

(1988) 11 CAL CK 0005
In the Calcutta High Court

Arjun Prosad Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-11-1988

Acts Referred:

Constitution of India, 1950 — Article 33

Citation : (1989) 1 LLJ 456

Hon'ble Judges : Mahitosh Majumdar, J

Bench : Single Bench

Judgement

Mahitosh Majumdar, J.—This writ application is directed against the order of suspension, as contained in Annexures "A", "B" and "D" to the petition. Again on June 29, 1988, when the writ application was moved, the respondents issued another order being Annexure "X" to the application for further orders. The said order reads thus:

The investigation into the charges to be levelled against you has not yet been completed. So the matter of your putting back to duty on expiry of 30 days from the date of suspension under Rule 135 has been thought over and it has been decided that since your activities were found to be prejudicial to the interest of the administration, you will, in public interest, continue to be under suspension till further orders.

Mr. Chakraborti drew the attention of the Court to the order passed by the concerned authority as contained in Annexure "F" to the application which is also quoted below:

C/3215 Arjun Prosad Sharma of the CE Post presently under suspension is directed to report to CC Reserve Coy. I/Liluah on deputation till disposal of the case against him. For all purposes the constable will be treated as working under Company Commander Res. I, on deputation.

After giving reference to all these documents, Mr. Chakraborti submitted that the petitioner's order of suspension cannot but be revoked as the petitioner has not

engaged himself in activities prejudicial to the interest of the State or criminal case for moral turpitude is pending against him. It is also claimed by Mr. Chakraborti that during the period when the order of suspension remains in force the petitioner should not be asked to work. From a reference to the order dated May 23, 1988, it appears that the petitioner has been treated as working under Company Commander Res. I, on deputation. The said order, in my view, revokes the order of suspension. Suspension means that there should be temporary cessation of relationship between the employee and the employer. During the pendency of the suspension that temporary cessation continues. It is somewhat unauthorised on the part of the concerned respondents to treat the petitioner as working under Company Commander Res. I on deputation. The said order puts an end to the temporary cessation. Rule 135 of the Railway Protection Force Rules, 1987 is quoted below:

Public interest shall be the guiding factor in deciding whether or not a member of the Force, including when he is on leave, should be placed under suspension:

Provided that before taking a decision on suspension the competent authority may consider whether the purpose would be served if the member is transferred from his post or sanctioned leave:

Provided further that charge on which a member has been placed under suspension shall be furnished to him within a period of thirty days from the date of suspension after which the incumbent shall be deemed to have been reinstated if no such charge is made available to him:

Provided further that the above provision of thirty days shall not apply to cases while a member has been placed under suspension on grounds that he has engaged himself in activities prejudicial to the interest and security of the State or a criminal case involving moral turpitude is pending against him.

2. Mr. Samaddar placed reliance on Rule 139.1 of the Railway Protection Force Rules, 1987 which reads thus:

Notwithstanding anything contained in Rule 135, where a member of the Force is suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceeding is concerned against him during the continuance of the suspension, the authority competent to place him under suspension may, for reasons to be recorded in writing, direct that the member of the Force shall continue to be under suspension until the termination of all or any of such proceedings.

3. On a careful consideration of Rule 135 and Rule 139.1 of the said Rules, I am of the view, that the order of suspension could be extended only when the condition precedent to the exercise of power under the proviso to Rule 135 stands fulfilled. The decision of the authority that since the activities of the petitioner were found to be prejudicial to the interest of the administration, the petitioner would, in the public interest, be continued under suspension till further

orders, is wholly de hors the proviso to Rule 135 of the said Rules. "Prejudicial to the interest of the administration" cannot be substituted for "prejudicial to the interest and security of the State." Mr. Chakraborti referred to a very celebrated judgment of the Supreme Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, . He placed reliance on paragraph 128 of the said judgment. The said paragraph for the sake of determination of this matter is required to be set out in extenso:

The expressions "law and order", "public order" and "security of the State" have been used in different Acts. Situations which affect "public order" are graver than those which affect "law and order" and situations which affect "security of the State" are graver than those which affect "public order". Thus, of these situations, those which affect "security of the State" are the gravest. Danger to the security of the State may arise from without or within the State. The expression "security of the State" does not mean security of the entire country or a whole State. It includes security of a part of the State. It also cannot be confined to an armed rebellion or revolt. There are various ways in which security of the State can be affected. It can be affected by State secrets or information relating to defence production or similar matters being passed on to other countries, whether inimical or not to our country, or by secret links with terrorists. It is difficult to enumerate the various ways in which security of the State can be affected. The way in which security of the State is affected may be either open or clandestine. Amongst the more obvious acts which affect the security of the State would be disaffection in the Armed Forces or para-military forces. Disaffection in any of these Forces is likely to spread, for disaffected or dissatisfied members of these Forces spread such dissatisfaction and disaffection among other members of the Force and thus induce them not to discharge their duties properly and to commit acts of indiscipline, insubordination and disobedience to the orders of their superiors. Such a situation cannot be a matter affecting only law and order or public order but is a matter affecting vitally the security of the State. In this respect, the Police Force stands very much on the same footing as a military or a para-military force for it is charged with the duty of ensuring and maintaining law and order and public order, and breaches of discipline and acts of disobedience and insubordination on the part of the members of the Police Force cannot be viewed with less gravity than similar acts on the part of the members of the military or para-military Forces. How important the proper discharge of their duties by members of these Forces and the maintenance of discipline among them is considered can be seen from Article 33 of the Constitution. Prior to the Constitution (Fiftieth Amendment) Act, 1984, Article 33 provided as follows:

33. Power to Parliament to modify the rights conferred by this Part in their application to Forces:

Parliament may by law determine to what extent any of the rights conferred by this Part shall, in their application to the members of the Armed Forces or the

Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

By the Constitution (Fiftieth Amendment) Act, 1984, this Article is substituted. By the substituted Article the scope of the Parliament's power to so restrict or abrogate the application of any of the Fundamental Rights is made wider. The substituted Article 33 reads as follows:

33. Power to Parliament to modify the rights conferred by this Part in their application to Forces, etc.,--Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to:

- a) the members of the Armed Forces; or
- b) the members of the Forces charged with the maintenance of public order; or
- c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter-intelligence; or
- d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in Clauses (a) to (c) be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Thus, the discharge of their duties by the members of these Forces and the maintenance of discipline amongst them is considered such vital importance to the country that in order to ensure this the Constitution has conferred power upon Parliament to restrict or abrogate any of the Fundamental Rights in their application to them.

4. In view of the said determination of the Constitutional Bench of the Supreme Court the petitioner cannot be allowed to continue on the ground indicated in the body of the order of suspension but not on the ground that the activities of the petitioner are prejudicial to the interest of administration. Interest of administration cannot be equated with the interest or security of the State. The order of suspension is therefore set aside. The petitioner shall be paid on the ground that the petitioner has been treated as working in terms of the order dated May, 23, 1988. Since the petitioner has been directed to work, the question of keeping him under suspension cannot and does not arise at all. The petitioner shall be paid all his salaries within three weeks from date.

5. I have not expressed any opinion on the question of the departmental proceeding, if initiated in the meantime. Be it recorded that I have not expressly gone into the other submissions made by Mr. Chakraborti as well as by Mr. Samaddar. Respondents will be at liberty to proceed de novo in the matter.

6. The contention of Mr. Samaddar as regards application of Rule 139 of the said Rules has had no manner of application as no order has been passed under Rule 139 of the said Rules. Mr. Samaddar could not also produce any record to show

that the order was passed under Rule 139 of the said Rules.

This application is, accordingly, allowed to the extent indicated above without any order as to costs.