
(2009) 08 MP CK 0055
In the Madhya Pradesh High Court

Mohd. Ismail Khan

APPELLANT

Vs

Madhya Pradesh Raod Transport Corporation and Another

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 28A, 37

Road Transport Corporations Act, 1950 — Section 3, 36, 45, 6

Citation : (2009) ILR (MP) 3115 : (2010) 1 JLJ 272 : (2009) 5 MPHT 348 :
(2010) 1 MPJR 12 : (2010) 1 MPLJ 346

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

Bench : Single Bench

Judgement

S.K. Gangele, J.

These two writ petitions have been filed by petitioner, Mohd. Ismail Khan, who was erst-while employee of the respondent-Corporation. Initially, petitioner filed Writ Petition No. 314/2009 (s) challenging appointment of Inquiry Officer. This Court vide, order dated 23-1-09 passed an interim order directing respondent No. 2 not to take any coercive action against the petitioner. However, in spite of operation of stay order of this Court petitioner has been removed from service after enquiry. Hence, the petitioner in subsequent writ petition, W.P. No. 1829/09 (s) challenged his order of dismissal from service.

Mr. Dilipraj Dwivedi, Deputy Secretary, Department of Transport, was appointed as Inquiry Officer in the case to conduct enquiry and competency to conduct the enquiry by Mr. Dilipraj Dwivedi has been challenged in these writ petitions, hence with the consent of parties, both writ petitions are heard and decided by this common order.

Petitioner was initially appointed as Traffic Superintendent in Madhya Pradesh Road Transport Corporation in 1982. He was promoted as Depot Manager in the year 2000. He was given current charge of Divisional Manager on 1-7-2006 and was posted as Divisional Manager, MPSRTC, Gwalior. A charge-sheet has been issued to the petitioner vide memo dated 26-11-2008 by the Managing Director

of the Corporation. By the aforesaid charge-sheet seven charges have been levelled against the petitioner. The petitioner vide letter (Annexure P-5), asked for certain documents for filing reply of the charge-sheet. Subsequently, vide letter (Annexure P-6), dated 17-12-2008, he filed his reply and denied the charges. After considering the reply of the petitioner vide impugned order (Annexure P-1), dated 15-2-2008 the Managing Director appointed Mr. Dilipraj Dwivedi, Dy. Secretary, Department of Transport as Inquiry Officer and Mr. R.K. Jain, Divisional Manager, MPSRTC, HQ, as Presenting Officer. The petitioner vide letter dated 19-12-2008 requested to change the Inquiry Officer. It has been mentioned by the petitioner that earlier Mr. Dilipraj Dwivedi was posted as Professor in Higher Education Department and his substantive post is of Professor in Higher Education Department. He is not familiar with the Rules and Regulations and working of the Madhya Pradesh Road Transport Corporation, hence he could not conduct the enquiry properly. It has further been stated that Mr. Dilipraj Dwivedi, respondent No. 2, is not eligible to be appointed as Inquiry Officer in accordance with the Regulations named as "Madhya Pradesh State Road Transport Employees Conduct, Discipline and Appeal Regulations, 1975", herein after referred to as the "Regulations of 1975. The aforesaid objection of the petitioner has been rejected vide order dated 9-1-2009, Annexure P-9. Thereafter, the petitioner filed Writ Petition No. 314/09 before this Court. This Court on 23-1-09 passed the following order:

Keeping in view the order passed by the Principal Seat of this Court in the identical case challenging the same that an Enquiry Officer was appointed who was the Deputy Secretary working under the State of M.P., it is ordered that till the next date of hearing the respondent No. 2 shall not take any coercive action against the petitioner in the Departmental Enquiry in which the respondent No. 2 is the Enquiry Officer.

The petitioner shall also place English Version of the Regulations of 1975 on record.

Issue notice to the respondents on payment of process fee within seven days failing which this petition shall stand dismissed without reference to the Court.

List the matter on 2-3-09.

Principal Seat of this Court at Jabalpur in identical cases challenging appointment of Inquiry Officer, also ordered that respondent No. 2 shall not take any coercive action. The respondent No. 2 is the Inquiry Officer. In spite of the stay order of this Court, the Inquiry Officer conducted the enquiry and found the charges proved against the petitioner. Thereafter, Managing Director vide order dated 8-4-2009 passed an order of dismissal of the petitioner from service. The aforesaid order has been challenged by the petitioner in petition, Writ Petition No. 1829/09(s).

Learned Counsel for the petitioner before arguing the case on merits, has submitted that appointment of respondent No. 2 as Inquiry Officer is arbitrary

and illegal because at the relevant time he was on deputation as Deputy Secretary and his substantive post is of Professor in Higher Education Department. Hence, the enquiry conducted against the petitioner is against the law. Learned Counsel for the petitioner has further submitted that in spite of the stay order granted by this Court, the order of dismissal of the petitioner has been passed, hence, the order of dismissal of the petitioner is also against the law.

Contrary to this, learned Counsel for respondent has submitted that the Managing Director had power and authority to appoint respondent No. 2 as an Inquiry Officer, hence the Disciplinary Enquiry conducted by respondent No. 2 is as per law. Learned Counsel further submitted that the stay order passed by this Court was against respondent No. 2. There was no order of stay against the Corporation, hence the dismissal order passed by the Corporation is as per law.

Undisputed facts of the case are that the petitioner is an employee of the Madhya Pradesh Road Transport Corporation. Respondent No. 2 was appointed as Inquiry Officer vide order dated 15-2-2008, Annexure P-1. At that time respondent No. 2, Mr. Dilipraj Dwivedi, had been working as Deputy Secretary, Department of Transport, Bhopal. The petitioner further pleaded that the substantive post of respondent No. 2 is Professor in Higher Education Department and he was on deputation as Deputy Secretary in the Department of Transport. In reply to the aforesaid pleadings of the petitioner respondent No. 1 did not dispute the above facts that the substantive post of respondent No. 2 is of Professor in Higher Education Deptt. and he was on deputation as Deputy Secretary at the relevant time.

Respondent No. 1, Madhya Pradesh State Road Transport Corporation was incorporated u/s 3 of the Road Transport Corporation Act, 1950, hereinafter referred as "Act of 1950". Section 45 of the Act of 1950 gives power to make regulations. In exercise of aforesaid power conferred by Section 45 of the Act of 1950, the respondent No. 1 with the previous sanction of the State Government framed the regulations named as "Madhya Pradesh State Road Transport Employees Conduct, Discipline and Appeal Regulations, 1975". The aforesaid regulations came into force w.e.f. 5-9-1975. These regulations are applicable to the employees who are in the services of the Corporation. Regulation 32 provides penalty, minor and major. Regulation 34 thereof provides authority competent to impose penalty, which is as under:

34. Authority competent to impose penalty.--

(1) The Corporation may impose any of the penalties specified in Regulation 32 on any Corporation employee.

(2) Notwithstanding anything contained in this regulation no. penalty specified in Clauses (v) to (ix) of Regulation 32 shall be imposed by any authority subordinate to the Appointing Authority.

Regulation 36 provides procedure for imposing major penalties, which is as

under:

36. Procedure for imposing major penalties.--

(a) No order imposing any of the major penalties specified in Regulation 32 shall be made except after an enquiry is held, as far as may be, in the manner provided in this Regulation and Regulation 37.

(b) Whenever the Competent Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct against an employee, it may itself inquire, or appoint under this regulation an authority to inquire into the truth thereof.

For the purpose of determining the question that whether respondent No. 2 was eligible to be appointed as Inquiry Officer, Section 36(b) is important. It has been mentioned in the aforesaid regulation that "whenever the Competent Authority is of the opinion that there are ground for inquiring into the truth of any imputation of misconduct against an employee, it may itself inquire, or appoint under this regulation an authority to inquire into the truth thereof. The words used under this regulation "an authority to inquire" is important. In the regulation the word "or appoint under this regulation an authority" has been used. The question is whether a person who is not an employee of the Corporation or who is not an authority under the Regulations of 1975, could be appointed as "an Inquiry Officer". In Advanced Law Lexicon, 3rd Edn., word "Authority" has been defined as under:

Authority, is nothing but a power to do something; it is sometimes given by word, and sometimes by writing; also it is by writ, warrant, commission, letter of attorney, etc. and sometimes by law. The authority that is given must be to do a thing lawful; for if it be for the doing anything against law, as to beat a man, take away his goods, or disseise him of his lands this will not be a good authority to justify him that doth it." (Dyer 102; Tomlin).

(In contracts) The lawful delegation of power by one person to another.

In Regulations of 1975 the words have been used are "or appoint under this regulation an authority to inquire into the truth thereof. If the words have been used "to appoint an authority to inquire into the truth thereof then it can easily be held that any person or body or agency could be appointed to inquire into the truth because it is settled law that a Competent Authority can delegate the power of the enquiry to any other authority.

Hon"ble the Supreme Court in Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, , has held as under with regard to interpretation of statute:

It is a sound principle of construction to brush aside words in a statute as being inapposite surplusages, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.

The Hon"ble Supreme Court further in State of Orissa and Ors. v. Joginder

Patjoshi and Anr. AIR 2004 SC 1039, has held as under with regard to interpretation of statute where the language used in a statute is clear and unambiguous:

12. Learned Counsel appearing on behalf of the respondents submission that subsequently another department of the State of Orissa intended to grant a higher benefit is of no consequence. In this case, this Court is required to interpret Rule 8 of the Rules as it stood prior to the amendment and not the amended Rules. It is now well settled principle of law that where the language used in a Statute is clear and unambiguous, the question of taking recourse of any principle of interpretation would not arise. In Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, , Para 13, this Court held:

While interpreting a provision the Court only interprets the law and cannot legislate it, if a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary. [See M/s. Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd.,]. The Legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah case. In Nanjudaiah case, the period was further stretched to have the time period run from date of service of the High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only Clause (1) and/or Clause (ii) of the proviso to Section 6(1), but also by a non-prescribed period. Same can never be the Legislative intent.

Similarly in Union of India (UOI) and Another Vs. Hansoli Devi and Others, , this Court held:

9. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of a statute. The rule stated by Tindal, C.J., in Sussex Peerage case (1844) 11 CI & Fin. 85 : 8 ER 1034, still holds the field. The aforesaid rule is to the effect (ER P. 1057)

If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law-giver.

It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In Kirkness v. John Hudson & Co. Ltd. (1995) 2 All ER 345 : 1955 AC 696 : (1955) 2 WLR 1135, Lord Reid pointed out as to what is the meaning of "ambiguous" and held that (All ERP.366C-D):

A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning.

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J., in the case of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry* AIR 1920 PC 181, it had been observed that the Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the Legislature had their attention been drawn to the omission before the Bill had passed into a law at times, the intention of the Legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the Court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of Section 28-A of the Act, to answer the questions referred to us by the Bench of two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, (sic: on one) who might have not made a reference earlier u/s 18, and therefore, ordinarily when a person makes a reference u/s 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression "had not made an application to the Collector u/s 18" in Section 28-A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference u/s 18 and that reference is entertained and answered. In other words, it may not be permissible for a land owner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact, in *Union of India and another Vs. Pradeep Kumari and others*, the three learned Judges, while enumerating the conditions

to be satisfied, whereafter an application u/s 28-A can be moved, had categorically stated (SCC p. 743, Para 10), "the person moving the application did not make an application to the Collection u/s 18". The expression "did not make an application", as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application u/s 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to the effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application u/s 28-A cannot be denied. We, accordingly, answer question 1(a) by holding that the dismissal of an application seeking reference u/s 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894.

In Dayal Singh and Others Vs. Union of India (UOI) and Others, , a three Judge Bench of this Court, in which both of us were members, observed as under:

37. It is a well settled principle of law that the Court cannot read anything into the statutory provision which is plain and unambiguous. The Court has to find out Legislative intent only from the language employed in the statutes. Surmises and conjectures cannot be restricted to for interpretations cannot be restricted to for interpretation of statutes. [See: Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama,].

This Court in Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , has observed (SCC p. 121, Para 25):

Scope of the Legislation on the intention of the Legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning in no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

The said decision has been followed by this Court in Illachi Devi (D) by Lrs. and Others Vs. Jain Society, Protection of Orphans India and Others, .

Hon"ble the Supreme Court further in Promoters & Builders Association of Pune v. Pune Municipal Corporation and Ors. : AIR 2007 SC 1956, has held, as under, with regard to interpretation of statute:

9. The main challenge of the review petitioners is to the addition of the words "from the very said plot" towards the end of the Clause (b) in DCR 2.4.11. Learned Counsel for the petitioners have submitted that in the proposal sent by the Pune Municipal Corporation after following the procedure prescribed in Sub-section (1) of Section 37 the aforesaid words were not there. However, the State Government while sanctioning the proposal added the said words which in law it could not do. It has been submitted that the Municipal Corporation had

submitted the proposal after inviting objections and after giving an opportunity of hearing and the proposal so made by the Municipal Corporation could not have been modified or altered by the State Government without inviting objections or giving an opportunity of hearing with regard to changes which it proposed to make and which were ultimately made in the notification issued by it. This point has been considered and examined in the judgment and order of this Court dated 5-5-2004. The language of Sub-section (2) of Section 37 uses the expression "sanction the modification with or without such changes, and subject to such conditions as it may deem fit, or refuse to accord sanction". The language of the section is very clear and it empowers the State Government to sanction the proposal of the Municipal Corporation regarding modification of Development Control Rules "with or without any changes as it may deem fit". These words are important and cannot be ignored. They have to be given their natural meaning. In *Union of India (UOI) and Another Vs. Hansoli Devi and Others*, , it has been held that it is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the Court must give effect to the words used in the statute and it would not be open to the Court to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and the policy of the Act. In *Nathi Devi Vs. Radha Devi Gupta*, , it was emphasized that it is well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part of a statute for a purpose and the Legislative intention is that every part of the statute should have effect. In *Dr Ganga Prasad Verma and Others Vs. State of Bihar and Others*, , it has been held that where the language of the Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Therefore, the view taken by this Court in the judgment and order dated 5-5-2004 that the State Government had full authority to make any changes or add any condition in the proposal of the Municipal Corporation is perfectly correct. In fact, on the plain language of the statute no other view can possibly be taken.

From the above stated principle of law laid down by the Hon"ble the Supreme Court, it is clear that it is not permissible to brush aside words in a statute and the scope of the statute, when the language of the provision is plain and unambiguous could not be enlarged. Regulation 36(b) means that an authority under the regulation could be delegated the power to enquire into the truth by the Competent Authority as Inquiry Officer. It means that a Competent Authority, who is competent to impose major penalty can enquire into the truth of impugnation of misconduct by himself or it could appoint or delegate his power to another authority appointed under the Regulations of 1975.

In the present case, the Managing Director has appointed respondent No. 2 as the Inquiry Officer. Respondent No. 2 admittedly is not an employee of the Corporation. He was working at the relevant time as Deputy Secretary in the

Department of Transport on deputation. Admittedly, his substantive post at the relevant time was Professor in the Higher Education Department. Consequently, the enquiry conducted by respondent No. 2 is against the provisions of Regulations of 1975 and beyond his power, hence the proceedings are null and void.

When the enquiry proceedings have been declared as null and void, in such circumstances, it is not necessary to decide the merits of the case. Consequently, the petitions of the petitioner are allowed. The order dated 15-12-2008, Annexure P-1, appointing respondent No. 2 as Inquiry Officer [filed in W.P. No. 314/09 (s)] is hereby quashed and subsequent proceedings conducted by him and also the order, dated 8-4-2009 (Annexure P-1) [filed in W.P. No. 1829/09 (s)] is also quashed. Because this Court granted stay in favour of the petitioner in spite of that petitioner has been dismissed from service, hence petitioner is entitled to get arrears of salary. After going through the facts of the case, in my opinion, the respondents have deliberately passed the order of dismissal in spite of stay order granted by this Court. It is hereby clarified that the respondents are free to take disciplinary action against the petitioner on the basis of charge-sheet issued by the Managing Director in accordance with Regulations of 1975. No order as to cost.