

G.S. Matharaoo vs Cbi on 25 January, 2012

Author: Mukta Gupta

Bench: Mukta Gupta

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CrI.M.C. 2695/2010 & CrI.M.A. 13999/2010 (stay)

% Reserved on: 21.12.2011

Decided on: 25th January, 2012

G.S. Matharaoo

..... Petitioner

Through: Mr. V.P. Singh, Sr. Adv. with Mr.
Anil Grover and Mr. Rakesh Kumar
Garg, Advs.

versus

CBI

..... Respondent

Through: Mr. Narender Mann, Spl. PP with Mr. Manoj Pant, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The grievance of the Petitioner in the present petition is to the incompetency of the authority granting sanction for prosecution against him for offences under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act (POC Act) in RC EOU-1 2005 A 0005 and thus the initiation of proceedings against the Petitioner is illegal and void ab initio be set aside.

2. Learned counsel for the Petitioner contends that in terms of the Regulations as empowered to be framed under Section 480 of the Delhi Municipal Corporation Act, 1957 (in short „DMC Act), the authority competent to remove the Petitioner is the Corporation, however, in the case of the Petitioner the sanction has been granted by the Commissioner, MCD, who is not the authority competent to remove him. He further contends that as per Section 2(7) of the DMC Act, "Corporation" means the Municipal Corporation of Delhi established under the Act. Section 44 provides for the municipal authorities for the efficient performance of the Corporation and the Commissioner, MCD is one of the authorities. Section 59 of the DMC Act provides for the functions of the Commissioner and the main function of the Commissioner is executive in nature. Section 59(d) of the DMC Act provides that subject to any Regulation that may be made in this behalf, the Commissioner will be the disciplinary authority in relation to all municipal officers and other municipal employees. Section

95 of the DMC Act further provides that an employee can be removed by such authority as may be prescribed by the Regulations. Thus, on a conjoint reading of Section 59(d) and Section 95 of the DMC Act, the power of the Commissioner to be the disciplinary authority of the employees of the Corporation is subject to Regulations. In terms of Section 92, DMC Act, the Commissioner, MCD does not have unbridled power of being the appointing authority of all municipal officers and municipal employees as the same is subject to Section 89 and the Standing Committee or its delegatee is the appointing authority of municipal employees under Group „B and „C below the Municipal Secretary or the Municipal Chief Auditor. It is stated that in exercise of said power under Section 480 of the DMC Act, under Regulation 7 vide Notification dated 15th December, 1976 the authority competent to impose all penalties for Group „A posts is the Corporation and the Central Government is the appellate authority. Only minor penalties against Group „A employees can be imposed by the Deputy Commissioner and for the said purpose the Commissioner is the appellate authority. It is contended that the Petitioner is a Group „A employee and thus, the only authority competent to remove him is the Corporation. The Corporation being the authority competent to remove the Petitioner, the sanction for prosecution under Section 19 of the POC Act could be granted only by the Corporation. Relying upon *Ajay Gandhi and another v. B. Singh & Ors*, 2004 II AD (SC) 169 it is contended that admittedly even the MCD is of the opinion that the Regulations are in vogue and in view of the principle of *contemporanea expositio*, it has to be interpreted that the Regulations are still applicable after the amendment in the DMC Act. Reliance is also placed on *State of Goa v. Babu Thomas*, 2005 (8) SCC 130 and *Virender Pratap Singh v. State of UP*, 1991 Cri.LJ 1964 to contend that in case the sanction is granted by an incompetent authority, the High Court in exercise of its jurisdiction under Article 227 of the Constitution and Section 482 Cr.P.C. will quash the order of cognizance as the same is void ab initio. Reliance is also placed on *Chittranjan Das v. State of Orissa*, 2011 (7) SCALE 461 and *Radhey Shyam Pandey v. State of Jharkhand*, 2011 INDLAW JHKD 325.

3. Learned counsel for the Respondent on the other hand contends that the Petitioner was charge-sheeted for commission of offences punishable under Section 13(2) read with Section 13(1)(e) of the POC Act for allegedly being in possession of assets which could not be satisfactorily accounted for.

During the pendency of the present petition, charge has been directed to be framed against the Petitioner by the learned Special Judge vide order dated 11th March, 2011. The DMC Act was passed in the year 1957 and Section 59 of the Act provides for the functions of the Commissioner. A combined reading of Sections 59 and 95 would show that all the executive powers of the Corporation vest in the Commissioner. The DMC Services (Control and Appeal) Regulations, 1959 came into force in the year 1959. Though as per Schedule to Regulation 7, the authority competent to impose all penalties for the category A posts was the Corporation, however, in the year 1993 there were amendments in the DMC Act. By virtue of the amendment, sub- Section (d) was inserted in Section

59 of the DMC Act by which the Commissioner, MCD was made the disciplinary authority in relation to all municipal employees and municipal officers. After the insertion of sub- Section (d) in Section 59, no fresh Regulations have been notified till date. The mandate in view of the insertion of this clause is that till the time new Regulations are made on a future date, the Commissioner shall be the disciplinary authority of all municipal officers and other municipal employees. As per sub-Section 1 substituted in Section 92 of the DMC Act, the Commissioner, MCD was made the appointing authority in respect of all the municipal officers and other municipal employees including category „A officers except the officers mentioned under Section 89 of the DMC Act. Further proviso to sub-Section 4 of Section 95 was inserted and the effect of which is that against the order of the Commissioner an appeal was provided before the Administrator. Section 509 of the DMC Act was omitted. The effect of omission of this provision was that it repealed the schedule to the Regulations. It is well settled law that in case of any conflict between the Act and the Regulation, the Act has to prevail. Reliance is placed on *Bharathidasan University and another v. All India Council for Technical Education and others*, 2001 (8) SCC 676 and *Additional District Magistrate (Rev) Delhi Admn. V. Siri Ram*, 2000(5) SCC 451. It is further contended that in a case where the sanction order has been passed by an authority, who is competent in law to represent the State Government, the burden is heavy on the party, who challenges the order of such authority, to show that the authority competent to pass the order of sanction is somebody else and not the officer who has passed the sanction order in question. In this regard reliance is place on *Lalu Prasad alias Lalu Prasad Yadav v. State of Bihar through CBI (AHD) Patna*, 2007 (1) SCC 49.

4. I have heard learned counsel for the parties. Briefly the allegations against the Petitioner are that while functioning as public servant in various capacities in the Ministry of Home Affairs, Government of India, New Delhi and Municipal Corporation of Delhi (MCD) during the period from 1st April, 1994 to 10th May, 2005 he acquired assets in his name and in the name of his family members, which were disproportionate to his known sources of income and could not be satisfactorily accounted for. The Petitioner was appointed as LDC in the Directorate of Educate, Delhi Administration in the year 1975 where he worked till 10th February, 1981 in different capacities. On 11th February, 1981 he was appointed as Assistant in the Ministry of Home Affairs, Government of India, New Delhi from where he was transferred to the Prime Minister Officer and back to the Ministry of Home Affairs. He attained promotions in the Ministry of Home Affairs. On 26 th September, 2001 he was appointed as Additional Deputy Commissioner (HQ) in the Municipal Corporation of Delhi and remained there till 31 st January, 2010. On 1st February, 2002 he was appointed as Secretary to the Commissioner where he worked till he absorbed as such on 3 rd November, 2003 and continued in the same position till 18th August, 2004. The petitioner worked as Deputy Commissioner, Central Zone in diverted capacity from 19th August, 2004 to 16th September, 2004 and finally again he worked as Secretary to the Commissioner from 17th September, 2004 to 11th May, 2005 when his house was searched on 10th May, 2005 resulting in registration of the abovementioned FIR.

5. The issue that falls for consideration in the present petition is whether the Commissioner, MCD is the authority competent to grant sanction for prosecution of the Petitioner in terms of Section 19 of the POC Act. Before advertng to this issue, it is essential to address whether this Court in a petition under Section 482 Cr.P.C. should decide on the competency of the sanctioning authority or leave it

to be decided during trial.

6. In *R.S. Nayak v. A.R. Antulay*, AIR 1984 SC 684 the Constitution Bench held:

"23. Offences prescribed in Ss. 161, 164 and 165 IPC and S. 5 of the 1947 Act have an intimate and inseparable relation with the office of a public servant. A public servant occupies office which renders him a public servant and occupying the office carries with it the powers conferred on the office. Power generally is not conferred on an individual person. In a society governed by rule of law power is conferred on office or acquired by statutory status and the individual occupying the office or on whom status is conferred enjoys the power of office or power flowing from the status. The holder of the office alone would have opportunity to abuse or misuse the office. These sections codify a well-recognised truism that power has the tendency to corrupt. It is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This interrelation and interdependence between individual and the office he holds is substantial and not severable. Each of the three clauses of sub-section (1) of S. 6 uses the expression 'office' and the power to grant sanction is conferred on the authority competent to remove the public servant from his office and S. 6 requires a sanction before taking cognizance of offences committed by public servant. The offence would be committed by the public servant by misusing or abusing the power of office and it is from that office, the authority must be competent to remove him so as to be entitled to grant sanction. The removal would bring about cessation of interrelation between the office and abuse by the holder of the office. The link between power with opportunity to abuse and the holder of office would be severed by removal from office. Therefore, when a public servant is accused of an offence of taking gratification other than local remuneration for doing or forbearing to do an official act (S. 161 IPC) or as a public servant abets offences punishable under Sections 161 and 163 (S. 164 IPC) or as public servant obtains a valuable thing without consideration from person concerned in any proceeding or business transacted by such public servant (S. 165 IPC) or commits criminal misconduct as defined in Section 5 of the 1947 Act, it is implicit in the various offences that the public servant has misused or abused the power of office held by him as public servant. The expression 'offices' in the three sub-clauses of Section 6(1) would clearly denote that office which the public servant misused, or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. This interrelation between the office and its abuse if severed would render S. 6 devoid of any meaning. And this interrelation clearly provides a clue to the understanding of the provision in S. 6 providing for sanction by a competent authority who would be able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from

the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider. By a catena of decisions, it has been held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before, according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants. (See Mohd. Iqbal Ahmad v. State of Andhra Pradesh, AIR 1979 SC 677). The legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that that authority alone would be able, when facts and evidence are placed before him, to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant holds, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the legislature clearly provided that that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office."

7. In State of Goa (supra) their Lordship held:-

"11....According to the counsel for the appellant no failure of justice has occasioned merely because there was an error, omission or irregularity in the sanction required because evidence is yet to start and in that view the High Court has not considered this aspect of the matter and it is a fit case to intervene by this Court. We are unable to accept this contention of the counsel. The present is not the case where there has been mere irregularity, error or omission in the order of sanction as required under sub-section (1) of Section 19 of the Act. It goes to the root of the prosecution case. Sub-section (1) of Section 19 clearly prohibits that the Court shall not 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 as stated in clauses (a), (b) and (c).

12. As already noticed, the sanction order is not a mere irregularity, error or omission. The first sanction order dated 2-1-1995 was issued by an authority that was not a competent authority to have issued such order under the Rules. The second sanction order dated 7-9-1997 was also issued by an authority, which was not competent to issue the same under the relevant rules, apart from the fact that the same was issued retrospectively w.e.f. 14-9-1994, which is bad. The cognizance was taken by the Special Judge on 29-5-1995. Therefore, when the Special Judge took cognizance on 29-5-1995, there was no sanction order under the law authorising him to take cognizance. This is a fundamental error which invalidates the cognizance as without jurisdiction."

8. In *Chittranjan Das v. State of Orissa*, 2011 (7) SCALE 461 it was held:-

"11. We are further of the opinion that no disputed question being involved, the High Court instead of making observation as to "whether in present case sanction order is necessary and whether that was refused by the State Government and what would be the consequence thereof"

to be decided by the trial court, ought to have decided the issues itself. The facts being not in dispute the High Court erred in not deciding these issues."

9. In *Prakash Singh Badal v. State of Punjab*, (2007) 1 SCC 1 it was held:

"48. The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."

10. It is well settled that the issue of competency of the sanctioning authority goes to the root of the matter. In a case where the issue goes to the root of the matter, the Court in exercise of its power under Article 227 and Section 482 Cr.P.C. is duty bound to decide the same. In the present case there are no disputed questions of fact for which evidence is required to be adduced. The petition raises issue of interpretation of the provisions of the DMC Act and DMC Services (Control & Appeal) Regulations, 1959 (in short the Regulations). Thus this Court is required to go into this issue in the present petition.

11. Before proceeding further in the matter it would be appropriate to note the relevant provisions of the DMC Act:-

"Section 2 - Definitions (7)"Corporation" means the Municipal Corporation of Delhi established under this Act;

Section 3 - Establishment of the Corporation Constitution of the Corporation (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall

be a Corporation charged with the Municipal Government of Delhi, to be known as the Municipal Corporation of Delhi.

(2) The Corporation shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and may by the said name sue and be sued.

[(3)(a) The Corporation shall be composed of the councillors;

Section 44 - Enumeration of municipal authorities For the efficient performance of its functions, there shall be the following municipal authorities under the Corporation, namely:--

(a) the Standing Committee;

(b) the Wards Committee; and

(c) the Commissioner.

Section 54 - Appointment, etc., of the Commissioner (1) The Central Government shall, by notification in the Official Gazette, appoint a suitable person as the Commissioner of the Corporation.

(2) The Commissioner so appointed shall hold office for a term of five years in the first instance:

Provided that his appointed may be renewed from time to time for a term not exceeding one year at a time :

Provided further that where the Commissioner holds a lien on any service under the Government, the Central Government may any time after reasonable notice to the Corporation replace his services at the disposal of that Government.

(3) The Central Government--

(a) shall remove the Commissioner from office if at a special meeting of the Corporation called for the purpose a resolution for such removal has been passed by a majority of not less than three-fifths of the total number of members;

(b) may remove the Commissioner from office at any time if it appears to that Government that he is incapable of performing the duties of his office or has been guilty of neglect or misconduct in the discharge of such duties which renders his removal expedient.

(4) The Commissioner shall not undertake any work unconnected with his office without the sanction of the Central Government and of the Corporation.

Section 59 - Functions of the Commissioner Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which confers, any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also--

(a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force;

(b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and other municipal employees other the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them and subject to any regulation that may be made in this behalf, dispose of all questions relating to the service of the said officers and other employees and their pay, privileges, allowances and other conditions of service;

(c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damage to any property of the Corporation, or danger to human life, take such immediate action as he considers necessary and make a report forthwith to the Standing Committee and the Corporation of the action he has taken and the reasons for the same as also of the amount of cost, if any, incurred or likely to be incurred in consequence of such action, which is not covered by a budget grant;

(d) subject to any regulation that may be made in this behalf, be the disciplinary authority in relation to all municipal officers and other municipal employees, Section 92 - Power to make appointments (1) Subject to the provisions of section 89, the power of the appointing municipal officers and other municipal employees whether temporary or permanent shall vest in the Commissioner :

Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor to category B posts of category C posts shall vest in the Standing Committee:

Provided further that the Standing Committee may delegate to the Municipal Secretary or the Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to the said Secretary or Auditor, to category C posts.

(2) The claims of the members of the Scheduled Castes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments of municipal officers and other municipal employees.

Section 95 - Punishment for municipal officers and other employees (1) Every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be censured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by regulations:

Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed:

Provided further that the Corporation may by regulations provide that municipal employees belonging to such classes or categories as may be specified in the regulations shall be liable also to be fined by such authority as may be specified therein.

(2) No such officer or other employee shall be punished under sub-section (1) unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this sub-section shall not apply--

(a) where an-officer or other employee is removed or dismissed on the ground of conduct which had led to his conviction on a criminal charge; or

(b) where the authority empowered to remove or dismiss such officer or other employee is satisfied that for some reason to be recorded by that authority, it is not reasonably practicable to give that person an opportunity of showing cause.

(3) If any question arises whether it is reasonably practicable to give to any officer or other employee an opportunity of showing cause under sub-section (2), the decision thereon of the authority empowered to remove or dismiss such officer or other employee shall be final.

(4) An officer or other employee upon whom a punishment has been inflicted under this section may appeal to such officer or authority as may be prescribed by regulations.

Provided that in the case of an officer or other employee appointed by the Commissioner an appeal shall lie to the Administrator.

Section 480 - Supplemental provisions respecting regulations (1) Any regulation which may be made by the Corporation under this Act, may be made by the Central Government within one year of the establishment of the Corporation; and any regulation so made may be altered or rescinded by the Corporation in the exercise of its powers under this Act.

(2) No regulation made by the Corporation under this Act shall have effect until it has been approved by the Central Government and published in the Official Gazette."

12. Regulation 7 of the Delhi Municipal Corporation Service (Control & Appeal) Regulations, 1959 and the Schedule thereunder read as under:-

"7. Disciplinary Authorities and Appellate Authorities- The authority specified in Column I of the Schedule may impose on any of the municipal officers or other municipal employees specified there against in column 2 thereof any of the penalties specified there against in column 3 thereof. Any such officer or employee may appeal against the order imposing upon him any of those penalties to the authority specified in column 4 of the said schedule.

SCHEDULE (See Regulation 7) Description of Posts Authority competent Penalties
Appellate Authority to impose penalties

1. 2. 3. 4.

PART „A In cases where appointments are made under Section 509 All Municipal officers & Corporation (i), (ii) & (iii) Central Government other Employees Central Government All. President of India PART „B Posts under the Corporation (Other than those under the Municipal Chief Auditor or the Municipal Secretary)

1. Category „A posts Corporation. All. Central Government do Deputy (i), (ii) & (iii). Commissioner.

Commissioner,

2. Category „B & „C Commissioner All. Standing Committee. posts

(i) Where appointment of Deputy (i), (ii) & (iii) Commissioner.

the officer or employee	Commissioner.		
was made by the	Any Municipal	(i), (ii) & (iii)	Deputy Commission

erstwhile local bodies or Officer or employees authorities specified in to whom powers to the Second Schedule of impose penalty is the Act. delegated under section 491 of the Act.

(i) Where the Commissioner. All. Standing Committee.

appointment was made by Deputy (i), (ii) & (iii). Commissioner.

the Commissioner	Commissioner.		
	Any Municipal	(i), (ii) & (iii)	Deputy Commission

Officer or employee
to whom powers to
impose penalty is
delegated under
Section 491 of the
Act.

(iii) Where the appointment was made by the Deputy Commissioner.	Deputy Commissioner. Any Municipal Officer or employee to whom powers to impose penalty is delegated under Section 491 of the Act.	All. (i), (ii) & (iii)	Commissioner. Deputy Commission
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Posts under The Municipal Chief Auditor

1. Category „A Posts Do	Corporation Municipal Chief Auditor	All (i), (ii) & (iii)	Central Governmen Standing Committe
2. Category „B posts Do	Standing Committee. Municipal Chief Auditor	All (i),(ii) & (iii).	Corporation Standing Committe
3. Category „C Posts	Municipal Chief Auditor	All	Standing Committe

Posts under the Municipal Secretary:

1. Category „A posts Do	Corporation Municipal Secretary	All. (i), (ii) & (iii)	Central Governmen Standing Committe
2. Category „B posts Do	Standing Committee Municipal Secretary	All. (i), (ii) & (iii)	Corporation Standing Committe
3. Category „C Posts	Municipal Secretary	All.	Standing Committe

13. It may be noted that as per Section 92(1) DMC Act, the power of the Commissioner to appoint municipal officers and other municipal employees is not subject to the Regulations but subject to provisions of Section 89 which provide that the Corporation shall appoint suitable persons to be the municipal engineers, the municipal health officers, the education officer, the municipal chief accountant, the municipal secretary and the municipal chief auditor and may appoint one or more deputy commissioners and such other officer or officers of a status equivalent to or higher than the officers specified in this sub-Section. Thus, except those officers mentioned in Section 89(1) and

category „B and „C posts officers under the Municipal Secretary or the Municipal Chief Auditor, the Commissioner MCD is the appointing authority. However, Section 59(d) provides that the power of the Commissioner to be the disciplinary authority in relation to all municipal officers and other municipal employees is subject to the Regulation that may be made in this behalf. This Section 59(d) was introduced by way of amendment by Act 67 of 1993 with effect from 1.10.1993. Further the opening words of the Section 59, which provides for the functions of the Commissioner are, "save as otherwise provided in this Act". Thus, the power of the Commissioner to be the discretionary authority in relation to all municipal officers and other municipal employees is subject to other provisions of the Act and Regulations. However, Section 95(1) which already existed in the Statute provides that every municipal officer or other municipal employee shall be liable to have his increment or promotion withheld, to be removed or dismissed by such authority as may be prescribed by Regulations. Thus both the provision relating to the power of the disciplinary authority and the provision relating to the functions of the Commissioner MCD as disciplinary authority are subject to the Regulations. The only difference is in the words used i.e. "any regulations that may be made in this behalf" in Section 59(d) and "by such authority as may be prescribed by regulations" under Section 95(1) of the DMC Act. Further the power under Section 59(d) is subject to other provisions of the DMC Act i.e. Section 95.

14. Learned counsel for the CBI canvasses that this Court should read the words "may be made in this behalf" introduced with effect from 1.10.1993 by the amending Act to mean that the existing regulations stood repealed and till the new regulations are notified, the Commissioner is the only competent authority for disciplinary action qua all municipal employees and municipal officers. On the first blush the contention of the learned counsel for CBI seems to be attractive, however such an interpretation would lead to negating the provision of Sections 95 and 480 of the DMC Act. Section 480 DMC Act specifically provides that any regulation made may be altered or rescinded by the Corporation in exercise of its power under the Act. By sub-Section 2 it also provides that no regulation made by the Corporation under this Act shall have effect until it has been approved by the Central Government and published in the official gazette. Thus regulations once notified would not stand repealed automatically without there being any recession or alteration thereof by the Corporation. Further under the DMC Act, Section 95 specifically provides for the authority competent to remove or dismiss, subject to the regulations and Section 59 provides for the general functions of the Commissioner, MCD. Both these provisions are required to be harmoniously construed. On a harmonious construction being given to both the provisions i.e. 59(d) and 95(1) the words „may be made in this behalf used in Section 59(d) have to be read as „may be prescribed in this behalf as used in Section 95(1), as both the provisions in the Act provide for the disciplinary authority of the municipal officers or other municipal employees, however subject to the regulations, and Section 59 being further subject to other provisions of the Act.

15. Learned counsel for the CBI also urges that with the introduction of Section 59(d) in the DMC Act, Section 95 also stands rescinded and will have to be read in subjugation to Section 59(d). In *Pratap Singh v. Manmohan Dey*, AIR 1966 SC 1931 their Lordships held:-

"8. It is, therefore, clear that Act V of 1859 is a special statute and Act IV of 1870 is a general statute. The special statute does not make the sanction of the Board of

Revenue a pre-condition for the validity of the lease executed by a Court of Wards so as to bind all future possessors of the said land, whereas s. 9 of Act V of 1859 imposes such a condition. The argument is that both the Acts should be read together and, if so read, the sanction of the Board of Revenue would also be a pre-condition in addition to the conditions imposed under the proviso to s. 1 of Act V of 1859. In our view, such a contention is untenable. The principle of law in this regard is well settled. In Maxwell on the Interpretation of Statutes, the relevant principle is stated, at p. 168, thus :

"A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, "where there are general words in a latter Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act" " "

16. Further the interpretation sought to be given by the learned counsel for the Respondent is also fallacious on the count that though Section 89(1), DMC Act provides that the Corporation will be the appointing authority for a certain category of senior municipal officers of the rank of Deputy Commissioner and above, by virtue of Section 59(d) in the absence of any regulations that may be made, the Commissioner would be their disciplinary and removing authority. There is no dispute that by virtue of Section 44 of the DMC Act the Commissioner is only one of the municipal authorities under the Corporation. Thus, with the interpretation as sought to be canvassed by the Respondent, the disciplinary authority competent to remove the officers of the rank of Deputy Commissioner and above would be the Commissioner who is subordinate to the Corporation i.e. the appointing authority. This interpretation is impermissible as the disciplinary authority can never be lower than the appointing authority.

17. Much emphasis has been laid by the learned counsel for the Respondent that in case of a conflict between the Act and the Regulation the Act has to prevail. It may be noted that the provision providing for the Commissioner MCD to be the disciplinary authority is subject to the regulations. While construing a statute, the plain and simple meaning to the same has to be given and words "subject to the Regulations" used in both Sections 59(d) and 95(1) cannot be made redundant. Further the same also renders Section 95(1) DMC Act otiose.

18. In O.P. Singla v. Union of India, 1984 (4) SCC 450 their Lordships held:-

"17. If the matter were to rest with the proviso, its interpretation would have to be that it does not prescribe a quota for direct recruits: it only enables the appointment of direct recruits to substantive posts so that, they shall not hold more than one-third of the total number of substantive posts in the Service. However, it is well recognised

that, when a rule or a section is a part of an integral scheme, it should not be considered or construed in isolation. One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of a provision leads to the risk of some other inter-related provision becoming otiose or devoid of meaning. That makes it necessary to call attention to the very next rule, namely, Rule 8. It provides by clause 2 that:

"The seniority of direct recruits vis-a-vis promotees shall be determined in the order of rotation of vacancies between the direct recruits and promotees based on the quotas of vacancies reserved for both categories by Rule 7 provided that the first available vacancy will be filled by a direct recruit and the next two vacancies by promotees and so on."

(emphasis supplied) This provision leaves no doubt that the overall scheme of the rules and the true intendment of the proviso to Rule 7 is that one-third of the substantive posts in the Service must be reserved for direct recruits. Otherwise, there would neither be any occasion nor any justification for rotating vacancies between direct recruits and promotees. Rule 8(2), which deals with fixation of seniority amongst the members of the Service, provides, as it were, a key to the interpretation of the proviso to Rule 7 by saying that the proviso prescribes "quotas" and reserves vacancies for both categories. The language of the proviso to Rule 7 is certainly not felicitous and is unconventional if its intention was to prescribe a quota for direct recruits. But the proviso, as I have stated earlier, must be read along with Rule 8(2) since the two provisions are interrelated. Their combined reading yields but one result, that the proviso prescribes a quota of one-third for direct recruits."

19. In terms of Section 59(d), DMC Act, it is clear that the power of the Commissioner for disciplinary action is subject to Regulations that may be made thereunder. By virtue of power to make Regulations under Section 480 of the DMC Act, the Corporation vide its notification dated 15th December, 1976 notified the Schedule to Regulation 7 which provided that for category A posts, the Corporation was the authority competent to impose penalty. This Regulation 7 and the Schedule thereto have not been rescinded till date despite the amendment under Section 59 of the DMC Act. As a matter of fact, the Additional Commissioner (Establishment) had sent a proposal to bifurcate the posts in category A and as per the amendments proposed, it was proposed that for officers of the rank of Deputy Commissioner and above, the authority competent to impose the penalty of removal would be the Corporation and for the post below that of Deputy Commissioner, the Commissioner would be the competent authority. The amendments proposed reads as under:-

"PROPOSED AMENDMENTS SCHEDULE (See Regulation 7) PART „A In cases where appointments are made u/s 509 stands deleted (as Section 509 stands repealed by Act 67 of 1993) PART „B Posts under the Corporation (other than those under the Municipal Chief Auditor or the Municipal Secretary) Description of Posts Authority Penalties Appellate competent to Authority impose penalties

1. Category 'A' posts

(a) Post of Deputy Commissioner and such other Corporation. All. Central officer or officers of status equivalent to or Government higher than the status of Deputy Commissioner. Commissioner (i), (ii), Administrator

(iii), (iv) & (v).

(b) Post below the status of Deputy Commissioner Commissioner All.
Additional (i), (ii),
Commissioner (iii), (iv)
& (v).

2. Category 'B' posts

(i) All Category „B posts including the post to which appointment was made by the erstwhile local bodies or authorities specified in the second schedule of the Act. Additional Commissioner All. Commissioner Deputy (i), (ii), Addl. Commissioner (iii), (iv) Commissioner & (v).

3. Category 'C' Post

(i) All category „C posts including the post to which appointment was made by the erstwhile local bodies or authorities specified in the second schedule of the Act. Additional Commissioner All. Commissioner Deputy (i), (ii), Addl. Commissioner (iii), (iv) Commissioner & (v).

Posts under the Municipal Chief Auditor:

1. Category „A Posts

-do-

Corporation All. Cent
Municipal (i), (ii), Gove
Chief Auditor (iii), (iv) Stan
Comm

2. Category „B Posts

-do-

& (v).
Standing All. Cor
Committee
Municipal (i), (ii), Sta
Chief Auditor (iii), (iv) Com
& (v).

3. Category „C Posts

Municipal All Sta
Chief Auditor Com

Posts under the Municipal Secretary:

1. Category „A posts

-do-

Corporation All. Cen
Municipal (i), (ii), Gov
Secretary (iii), (iv) Sta
& (v). Com

2. Category „B posts

Standing All. Cor

- do -

Committee		
Municipal	(i), (ii),	Sta
Secretary	(iii), (iv)	Com
	& (v).	

3. Category „C Posts

Municipal	All.	Sta
Secretary		Com

20. A perusal of the proposal sent by the Additional Commissioner (Establishment) on 20th September, 2010 itself states that the said amendments in the Regulations was to bring the same in conformity with the provisions of the Act and as per the 4th paragraph it was proposed that the existing schedule framed under Regulation 7 as placed as Annexure A may be substituted by the amended schedule as proposed at Annexure B. However, this proposal was not accepted by the Corporation. Thus, it is clear that the Corporation itself is of the considered opinion that the existing schedule needs to be continued. This is contrary to what has been urged by learned counsel for the CBI that the schedule to the Regulations stood repealed by the amendment Act of 1993. Further Section 59(d) of the DMC Act could not be construed to mean that it repealed the existing Regulations and was only subject to the Regulations which would be made after the amendment Act. A plain reading of the provisions of the Act and the Regulations show that the Corporation is the competent authority to remove the Petitioner from the service and not the Commissioner, MCD.

21. Further, the contention of the learned counsel for CBI that the effect of omission of Section 509 by the amendment Act of 1993 is that the schedule to the Regulation get automatically repealed. It may be noted that in the Schedule as reproduced above only Part „A relates to officers appointed under Section 509 whereas the Petitioner is Group „A employee in Part „B .

It may be noted that Section 509 related only to the first appointment to the post of General Manager (Electricity) and any municipal officer or other municipal employee to be made by Central Government whose term was not to exceed three years.

22. In view of the discussion hereinabove, the only conclusion that can be drawn in the present case is that the authority competent to remove the Petitioner is the Corporation as notified in the schedule to the Regulations on 15th December, 1976 which regulations have neither been rescinded nor amended till date. Thus, the Corporation is the competent authority to grant sanction under Section 19 of the P.C. Act and not the Commissioner in the case of the Petitioner, who is a Group „A employee.

23. Since the learned Trial Court has taken cognizance on a sanction granted by an incompetent authority, the order taking cognizance is illegal and set aside. The Respondent is, however, at liberty to take sanction for the prosecution of the Petitioner from the competent authority and proceed in

accordance with law.

Petition and application stand disposed off accordingly.

(MUKTA GUPTA) JUDGE JANUARY 25, 2012 'ga'