
(2004) 05 AHC CK 0030
In the Allahabad High Court
Case No : Writ Petition No. 1597 (S/S) of 2004

Banwari Lal Misra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-05-2004

Acts Referred:

Uttar Pradesh Civil Services (Classification, Control and Appeal) Rules, 1930 — Rule 49A(2)

Citation : (2004) 4 AWC 3525

Hon'ble Judges : A.N. Varma, J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant; C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—Through the instant writ petition, the petitioner has assailed the order dated 9.4.2003, as contained in Annexure-1 to the writ petition, whereby he has been placed under suspension on the ground of pendency of Criminal Case No. 114 of 2003 u/s 302/506, I.P.C. and Case No. 115 of 2003 u/s 25 of the Arms Act.

2. Briefly stated, the facts of the case are as follows :

At the relevant time the petitioner was posted at Sitapur as Enforcement Supervisor in the Office of A.R.T.O. An F.I.R. was lodged on 30.3.2003 alleging therein that on the date of incident the petitioner came to the shop of the informant and demanded a sum of Rs. 25,000. When his father Rampal Gupta, S/o Maikulal Gupta protested, he took out his country made pistol and fired upon him as a result of which the father of the informant died. A case u/s 302/506, I.P.C. was registered against the petitioner as Crime Case No. 114 of 2003, Police Station Khairabad, district Sitapur. Consequent upon the said incident the petitioner was lodged in jail. He, vide order dated 9.4.2003, passed by opposite party No. 3 was placed under suspension, copy of which has been annexed as

Annexure-1. The petitioner, however, was subsequently granted bail by this Court on 4.2.2004, whereupon he informed the opposite parties and submitted his Joining.

3. I have heard the learned counsel for the petitioner, Sri J. C. Srivastava as well as Sri Badrul Hasan, the learned standing counsel.

4. Learned counsel for the petitioner Sri J. C. Srivastava vehemently argued that the petitioner having been released on bail by this Court on 4.2.2004 and having submitted an application for joining, the opposite parties ought to have permitted him to join. He further submits that deeming clause as contemplated u/s 49A (2) (a) and (b) of Civil Services (Classification, Control and Appeal) Rules, 1930, comes to an end when a person is released on bail and unless an express order of suspension is passed he cannot continue to remain under suspension. According to him in the absence of an express order he cannot be deemed to have continued under suspension for indefinite period. His submission further is that the departmental proceedings against him are neither contemplated, nor are pending, which too invalidates the order of suspension. In support of his argument, Sri Srivastava placed reliance upon a Full Bench decision rendered by this Court in 1997 (15) LCD 323, The Full Bench was called upon to answer the following questions :

"(1) Whether sub-clause (a) of sub-rule (2) of Rule 49A of the Civil Service (Classification. Control and Appeal) Rules, 1930 as applicable in Uttar Pradesh is violative of Articles 14 and 21 of the Constitution of India are null and void?

(2) Whether the legal fiction envisaged under Rule 49A (2) (a) or (b) can come into play even in the absence of an order of suspension passed in writing?"

Thus, as would appear, the question before the Full Bench was, would the deeming fiction also continue beyond the period after which the person had been released on bail. In paragraph 27 of the said report the Court has held as follows :

"We have considered all the cases cited by the learned counsel for the parties. However, we do not find anything on which basis the view we have expressed above may be doubted or shaken. Our conclusions and answer to the questions referred to us are as under :

(A) Sub-clause (a) of sub-rule (2) of Rule 49A of the Civil Services (Classification, Control and Appeal) Rules, 1930, as applicable in Uttar Pradesh, is not violative of Articles 14 and 21 of the Constitution of India as held in case of Jagjit Singh v. State of U. P. (1996) 1 UPLBEC 405 and the judgment is here by overruled.

(B) The legal fiction envisaged under sub-rule (2) (a) and (b) of Rule 49A shall come into play and a deemed suspension by an order of the appointing authority shall come into existence if the Government servant is detained in custody for more than forty-eight hours even in absence of any order in writing passed by

the appointing authority.

(C) The deemed suspension provided under sub-rule (2) of Rule 49A shall be confined to the period of detention in custody and not beyond that.

(D) The deemed suspension by an order of the appointing authority under the legal fiction provided in sub-rule (2) may be continued after release by the appointing authority by passing an express order taking into account the guidelines provided in other sub-rule (2) of Rule 49A according to the facts and circumstances of the case.

(E) The deemed suspension under sub-rule (2) of Rule 49A may be modified or revoked by the appointing authority on a representation made by the Government servant which shall be considered and decided taking into consideration the guidelines provided in sub-rules {1) and (1A) of Rule 49A."

As would appear from the perusal of the clause (D), deemed suspension under the legal fiction may be continued after release by the appointing authority by passing an express order taking into account the guidelines provided under the said Rules under the said Clause. Sri Srivastava tried to emphasise that the petitioner having been released on bail, he cannot continue to remain under suspension unless an express order with regard to the same is passed by the authority concerned placing him under suspension.

5. The learned standing counsel in opposition submitted that a person having been released on bail, the order of suspension automatically does not vanish, nor any express order of suspension is required to be passed by the authority concerned. In this connection he placed reliance upon a decision rendered by the Apex Court in case of Union of India v. Rajeev Kumar. 2003 (4) AWC 3020 (SC) ; (2003) 21 LCD 1396: His submission further is that the view taken by the Full Bench in Chandra Shekhar Saxena's case (supra) has been overruled by the Hon"ble Supreme Court, in the aforesaid decision. Before the Apex Court scope and ambit of Rule: 10 (2) of the Central Civil Services (Classification, Control and Appeal) Rules. 1985, a provision analogous to the provision of Civil Services (Classification, Control and Appeal Rules, 1930, was under consideration. In paragraphs 18 to 21 of the said report the Apex Court held as follows :

"18. View of the Full Bench of the Allahabad High Court (supra) that the legal fiction created ceases to be effective for the purpose of suspension while operative for other purposes is clearly unsustainable and we do not approve of the same.

19. It is well-settled principle In law that the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers.

20. Words and phrases are symbols that stimulate mental references to

referents. The object of interpreting a statute or any statutory provision is to ascertain the intention of the Legislature or the Authority enacting it. (See *Institute of Chartered Accountants of India v. M/s. Price Waterhouse and Anr.* AIR 1998 SC 74). The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner* 1846 (6) Moore PC 1. Courts, cannot aid the Legislatures, defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (Also see *State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another*, . It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock v. Frank Jones (Liptan) Ltd.* (1978) 1 All ER 948). Rules of interpretation do not permit Courts to do so, unless the provisions as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C., in *Vickers Sons and Maxim. Ltd. v. Evans.* (1910) AC 444 , quoted in *The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah*,

21. The question is not what may be supposed and has been intended, but what has been said.

"Statutes should be construed not as theorems of Euclid". Judge learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them", (See *Lenigh Valley Coal Co. v. Yensavage* 218 FR 547). The view was reiterated in *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco Dc Gama* AIR 1990 SC 981."

6. In view of the principles enunciated by the Apex Court in the said decision the Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. In view of the fact that the provision with regard to suspension u/s 49 (A) (2)(a) and (b) does not postulate that after the person having been released on bail, an express order of suspension is required to be passed by the authority concerned, the argument of learned counsel for the petitioner in the circumstances fails. The order of suspension does not lose its efficacy, nor does it automatically stand terminated the moment detention comes to an end and the person is set at large.

7. So far as the question of continuance of suspension in the absence of any enquiry against the petitioner is concerned it is hereby provided that in case any charge- sheet has been furnished to the petitioner and departmental enquiry is proceeding against him, the same may be concluded expeditiously.

8. In view of what has been said hereinabove the impugned order of suspension does not deserve to be interfered with. The writ petition lacks merits and as such is hereby dismissed.