

(1959) 03 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3305 of 1958

Hukum Chand Jain

APPELLANT

Vs

The Municipal Board, Faizabad and Another

RESPONDENT

Date of Decision : 04-03-1959

Acts Referred:

Constitution of India, 1950 — Article 215, 226, 311, 32
Uttar Pradesh Municipalities Act, 1916 — Section 69A

Citation : AIR 1959 All 686

Hon'ble Judges : M.C. Desai, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant; S.C. Khare, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Desai, J.—The petitioner in this case and in the connected case is an ex-overseer of the Municipal Board, Faizabad, opposite party No. 1, the President of which is Mahabir Prasad, opposite party No. 2. On 9-9-1958 the President passed an order to the effect that the petitioner had been guilty of misconduct, persistent failure in the discharge of his duties, gross negligence, flagrant disobedience, etc., that a thorough inquiry was absolutely necessary before disciplinary proceedings could be taken against him, that his continuance in office was bound to interfere with a free and impartial inquiry and that consequently he directed "the suspension of Shri H. C. Jain...with immediate effect pending inquiry after which a charge sheet shall be served on him."

The President passed on the same day another order directing the additional municipal overseer and the public works clerk to take over complete charge from the petitioner, and a third order, addressed to the petitioner, requiring him to be al-ways available to the Executive Officer and the Office Superintendent of the Municipal Board on all working days during the period of his suspension pending inquiry. This petition has been filed for a writ or certiorari to quash the President's order of suspension of the petitioner dated 9-9-1958, a writ of

mandamus requiring him and the Municipal Board not to treat him as under suspension and for an interim order keeping the President's order of 9-9-1958 in suspension during the pendency of the writ petition.

The ground given for the quashing of the order of suspension is that the President had no jurisdiction to suspend him without or before framing charges against him and reliance is placed on Section 69-A of the Municipalities Act, which provides that if the President has reasons to believe that an overseer is corrupt or has persistently failed in the discharge of his duties or is otherwise guilty of misconduct,

"he may frame charges against him and where he is satisfied that it is so necessary, he may, for reasons to be recorded suspend him pending the completion of the enquiry."

It is clear that this provision under which the President has admittedly acted, contemplates the framing of charges against an overseer before suspending him. The power of suspending him can be exercised after charges have been framed against him and is so dependent upon the framing of charges that there is no power to suspend prior to the framing of charges. The order of the President was, therefore, illegal,

2. On the writ petition being admitted this Court on 6-11-1958 passed the order: "Issue Notice. Meanwhile the operation of the order dated 9-9-1958 shall remain stayed." The petitioner obtained a copy of this order on 6-11-1958 and handed it over to the President on 7-11-1958. The President at once re-instated the petitioner by the following order :

"In view of the order of the Hon"ble High Court ----operation of my order dated 9-9-1958 suspending Shri H. C. Jain....be stayed and he be allowed to resume."

A copy of the order was sent at once to the petitioner for information and compliance. Subsequently, again on 7-11-1958 the President passed another order specifying the duties to be performed by the petitioner on taking over charge. The petitioner on taking over charge performed his duties on November 7 and 8 and then the office was closed for holidays on November 9 to 12, 1958. Then the petitioner proceeded on medical leave for a month with effect from 13-11-1958. On 7-11-1958 the President framed charges against the petitioner and on 1-12-1958 he, passed another order suspending him during the pendency of the inquiry into the charges. In the second suspension order the President recited the fact that a copy of the charges framed on 7-11-1958 was served upon him, and that he had good reasons to believe that his continuance in office was bound to hinder the progress of a free and fair inquiry against him.

The connected petition is for contempt proceedings against the President and the Executive Officer of the Municipal Board for contempt of this Court by the alleged defiance of its interim order dated 6-11-1958. The contention of the petitioner is that the President by passing the second suspension order without anything fresh

having happened between 7-11-1958 (the date on which he was reinstated) and 1-12-1958 (the date on which the second suspension order was passed) disobeyed this Court's interim order of 6-11-1958 suspending the operation of the earlier order of suspension. It was argued that the entire purpose of the interim order of stay has been defeated by the second order of suspension and that since the writ petition was pending in this Court, the president could not suspend the petitioner without its permission.

3. In the writ petition the Executive Officer filed a counter-affidavit on behalf of the Municipal Board and the President. In paragraph 7 it was affirmed that the order of suspension of 9-9-1958 contained a narrative of the charges; what seems to have been contended is that narrating in the order of suspension the reasons for it amounted to framing charges against the petitioner. With reference to the prayer for interim relief, it was pleaded in paragraph 10 (c) of the counter-affidavit that it was not expedient in the ends of justice to stay the order of suspension dated 9-9-1958.

In subsequent paragraphs it was stated that a formal charge sheet was prepared by the President on 7-11-1958 but could not be served upon the petitioner on 8-11-1958 because he avoided to appear before the Executive Officer and did not attend office in the afternoon on the ground of headache, that it was sent for service through clerks but he refused to accept it and that it had to be affixed at his door on 18-11-1958 and a copy of it had to be sent to him by registered post, which was received by him on 24-11-1958, and it was contended in paragraph 15 that after charges had formally been framed against the petitioner any relief to be given by this Court in the writ petition would be ineffective, because the President had after the framing of the charges jurisdiction to suspend him and that to avoid technical objections, the President had actually passed the second order of suspension on 1-12-1958.

4. The first suspension order was certainly illegal as held by this Court in *Mehar Chand Mehta Vs. The City Board, Shahjahanpur and Another*, . Mentioning in it the grounds for suspension or the grounds for holding an inquiry was not tantamount to framing charges against the petitioner. But merely because the suspension order was illegal, I am not bound to quash it. I must take into account the subsequent events that have) happened; if they render any relief that I can give in this writ petition ineffective, I must refrain from granting it. A Court should not grant a relief that can be immediately rendered ineffective by a valid act of the party against whom it is granted. The illegal order of suspension has now been supplanted by another order of suspension.

Charges have been framed against the petitioner and after framing them the other order of suspension was passed against him on 1-12-1958. In the face of that order, whether legal or illegal or contemptuous or not which has come into operation, it would be useless for this Court to quash the earlier order of suspension, because the petitioner must remain under suspension under the second order of suspension. This Court has no authority to interfere with the

second order of suspension even if it be illegal or contemptuous. If the passing of the order amounts to contempt, this Court can punish the President for passing it, but it takes effect all the same. This petition should, therefore, fail.

5. Coming to the connected petition for contempt proceedings I am definitely of the opinion that no contempt has been committed by either of the opposite parties. The act that is said to constitute contempt of the interim order is the passing of the second suspension order; that order was passed by the President and the Executive Officer, opposite party No. 2, had absolutely no hand in it. He has been implicated because of what he affirmed in paragraphs 7 and 15 of his counter-affidavit in the writ petition. Nobody can be guilty of contempt unless he does an act which constitutes contempt; mere intention to commit contempt without doing any act in furtherance is not punishable as contempt.

Even if the Executive Officer disclosed a contemptuous intention by saying that ,the first order of suspension was correct and that the writ petition was rendered infructuous on account of the framing of the formal charges on 7-11-1958, he himself has done no act and, therefore, cannot be guilty of contempt. Moreover by denying that the first order of suspension was illegal and by contending that the writ petition was rendered infructuous by the subsequent events, he did not adopt defiant attitude and did not disclose any contemptuous intention. When the petitioner contended that he was entitled to certain relief, it was open to the opposite parties to say in reply, that it would be useless to grant the relief prayed for.

6. The interim order was that the operation of the (first) order of suspension be stayed: the President has done nothing whatsoever to put that order into effect or operation. What he has done is to pass a second order of suspension, but he was not ordered not to pass it. This Court refused to let the order of 9-9-1958 to take effect because of certain illegalities in it: it did not order that the petitioner should not be suspended at all or that no legal suspension order should be passed. Unless the interim order could be interpreted to mean that the President was prohibited from passing any suspension order, whether on fresh allegations or even on the old allegation, the President cannot be said to have disobeyed it by passing the second order.

There was no bar imposed on the passing of another order of suspension if it did not suffer from any illegality like the one of 9-9-1958. The petitioner objected to the suspension order of 9-9-1958 because no charges had been framed against him and the interim order only amounted to directing the President not to give effect to the suspension order. It never purported to prohibit him from passing a legal suspension order; the petitioner himself did not seek a permanent injunction restraining the President from passing any suspension order in future. Sri J. N. Chatterji conceded before me that if the writ petition was allowed the President could pass another suspension order on the same allegations after framing charges against him. If so, there is no reason why he could not do so even during the pendency of the writ petition.

He surely could not be in a worse position during the pendency of the writ petition than he would have been in after the writ petition was allowed: the interim relief could not be greater than the final relief. The interim order did not prohibit the President's framing charges against the petitioner and once he framed the charges, he was entitled to suspend the petitioner and this Court could not, and did not, deprive him of that right by passing the interim order. The question whether the second order of suspension was passed on the same allegations or not is completely irrelevant; it could be passed on new allegations as well as on the old allegations.

Really the distinction between old allegations and new allegations or old cause of action and fresh cause of action was meaningless. The whole trouble arose because no charges had been framed at all in the first instance. When no charges had been framed at all, the question whether the second suspension order was passed on old charges (or allegations) or fresh charges (or allegations) simply did not arise. This Court while dealing with the writ petition was not at all concerned with the question what were the charges.

7. It was suggested that the President has defied the spirit of the interim order or evaded it, but the question that would arise is "What was the spirit of the order"? Did the letter of the interim order include the spirit that no fresh suspension order after framing charges should be passed at all? My answer is emphatically "no". I am certain that if the petitioner had in the writ petition sought the interim relief of an injunction to restrain the President from passing a fresh order of suspension on new or even old allegations, it would have been refused. It follows that whatever was the spirit behind the interim order passed by it. It was not that another suspension order should not be passed, on the old allegations at least. The President certainly did not evade compliance with the interim order; he fully complied with it.

There was nothing illegal in what he did when he passed the second order; there was no sham transaction, no dishonesty and no underhand dealing. Doing an act which is not within the contemplation of the legislature is not circumventing the statutes even though by doing it the policy behind the Statute may be contravened: *Grinnell v. The Queen* (1888) 16 SCR 119. Same way the President by passing the second order, which was not within the contemplation of this Court, did not circumvent its interim order. Evasion is used in two senses, one suggesting sham transaction or underhand dealing and the other meaning nothing more than the intentional avoidance of something disagreeable. It is evasion in the former sense that is obvious and renders the act void; in *Ramsden v. Lupton* (1873) 9 QB 17 Cockburn, C. J. said at page 25:

"If the terms of the Act of Parliament had been contravened, I can perfectly understand that any arrangement intended in contravention of the Act of Parliament would be illegal; but if the terms of the Act of Parliament have been observed, all we can say is, that if transactions of this kind, not forbidden by the Act of Parliament, are nevertheless thought by Parliament to be contrary to

public policy, they must pass an act making such a thing illegal."

So if the passing of another order of suspension was thought to be undesirable this Court should have passed a specific order forbidding it. Otherwise the President was free to pass it in exercise of his right. So long as a servant is working he can be asked to suspend the work; it does not matter in the least how he is working. The petitioner resumed his work after the interim order and the moment he resumed work, he again became liable to suspension as before; in other words, his reinstatement in obedience of the interim order brought about a fresh liability to suspension. The second suspension order was, therefore, in exercise of the right vesting in the President on account of the reinstatement as the result of the interim order. When the President exercised the right accruing to him because of his complying with the interim order, he cannot be held to be guilty of its disobedience.

8. The interim order did not have retrospective effect; if the suspension order of 9-9-1958 had already been put into operation this Court did not order that the operation should be suspended with retrospective effect from the moment when it was passed and that whatever was done to give operation should be undone. The suspension order was given effect to in 9-9-1958 by the petitioner being suspended; once he was suspended nothing remained to be done under it and really there did not arise any question of suspending its operation. Once the petitioner was suspended he would remain under suspension without any further act being done by the President and he was only directed under the interim order not to put it into operation.

When the President was directed not to do an act and when no act was required to be done by him to keep the petitioner under suspension, I do not think he would have been guilty of contempt even if he had not reinstated the petitioner. He would have been guilty of contempt by refraining from reinstating him only if this Court had directed him to reinstate him or had cancelled the suspension order or had kept it in abeyance with retrospective effect from the moment when it was passed. And if he had not been guilty of contempt on account of his failure to reinstate him, he cannot be guilty of contempt if after reinstating him he passed a fresh order of suspension.

9. There is no force in the argument that the first suspension order was in existence though in abeyance and that consequently another suspension order could not be passed at all. It was said that the first suspension order would revive after the writ petition was disposed of. The argument is based upon an erroneous view of what is suspension. Suspension is in its very nature of a temporary duration and there can be no suspension of suspension. When a suspended servant is allowed to resume work, the suspension comes to an end, and comes to an end once for all; he may be suspended again but there is nothing like the suspension remaining under suspension and reviving on the happening of a certain event,

So it is not correct to say that in spite of the interim order the first suspension order remained in existence and would revive on the disposal of the writ petition. As explained earlier, the moment, the petitioner was reinstated and started working, a right vested in the President to suspend him again and he could exercise this right after framing charges on any allegations, whether new or old. The right to suspend conferred by Section 69-A of the Municipalities Act depended simply upon the framing of charges and on what allegation the charges were framed was wholly immaterial.

10. I have not the slightest doubt that the President also committed no contempt of this Court. The contempt petition also therefore, must be dismissed.

11. Since the suspension order was illegal, the petitioner had a cause of action to come to this Court, but it was a precarious cause of action; in the circumstances the ends of justice would be met by his getting half of his costs.

12. The petition is dismissed; the petitioner will, however, get half of his costs from the opposite parties.