
(1962) 02 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 252 of 1961

Prem Shankar Sharma

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 23-02-1962

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 172, 176(2), 25(6)
Central Provinces and Berar Municipalities Rules — Rule 1, 2

Citation : AIR 1962 MP 262 : (1963) ILR (MP) 579 : (1962) JLJ 997 : (1962) 7 MPLJ 703

Hon'ble Judges : P.V. Dixit, C.J.; N.M. Golvalkar, J.; K.L. Pandey, J

Bench : Full Bench

Advocate : A.P. Sen and A.H. Saifi, for the Appellant; R.S. Dabir and V.S. Dabir, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.

This application for the issue of a writ of certiorari is by a person, who was employed as Head-Master of a school by the Municipal Committee, Khandwa, and who has been removed from service by a resolution dated the 27th September 1960 of the Committee. The resolution of the Committee was set aside in appeal by the Sub-Divisional Officer, Khandwa. It was, however, restored by the Collector, Khandwa, in an appeal preferred by the Municipal Committee against the decision of the Sub-Divisional Officer. The petitioner prays that the decision of the Collector be quashed by the issue of a writ of certiorari as the appeal preferred before him was incompetent.

The question raised as to the competency of the appeal preferred by the Municipal Committee before the Collector is one of construction of sections 25 (6), 172 and 176 (2) (vii) of the Central Provinces and Berar Municipalities Act, 1922, and of the rules framed by the Government as regards appeals from any decision of the Committee dismissing or removing a municipal employee or

inflicting any punishment on him. The question being of some importance and of frequent occurrence, the petition has been referred to this Bench for decision.

The relevant provisions of the Act, namely, Sections 25 (6), 172 and 176 (2) (vii) are as follows:

"25 (6). The Provincial Government may prescribe the classes or grades of officers and servants who shall have the right of appeal except in the case of dismissal under Sub-section (5) from any decision of the committee inflicting any departmental punishment other than censure."

"172. An appeal shall not lie against any order made under this Act except where express provision for appeal from such order has been made in the Act or any rule made thereunder."

"176. (1) In addition to any power specially conferred by this Act, the Provincial Government may make rules generally for the purpose of carrying into effect the provisions of this Act,

In particular, and without prejudice to the generality of the foregoing power, the Provincial Government may make rules-

(vii) as to cases in which, and the authorities to whom and the conditions subject to which, orders and decisions given under any provisions of this Act, and not expressly provided for as regards appeal, shall be appealable."

The rules as regards appeals (page 182 of the Madhya Pradesh Municipal, Manual) bear the heading "Rules u/s 25 (6)--Rules as to the classes and grades of officers and servants who shall have the right of appeal and the authorities to whom and the conditions subject to which the appeal shall lie." The first rule is negated in terms and specifies the circumstances in which no officer or servant of a municipal committee shall have a right of appeal. Rule 2 then says :

"2. (i) Subject to the provisions contained in Rule 1, every officer or servant, other than an officer of the classes specified in or under the first proviso to Sub-section (1) of Section 25, drawing Rs. 20 per mensem or above, shall have a right of appeal against the order of the Committee to the Sub-Divisional Officer. The Sub-Divisional Officer's order shall be final in the case of an employee drawing less than Rs. 50/- per mensem, and shall not be subject to revision.

(ii) A second appeal shall lie to the Deputy Commissioner against the order of the Sub-Divisional Officer under Sub-rule (i) in the case of an employee drawing Rs-50/- per mensem or over. Except as otherwise provided in Rule 3, the Deputy Commissioner's order shall be final.

(iii) Subject to the provisions contained in Rule 1, an officer of the classes specified in or under the first proviso to Sub-section (1) of Section 25 shall have a right of appeal against the orders of the Committee to the Deputy Commissioner. A second appeal shall lie to the State Government, and the orders of the State Government shall be final."

It was argued by Shri Sen, learned counsel appearing for the petitioner Prem Shankar, that the Municipal Committee could not claim any right of appeal if the Act or the rules made thereunder did not confer one; and that there was no express provision in the Act or any rule made thereunder permitting the Municipal Committee to appeal from a decision of the Sub-Divisional Officer in an appeal preferred by an officer or a servant of the Committee. It was said that Section 25 (6) only empowers the Government to prescribe the classes or grades of officers and servants who shall have the right of appeal from any decision of the Committee inflicting any departmental punishment other than censure; that it does not authorise the Government to give any right to the Committee to question, by appeal or otherwise, an order of the appellate authority constituted under the Act or the rules thereunder; that rules 1 and 2 of the rules framed u/s 25 (6) of the Act must be read so as to be consistent with Section 25 (6) and within the rule-making power conferred by that provision, and so read the second appeal spoken of in Sub-rule (ii) of rule 2 can only mean a second appeal by a municipal officer or servant who has been given the right of first appeal to the Sub-Divisional Officer by Sub-rule (i); and that if Sub-rule (ii) were to be read as giving a right of second appeal to the Municipal Committee also, it would be in excess of the provisions of Section 25 (6) and in contravention of those provisions.

We are unable to accede to the contention that under Sub-rule (ii) of Rule 2 the municipal committee has no right of appeal against a decision of the Sub-Divisional Officer given in an appeal under Sub-rule (i). There can be no controversy as regards the general principle that appeals are creatures of statutes and a court or tribunal or authority cannot have an inherent right to hear an appeal from any order or decision unless the law so expressly provides. Section 172 only embodies this principle when it lays down that an appeal shall not lie against any order made under the Act except where express provision for appeal from such order has been made in the Act or any rule made thereunder. The Act itself does not contain any express provision in regard to appeals from a decision of the municipal committee inflicting on its officers or servants punishments of dismissal or removal or other punishments. This matter, as permitted by Section 172 of the Act, is, however, regulated by the rules made under the Act. Clause (vii) of Section 176 (2) confers on the Government power to make rules as to cases in which, authorities to which, and the conditions and restrictions subject to which orders and decisions under the Act would be appealable.

It will be seen that under this rule-making power, a provision for appeals against an order or decision under the Act can be made only if there is no express provision to that effect. It is important to note that Section 25 (6) of the Act is not a provision making any decision of the Committee appealable or conferring a right of appeal on officers or servants of a municipal committee or designating the appellate authority. It only empowers the Government to prescribe "the classes or grades of officers and servants who shall have the right of appeal"

against any decision of the committee indicated in the sub-section. It postulates that the decisions of the committee would be made appealable under some other provision and proceeds to give to the Government power to confine the right of appeal to certain classes and grades of officers and servants. The power to frame rules with regard to the appealability of the decisions of a municipal committee and the appellate authority is thus not derived under Sub-section (6) of Section 25. That power is conferred by Sections 172 and 176 (2). (vii) read together.

Turning now to the rules, they are no doubt styled as "Rules u/s 25 (6)". But a bare perusal of the rules is sufficient to show that with the exception of the first rule, all other rules are in substance rules falling within the power conferred by Section 176 (2) (vii). It is only the first rule, which specifies the circumstances in which an officer or a servant of a municipal committee shall not have the right of appeal, that falls within the power given by Section 25 (6). The rules are, therefore, in substance rules both u/s 25 (6) as well as Section 176 (2) (vii). If the rules are regarded, as having been made in the exercise of the power conferred by Section 25 (6) alone, then barring rule 1 all other rules would be invalid. They would be in excess of Section 25 (6) and not consistent with it. The first rule would no doubt be in conformity with Section 25 (6). But standing by itself it would be altogether ineffective if the other rules are held to be invalid as not falling within the four corners of the power given by Section 25 (6).

In determining the validity of the rules, what is material is their substance and not the form or the heading. It is well settled that a rule made under an enactment cannot be declared ultra vires unless it is found that the enactment does not confer any power at all to make the rule. A rule purported to have been made under a wrong provision of an Act would none the less be valid if it is shown to be within the four corners of the power conferred by any other provision of the Act. In *P. Balakotaiah Vs. The Union of India (UOI) and Others*, , the Supreme Court has said that no exception can be taken to the proposition that when an authority, passes an Order which is within its competences it cannot fail merely because ,it purports to be made under a wrong provision if it can be shown to be within its power under any other rule and that the validity of an order should be judged on a consideration of its substance and not its form. The same principle applies in judging the validity of rules made under an enactment. In *Municipal Committee, Raipur v. Punjab Gil Mills*, 1959 MPC 592, a Division Bench of this Court upheld the validity of proviso (b) to rule 38 of the Raipur Municipal Committee Octroi-tax Rules, on this principle. To the same effect are the decisions in *Secy. of State v. Appurao* AIR 1924 Mad 92, *Rajam Chetti v. Seshayya* ILR 18 Mad 236 (FB) and *Queen-Empress v. Gangaram*; ILR 16 All 136 (FB).

If as we think, the rules in question are referable to the powers of the State Government u/s 176, (2) (vii), then there can be no justification for reading Rule 2 (ii) with reference, to power conferred by Section 25 (6), and limiting the right of second appeal conferred by the said rule only to officers and servants who

have been given the right of first appeal under Rule 2 (i). Rule 2 (ii), as it stands, does not import any such restriction. The expression "A second appeal shall lie to the Deputy Commissioner" used in that rule does not in any way particularise the party who shall have the right of second appeal. It means no more than this that an aggrieved party can go to the Deputy Commissioner in appeal and the Deputy Commissioner shall have jurisdiction to entertain the appeal. If, therefore, the municipal committee is aggrieved by a decision of the Sub-Divisional Officer given in first appeal, the Committee has a right of appeal against the decision of the Sub-Divisional Officer. In our opinion, the proposition put forward by the learned counsel for the petitioner that under Rule 2 (ii) the Municipal Committee has no right of appeal is unmaintainable.

The decisions of this Court in AIR 1948 24 (Nagpur) and *Pralhact v. Municipal Committee, Achalpur*, ILR (1955) Nag 131, support the construction we have put on Rule 2 (ii). In the former case, Sen, J. considered Sub-sections (6) and (7) of Section 25, as they stood before they were amended in 1947, and the relevant rules framed under Sub-section (7) with regard to appeals. Sub-sections (6) and (7) of Section 25 ran as follows :

"(6) An appeal shall be from any decision of the committee dismissing an officer or servant otherwise than under Sub-section (5).

The Provincial Government may make rules under this Act as to the classes or grades of officers and servants who shall have the right of appeal under Sub-section (6), and the authorities to whom and the conditions subject to which such; appeal shall lie."

While considering the validity of the rule which provided" a second appeal to the Commissioner against a decision of the Deputy Commissioner, the learned Judge observed that the rule in its wide terms went beyond the terms of Section 25 (7) but could be supported by invoking the powers u/s 176 which the Government undoubtedly had, and further said that the rule did not restrict the right of second appeal only to an employee and a second appeal by the municipal committee was also competent.

Learned counsel for the petitioner said that the observations in AIR 1948 24 (Nagpur) , were obiter. We do not agree. In that case a Water Work overseer who had been removed from service by a resolution of the municipal committee, was reinstated by the Deputy Commissioner in first appeal. The Municipal Committee then preferred a second appeal before the Commissioner which was dismissed on the ground that it was incompetent. Subsequently on the advice of an advocate, the municipal committee preferred a revision petition before the Government which was also dismissed. The Examiner of Local Fund Accounts then made an order of surcharge against the members of the municipal committee who voted in favour of the resolution recommending the filing of a revision petition. It was while dealing with the legality of the order of surcharge that the learned judge considered the question whether the advice given by the

advocate that the Commissioner was wrong, and expressed the opinion that the second appeal filed before the Commissioner was competent.

The following observation of Sen, J. abundantly show that the statement of the learned Judge that a second appeal lay at the instance of the municipal committee was not obiter. He said:

"The question whether an appeal to the Commissioner was competent or not is not relevant at this stage because the Municipal Committee has not been made liable for the filing of an appeal before the Commissioner or for sanctioning the expenses for the appeal. The question however is relevant only for the purpose of showing that the advice given by Mr. Thengdi, Advocate, to the effect that the order of the Commissioner was wrong, was justified."

In ILR (1955) Nag 131 (supra), the validity of the provision in Sub-rule (i) of Rule 2 providing that a revision petition will not lie at the instance of an employee drawing a salary below Rs. 50/- p.m. was upheld with reference to the rule-making power conferred u/s 176 (2). In Laxman Prasad v. M.P. Dwivedi, M. P. No. 57 of 1955, D/-30-8-1958 (MP), Naik, J. also upheld the validity of Rule 2 (ii) by invoking Section 176 (2) and came to the conclusion that the rule gave a right of second appeal to the municipal committee also. To the same effect is the decision of a Division Bench of the Bombay High Court in Abdul Rahim Khan Vs. Municipal Committee, Khamgaon and Another, .

In our judgment the appeal preferred by the Municipal Committee before the Collector, Khandwa, was competent. That being so, the contention of the petitioner that the Collector's decision was without jurisdiction must be rejected, learned counsel did not rightly assail before us the merits of the order of the Collector. Indeed he could not when, the charges of indiscipline and insubordination against the petitioner were fully established at an enquiry after giving the petitioner all opportunity to defend himself against the charges. Rule 1 of the rules framed u/s 25 (7) (i) as regards punishments for any officer or servant of a municipal committee, empowers the committee to remove an officer or servant "for good and sufficient reasons". The fact that the Municipal Committee did not make a bye-law providing for the removal of a servant on a charge of insubordination or indiscipline does not take away the Committee's power under Rule 1 to remove its employee on such a charge.

For all these reasons, this petition is dismissed. In the circumstances of the case, we make no order as to costs. The outstanding amount of security deposit shall be refunded to the petitioner.