

Sub-Divisional Officer, Sadar, ... vs Shambhoo Narain Singh on 31 March, 1969

Equivalent citations: 1970 AIR 140, 1970 SCR (1) 151, AIR 1970 SUPREME COURT 140, 1969 ALLCRIR 339, 1970 (1) SCR 151, 1970 (1) SCJ 285

Author: K.S. Hegde

Bench: K.S. Hegde, S.M. Sikri, R.S. Bachawat

PETITIONER:

SUB-DIVISIONAL OFFICER, SADAR, FAIZABAD

Vs.

RESPONDENT:

SHAMBHOO NARAIN SINGH

DATE OF JUDGMENT:

31/03/1969

BENCH:

HEGDE, K.S.

BENCH:

HEGDE, K.S.

SIKRI, S.M.

BACHAWAT, R.S.

CITATION:

1970 AIR 140

1970 SCR (1) 151

1969 SCC (1) 825

ACT:

U.P. Panchayat Rai Act 1947, s. 95 (1) (g) -Pradhan of Gaon Sabha Suspension, pending enquiry, power-Up-pradhan to officiate as Pradhan during suspension-If can be ordered-Pradhan's relationship with Government.

HEADNOTE:

The respondent was elected as Pradhan of a Goan Sabha in Uttar Pradesh. The appellant-government by an order suspended the respondent, and pending enquiry, directed the respondent to give charge to the up-pradhan. The respondent filed a writ petition in the High Court challenging the order. The High Court dismissed the petition but in appeal, the High Court quashed the order holding that s. 95(1)(g) of

the U.P. Panchayat Raj Act, 1947 did not empower the Government to pass the impugned order. In appeal by special leave, this Court affirming the decision of the appellate bench of the High Court,

HELD : Where an Act confers a jurisdiction it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution. But before implying the existence of such a power the court must be satisfied that the existence of that power is absolutely essential for the discharge of the power conferred and not merely that it is convenient to have such a power. The power to place under suspension an officer is not absolutely essential for the proper exercise of the power conferred under s. 95(1)(g). It cannot be said that the power in question cannot be properly exercised without the power to suspend pending enquiry. The mere possibility of interference with the course of enquiry or of further misuse of powers are not sufficient to enlarge the scope of a statutory power. If it is otherwise, the mere power to punish an offender would have been held sufficient to arrest and detain him pending enquiry and trial. There would have been no need to confer specific power to arrest and detain persons charged with offences before their conviction. Further no provision either in the Act or in the rules framed thereunder has been shown under which the Government could have directed the up-Pradhan to officiate as Pradhan during the Suspension of the respondent. If the order could not have been made, is it could not be made, then the question arises as to who could discharge the functions of Pradhan when he is placed under suspension pending enquiry of the charges levelled against him. Absence of a provision providing for such a contingency is a clear indication of the absence of the power contended for. [154 F-155 D]

Babu Nandan v. Sub Divisional Officer Salempur A.I.R 1966 All 1958, approved.

A Pradhan cannot be considered as a servant of Government. He is an elected representative. There is no contractual relationship between him and the Government much less the relationship of master and servant [154 A-B]

Management of Hotel Imperial, New Delhi v. Hotel Workers' Union, [1960] 1 S.C.R. 476; T. Cajee v. U. Jormanik Siem, [1961] 1 S.C.R. 750; R. P. Kapur v. Union of India [1964] 5 S.C.R. 431 and Balwant Rai Ratilal Patel v. State of Maharashtra, [1968] 2 S.C.R. 577, held inapplicable.

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The Goan Sabha is the creature of a statute. Its powers and duties as well as the powers and duties of its officers are all regulated by the Act Hence no question of any inherent power 'arises for consideration.

Smt. Hira Devi & Ors. v. District Board, Shahjahanpur, [1952] S.C.R. 1122, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 721 of 1966. Appeal by special leave from the judgment and order dated December 9, 1964 of the Allahabad High Court, Lucknow Bench in Special Appeal No. 93 of 1963.

C. B. Agarwala and O. P. Rana, for the appellant. S. C. Agarwal, R. K. Garg, D. P. Singh and S. Chakravarty, for the respondent.

The Judgment of the Court was delivered by Hedge J. In this appeal by special leave, the scope of s. 95 (1) (g) of the U.P. Panchayat Raj Act, 1947 (to be hereinafter referred to as the Act) arises for decision. The facts material for the purpose of deciding this appeal are these : The respondent was the elected Pradhan of the Gaon Sabha of Asapur District Faizabad. The Sub-Divisional Officer, Sadar, Faizabad placed him under suspension as per his order of September 18, 1963. The order in question reads as follows :

"Sri Shambhoo Narain Singh, Pradhan of Gram Sabha and Chairman Land Management Committee of village Asapur is placed under suspension with effect from the immediate date. He is further directed to hand over the charge to the Up-Pradhan of Gram Sabha, Asapur. The Up- Pradhan will function as Pradhan till further orders. The charge sheet against Sri Shambhoo Narain Singh will follow.

Sd/- S. M. Abbas, P.C.S. Sub-Divisional Officer, Sadar, Faizabad."

The validity of this order is being challenged in these proceedings. It is the common case of both the parties that the suspension ordered thereunder is merely a suspension pending enquiry and is not a punishment imposed under s. 95 (1) (g). The question for decision is whether the appellant had the competence to place the respondent under suspension pending enquiry into the charges levelled against the respondent. The impugned order was challenged before a single judge of the Allahabad High Court by means of a petition under Art. 226 of the Constitution. The learned single judge dismissed that petition but in appeal the appellate bench upheld the contention of the respondent and quashed the same holding that s. 95 (1) (g) did not empower the appellant to pass the impugned order. It is the correctness of that conclusion that is in issue in this appeal. To repeat, the respondent is an elected Pradhan. His rights

-and duties are regulated by the Act. He is not a government servant though he has to be deemed as a public servant within the meaning of s. 21 of the Indian Penal Code in view of s. 28 of the Act. He is not a subordinate of the Sub-Divisional Officer or even of the Government. It is true that the Act has conferred on the State Government certain powers of control and supervision over the Gaon Sabhas and its office-bearers. These powers are enumerated in s. 95. Under s. 95 (1) (g), power is conferred on the Government to suspend or remove a member of a Gaon Panchayat or joint committee (or Bhumi Prabandhak Samiti) an office-bearer of a Gaon Sabha or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat if the conditions mentioned therein are satisfied. But that power is admittedly a power to punish. No specific power to suspend a Pradhan pending

enquiry into the charges levelled against him has been conferred on the State Government. This much is conceded. In view of s. 96A the power conferred on the Government under s. 95 can be delegated to any officer or authority subordinate to it subject to such conditions and restrictions as the Government may deem fit to impose. The State Government's power under s. 95 (1) (g) has been delegated to Sub-Divisional Officers. Therefore if the State Government is held to have power to suspend an office-bearer of a Gaon Sabha pending enquiry into the charges levelled against him that power must be held to have been delegated to the Sub-Divisional Officers. Therefore the essential question is whether the State Government has power to make the impugned order.

A faint attempt was made to show that the relationship between the State Government and the Pradhans is that of master and servants and that being so the State Government has competence to require Pradhans not to discharge their functions as Pradhans during the pendency of an enquiry into the charges made against them. It was urged that if the court is pleased to hold that the relationship between the State Government and the Pradhans is that of a master and the servants then the appellant could call into aid the rule laid down by this Court in *Management of Hotel Imperial, New Delhi v. Hotel Workers' Union*; (1) *T. Cajee v. U. Jormanik Siem*; (2) *R. P. Kapur v. Union of India* (1) [1960] 1 S.C.R. 476.

(2) [1961] 1 S.C.R. 750.

L12 SupCI/69-11 India(1); and *Balwant Rai Ratilal Patel v. State of Maharashtra*(2). This is a wholly untenable contention. A Pradhan cannot be considered as a servant of the Government. He is an elected representative. There is no contractual relationship between him and the Government much less the relationship of master and servant. As mentioned earlier his rights and duties are those laid down in the Act. Therefore the rule laid down in the above cited decisions is wholly inapplicable to the facts of this case. In this case there is no question of suspending a servant from performing the duties of his office even though the contract of service is subsisting. In the case of a master and his servant it is a well established right of the master to give directions to his servant relating to his duties. That power includes within itself the right to direct the servant to refrain from performing his duties but that does not absolve the liability of the master to pay the remuneration contracted to be paid to the servant unless otherwise provided in the contract, even during the period the servant is required not to perform his duties.

The Goan Sabha is the creature of a statute. Its powers and duties as well as the powers and duties of its officers are- all regulated by the Act. Hence no question of any inherent power arises for consideration-see *Sm. Hira Devi and Ors. v. District Board, Shahjahanpur*(3).

The only other contention advanced is that power claimed should be held to be an essential power for the proper discharge of the conferred power. It was urged that without such a power, charges framed against any office-bearer cannot be properly inquired into as he may utilise his office to interfere with the course of enquiry and the possibility of his continuing to misuse his office during the pendency of the enquiry cannot be ruled out. It is well recognised that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution. But before implying the existence of such a power the

court must be satisfied that the existence that power is absolutely essential for the discharge of the power conferred and not merely that it is convenient to have such a power. We are not satisfied that the power to place under suspension an officer is absolutely essential for the proper exercise of the power conferred under S. 95 (1) (g). It cannot be said that the power in question cannot be properly exercised without the power to suspend pending enquiry. the mere possibility of interference with the course of enquiry or of further misuse of powers are not sufficient to enlarge the scope of -a statutory power. -If it is otherwise the mere power to punish (1) [1964] 5 S.C.R. 431. (2) [1968] 2 S.C.R. 577. (3) [1952] S.C.R. 1122.

an offender would have been held sufficient to arrest and detain him pending enquiry and trial. There would have been no need to confer specific power to arrest and detain persons charged with offences before their conviction. The unsustainability of the contention of the appellant would become obvious on an examination of the various provisions of the Act. Under the impugned order, the appellant had directed the up-Pradhan to officiate as Pradhan during the suspension of the respondent. Our attention has not been invited to any provision either in the Act or in the rules framed thereunder -under which the, appellant could have made such an order. If he could not have made that order, as in our opinion he could not have, then the question arises as to who could discharge the functions of a Pradhan when he is placed under suspension pending enquiry of the charges levelled against him. , Absence of a provision providing for such a contingency is a clear indication of the absence of the power contended for. For the reasons mentioned above, we agree with the appellate bench of the High Court that the impugned order was made without the authority of law. That is also the view taken by the Allahabad High Court in Babu Nandan v. Sub Divisional Officer Salempur(1). We accordingly dismiss this appeal with costs.

Y.P. Appeal dismissed.

(1) A.I.R. 1966 All. 158.