

(2006) 03 AHC CK 0132

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 16436 of 2006

Bhupendra Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Uttar Pradesh Police Act, 1861 — Section 2, 46(2), 46(3), 7
Uttar Pradesh Subordinate Police Officers (Punishment and Appeal) Rules, 1991 —
Rule 4(1)(b)(i)

Citation : (2006) 03 AHC CK 0132

Hon'ble Judges : A.P.Sahi, J

Final Decision : Disposed Of

Judgement

A.P. Sahi, J.—Heard learned Counsel for the petitioner and learned Standing Counsel for the respondents.

2. The petitioner has come up against the show cause notice dated 30.12.2005, on the ground that it has been issued for imposing a minor penalty of adverse/censure entry, which cannot be awarded in view of the decision of the Lucknow Bench in the case of Deep Narain Singh v. State of U.P. and others. A perusal of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, indicates that the said Rules have been framed in exercise of powers contained in Sections 2, 7 and Section 46 (2) and (3) of the Police Act of 1861.

3. Section 7 of the Act in its opening words clearly recites as under :

"Subject to provisions of Article 311 of the Constitution of India and to such Rules as the State Government may from time to time make under this Act....."

4. The expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject. A perusal of the aforesaid opening words leave no room for doubt that the Act itself carves out the powers conferred on the State Government to frame such Rules. The

delegation of power is wide enough and not conditional.

5. Learned Counsel for the petitioner, relying on the decision of the Lucknow Bench of this Court dated 2.1.2006 in the case of Deep Narayan Singh v. State of U.P. and others, Writ Petition No. 6525 of 2004 (SS), has urged that the impugned order could not have been passed as the decision referred to herein above has declared the provisions of Rule 4(1)(b)(iv) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 ultra vires the provisions of Section 7 of the Police Act, 1861.

6. The provisions of Section 7 read with Section 46 of the Police Act, empower the State Government to frame rules. There is no dearth of legislative competence either, so as to denude the State from framing any rules. The rule in question does not in any way dilute the provisions of Section 7 of the Act. It is in addition to the punishments already referred to in Section 7 of the Act. Section 7 does not prohibit the framing of such rules and the rule making power is not limited. It rather permits the framing of such rules and Section 7 of the Act is subject to such rules being framed by the State Government. The legislature, therefore, has delegated wide powers on the State Government which is not hedged by any express limitations which may render the framing of the Rules to be an incompetent exercise. None of the rules including Rule 4(1)(b)(iv) run counter to the provisions of Section 7 of the Act. They are neither inconsistent nor do they impliedly or expressly repeal the provisions of Section 7.

7. The comparison of the rule in question with the provisions of Regulation 478 of the U.P. Police Regulations in my humble opinion would not be appropriate as the Police Regulations stand on a different footing than the rules which are a creation under the powers conferred on the State Government to legislate under Section 7 read with Section 46 itself.

8. The framing of such as rule for awarding censure does not in any way run counter to any provision of the Police Act, 1861. It rather supplement the same and is not against the object for which the rulemaking power has been conferred. Section 7 of the Act does not prohibit the State Government for making such provisions of punishment. The power is not restricted as suggested in Deep Narayan 's case.

9. The conclusion drawn in the judgment of Deep Narayan's case, that a subordinate legislation cannot include the power to frame any substantive rule and can only make a provision for procedure overlooks the real meaning and content of the opening sentences of Section 7 of the Police Act, 1861. As a matter of fact, the 1991 Rules give effect to the provisions of the 1861 Act.

10. The decision relied upon by the learned Counsel for the petitioner indicates that since there is no provision for the award of censure entry contained in Section 7, therefore, the Rule making provision for award of censure as contained in Rule 4(1)(b)(iv) in 1991 Rules is ultra vires the provisions of Section 7 of the said Act.

11. With the utmost respect to the ratio of the aforesaid decision of the learned Single Judge, I am unable to agree with the aforesaid proposition inasmuch as the opening sentence of Section 7 of the Police Act leaves no room for doubt that provisions in addition to those provided for under Section 7 can be made by framing rules and as such, in these circumstances, there does not arise any occasion for declaring the Rule to be ultra vires the provision of Section 7 of the Act.

12. Apart from the aforesaid reasons, it is difficult to accept that because of a framing such a rule, some inconvenience would be caused to the employees and which, therefore, renders the rule invalid. In case, it is found that there is likelihood of violation of some procedure which may cause prejudice to a delinquent employee then it is always open to interpret such a rule so as to impliedly contain such procedures which may be in conformity with the principles of natural justice. If this can be done safely by way of an interpretation, then it would not be necessary for the Court to strike down the provisions as being ultra vires. The question of security of procedure, therefore, can be taken care of by judicial interpretation. In view of this, the suggestion to the said extent in the judgment of Deep Narayan's case, deserves to be reconsidered.

13. The judgment further records that the power under Section 7 to frame rules is general delegation without laying down any guidelines and therefore, the Rule making authority cannot assume a power to formulate such a Rule. In my humble opinion, the aforesaid interpretation would be too narrow an interpretation of the provisions of Section 7 read with Section 46 of the Police Act. The inclusion of such a punishment in the Rules rather helps the delinquent officials to be awarded a lesser punishment keeping in view the proportionality and the gravity of the delinquency. It rather eases the situation and gives a wider amplitude of power to the disciplinary authorities to be exercised keeping in view the aforesaid principles. The legislature, therefore, will be presumed to have delegated such powers in respect of at least awarding lesser punishments as are referred to in Section 7 of the Act. The State Government, in my opinion, is not denuded of its powers in making provisions for a minor punishment like censure under the Rule making power. Even otherwise Article 309 of the Constitution of India empowers the State Government to frame such Rules.

14. In view of the aforesaid reasons recorded by me, it would be appropriate that the matter be decided by a Larger Bench and as such in view of the provisions contained in Chapter V, Rule 6 of the Allahabad High Court Rules, 1952, read with the other relevant provisions and the ratio of the decision in the case of Rana Pratap Singh v. State of U.P. and others, 1995 ACJ 200, let the papers of this case be placed before Hon'ble the Chief Justice for constituting a Larger Bench in order to determine the aforesaid issue.

15. The question, which deserves to be answered, is as to whether Rule 4(1)(b) (iv) of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991, is ultra vires the provisions of Section 7 of the U.P. Police

Act or not and whether the law to the said extent has been correctly laid down in Deep Narayan 's case (supra) or not.

16. Let the papers be placed before the Hon''ble Chief Justice for appropriate orders.