
(1991) 08 BOM CK 0037

In the Bombay High Court

Case No : Criminal Writ Petition No. 683 of 1991

Krishinchand Khubchand Jagtiani

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 23-08-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 161, 5

Citation : (1992) 1 BomCR 449 : (1992) CriLJ 1071 : (1991) 2 MhLj 1228 : (1991) MhLj 1228

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : Madhukar Soochak, M/s. A.H. Pande and B.P. Pande, for the Appellant; K.H. Chopda, Public Prosecutor, for the Respondent

Judgement

1. The short question which will dispose of this petition embracing larger and many questions is in relation to the applicability or otherwise of certain provisions of S. 83 of the Bombay Municipal Corporation Act viz. Bombay Act No. III of 1888 - hereinafter referred to as the "Act".

2. For a proper pinpointing of the question that I am taking up for determination it will be necessary to set out the factual and legal parameters :

The petitioner K. K. Jagtiani was working as an Assistant Engineer with the Municipal Corporation of Greater Bombay (BMC). It is alleged that on 10th February, 1987 the petitioner along with one. Sawarkar and certain other municipal employees took action against M/s. Asian Oil Company of Sewree, Bombay-15. As an aftermath of this action, S. K. Toprani a partner of M/s. Asian Oil Company contacted Inspector G. G. Aparaj Anti-Corruption Bureau on 11-2-1987. On the basis of information furnished by Toprani, an offence was registered ascribing to the petitioner and Sawarkar the commission of an offence and a trap organised. The next day i.e. on 12-2-1987 the trap was sprung and the petitioner and Sawarkar trapped. In the course of the investigation, the then Municipal Commissioner P.W. S. S. Tinaikar allegedly after going through the

requisite papers accorded sanction to the prosecution of both the petitioner and Sawarkar. The sanction was accorded on 4-1-1988. On that day the petitioner was an Officer of the BMC being an Assistant Engineer in receipt of a basic minimum salary of less than Rs. 1,200/-. In due course, a charge-sheet was lodged against petitioner and Sawarkar in the Court of Special Judge, Greater Bombay. The petitioner had given notice of his being desirous of raising certain preliminary contentions - one of them being the validity of the sanction accorded by the Municipal Commissioner. For that reason, Tinaikar and Aparaj were examined as preliminary witnesses by the prosecution. The different grounds taken by the petitioner to assail the sanction and the investigation having been negatived, he has come by way of a writ petition to this Court. It is not necessary to go into the many points raised in the petition questioning the sanction and the investigation. In fact the validity of the investigation need not be gone into at all for the present. Even in respect of the challenge thrown to the validity of the sanction I will restrict the discussion to the vires of the sanction vis-a-vis the requirements of S. 83 of the Act.

3. Having done with the factual position I shall now set out the relevant provisions of the Prevention of Corruption Act, 1947 and the Act i.e. the BMC Act. S. 6(1)(c) of the Prevention of Corruption Act, 1947 to the extent relevant reads as follows :-

"6(1) No Court shall take cognizance of an offence punishable under S. 161 ... of the Indian Penal Code or under sub-sec. (2) of S. 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction -

(c) in the case of any other person, of the authority competent to remove him from his office."

The petitioner appears to have been appointed as an Assistant Engineer under S. 79 of the Act. Briefly stated, that Section requires the Municipal Commissioner to prepare from time to time and bring before the Standing Committee a schedule setting forth the designations and grades of the other Officers and servants ..., who should, in his opinion, be maintained, and the amount and nature of the salaries, fees and allowances, which, he proposes, should be paid to each. This is provided for by the first sub-section of S. 79. The second sub-section recites that the Standing Committee shall sanction such schedule either as it stands or subject to such modifications as they deem expedient. Sub-section (3) of S. 79 lays down that nothing in this section shall be construed as affecting the right of the corporation or of the Commissioner to make any temporary appointment which they or he are empowered to make under S. 80A. S. 80A is in two parts. Sub-section (1) provides for the power of appointing municipal officers, whether temporary or permanent to the posts which rank equivalent to, or higher than, the post of Executive Engineer set forth in a schedule for the time being in force prepared and sanctioned under S. 79, to vest in the corporation. The Proviso to sub-section (1) need not detain us for that deals with temporary appointments. Sub-section (2) of S. 80A says that except as provided in the Act, the power of

appointing municipal officers and servants whether temporary or permanent, shall vest in the Commissioner. The first Proviso goes on to lay down that the power in respect of permanent appointments shall be subject to the schedule for the time being in force prepared and sanctioned under S. 79. The second Proviso deals with temporary appointments and may for that purpose be kept aside. S. 83 runs into two sub-sections, the second running into a number of separate clauses. Sub-section (1) of S. 83 provides for different punishments including dismissal being imposed upon every municipal officer and servant "by the authority by whom such officer or servant is appointed". Sub-section (2) enumerates four Provisos. On the date the sanction was accorded Clause (a) to the extent relevant read as follows :-

"(a) no officer appointed to a post the minimum monthly salary exclusive of allowances of which Rs. 1,200/- or more shall be dismissed by the Commissioner without the previous approval of the Standing Committee ..."

Clause (b) provides for suspension by the Standing Committee or the Education Committee in respect of Officers appointed by the Corporation under Ss. 55, 56A, 74, 75, 76B, 77, 78A or 78C and 76A. Cl. (c) deals with the power of the Commissioner to impose penalties upon "any officer appointed by the Corporation otherwise than under Ss. 55, 56A, 74, 75, 76A, 77, 78A or 78G and Clause (q) of S. 61". Such Officers excluding the appointees under the sections detailed above "may with the previous approval of the Standing Committee ... be dismissed by the Commissioner." Clause (d) authorises the Municipal Chief Auditor to deal with "any officer or servant immediately subordinate to him and drawing a salary not exceeding rupees two hundred and fifty per month exclusive of allowances." But this is subject to "such conditions and limitations as the Standing Committee may deem fit to prescribe, and subject to a right of appeal to the Standing Committee". The Municipal Chief Auditor subject to the above limitations can impose upon the officer or servant a punishment of fine, reduction in rank or suspension etc. etc.

4. Mr. Soochak for the petitioner submits that the Special Judge was in error in holding that the petitioner could be dismissed from service by the Commissioner without the previous approval of the Standing Committee. In support of this contention learned Counsel points to Clause (2) of Sub-section (2) of S. 83. The argument developed by Mr. Soochak is that the petitioner is an officer appointed by the Corporation, that he is an Officer appointed under the enumerated sections and that the power to sanction a prosecution can be exercised only by an authority competent to dismiss the officer contemplated by Clause (c). If clause (c) fetters the power of Commissioner of dismissal as being subject to the previous approval of the Standing Committee, it is not open to the Commissioner to sanction a prosecution except with the previous approval of the Standing Committee. Admittedly, such previous approval had not been obtained by Tinaikar before according sanction to prosecution of the petitioner. The Public Prosecutor on the other hand submits that clause (c) has no application and that

it is clause (a) of sub-sec. (2) of S. 83 which is attracted. The petitioner on the date of according sanction was in receipt of a monthly salary exclusive of allowances totalling less than Rs. 1200/-. Therefore petitioner was not entitled to the protection carved out in Clause (a) which requires the Commissioner to act only with the previous approval of the Standing Committee.

5. There is some anomaly in Clauses (a) and (c) of sub-sec. (2) of S. 83. On the date the sanction was accorded clause (a) did not cover the case of an Officer whose basic salary was less than Rs. 12,00/- per month. Consequently such Officers would appear to be within the ambit of sub-sec. (1) of S. 83. But then clause (c) is rendered meaningless. This clause deals with all officers except those appointed under the enumerated sections. Petitioner has given an abstract of the enumerated sections in additional compilation No. 2. A summarization of the said compilation shows that the appointments made under the enumerated sections are of those who may be broadly classified as the higher echelon Officers of the BMC. Clause (c) deals with all Officers except those in the enumerated sections. In relation to such Officers the Commissioner is entitled to impose the punishments of fine, reduction in rank or suspension. In the matter of these punishments it is not required that he obtains the previous approval of the Standing Committee or the Education Committee. But if the Commissioner wishes to impose on any of the Officers the penalty of dismissal he can do so only "with the previous approval of the Standing Committee or the Education Committee". The learned Public Prosecutor contends that the word "or" should be read as a disjunctive and the word "may" should be read as giving the Commissioner an option. The contention is incomprehensible and I do not see what that has to do with the point under consideration. Even after reading the word "or" as a disjunctive what is clear is that there the Commissioner wants to dismiss an Officer appointed by the corporation the said Officer not being an appointee under the enumerated sections, he can do so only with the previous approval of the Standing Committee or the Education Committee. As to the submission based upon the use of the word "or" it is well settled that in certain situations "may" becomes "shall". As the word has been placed in clause (c) it is rightly claimed that the dismissal of the Officer by the Commissioner is fettered by the requirement of the previous approval of either the Standing Committee or the Education Committee. It is submitted that if Clause (c) is attracted, Clause (a) appears to be otiose. There is substance in this contention, and a well-known rule of construction is that redundancy should not be attributed to the legislature when construing any enactment or a provision thereof. Even so it is not the duty of the Court to ignore a mandatory provision of the law on the ground that the alternative is to ascribe to the legislature a redundancy. Here, Clause (c) is wider in scope than Clause (a) and because clause (c) exists it was not necessary to have Clause (a). I am now speaking of the position as on 4-1-1988. Since that time a change has been effected in Clause (a). That apart and even if Clause (a) be deemed to be a surplusage and Clause (a) and (c) be deemed to be somewhat conflicting, it will not be permissible to ignore the effect of Clause (c).

The learned Public Prosecutor contends that if the interpretation canvassed by the petitioner is accepted, S. 83(1) becomes redundant vis-a-vis the right to dismiss an Officer of the Corporation by the authority by whom such Officer is appointed. But the very purpose of the said next sub-section is to control the power of the appointing authority in the matter of punishments inclusive of dismissal. There is nothing strange in the enactment conferring a power to prescribe restrictions on the exercise of that power so as to prevent its degeneration into arbitrariness. Upholding the contention of the petitioner, I find that the sanction to prosecute not having the previous approval of the Standing Committee is bad in law and violative of S. 6(1)(c) of the Prevention of Corruption Act. So finding I quash the prosecution. It is made clear that the State is at liberty to lodge a fresh prosecution against the petitioner after obtaining the requisite sanction from the appropriate authority. Points not touched by this judgment will be available to the petitioner as and when a fresh charge-sheet is filed. Rule made absolute in the above terms.

6. The oral application made by the Public Prosecutor for leave to appeal is hereby rejected.

7. Rule made absolute.