

Corporation Of The City Of Nagpur Civil ... vs Ramchandra S/O Gurunath Modak & Ors on 26 February, 1981

Equivalent citations: 1984 AIR 626, 1981 SCR (3) 22

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Bench: Syed Murtaza Fazalali, A. Varadarajan, V. Balakrishna Eradi

PETITIONER:

CORPORATION OF THE CITY OF NAGPUR CIVIL LINES, NAGPUR & ANR.

Vs.

RESPONDENT:

RAMCHANDRA S/O GURUNATH MODAK & ORS.

DATE OF JUDGMENT 26/02/1981

BENCH:

FAZALALI, SYED MURTAZA

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FAZALALI, SYED MURTAZA

VARADARAJAN, A. (J)

ERADI, V. BALAKRISHNA (J)

CITATION:

1984 AIR 626 1981 SCR (3) 22

1981 SCC (2) 714 1981 SCALE (1) 503

ACT:

City of Nagpur Corporation Act, 1948-Section 59(3) (b)-Municipal Commissioner is the competent authority to suspend municipal officers and servants, pending a departmental inquiry-Words and phrases "control" and "vests", explained-Criminal cases to be disposed off to protect the accused from harassment-Departmental inquiry, whether can be continued after acquittal in a criminal case.

HEADNOTE:

During the construction of a stadium called the Yeshwant Stadium, which was being looked after by the respondents, two accidents occurred resulting in the death of seven persons and injuries to eight persons. Pending a departmental inquiry in the said connection, an order of suspension was passed by the Municipal Commissioner on the 23rd of September, 1974 which was confirmed by the

Corporation by its order of the same date. According to the respondents the later order was not communicated to them. Pursuant to a criminal complaint filed before it, the police filed a charge-sheet under section 304-A Penal Code against the respondents on the 25th of September, 1976. In view of the charge-sheet submitted by the police another order of suspension was passed by the Municipal Commissioner on 13-1-1977 with effect from 8-10-76. The respondents filed an appeal to departmental appellate authority which was dismissed on the 20th of July, 1977. Thereafter the respondents filed a writ petition in the High Court which allowed the petition taking the view that under the rules and byelaws of the City of Nagpur Corporation Act, 1948, as amended upto date, the competent authority to pass orders of suspension against the respondents was the Corporation itself and not the Chief Executive Officer. The High Court quashed the orders of suspension and directed the reinstatement of the respondents and payment of their full salary to them. Hence the appeal by special leave.

Allowing the appeal, the Court

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HELD: 1:1. Clause (b) of Section 59(3) of the City of Nagpur Corporation Act, 1948 in express terms authorises and clothes the Municipal Commissioner with the power to exercise supervision and control over the acts of Municipal Officers and servants and hence he is fully competent to suspend the Municipal Officers and servants, pending a departmental inquiry. [24 H-25A: 26 F]

1: 2. The term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned. Clause (b) of the City of Nagpur Corporation Act is preceded by the Words "vests in the commissioner". When the words "control" and "vests" are read together they are strong terms

23

which convey an absolute control in the authority in order to effectuate the policy underlying the rules and makes the authority concerned the sole custodian of the servants and officers of the Municipal Corporation. [28 E, 25 A-B]

State of West Bengal v. Nripendra Nath Bagchi, [1966] 1 SCR 771; High Court of Andhra Pradesh and Ors. v. V.V.S. Krishnamurthy and Ors., [1979] 1 SCR 26, followed.

2. Whether or not the departmental inquiry pending against its servants, if he is acquitted in the criminal case, would have to continue is a matter to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains that merely because the accused is acquitted, the power of the authority concerned to continue

the departmental inquiry is not taken away nor is its direction in any way fettered. However, whether it is really worthwhile to continue the departmental inquiry in the event of the acquittal after the lapse of number of years since the departmental inquiry has started is a relevant factor to be considered. [27 C-E]

Observation: Criminal cases should be disposed off as quickly as possible so as to protect the accused from unnecessary harassment. [27 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 396 of 1980. Appeal by Special Leave from the Judgment and Order dated 3.10. 1979 of the Bombay High Court (Nagpur Bench) in Special Civil Application No. 1501 of 1977.

G.S. Sanghi, Mrs. Jayashri Wad and Mrs. Urmila Sirur for the Appellants.

P.V. Holay, T.G. Narayana Nair, M.S. Gupta and G.S. Sathe for Respondent No. 1 & 2.

The Judgment of the Court was delivered by FAZAL ALI, J. This appeal by special leave is directed against an order of the High Court of Bombay of 2/3rd October, 1979 by which an order passed suspending the two respondents was quashed on the ground that the order of suspension pending a departmental inquiry was passed by the Municipal Commissioner who was not competent to suspend the respondents pending a departmental inquiry. The High Court was of the view that under the Rules and Bye-laws of the City of Nagpur Corporation Act, 1948(hereinafter referred to as the 'Act') as amended upto date, the competent authority to pass orders of suspension against the respondents was the Corporation itself and not the Chief Executive Officer. It appears that originally the order of suspension was passed by the Municipal Com-

missioner on the 23rd September, 1974 which was confirmed by the Corporation by its order dated 23rd September, 1974. It is alleged by the respondents that latter order was not communicated to them. The suspension was ordered in connection with a departmental inquiry relating to two accidents which occurred during the construction of a stadium called the Yeshwant Stadium, which was being looked after by the respondents and which resulted in the death of seven persons and injuries to eight others. A complaint was also filed before the police as a result of which a charge-sheet under s. 304-A I.P.C. was filed against the respondents, on the 25th September, 1976. In view of the charge-sheet submitted by the police another order of suspension was passed by the Municipal Commissioner on 13.1.77 with effect from 8.10.76. The respondents filed an appeal to departmental appellate authority which was dismissed on the 20th July, 1977. Thereafter, the respondents filed a writ petition in the High Court which allowed the petition and quashed the order of suspension and directed the respondent to be paid their full salary and further directed the reinstatement of the respondents. Hence this appeal.

The short point taken by Mr. Sanghi was that under s. 59 (3) of the Act, the Municipal Commissioner is the competent authority to suspend the respondents pending a departmental inquiry. On a perusal of s. 59 (3) we are of the opinion that the contention is well-founded and must prevail. Section 59 (3) may be extracted thus:

"Section 59 (3) : Subject, whenever it is in this Act expressly so directed to the approval or sanction of the Corporation or of the Standing Committee, and subject also to all other restrictions, limitations and conditions imposed by this Act, the entire executive power for the purpose of carrying out the provisions of this Act vests in the Commissioner who shall also-

(a).....

(b) exercise supervision and control over the acts and proceedings of all municipal officers and servants and subject to the rules or bye-laws for the time being in force, dispose of all questions relating to the services of the said officers and servants and their pay, privileges and allowances. "(Emphasis ours)"

Thus clause (b) of s. 59(3) in express terms authorises and clothes the Municipal Commissioner with the power to exercise supervision and control over the acts of Municipal officers and servants. It may be noticed that the said clause (b) is preceded by the words 'vest in the Commissioner'. When the words 'control' and 'vests' are read together they are strong terms which convey an absolute control in the authority in order to effectuate the policy underlying the rules and makes the authority concerned the sole custodian of the control of the servants and officers of the Municipal Corporation. In the case of *State of West Bengal v. Nripendra Nath Bagchi*(1) while interpreting a similar language employed in Art. 235 of the Constitution of India which confers control by the High Court over District courts, this Court held that the word 'control' would include the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations:

"The word "control", as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge,"

... ..

"In our Judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal."

This view was reiterated in High Court of Andhra Pradesh & Ors. v. V.V.S. Krishnamurthy & Ors.(2) where this Court clearly held that 'control' included the passing of an order of suspension and that the power of control was comprehensive and effective in operation. In this connection, Sarkaria, J. speaking for the Court, observed as follows:-

"The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystalized by these decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive in extent and effective in operation. It comprehends a wide variety of matters. Among others, it includes:

(a) (i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges.

In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal.....

(ii) In Article 235, the word 'control' is accompanied by the word "vest" which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court, being exclusive, and not dual, an inquiry into the conduct of a member of judiciary can be held by the High Court alone and no other authority.....

(iii) Suspension from service of a member of the judiciary, with a view to hold a disciplinary inquiry." It is thus now settled by this Court that the term 'control' is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers vested in the authority concerned. In the aforesaid case, suspension from service pending a disciplinary inquiry has clearly been held to fall within the ambit of the word 'control'. On a parity of reasoning, therefore, the plain language of clause (b) of s. 59 (3), as extracted above, irresistibly leads to the conclusion that the Municipal Commissioner was fully competent to suspend the respondents pending a departmental inquiry and hence the order of suspension passed against the respondents by the Municipal Commissioner did not suffer from any legal infirmity. The High Court was, therefore, in error in holding that the order of suspension passed by the Municipal Commissioner was without jurisdiction. In this view of the matter the order of the High Court cannot be maintained and has to be quashed.

We might, however, mention that although in the criminal case charge-sheet was submitted as far back as September, 1976 we understand that no charges have been framed so far. Criminal cases should be disposed of as quickly as possible so as to protect the accused from unnecessary harassment. We therefore direct the Judicial Magistrate First Class of Nagpur to dispose of the Criminal Case No. 1902 of 1976 pending in his file with the utmost expedition and if possible within six months from today. Mr. Sanghi on behalf of the Municipality, states that he will fully cooperate with the prosecution in producing all the available evidence before the court and bringing the case to a final conclusion within the period mentioned above.

The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental inquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the criminal court. Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will taken into consideration this factor in coming to the conclusion if it is really worth while to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so. In case the respondents are acquitted we direct that the order of suspension shall be revoked and the respondents will be reinstated and allowed full salary thereafter even though the authority chooses to proceed with the inquiry. Mr. Sanghi states that if it is decided to continue the inquiry, as only arguments have to be heard and orders to be passed, he will see that the inquiry is concluded within two months from the date of the decision of the criminal court. If the respondents are convicted, then the legal consequences under the rules will automatically follow.

We might mention that at the time when special leave was granted by this Court, it was ordered that the respondents should be paid a lump-sum of Rs. 10,000/- each apart from the 75% allowance. We think that in the interest of justice the department may not insist on the refund of the amount of Rs. 10,000/- until the result of the departmental inquiry and if the departmental inquiry concludes in their favour, the amount will be either refunded or adjusted against their dues.

With these observations, the appeal is accepted and the judgment of the High Court is quashed. Parties will bear their own costs throughout.

S.R.

Appeal allowed.