SUPREME COURT OF INDIA

M.P.State

Vs.

Pradeep Kumar Gupta

Crl.A.No.992 of 2007

(Asok Kumar Ganguly and Deepak Verma,JJ.,)

18.05.2011

JUDGMENT

A.K.Ganguly,J.,

1. This appeal is filed at the instance of the State impugning the order of the High Court dated 17.12.2004 whereby the High Court in a revision filed before it was pleased to held that sanction for prosecution which was granted to the respondent, Sh. Pradeep Kumar Gupta was invalid and High Court was pleased to quash the same.

2. In coming to the said finding, the High Court, inter alia, held that Sh. Pradeep Kumar Gupta, (hereinafter called the respondent), was posted as an Engineer in Municipal Corporation of Ujjain and was a public servant and can be removed from the said post by the Mayor-in-Council under the relevant provisions of the Madhya Pradesh Municipal Corporation Act and the sanction for prosecution granted by the State Government is invalid and incompetent.

3. In support of the said finding, the High Court, inter alia, relied on a judgment of *Ashok Baijal Vs. M.P. Government reported as*[1]

4. We have heard the counsel appearing for the parties. We are of the view that the conclusions reached by the High Court are not warranted either in facts or in law for the reasons discussed herein-under.

5. From the order dated 4.10.1983 of the Government of Madhya Pradesh Local Self Government, it is clear that the respondent was appointed under Section 86(1) of the Madhya Pradesh Municipality Act and such appointment was made by the State Government in terms of Rule 17 of the Madhya Pradesh Municipal Service (Executive) Rules, 1973. It is thus clear that the respondent was appointed by the State Government.

6. The learned counsel for the appellant has also drawn the attention of this Court to other materials on record from which it appears that the respondent, after such appointment, was

deputed by order dated 9.11.99 of M.P. Local Self Government in the Municipal Corporation, Khandwa in place of Municipality of Ujjain.

7. Our attention is also drawn to the fact that in the course of his employment, the respondent suffered a penalty of withholding of two increments and the same was also imposed by the Government. The said order of punishment was filed in the trial court by the respondent himself. These are admitted facts of the case.

8. These facts were also available before the High Court, but unfortunately, the High Court has not at all considered these facts.

9. Now, coming to the legal question, it appears that Section 86 of the M.P. Municipalities Act, 1961 (hereinafter referred to as the said Act) provides for constitution of State Municipal Services. In Section 86 it is also made clear that such services to be constituted by the State Government shall make rules in respect of the recruitment, qualification, appointment, promotion, etc. and also for dismissal, removal, conduct, departmental punishment under Section 86(2) of the Act. Section 86(4) also provides that the State Government may transfer any member of the said municipal service from one municipal council to another municipal council.

10. It is, therefore, clear that the respondent having been appointed under Section 86 of the said Act, has been appointed by the State Government and remains under the control of the State Government throughout his service. The relevant rule in this connection is the Madhya Pradesh Municipal Service (Executive) Rules, 1973. Under Rule 2(b) of the said Rules, Appointing Authority has been defined as follows:

> (b) "Appointing Authority" means State Government in respect to Select Grades, Class I, Class II and Class III Chief Municipal Officers"

11. Similarly, under Rule 2(i) service has been defined as follows:

> "(i) "Service" means the Municipal Service for the State constituted under sub-section (i) of Section 86 of the Act."

12. Rule 32 of the said Rule provides as follows:

> "32. Authorities who may impose penalties - (1) Subject to the provisions of the Act and these rules the penalties mentioned in clauses (I) to
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> (ii) of Rule 31 may be imposed on a member of the service by the [appointing authority or Divisional Commissioner or Director].
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> (2) Subject to the provisions of the Act and these rules, the penalties mentioned in clauses

(iv) to (vi) of Rule 31 shall not be imposed on a member of the service except by the appointing authority and in consultation with the Public Service Commission."

13. It is clear from the aforesaid Rules that the State Government is the Appointing Authority and the State Government can impose on the members of the State Service penalties mentioned in clause (i) to (vi) of such Rule. Therefore, State Government being the Appointing Authority and being the Authority to impose punishment on the employee is also the Authority who can remove an employee from the service.

14. That being the position, it is clear from the provisions of Section 19 of the Prevention of Corruption Act, 1988 that the Authority who is competent to remove the person concerned is competent to grant sanction. Unfortunately, the High Court, without considering these aspects of the Act and Rules, relied only on the judgment of Ashok Baijal (supra) in coming to an erroneous finding. Provision of Section 19(1) of Prevention of Corruption Act, 1988 is set out hereunder:

19. Previous sanction necessary for prosecution - (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,

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"(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 that Government;

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

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

15. Similar views have been expressed in the case of *State of Tamil Nadu Vs. T. Thulasingam and others reported in*[2].

16. We are, however, not called upon to decide the correctness of the decision rendered in Ashok Baijal case (supra). We further make it clear that the decision is Ashok Baijal case (supra) is not attracted to the facts and circumstances of this case. However, we do not express any opinion on the correctness of the proposition laid down in Ashok Baijal case (supra).

17. This appeal is allowed, the order of the High Court is set aside and the trial of the case of the respondent may proceed in accordance with law.

Judgment Referred.

[1]*(1998) Crl. L.J. 3511*
[2]*AIR 1975 SC 1314*