K.N.Shukla vs Navnit Lal Manilal Bhat And Anr on 15 December, 1966

Equivalent citations: 1967 AIR 1331, 1967 SCR (2) 290, AIR 1967 SUPREME COURT 1331, 1967 2 LABLJ 261, 1967 (1) SCWR 513, 1967 SCD 529, 1967 2 SCR 290, 1968 (1) SCJ 299, 1968 MADLJ(CRI) 97, 8 GUJLR 571

Author: V. Ramaswami

Bench: V. Ramaswami, K. Subba Rao, J.C. Shah, S.M. Sikri, C.A. Vaidyialingam

PETITIONER:
K.N.SHUKLA

Vs.

RESPONDENT:
NAVNIT LAL MANILAL BHAT AND ANR.

DATE OF JUDGMENT:
15/12/1966

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
RAO, K. SUBBA (CJ)
SHAH, J.C.
SIKRI, S.M.
VAIDYIALINGAM, C.A.

CITATION:
1967 AIR 1331 1967 SCR (2) 290

ACT:
Code of Criminal Procedure (Act 5 of 1898), s. 197--Class II railway officer officiating as Class I officer--Private complaint against him under ss. 166 and 167 I.P.C.--Sanction of Central Government, if necessary. Railway Board, if different from Central Government--Maxim, qui facit per alium facit per se, scope of.

HEADNOTE:
The appellant was holding a substantive post as a Class II officer of the Western Railway. He was promoted to an

officiating position as a Class I officer by the General Manager, with the approval of the Railway Board, as per r. 134 of the Indian Railway Establishment Code. While he was officiating in that post, a private complaint was filed against him for offences under ss. 166 and 167, I.P.C.
On the question whether sanction of the President of India was necessary under s. 197, Criminal Procedure Code, for prosecuting him,
HELD : The appellant was not a public servant who was "not removable from his office save by or with the sanction of the Central Government" within the meaning of the section and, therefore, such sanction was not necessary. [292 C; 296 G-H]
(1) A Railway officer who merely officiates in Class I cannot be said to belong to that Class within the meaning of Item I of Schedule 11, referred to in r. 1729 of the Discipline and Appeal Rules for Gazetted ,Officers (Indian Railway Establishment Code). He continues to be a Class II officer who could. be removed from his office with the sanction of the Railway Board. [294 F-G]
(2) Section 2 of the Railway Board Act, 1905, indicates that the Railway Board is an entity separate from the Central Government and that the powers of the Board are derived by delegation, either absolutely ,or subject to conditions, by the Central Government. Therefore, the Railway Board is not a part of the Central Government. [296 E-F]
(3) The appellant could not be deemed to be removable only by or with the sanction of the Central Government on the basis of the maxim qui facit per alium facit per se. For, once the Central Government has delegated its power to the Railway Board with regard to the appointment and removal of a public servant, then, for the purpose of s. 197, Cr.P.C., the public servant concerned will not be treated as one "not removable from his office except by or with the sanction of the Central Government." [297 A-C]
Afzalur Rahman v. The King. [1943] F.C.R. 7, applied.
(4) The Note to r. 1704, and r. 1705, would not apply to the appellant, as the first applies only to non-gazetted officers, and the second came into force on 1st August 1961, after the complaint against him was filed. [295 B, D]
291

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 44 of 1965.

Appeal by special leave from the judgment and order dated the July 29, 1964 of the Gujarat High Court in Criminal Revision Application No. 386 of 1963.

B. Sen R. Ganapathy Iyer and R. H. Dhebar, for appellant. M. K. Ramamurthi, for respondent No. 1.

R. H. Dhebar, for respondent No. 2.

The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought, by special leave, from the judgment of the High Court of Gujarat dated July 29, 1964 in Criminal Revision No. 385 of 1963. On March 14, 1961 respondent No. 1 filed a complaint against the appellant who was officiating in the post of Divisional Operating Superintendent, Western Railway, Rajkot. It was alleged in the complaint that the appellant had committed offences under ss. 166, 167 and 182, Indian Penal Code. The appellant objected before the trying Magistrate that the complaint under s. 182, Indian Penal Code by a private person was barred under s. 195(1)(a) of the Code of Criminal Procedure and that as the alleged acts of the appellants were said to be done in his official capacity and in dis- charge of his official duty and as the appellant was a public servant not removable from his office save with the sanction of the Central Government, the complaint was not maintainable in the absence of sanction of Central Government under s. 197 of the Criminal Procedure Code and the Magistrate was not competent to take cognizance of the offences under ss. 166 and 167, Indian Penal Code. The objections were overruled by the Judicial Magistrate, First Class, Mehsana by his order dated October 14, 1961. The appellant took the matter in revision to the Sessions Judge of Mehsana who referred the matter to the High Court on January 31, 1962. In Criminal Reference No. 14 of 1962 the High Court ordered that the complaint under s. 182, Indian Penal Code was bad being in contravention of the provisions of s. 195, Criminal Procedure Code, but the High Court directed the trial court to decide in the first instance whether the appellant was not removable from his office save with the sanction. of the Central Government. Thereafter the Judicial Magistrate, First Class, Mehsana, by his order dated February 28, 1963, held that the appellant was not removable from his office save with the sanction of the Central Government and the complaint should be rejected because there was no sanction granted under s. 197 of the Criminal Procedure Code. The first respondent preferred a revision petition before the Sessions Judge of Mehsana who dismissed it and confirmed the order of the Judicial Magistrate, First Class, Mehsana. The first respondent took the matter in revision to the High Court in Criminal Revision No. 385 of 1963. By its order dated July 29, 1964 the High Court held that the appellant being an officiating Class I Officer was removable by the Railway Board and no sanction of Central Government was necessary to prosecute the appellant as contemplated by s. 197 of the Criminal Procedure Code. The High Court accordingly directed that the case under ss. 166 and 167, Indian Penal Code should proceed against the appellant. The question presented for determination in this appeal is whether the appellant was, at the date of the complaint i.e., March 14, 1961, a public servant "who was not removable from his office save by or with the sanction of the Central Government" within the meaning of s. 197 of the Criminal Procedure Code and, therefore, whether sanction of Central Government was necessary for prosecuting the appellant of the offences under ss. 166 and 167 of the Indian Penal Code.

It is not disputed that on the material date the appellant was, officiating in the senior scale as Class I Officer in the Transportation (Traffic & Commercial) Department of the Western Railway. It is also not in dispute that the appellant was holding a substantive post as Class 11 Officer, though he was officiating as Class I Officer on March 14, 1961. The question to be considered is whether, on the material date, the appellant was not removable from his office save by the sanction of Central

Government within the meaning of s. 197 of the Criminal Procedure Code. Under s. 3(8)(b) of the General Clauses Act "Central Government"

> shall in relation to anything done or to be done after the commencement of the Constitution, mean the President. Rule 1728 of Discipline and Appeal Rules for Gazetted Officers (Indian Railway Establishment Code Vol.I) reads as follows "1728. The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed upon members of the Railway Services, Classes I and II, namely
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> (i) Censure.
>
> (ii) Withholding of increments or promotion, including stoppage at any efficiency bar.
>
> (iii) Reduction to a lower post or time- scale or to a lower stage in a time-scale.
>
> (iv) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.
>
> (v) Suspension.
>
> (vi) Removal from the civil service of the Government which does not disqualify from future employment.
>
> (vii) Dismissal from the civil service of the Government which ordinarily disqualifies from future employment.

Rule 1729 states "Subject to the provisions of the rules in this Section the President may impose any of the penalties specified in Rule 1728 on any person belonging to a Railway Service, Class I or II, and the authorities specified in column 3 of Schedule II appended to the rules in this chapter may impose the penalties specified in column 4 on the classes of railway servants shown in the column 2 of that Schedule."

The relevant part of Schedule II provides as follows :

> "Item Name of service Punishing Penalties No.. of post authority (1) (2) (3) (4)
>
> 1. Railway Services, The Railway In the case of persons Class I. Board appointed to a Railway service class I Railway Service, before 1st April,1937, the penalty specified in clauses Class 1, before clause (i)and in the case of others the penalities specified in clause (i) to (v) of Rule 1728 penalties specified in clause (i), to (vii) of Rule 1728.

> 2. Railway service Class II Rules 124 to 130 of the Indian Railway Establishment Code, Vol. 1 deal with Recruitment and Promotion to Gazetted posts. Rule 124 provides that all first appointments to a Railway Service, Class 1, shall be made by the President.

Rule 132 provides that all first appointments to the Railway Services, Class II, shall be made by the Railway Board. The relevant part of Rule 134 which deals with promotions is to the following effect :

> "Promotions to gazetted posts.-(I) All substantive promotions to Railway Services, Class 1, shall be made by the President. (2) Substantive promotions to the Lower Gazetted Service and to the Assistant Accounts Officers' grade shall be made by the Railway Board.
>
> (3) The General Manager may appoint-
>
> (a)
>
> (b) an officer of the Class II Service to officiate in the District Grade or as Senior Accounts Officer for a continuous period not exceeding one year on each occasion, when circumstances warrant such a course
>
> (e) except for the first time, an officer of a Railway Service, Class 1, to officiate as a Divisional Superintendent (or Divisional Trans portation Superintendent on the Great Indian Peninsula Railway), if the vacancy is not likely to exceed eight months;

It is apparent from these Rules that if a substantive promotion is made from Class II to Class I it is done by the President, but officiating appointments are to be made by 'the General Manager, and in some cases with the approval of the Railway Board. Exhibits 22, 23 and 24 which are the copies of the appointment orders of the appellant also show that he was promoted to Class I by the General Manager with the approval of the Railway Board. It is also apparent that a Railway Officer who merely officiates in Class I cannot be said to belong to Class I within the meaning of item I of Sch. II. It follows therefore that the appellant was removable from his office with the sanction of the Railway Board and the sanction of the President is not necessary for taking such action against the appellant. On behalf of the appellant Mr. Sen relied upon the Note to Rule 1704 which deals with 'Authorities Competent to impose Penalties' on non-gazetted staff. The note states :

> "The authority empowered to impose penalties on a railway servant officiating in a higher post shall be determined by the post held by the railway servant at the time when the penalty is imposed and a non-gazetted railway servant officiating in a gazetted post at the time of imposition of a penalty shall be treated in accordance with the rules applicable to a railway servant holding the gazetted post in a substantive capacity."

But this note applies to the cases of non-gazetted officers and is of no assistance to the appellant. If the authorities framing the rules intended that the same provision should apply in the case of' gazetted officers also there was no reason why a similar explanation. was not provided to Rule 1729. Mr. Sen also referred to Rule: 1705 of the New Rules which came into- force on August 1, 1961. and which provided as follows :

> "The competent authority in the case of a railway servant officiating in a higher post, shall be determined with reference to the officiating post held by him at the time of taking action."

It is obvious that this Rule cannot apply to the appellant as it came into force much later than March 14, 1961 which is the material date in determining the question regarding the need for sanction.

We proceed to consider the next contention of the appellant that even if the Railway Board was the authority competent to remove the appellant from service, the Railway Board was part and parcel of the Ministry of Railways of the Central Government and therefore in the eye of law the Railway Board must be deemed to be the "Central Government" for the purpose of s. 197 of the Criminal Procedure Code. In support of this argument Mr. Sen referred to the Allocation of Business Rules, 1961 made by the President under cl. (3) of Art. 77 of the Constitution. Item 15 of the First Schedule is 'Ministry of Railways (Railway Board).' Mr. Sen also referred to para 201 of the Indian Railway General Code which states "The existing enactments regulating the construction and operation of railways in India are the Indian Tramways Act of 1886 and the Indian Railways Act of 1890 as amended from time to time. Subject to the provisions of these enactments, the executive authority in connection with the administration of railways, vests in the Central Govt. In virtue of the delegation made under section 2 of the Indian Railway Board Act of 1905, all the functions and powers of the Central Government, under certain sections of the Indian Railways Act of 1890, are exercised by the Railway Board."

Para 205 reads as follows "The Railway Board is to function as a corporate body, and as a corporate body is responsible to advise the Minister on all major questions of Railway policy.

Major and policy issues are, therefore, to be submitted to the Minister with the recommendations of the Board. Other questions may be submitted to the Minister for his information or orders by individual members." Reference was also made to s. 2 of the Indian Railway Board Act, 1905 (Act No. IV of 1905) which states :

> "2. Investment of Railway Board with powers under Indian Railways Act, 1890.-The Central Government may, by notification in the official Gazette, invest the Railway Board, either absolutely or subject to conditions,-
>
> (a) with all or any of the powers or function of the Central Government under the Indian Railways Act, 1890, with respect to all or any railways,and

(b) with the power of the officer referred to in section 47 of the said Act to make general rules for railways administered by the Government."

It was argued by Mr. Sen that the Railway Board is vested with the powers of Central Government in respect of administration of Railways and therefore it must be taken that the Railway Board itself is a part of Central Government. We are unable to accept this argument as correct. It is true that many important powers and functions of the Central Government in respect of administ- ration of the Railways are exercised by the Railway Board, but it does not follow that the Railway Board is exercising those powers in their own right as part of the Central Government. On the other hand, s. 2 of the Railway Board Act, 1905 itself indicates that the Railway Board is an entity which is separate from the Central Government and the powers of the Railway Board are derived as a matter of delegation either absolutely or subject to conditions by notification by the Central Government. In other words, the Railway Board is a separate body which derives its powers and authority however wide they may be only because of delegation of powers from the Central Government in respect of the administration of the Railways. The result therefore is that the appellant was appointed in an officiating position as Class I Officer by the Railway Board and therefore he was removable by the Railway Board and not by the Central Government. It cannot be said in the circumstances that the appellant was one of those public officers who could be removed only by or with the sanction of t he Central Government within the meaning of s. 197, Criminal Procedure Code.

It was suggested on behalf of the appellant that even if the Railway Board had power to remove the appellant from his office and even if it was acting under the powers delegated to it, the principle of the maxim qui facit per alium facit per se applies to the case and the appellant must be deemed to be removable only by or with the sanction of the Central Government within the meaning of s. 197 of the Criminal Procedure Code. We do not think there is any substance in this argument. If once the Central Government has delegated its power to another authority with regard to appointment and removal of a public servant, then for the purpose of s. 197, Criminal Procedure Code the public servant concerned will not be treated to be a public servant "not removable from his office except by or with the sanction of the Central Government". within the meaning of that section. A similar argument was advanced in Afzalur Rahman v. The King Emperor etc.(1) in which it was held that a police officer who could be dismissed by the Deputy Inspector-General of Police under the statutory rules and regulations was not a person in "not removable from office except by or with the sanction of the Provincial Government" within the meaning of s. 197 of the Criminal Procedure Code and that sanction under that section was not, therefore, necessary for prosecuting such an officer for an offence alleged to have been committed by him. Varadachariar, J. speaking for the Federal Court in that case observed that the provisions of s. 24 1 (1)(b) and s. 240(2) of the Goverment of India Act must also be understood in the light of the practice prevailing in India under which the power to appoint and dismiss particular classes of officers is vested in particular authorities. Otherwise there is the danger of our ignoring the policy of the Legislature in limiting the class of officers entitled to this protection and of making s. 197, Criminal Procedure Code available to all public officers. We accordingly reject the argument of the appellant on this aspect of the case.

For the reasons already expressed we hold that the decision of the Gujarat High Court is correct and this appeal must be dismissed Appeal dismissed.

V.P.S. (1) [1943] F.C.R.7.