

(1996) 01 GUJ CK 0019

In the Gujarat High Court

Case No : Special Civil Application No. 645 of 1996

K.B. Mehta

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-01-1996

Acts Referred:

Bombay Prohibition Act, 1949 — Section 66(1), 85(1)(3)

Citation : (1996) 3 GLR 330

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—Heard Learned Counsel for the petitioner. The petitioner, a Deputy Superintendent of Police in the service of the State of Gujarat is challenging by this Writ Petition, the order dated 12-1-1996 of the respondent No. 1 by which he was placed under suspension. The suspension of the petitioner has been ordered as a criminal complaint has been lodged against him for the commission of the offences u/s 66(1)(b) and 85(1)(3) of the Bombay Prohibition Act, 1949. The criminal complaint bears F.I.R. No. 9 of 1996 which has been lodged on 8th January, 1996 at Palanpur Police Station. The Learned Counsel for the petitioner does not dispute that the respondent-State has the power to place the petitioner under suspension on the ground pending investigation or pending trial of the criminal case under the provisions of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971. The challenge to the suspension order has also not been made in the present case by the petitioner on the ground of mala fides. The Learned Counsel for the petitioner made two-fold contentions. Firstly, the Learned Counsel for the petitioner contended that from the mere fact that alcohol smell was coming from the person of the petitioner or his eyes were red when he went to the chamber of the respondent No. 3 would not ipso facto lead to the conclusion that the petitioner was drunk within the meaning of Section 85(1)(3) of the Bombay Prohibition Act. It has next been contended that for constituting an offence u/s 66(1)(b) of the Prohibition Act, it must be shown that the petitioner has consumed liquor. The last submission made by the Learned

Counsel for the petitioner is that the respondent Government should have resorted to the power to place the petitioner under suspension only when the nature of misconduct is such that the petitioner could not be trusted to discharge his duties for fear that he may indulge in similar activities elsewhere. In support of his contention, the Learned Counsel for the petitioner cited the decision of this Court in the case of J.S. Solanki Vs. Principal Chief Conservator of Forests and Another, . The Counsel for the petitioner has placed reliance on paragraph (53) of this judgment. I have given my thoughtful consideration to these submissions made by Learned Counsel for the petitioner.

2. Firstly, I may make it clear that the petitioner has not been placed under suspension in contemplation of a department inquiry. As stated earlier, in the present case, the petitioner is placed under suspension because a criminal complaint against him is pending investigation. The F.I.R. has been lodged on 8-1-1996 and the matter is pending investigation. At this stage, I do not consider it to be advisable to give any finding on the contention that no offence whatsoever has been committed by the petitioner as provided under Secs. 66(1)(b) and 85(1)(3) of the Bombay Prohibition Act. Otherwise, any finding given on this question may affect either of the parties. Moreover, whether the petitioner committed any offence or not is a matter of investigation and then of trial. Whether the petitioner has consumed liquor or not may be decided after taking the evidence in the trial and at this stage when the petitioner is placed under suspension any finding by this Court on this question will materially affect the investigation and ultimately the trial of the case. In the present case, none other than the District Superintendent of Police has noticed that the petitioner has consumed liquor and at his instance the F.I.R. has been lodged against the petitioner. As stated earlier in this judgment, the petitioner has not come out with any case of mala fides against the respondent No. 3. The charges which have been alleged against the petitioner are very serious. The Petitioner being a police officer of the State where there is prohibition, he has to see that the prohibition policy is strictly implemented. On the other hand, there is an allegation that he himself has violated the prohibition law and the person who is conferred with the powers for the enforcement of the Act himself has been alleged to have broken the law. Looking to these facts, it cannot be said that the suspension of the petitioner is unjustified or arbitrary. In the case of J.S. Solanki (supra), a grievance has been made by the petitioner therein that the delinquent could not be simultaneously transferred and suspended for the same charges. In that case, the delinquent was suspended and he has also been ordered to be transferred by transferring the head quarters which is not the case in the present case. In paragraph (25) of the judgment in the case of J.S. Solanki (supra), this Court has observed as under :

25. Before we part, we may sound a note of caution. Whenever an employee is facing charges which can be described as grave, as for example, corruption, misappropriation of large funds, gross abuse of powers with ulterior motives, etc. which if proved would result in the imposition of one of the three major penalties

outlines in Art. 311 of the Constitution of India, the Government address itself the question whether or not the facts of the case warrant any interim action during the pendency of the enquiry. If Government deems it necessary to take interim action, it should first consider if transfer of the delinquent to another station would suffice. If, however, the Government feels that the nature of the misconduct is such that he cannot be trusted to discharge his duties for fear that he may indulge in similar activities elsewhere, he may be suspended from service. Only in those rare cases where the Government is satisfied that notwithstanding the suspension of the employee, his continued presence at the same headquarters is likely to cause or is causing embarrassment to those of his subordinates expected to testify against him during the course of enquiry or he is attempting to influence or browbeat witnesses or is otherwise trying to tamper with the evidence because of his influence or connections at the said headquarters, Government may resort to both, suspension and transfer."

3. In paragraph 25 of the aforesaid decision, the Court has sounded a note of caution. The note of caution has been made by the Court in a case where there was department inquiry in contemplation. In the present case, a criminal complaint has been lodged and that too for a serious offence of violating the prohibition law by none other than by a police officer. The Government has the power to place the petitioner under suspension and it is for the Government and not for this Court to decide whether transfer or suspension is appropriate for the petitioner. The petitioner has been transferred to Tharad on 7-1-1996 from Ahmedabad and the suspension is of 12th January 1996. Had the petitioner been transferred at the place concerned only before one day to the commission of the alleged offence and five days before the date of suspension, the transfer would not have been appropriate action. The suspension of the petitioner was considered necessary as he is alleged to have committed the offence punishable under the Prohibition Act. In paragraph (2) of the suspension order, this conduct of the petitioner has been taken to contrary to the provisions of Gujarat Civil Services Conduct Rules, 1971. In paragraph (3) of the suspension order, the respondent No. 1 has considered that if the offence alleged against the petitioner is proved, then he is likely to be dismissed from the service. It has further been noted that in case the petitioner is not placed under suspension he may influence the witnesses or tamper with the evidence. However, each case has to be decided on its own facts. It is for the respondent No. 1 to decide whether the petitioner should be continued in service during the pendency of the investigation and the trial. In the facts of this case, if the respondent No. 1 has decided to place the petitioner under suspension, the exercise of power cannot be said to be illegal or arbitrary. The note of caution has been given in the case where the authority has exercised both the powers of transfer and suspension simultaneously which is not there in the present case. In the matter of suspension of Government servants, this Court has very limited powers of judicial review. Reference in this respect may be made to the decision of the Supreme Court in the case U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. v.

Sanjiv Rajan, 1993 I CLR 315. The order of suspension can be interfered with only where the power has been exercised by the authority concerned mala fide and there is no prima facie evidence before the Court to connect the delinquent with the charges. As stated earlier, the petitioner has not come up with any case of mala fides. So far as the other aspect is concerned, the matter is at the stage of investigation and any observation if made on this aspect of the case may cause prejudice to the either side. In cases where a delinquent has been placed under suspension pending criminal investigation or the trial, the investigation or the trial should be allowed to proceed and at this stage, the Court should not go in the question of merits of the charges as well as sufficiency of the material to prove the charges.

4. Taking into consideration, the matter from all angles, I do not find any substance in the Special Civil Application. The Special Civil Application fails and the same is dismissed.

5. Application dismissed.