Rules framed thereunder, learned Counsel for the parties do not dispute that at this point of time nothing survives in this appeal for our consideration. In this view of the matter because of the changed circumstances, this appeal does not merit any further consideration. It is dismissed with no order as to costs.

7. We, however, do not express any opinion on the question of law as noticed in the earlier part of this order.