

(1990) 07 BOM CK 0015
In the Bombay High Court
Case No : Writ Petition No. 1057 of 1988

Dattatraya Jamkar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-07-1990

Acts Referred:

Maharashtra Felling of Trees (Regulation) Act, 1964 — Section 3
Maharashtra Land Revenue Code, 1966 — Section 10

Citation : (1991) 2 BomCR 706 : (1990) MhLj 950

Hon'ble Judges : W.M. Sambre, J;M.S. Ratnaparkhi, J

Bench : Division Bench

Advocate : R.B. and A.W. Pendharkar, for the Appellant; Indira L. Bodade, Asst. G.P. for respondents 1 and 2, for the Respondent

Judgement

M.S. Ratnaparkhi, J.—The order of compulsory retirement passed by the commissioner, Amravati division, amravati on 30th March, 1988 following the domestic enquiry has been challenged in this petition.

2. The petitioner Dattatraya Mahadeo Jamkar was serving at the relevant time in December 1983 as Naib Tahsildar. Kelapur in Yavatmal district. The Tahsildar, Kelapur proceeded initially on leave and in his place one Mr. Mulavkar was asked to look after the duties of the Tahsildar. This Mulavkar initially proceeded on casual leave and then on earned leave, converting the initial casual leave also into earned leave. The present petitioner was directed to look after the charge of the Tahsildar, Kelapur in addition to his own duties from 12-12-1983 to 21-12-1983. There was a further direction in the order-annexure-1 that the petitioner was to perform all the duties as was being performed by Shri Mulavkar. With this order Annexure-1, the petitioner started performing the additional duties of the Tahsildar.

3. One revenue case was pending before the Tahsildar, Kelapur. Two persons, namely, Buchya Kasha and Lallu Kashya had applied before the Tahsildar, Kelapur for permission to fell the trees standing in the field Survey Nos. 10/1 and 11/1.

There were about 550 trees standing in these two fields including 475 Teak trees and 75 Adjat trees. This application was made by these two persons before the Tahsildar, Kelapur sometimes on 14-3-1983. This application remained pending before the Tahsildar. Some steps were taken during the pendency of this application inasmuch as the reports of the Agricultural Officer, Divisional Forest Officer and Talathi had already been called for. A spot inspection note recorded by the Naib Tahsildar also formed part of the record. With all this material, the case came up before the present petitioner sometimes on 19-12-1983. The petitioner passed the order permitting the felling of these trees.

4. It is sometimes in the first quarter of 1984 that the Revenue Department directed an enquiry at the hands of the Resident Deputy Collector, Yavatmal regarding this deal. The Resident Deputy Collector, Yavatmal submitted his report to the Collector, Yavatmal and the Collector, Yavatmal, in his turn, submitted his report to the Commissioner, Amravati Division, Amravati. The Commissioner considered this report and passed an order on 31st January, 1986-annexure-10, wherein he directed holding of a domestic enquiry against the petitioner. Three charges came to be framed. This can be found at Annexure-I attached to Annexure-10 of the petition at page 55. The commissioner then by his subsequent order dated 2nd August, 1986 (Annexure-12) appointed the Resident Deputy Collector, Yavatmal as an enquiry officer and the Sub-Divisional Officer, Kelapur as presenting officer (by two separate orders dated 2nd August, 1986).

5. The memorandum of charges along with the statement of allegations, list of witnesses and list of documents relied upon were furnished by the enquiry officer to the present petitioner (delinquent). The enquiry was held, the oral evidence was recorded and ultimately the enquiry officer submitted his report (Annexure-20) on or about 29th February, 1988. He held the petitioner guilty on all the three counts and suggested exemplary punishment, taking into consideration the gravity of the charges levelled. The papers were then sent to the Commissioner, Amravati Division amravati. A show cause notice was issued on 9th March, 1988 (Annexure-19) to the petitioner and the petitioner was called upon to submit his say. The petitioner filed his say vide Annexure-21. Thereafter the Commissioner passed the impugned order on 30th March, 1988 holding the petitioner guilty of all the charges and directing that the petitioner be compulsorily retired. This order can be found at Annexure-22. It is this order which has been challenged in this petition.

6. The contentions raised by the petitioner in this petition are: (1) that the charges, standing as they are, do not make out any misconduct for which the petitioner can be held guilty and punished, (2) the enquiry is bad inasmuch as (i) no sufficient opportunity for defending himself was afforded to the petitioner inasmuch as his request for appointment of legal practitioner was rejected and the documents relied upon in the list Annexure-4 were never furnished to him inspite of his specific and positive request, (ii) that one Mr. Bhoge, who was initially the Resident Deputy Collector at Yavatmal and then the Assistant

Commissioner, Amravati was interested adversely against the petitioner and the initiation and his participation in the further enquiry infringes the rules of natural justice, (3) in any case there was absolutely no material to record the finding that have been recorded by the Commissioner. Mr. Pendharkar took us extensively through the whole record. There is no dispute that at the relevant stage, the petitioner was working as Naib Tahsildar at Kelapur and during the period commencing with 12-12-1983 and ending on 21-12-1983, he was looking after the charge of the Tahsildar in addition to his duties and was performing all the duties which were being performed by the Tahsildar. The learned Assistant Government Pleader strenuously urged before us that the day to day duties which were directed to be performed by the petitioner did not include the statutory duties which the Government vested in the Tahsildar. What was urged before us was that under the Maharashtra Felling of Trees (Regulation) Act, 1964, the State Government was required to specially empower the officers not below the rank of Mahalkari and Naib Tahsildar. The State has come before this Court with a case that the petitioner was substantially a Naib Tahsildar and he was merely directed to perform the duties of the Tahsildar because the later was on leave. It was urged before us that under the Maharashtra Felling of Trees (Regulation) Act, 1964, the State Government had empowered only the Tahsildar to act u/s 3 of the said Act and none other official including the petitioner was vested with these powers. It was the contention raised before us that though the petitioner was directed to look after the duties of the Tahsildar, these duties excluded the functions specifically vested in him by the special statute. There appears to be a considerable doubt regarding the correctness of this argument. In fact, two of the higher officers, of the petitioners have been examined during the enquiry and they have deposed before the Enquiry Officer that whatever the Tahsildar could do, the petitioner also could do as he was directed to discharge the functions of the Tahsildar. In fact the order, as it stands, does not make a difference between the daily routine functions and the statutory functions. It is not the case put up before us that the powers were vested by an order and not by the statute. On the other hand, the learned Assistant Government Pleader positively stated before us that all the Tahsildars were empowered by the State Government u/s 3 of the Act. If it is so, then it is the office of Tahsildar at Kelapur who was vested with these functions and it is the petitioner who was directed to look after that office without exception. These circumstances, coupled with the statements of two higher officers before the Enquiry Officer, could not lead to the positive conclusion that the petitioner could not discharge the functions of the Tahsildar u/s 3 of the said Act.

7. In fact, it is not necessary for us to enter into this controversy at all. The charges framed against the petitioner are :

(1) He was not competent to pass such orders as the powers under the provisions of the Maharashtra Felling of Trees Act, 1964 have been delegated only to the Tahsildar.

(2) that he did not carry out spot inspection and physical scrutiny of number of trees actually standing on the lands mentioned in the applications.

(3) that he did not verify whether the lands really belonged to the applicants. He also did not verify whether the teak and other trees were actually standing on S.No. 10/1 and 11/1 or on the lands belonging to the forest department.

These were the only charges which he was called upon to meet. No charge of mala fides or corrupt motives was even suggested. It is these charges that the enquiry officer was called upon to probe into and it is on these charges that the evidence was expected to be led during the enquiry. The enquiry officer came to the conclusion that he did pass the order permitting cutting of the trees, though in fact he was not authorised to pass that order. On the other charge the enquiry officer recorded a finding that the petitioner did not personally verify whether the lands really belonged to the applicants. It was the contention of Mr. Pendharkar that these findings are perverse inasmuch as there is absolutely no material in support of this finding. On the other hand, according to him, if at all the material has to be re-appreciated or gone into it will lead to a finding just opposite to the finding of the enquiry officer.

8. We shall proceed with charges 2 and 3 initially. The petitioner has admitted that he did not personally verify as to how many trees are standing on the lands. The learned Assistant Government Pleader urged before us that it was incumbent on him to personally verify the trees before passing such orders. We have on record 4 reports of different authorities and all pertain to the period long before the petitioner came on the scene. One is the report submitted by the Talathi; another is the report submitted by the Agricultural Officer; third is the report submitted by the Divisional Forest Officers and there is one spot inspection note recorded by the Naib Tahsildar. The note recorded by the Naib Tahsildar shows that he had actually visited these two fields and he found 475 teak trees and 75 Adjat trees standing on these two fields. The report of the Divisional Forest Officer corroborates this as far as the number of trees standing is concerned. In addition the Divisional Forest Officer had recorded a 'no-objection' in his report which means that he had furnished a ground certainly for passing the order permitting felling of the trees. This was the material available to the petitioner when the case came up before him. It is the contention of the petitioner that when the case came up before him, he had already sufficient material before him to show that there was personal verification by the competent officers regarding the number of trees standing on these two fields. There was also a no-objection certificate given by the Forest Department. It was his contention that he did not feel it necessary to personally visit the spot and to repeat the performance which was already done by his predecessor. We do not think that this explanation is unacceptable. Thus though there is an admission that he did not personally verify, this admission does not necessarily lead to the conclusion that he failed in his duties. On the other hand, he could legitimately act on the report submitted by his predecessor, a different public authority and proceed further.

9. Regarding the third charge, the enquiry officer found that he did not personally verify as to who was in actual possession of the fields. The petitioner's case was that he had the record of right with him which positively recorded that it were these two applicants in whose names the trees were recorded in the record of rights. If this evidence were before the enquiry-officer, we do not think that any further probe into this matter was ever necessary. Thus the findings on these two charges according to us are definite findings.

10. Coming to the first charge, to repeat it once again, we would not enter into the area as to whether the petitioner had powers to pass the order or he had no power. The charge, as it stands is that he passed the particular order without having any powers. Even assuming for the time being that as Naib Tahsildar he had no powers, it is his contention that in pursuance of the orders passed by the higher authorities he was asked to discharge all the functions of the Tahsildar, and to do all that the Tahsildar was expected to do. The wording of the order is unambiguous and it leaves no doubt that the authorities who put him in charge expected him to discharge all the functions of the Tahsildar. A reference to section 10 of the Maharashtra Land Revenue Code would not be out of place on this question. Section 10 prescribes that when the Tahsildar is disabled for performing his duties or for any reason vacates his office or leaves his jurisdiction or dies, the Additional Tahsildar, and if there is no Additional Tahsildar, the Naib Tahsildar or the senior-most Subordinate Revenue Officer in the taluka shall succeed temporarily to the office and shall be held to be the Tahsildar under this Code until a successor is appointed. This is provision for a temporary vacancy and the statute itself lays down that whenever the post of Tahsildar is vacant, a senior most Naib Tahsildar would succeed temporarily to that office. In addition to this statutory provision, there was also an order passed by the Collector directing the petitioner to perform the duties of the Tahsildar. This order, according to us, means that he was not only expected to discharge the routine day to day functions, but he was asked to discharge all the functions of the Tahsildar which the latter could do. Thus we do not find any merit in this contention.

11. We may proceed to step further and assume for the time being that he had no powers inasmuch as no such powers have been vested in him by the Government. We shall proceed on the ground that even assuming that the petitioner has passed the order without any authority, the fact remains that he passed this order while he was discharging the functions of the Tahsildar. The question that arise at this stage is whether passing of an order without any authority in itself amounts to a misconduct for which a Government servant can be impeached. The Maharashtra Discipline and Appeal Rules, 1979 permit the competent authority to punish the servant for the misconduct. Several punishments (some major and some minor) are permitted to be inflicted on the person found guilty. What the rules show ex-facie is that unless there is a misconduct, no disciplinary action can be initiated against an incumbent. It will not be out of place to refer to the norms laid down by the Maharashtra Civil

Services Conduct Rules and it is possible that contravention or the breach of these norms may at times amount to misconduct for which a Government servant can be appropriately dealt with. What we find in the present case is that the petitioner is charge-sheeted not for his conduct, but for the act done by him while acting in his official capacity. If at all the act is without jurisdiction, that can be challenged under the statutes. But it cannot be legitimately said that doing the act without authority is misconduct for which a Government servant should be punished. To be more specific, the charge nowhere suggests that this act has been done by the petitioner with some ulterior motive of obtaining some advantages for himself or to others. There is not even a whisper thereof either in the charge or in the statement of allegations or even in the orders that came to be passed subsequently. We could understand the charge that the petitioner did this particular act with an ulterior motive of gaining some monetary or other benefits for himself or to others. This could have constituted "misconduct" for which the Government officer could be legitimately dealt with.

12. In our opinion, therefore, the charges, standing as they are, do not constitute any misconduct for which the Government servant can be punished. At the most, we may say that he has done something without an authority of law, but this is itself without anything more cannot constitute a misconduct. The learned Assistant Government Pleader invited our attention to the ratio laid down in *P.P. Parekh v. State of Gujrat* 1 C.L.R. 570. However, the facts of that case were quite different. In that case the Tahsildar decided a case under the Gujrat Land Ceiling Act, 1960 when he had no powers to decide the case. The case came to be decided as per his order dated 25-9-1981 against the provisions of the Act and what he held by his order was that the Khatedar was not holding the land in excess of the Ceiling limit. By deciding the case in this fashion, he benefited the Khatedar and adversely affected the public interest. This conduct of the petitioner exhibited lack of sincerity in performance of duties and, therefore, the petitioner was liable for misconduct as per the relevant provisions of the Gujrat Civil Services (Conduct) Rules. It is for this misconduct a domestic enquiry was initiated. In the present case, no such allegations have been made either in the statement of allegations or in the charge.

13. We, therefore, hold that there being no misconduct on the part of the petitioner, the punishment cannot be justified. In view of the fact that there was no misconduct, giving rise to the departmental enquiry, we need not enter into further controversy as to whether the inquiry was proper and whether the rules of natural justice were complied with or breached. In view of our finding that there was no misconduct, the whole discussion would become academic. We, therefore, find ourselves unable to agree with the learned Commissioner that the petitioner was guilty of any misconduct. The order passed by the Commissioner is, therefore, liable to be quashed.

14. In the result, the petition succeeds. The order passed by the commissioner directing the compulsory retirement of the petitioner is hereby quashed. Rule

made absolute in terms above. There shall be no order as to costs.